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CHAPTER 144

WATER, SEWAGE, REFUSE, MINING, OIL AND GAS AND AIR POLLUTION

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SUBCHAPTER I

DEFINITIONS

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

(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" means 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" means 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" means a nonstock corporation organized under ch. 181 or corresponding prior general corporation laws.

(8) "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.

(9) "Owner" means 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.

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

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

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

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

(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 permits 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" means 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 water or groundwater, natural or artificial, public or private, within the state or its jurisdiction.

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

(21) "Waterworks," or "water system" means 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; 1983 a. 36, 189; 1987 a. 403

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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) 1. The department shall promulgate 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. Water quality standards shall consist of the designated uses of the waters or portions thereof and the water quality criteria for those waters based upon the designated use. Water quality standards shall 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.

2. In adopting or revising any water quality criteria for the waters of the state or any designated portion thereof, the department shall do all of the following:

a. At least annually publish and provide public notice of water quality criteria to be adopted, revised or reviewed in the following year.

b. Consider information reasonably available to the department on the likely social, economic, energy usage and environmental costs associated with attaining the criteria and provide a description of the economic and social considerations used in the establishment of the criteria.

c. Establish criteria which are no more stringent than reasonably necessary to assure attainment of the designated use for the water bodies in question.

d. Employ reasonable statistical techniques, where appropriate, in interpreting the relevant water quality data.

e. Develop a technical support document which identifies the scientific data utilized, the margin of safety applied and any facts and interpretations of those data applied in deriving the water quality criteria, including the persistence, degradability and nature and effects of each substance on the designated uses, and which provides a summary of the information considered under this paragraph.

3. Subdivision 2. does not apply to rules promulgated under this paragraph by the department for any substance before November 10, 1987.

4. By April 1, 1989, the department shall review, in accordance with subd. 2, and as necessary revise all water quality criteria, except those for dissolved oxygen, temperature, pH and ammonia, adopted under this paragraph before November 10, 1987.

5. The department shall comply with this paragraph with respect to all water quality criteria adopted or revised after November 10, 1987.

(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.

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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 s. 144.026 applies to the proposed construction, the application shall comply with s. 144.026 (5) (a). 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 or does not meet the grounds for approval specified under s. 144.026 (5) (d), if applicable, 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 and the withdrawal will conform to the requirements of s. 144.026, if applicable. The department shall require each person issued an approval under this paragraph to report that person's volume and rate of withdrawal, as defined under s. 144.026 (1) (m), and that person's volume and rate of water loss, as defined under s. 144.026 (1) (L), if any, in the form and at the times specified by the department. The department may issue general or special orders it considers necessary to ensure 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, 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 wastewater, including operations and maintenance, taking into consideration the future needs of the community for protection of its water supply. 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 promulgate rules establishing an examining program for the certification of operators of waterworks, wastewater treatment plants and septage servicing vehicles operated under a license issued under s. 146.20 (3), setting such standards as the department finds necessary to accomplish the purposes of this chapter, including requirements for continuing education. The department may charge applicants a fee for certification. All moneys collected under this paragraph for the certification of operators of waterworks, wastewater treatment plants and septage servicing vehicles shall be credited to the appropriation under s. 20.370 (2) (bL). No person may operate a waterworks, wastewater treatment plant or septage servicing vehicle without a valid certificate issued under this paragraph. The department may suspend or revoke a certificate issued under this paragraph for a violation of any statute or rule relating to the operation of a waterworks or wastewater treatment plant or to septage servicing, for failure to fulfill the continuing education requirements or as provided under s. 145.245 (3). The owner of any wastewater treatment plant shall be, or shall employ, an operator certified under this paragraph who shall be responsible for plant operations, unless the department by rule provides otherwise. In this paragraph, "wastewater treatment plant" means a system or plant used to treat industrial wastewater, domestic wastewater or any combination of industrial wastewater and domestic wastewater.

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

(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), (r) or (u), 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, 144.24, 144.241 and 144.2415.

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(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.

(u) Under the procedure specified in par. (v), the department, in consultation with the department of agriculture, trade and consumer protection, may order or cause the abatement of pollution which the department has determined to be significant and caused by a nonpoint source, as defined in s. 144.25 (2) (b), including pollution which causes the violation of a water quality standard, pollution which significantly impairs aquatic habitat or organisms, pollution which restricts navigation due to sedimentation, pollution which is deleterious to human health or pollution which otherwise significantly impairs water quality, but not including any pollution caused primarily by animal waste.

(v) 1. If the department determines under par. (u) that significant pollution is caused by a nonpoint source, the department shall send a written notice of intent to issue an order to abate the pollution to the person whom the department determines to be responsible for the nonpoint source, to the department of agriculture, trade and consumer protection and to the land conservation committee created under s. 92.06 in every county in which the nonpoint source is located. The notice shall describe the department's findings and intent, and shall include a date by which that person is required to abate the pollution. That date shall be at least one year after the date of the notice unless the department determines that the pollution is causing or will cause severe water quality degradation that could be mitigated or prevented by abatement action taken in less than one year. In its determination under this paragraph, the department shall consider the nature of the actual or potential damage caused by the pollution and the feasibility of measures to abate that pollution.

2. If the nonpoint source which is the subject of a notice under subd. 1. is agricultural, the department of agriculture, trade and consumer protection shall do all of the following:

a. Upon receipt of the notice and in cooperation with the land conservation committee, provide to the person whom the department has determined to be responsible for the nonpoint source a listing of management practices which, if followed, would reduce pollution to an amount which the department of natural resources determines to be acceptable. The list shall, with reasonable limits, set forth all of the options which are available to the person to reduce pollution to that amount of pollution, and shall include an explanation of financial aids and technical assistance which may be available to the person for the abatement of pollution from the department of agriculture, trade and consumer protection under s. 92.14 and from other sources.

b. Issue a report to the department within one year after the date of the notice which describes the actions taken by the person whom the department has determined to be responsible for the nonpoint source and a recommendation as to whether the department should issue an order to abate the pollution caused by that nonpoint source. Notwithstanding subd. 1, the department may not issue an order to abate that pollution until the department receives that report unless the department determines that the pollution is causing or will cause severe water quality degradation which could be mitigated or prevented by abatement action taken in less than one year and unless the department of agriculture, trade and consumer protection files a concurring determination in writing with the department within 30 days after receiving notice of the department's determination.

(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; 1985 a. 60; 1987 a. 27, 60, 297, 399, 403; 1989 a. 31, 366; 1991 a. 39.

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.

144.0255 Municipal clean drinking water grants. (1) The department may award a municipal clean drinking water grant, from the appropriation under s. 20.866 (2) (tb), to a municipality for capital costs to achieve compliance with standards for contaminants established by the department by rule under the safe drinking water program under s. 144.025 (2) (t), if the municipality is not in compliance with those standards on or after April 1, 1990, if the municipality incurs the capital costs after January 1, 1989, and if the violation of the standards for contaminants occurs in a public water supply owned by the municipality.

(2) The department shall approve grants under this section equal to 90% of the amount by which the reasonable and necessary capital costs of achieving compliance with the standards for contaminants exceed an amount equal to $25 times the population that is served by the contaminated public water supply for which a grant is sought if the reasonable and necessary capital costs of achieving compliance with such standards are an amount equal to an amount that is greater than $150 times the population that is served by the contaminated water supply.

(3) The department shall rank applicants for grants under this section on the basis of the severity of risk to human health

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posed by each applicant's violation of the standards for contaminants. If insufficient funds are available for providing grants to eligible municipalities, the department shall allocate grants based on the severity of risk to human health.

(4) The department shall promulgate rules for the administration of the program under this section that include the establishment of which capital costs are eligible for reimbursement and the method for ranking applicants under sub. (3).

History: 1989 a. 366; 1991 a. 32.

144.026 Water resources conservation and management. **(1)** DEFINITIONS. In this section:

(a) "Approval" means a permit issued under s. 30.18 or an approval under s. 144.025 (2) (e) or 144.04.

(b) "Authorized base level of water loss" means any of the following:

1. The maximum 30-day average water loss authorized as a condition of an approval.

2. If subd. 1 does not apply, the highest average daily water loss over any 30-day period that is reported to the department or the public service commission under sub. (3) (c) or s. 30.18 (6) (c), 144.025 (2) (e), 144.04 or 196.98.

3. If there is no water loss from an existing withdrawal, zero gallons per day.

(c) "Consumptive use" means a use of waters of the state, other than an interbasin diversion, that results in a failure to return any or all of the water to the basin from which it is withdrawn. "Consumptive uses" include, but are not limited to, evaporation and incorporation of water into a product or agricultural crop.

(d) "Great Lakes basin" means the watershed of the Great Lakes and the St. Lawrence river upstream from Trois Rivieres, Quebec.

(e) "Great Lakes charter" means the document establishing the principles for the cooperative management of Great Lakes water resources, signed by the governors and premiers of the Great Lakes region on February 11, 1985.

(f) "Great Lakes region" means the geographic region composed of the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin, the commonwealth of Pennsylvania and the provinces of Ontario and Quebec, Canada.

(g) "Interbasin diversion" means a transfer of the waters of the state from either the Great Lakes basin or the upper Mississippi river basin to any other basin.

(h) "International joint commission" means the commission established by the boundary water agreement of 1909 between the United States and Canada.

(i) "Person" has the meaning given in s. 144.01 (9m) and also includes special purpose districts established under s. 66.072, other states and provinces and political subdivisions of other states and provinces.

(j) "Upper Mississippi river basin" means the watershed of the Mississippi river upstream from Cairo, Illinois.

(k) "Upper Mississippi river region" means the geographic region composed of the states of Illinois, Iowa, Minnesota, Missouri and Wisconsin.

(L) "Water loss" means a loss of water from the basin from which it is withdrawn as a result of interbasin diversion or consumptive use or both.

(m) "Withdrawal" means the removal or taking of water from the waters of the state.

(2) AGGREGATION OF MULTIPLE WITHDRAWALS. (a) In calculating the total amount of an existing or proposed withdrawal for purposes of determining the applicability of sub. (3), a person shall include all separate withdrawals which the person makes or proposes to make for a single use or for related uses.

(b) In calculating the total amount of an existing or proposed water loss for purposes of determining the applicability of sub. (4), a person shall include all separate interbasin diversions and consumptive uses, or combinations thereof, which the person makes or proposes to make for a single use or for related uses.

(3) REGISTRATION REQUIRED. (a) 1. Except as provided in par. (b), any person who, on January 1, 1986, is making a withdrawal averaging more than 100,000 gallons per day in any 30-day period shall register the withdrawal with the department before July 1, 1987.

2. Except as provided in par. (b), any person who, on or after January 1, 1986, proposes to begin a withdrawal that will average more than 100,000 gallons per day in any 30-day period shall register the proposed withdrawal with the department.

(am) A registration under par. (a) shall contain a statement of and supporting documentation for all of the following:

1. The source of the proposed or existing withdrawal.

2. The location of any discharge or return flow.

3. The location and nature of the proposed or existing water use.

4. The actual or estimated average annual and monthly volumes and rates of withdrawal.

5. The actual or estimated average annual and monthly volumes and rates of water loss from the withdrawal.

(b) Paragraph (a) does not apply to any of the following:

1. A person making a withdrawal who has been issued an approval and, as a condition of the approval, is reporting the volume and rate of withdrawal and, if applicable, the volume and rate of water loss from the withdrawal to the department or, if the person is a public utility, to the public service commission.

2. A person who is required to comply with sub. (4) before beginning the proposed withdrawal.

3. A person holding a permit under s. 147.02 or the federal water pollution control act, as amended, 33 USC 1251 to 1376, for whom the department has established a water loss coefficient, based on flow diagrams and other water use information provided by the permittee, that the department uses to calculate the permittee's water loss.

(c) Each person who registers a withdrawal under par. (a) shall report the volume and rate of withdrawal and, if applicable, the volume and rate of water loss from the withdrawal to the department in the form and at the times required by the department.

(4) WATER LOSS APPROVAL REQUIRED. (a) This subsection applies to all of the following:

1. A person to whom a permit has been issued under s. 30.18 or who is required to obtain a permit under that section before beginning or increasing a withdrawal.

2. A person who is operating a well under an approval issued under s. 144.025 (2) (e) or who is required to obtain an approval under that paragraph before constructing or installing a well.

3. An owner who is operating a system or plant under plans approved under s. 144.04 or who is required to submit plans and obtain an approval under that section before construction or extension of a proposed system or plant.

(b) Before any person specified in par. (a) may begin a new withdrawal or increase the amount of an existing withdrawal, the person shall apply to the department under s. 30.18, 144.025 (2) (e) or 144.04 for a new approval or a modification of its existing approval if either of the following conditions applies:

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1. The person proposes to begin a new withdrawal that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period.

2. The person proposes to increase an existing withdrawal that will result in a water loss averaging more than 2,000,000 gallons per day in any 30-day period above the person's authorized base level of water loss.

(5) APPLICATION; APPROVAL; DENIAL. (a) *Application.* An application under sub. (4) (b) shall contain a statement of and documentation for all of the following:

1. The current operating capacity of the withdrawal system, if the proposed increase requires the expansion of an existing system.

2. The total new or increased operating capacity of the withdrawal system.

3. The place and source of the proposed withdrawal.

4. The place of the proposed discharge or return flow.

5. The place and nature of the proposed water use.

6. The estimated average annual and monthly volumes and rates of withdrawal.

7. The estimated average annual and monthly volumes and rates of water loss.

8. The anticipated effects, if any, that the withdrawal will have on existing uses of water resources and related land uses both within and outside of the Great Lakes basin or the upper Mississippi river basin.

9. Any land acquisition, equipment, energy consumption or the relocation or resiting of any existing community, facility, right-of-way or structure that will be required.

10. The total anticipated costs of any proposed construction.

11. A list of all federal, state, provincial and local approvals, permits, licenses and other authorizations required for any proposed construction.

13. A statement as to whether the proposed withdrawal complies with all applicable plans for the use, management and protection of the waters of the state and related land resources, including plans developed under ss. 144.025 (2) (a) and 147.25 and the requirements specified in any water quantity resources plan under sub. (8).

14. A description of other ways the applicant's need for water may be satisfied if the application is denied or modified.

15. A description of the conservation practices the applicant intends to follow.

16. Any other information required by the department by rule.

(b) *Great Lakes basin; consultation required.* If the department receives an application that, if approved, will result in a new water loss to the Great Lakes basin averaging more than 5,000,000 gallons per day in any 30-day period, or an increase in an existing withdrawal that will result in a water loss averaging 5,000,000 gallons per day in any 30-day period above the applicant's authorized base level of water loss, the department shall notify the office of the governor or premier and the agency responsible for management of water resources in each state and province of the Great Lakes region and, if required under the boundary water agreement of 1909, the international joint commission. The department shall also request each state and province that has cooperated in establishing the regional consultation procedure under sub. (11) (f) to comment on the application. In making its determination on an application, the department shall consider any comments that are received within the time limit established under par. (c).

(c) *Department response.* Within the time limit established by the department by rule, which shall be consistent with the time limit, if any, established by the governors and premiers of the Great Lakes states and provinces, the department shall do one of the following in writing:

1. Notify the applicant that the application is approved or denied, and if it is denied, the reason for the denial.

2. Notify the applicant of any modifications necessary to qualify the application for approval.

(d) *Grounds for approval.* Before approving an application, the department shall determine all of the following:

1. That no public water rights in navigable waters will be adversely affected.

2. That the proposed withdrawal does not conflict with any applicable plan for future uses of the waters of the state, including plans developed under ss. 144.025 (2) (a) and 147.25 and any water quantity resources plan prepared under sub. (8).

3. That both the applicant's current water use, if any, and the applicant's proposed plans for withdrawal, transportation, development and use of water resources incorporate reasonable conservation practices.

4. That the proposed withdrawal and uses will not have a significant adverse impact on the environment and ecosystem of the Great Lakes basin or the upper Mississippi river basin.

5. That the proposed withdrawal and uses are consistent with the protection of public health, safety and welfare and will not be detrimental to the public interest.

6. That the proposed withdrawal will not have a significant detrimental effect on the quantity and quality of the waters of the state.

7. If the proposed withdrawal will result in an interbasin diversion, all of the following:

a. That each state or province to which the water will be diverted has developed and is implementing a plan to manage and conserve its own water quantity resources, and that further development of its water resources is impracticable or would have a substantial adverse economic, social or environmental impact.

b. That granting the application will not impair the ability of the Great Lakes basin or upper Mississippi river basin to meet its own water needs.

c. That the interbasin diversion alone, or in combination with other water losses, will not have a significant adverse impact on lake levels, water use, the environment or the ecosystem of the Great Lakes basin or upper Mississippi river basin.

d. That the proposed withdrawal is consistent with all applicable federal, regional and interstate water resources plans.

(e) *Right to hearing.* Except as provided in s. 227.42 (4), any person who receives notice of a denial or modification requirement under par. (c) is entitled to a contested case hearing under ch. 227 if the person requests the hearing within 30 days after receiving the notice.

(f) The department shall charge each applicant for an approval under this subsection the fee established under sub. (10) (a) 5. All moneys collected under this paragraph shall be credited to the general fund.

(6) APPROVAL. (a) *Issuance; contents.* If an application is approved under sub. (5), the department shall modify the applicant's existing approval or shall issue a new approval that specifies all of the following:

1. The location of the withdrawal.

2. The authorized base level of water loss from the withdrawal.

3. The dates on which or seasons during which water may be withdrawn.

4. The uses for which water may be withdrawn.

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5. The amount and quality of return flow required and the place of discharge.

6. The requirements for reporting volumes and rates of withdrawal and any other date specified by the department.

7. Any other conditions, limitations and restrictions that the department determines are necessary to protect the environment and the public health, safety and welfare and to ensure the conservation and proper management of the waters of the state.

8. Any requirements for metering, surveillance and reporting that the department determines are necessary to ensure compliance with other conditions, limitations or restrictions of the approval.

9. If the department determines that a time limit is necessary, the date on which approval for the withdrawal expires.

(b) *Review.* The department shall review each approval prior to the expiration date specified under par. (a) 9, if any, or within 5 years from the date of issuance and at least every 5 years thereafter.

(c) *Modification by department.* The department may at any time propose modifications of the approval or additional conditions, limitations or restrictions determined to be necessary to ensure continued compliance with this section or with any other applicable statute or rule.

(d) *Revocation.* If the department determines that a person to whom an approval has been issued would be unable under any conditions, limitations or restrictions to comply with this section or another applicable statute or rule, it shall revoke the approval.

(e) *Request for modification.* A person to whom an approval has been issued or any person adversely affected by a condition, limitation or restriction of an approval may request that the department modify a condition, limitation or restriction of an approval.

(f) *Notice; right to hearing.* The department shall notify the person to whom the approval has been issued and any other person who has in writing requested notice of the receipt of a request to modify an approval or of the department's intent to modify or revoke an approval. The person to whom the approval is issued is entitled to a contested case hearing under ch. 227 before a revocation or modification takes effect. Any other person who may be adversely affected by a proposed modification is entitled to a contested case hearing under ch. 227 before a modification takes effect.

(g) *Fees.* The department shall periodically collect from each person whose application under this subsection is approved the fee established under sub. (10) (a) 5. All moneys collected under this paragraph shall be credited to the general fund.

(7) EMERGENCY ORDER. The department may, without a prior hearing, order a person to whom an approval is issued to immediately stop a withdrawal if the department determines that there is a danger of imminent harm to the public health, safety or welfare, to the environment or to the water resources or related land resources of this state. The order shall specify the date on which the withdrawal must be stopped and the date, if any, on which it may be resumed. The order shall notify the person that the person may request a contested case hearing under ch. 227. The hearing shall be held as soon as practicable after receipt of a request for a hearing. An emergency order remains in effect pending the result of the hearing.

(8) PREPARATION OF WATER QUANTITY RESOURCES PLAN. The natural resources board shall, before August 1, 1988, adopt and submit to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a long-term state water quantity resources plan for the protection, conservation and management of the waters of the state. The plan shall include, but need not be limited to, the following:

(a) The description of a system for allocating this state's water resources during a water shortage or other emergency.

(b) Identification of the existing uses of the waters of the state.

(c) An estimate of future trends in water use.

(d) Recommendations for the use, management and protection of the waters of the state and related land resources that will affect persons subject to sub. (4).

(9) AMENDMENT OF COASTAL MANAGEMENT PROGRAM. (a) The Wisconsin coastal management council, established under executive order number 62, dated August 2, 1984, shall amend this state's coastal management program submitted to the U.S. secretary of commerce under 16 USC 1455, to incorporate the requirements of this section and the findings and purposes specified in 1985 Wisconsin Act 60, section 1, as they apply to the water resources of the Great Lakes basin, and shall formally submit the proposed amendments to the U.S. secretary of commerce.

(b) After approval of the amendments submitted to the U.S. secretary of commerce under par. (a), the Wisconsin coastal management council shall, when conducting federal consistency reviews under 16 USC 1456 (c), consider the requirements, findings and purposes specified under par. (a), if applicable.

(c) If the department issues an approval for a withdrawal to which this section applies, and the withdrawal is subject to a federal consistency review under 16 USC 1456 (c), the Wisconsin coastal management council shall certify that the withdrawal is consistent with this state's coastal management program.

(10) RULE MAKING; FEES. (a) The department shall promulgate rules establishing all of the following:

1. The procedures for reviewing and acting on applications under subs. (4) and (5).

2. Requirements for reporting volumes and rates of withdrawals.

3. The method for determining what portion of a withdrawal constitutes a consumptive use.

4. Procedures for implementing the plan adopted under sub. (8).

5. A graduated schedule for the fees required under subs. (5) (f) and (6) (g) and a schedule for collecting the fees under sub. (6) (g) periodically.

(b) The department may promulgate any other rule necessary to implement this section.

(11) COOPERATION WITH OTHER STATES AND PROVINCES. The department shall do all of the following:

(a) Cooperate with the other Great Lakes states and provinces to develop and maintain a common base of information on the use and management of the water resources of the Great Lakes basin and to establish systematic arrangements for the exchange of such information.

(b) Collect and maintain information regarding the locations, types and quantities of water use, including water losses, in a form that is comparable to the form used by the other Great Lakes states and provinces.

(c) Collect, maintain and exchange information on current and projected future water needs with the other Great Lakes states and provinces.

(d) Cooperate with the other Great Lakes states and provinces in developing a long-term plan for developing, conserving and managing the water resources of the Great Lakes basin.

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(e) As provided in the Great Lakes charter, participate in the development of a regional consultation procedure for use in exchanging information on effects of proposed interbasin diversions and consumptive uses.

(f) Participate in the development of an upper Mississippi river basin regional consultation procedure for use in exchanging information on the effects of proposed water losses from that basin.

(12) MISCELLANEOUS PROVISIONS. (a) The enumeration of any remedy under this section does not limit the right to any other remedy available in an action under the statutory or common law of this state or any other state or province, federal law or Canadian law.

(b) Proof of compliance with this section is not a defense in any action not founded on this section.

(c) This state reserves the right to seek, in any state, federal or provincial forum, an adjudication of the equitable apportionment of the water resources of the Great Lakes basin or upper Mississippi river basin, and the protection and determination of its rights and interests in those water resources, in any manner provided by law.

History: 1985 a. 60; 1987 a. 27, 186; 1987 a. 403 s. 256; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 32; 1991 a. 39.

NOTE: Section 1 of 1985 Act 60, which created this section is entitled "Legislative findings; purpose."

144.027 Compensation for well contamination. (1) DEFINITIONS. In this section:

(a) "Alternate water supply" means a supply of potable water obtained in bottles, by tank truck or by other similar means.

(b) "Contaminated well" or "contaminated private water supply" means a well or private water supply which:

1. Produces water containing one or more substances of public health concern in excess of a primary maximum contaminant level promulgated in the national drinking water standards in 40 CFR 141 and 143;

2. Produces water containing one or more substances of public health concern in excess of an enforcement standard under ch. 160; or

3. Is subject to a written advisory opinion, issued by the department, containing a specific descriptive reference to the well or private water supply and recommending that the well or private water supply not be used because of potential human health risks.

(c) "Groundwater" means any of the waters of the state occurring in a saturated subsurface geological formation of permeable rock or soil.

(d) "Livestock" has the meaning specified under s. 95.80 (1) (b) and includes poultry.

(e) "Livestock water supply" means a well which is used as a source of potable water only for livestock and which is:

1. Approved by the department of agriculture, trade and consumer protection for grade A milk production under s. 97.24; or

2. Constructed by boring or drilling.

(f) "Private water supply" means a residential water supply or a livestock water supply.

(g) "Residential water supply" means a well which is used as a source of potable water for humans or humans and livestock and is connected to 14 or less dwelling units.

(h) "Well" means an excavation or opening in the ground made by boring, drilling or driving for the purpose of obtaining a supply of groundwater. "Well" does not include dug wells.

(2) DUTIES OF THE DEPARTMENT. The department shall:

(a) Establish by rule procedures for the submission, review and determination of claims under this section.

(b) Assist claimants in submitting applications for compensation under this section.

(c) Issue awards under this section.

(d) Establish casing depth and other construction requirements for a new or reconstructed private water supply.

(3) WELLS FOR WHICH A CLAIM MAY BE SUBMITTED; SUNSET DATE. (a) A claim may be submitted for a private water supply which, at the time of submitting the claim, is contaminated.

(b) Claims may not be submitted under this section until January 1, 1985.

(4) WHO MAY SUBMIT A CLAIM. (a) Except as provided under par. (b), a landowner or lessee of property on which is located a contaminated private water supply, or the spouse, dependent, heir, assign or legal representative of the landowner or lessee, may submit a claim under this section.

(b) The following entities may not submit a claim:

1. The state.

2. An office, department, independent agency, institution of higher education, association, society or other body in state government.

3. An authority created under ch. 231 or 234.

4. A city, village, town, county or special purpose district.

5. A federal agency, department or instrumentality.

6. An interstate agency.

(4m) INCOME LIMITATION. (a) In order to be eligible for an award under this section, the annual family income of the landowner or lessee of property on which is located a contaminated water supply may not exceed $45,000.

(b) Except as provided under par. (d), annual family income shall be based upon the adjusted gross income of the landowner or lessee and the landowner's or lessee's spouse, if any, as computed for Wisconsin income or franchise tax purposes for the taxable year prior to the year in which the claim is made. The county median income shall be determined based upon the most recent statistics published by the federal department of housing and urban development for the year prior to the year of the enforcement order.

(c) In order to be eligible for an award under this section, the claimant shall submit a copy of the designated income or franchise tax returns for the taxable year prior to the year in which the claim is made together with the application under sub. (5). The claimant shall submit a copy of the landowner's or lessee's Wisconsin franchise tax return, joint Wisconsin income tax return or, if filing separately, the landowner's or lessee's separate Wisconsin income tax return and the separate Wisconsin income tax return of his or her spouse, if any.

(d) The department may disregard the Wisconsin income tax return for the taxable year prior to the year in which the claim is made and may determine annual family income based upon satisfactory evidence of adjusted gross income or projected taxable income of the landowner or lessee and the landowner's or lessee's spouse in the current year.

(5) APPLICATION. (a) A claimant shall submit a claim on forms provided by the department. The claimant shall verify the claim by affidavit.

(b) The claim shall contain:

1. Test results which show that the private water supply is contaminated, as defined under sub. (1) (b) 1 or 2, or information to show that the private water supply is contaminated as defined under sub. (1) (b) 3;

2. Any information available to the claimant regarding possible sources of contamination of the private water supply; and

3. Any other information requested by the department.

(c) The department shall notify the claimant if the claim is complete or specify the additional information which is required to be submitted. If the claimant does not submit a

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complete claim, as determined by the department, the department may not proceed under this section until it receives a complete claim.

(d) A claim constitutes consent by the claimant to:

1. Enter the property where the private water supply is located during normal business hours and conduct any investigations or tests necessary to verify the claim; and

2. Cooperate with the state in any administrative, civil or criminal action involving a person or activity alleged to have caused the private water supply to become contaminated.

(e) The department shall consolidate claims if more than one claimant submits a claim for the same private water supply.

(f) The department shall allocate money for the payment of claims according to the order in which completed claims are received. The department may conditionally approve a completed claim even if the appropriation under s. 20.370 (4) (cv) is insufficient to pay the claim. The department shall allocate money for the payment of a claim which is conditionally approved as soon as funds become available.

(6) DETERMINING CONTAMINATION. (a) Contamination of a private water supply, as defined under sub. (1) (b) 1 or 2, is required to be established by analysis of at least 2 samples of water, taken at least 2 weeks apart, in a manner which assures the validity of the test results. The samples shall be tested by a laboratory certified under s. 144.95.

(b) The department may reject test results which are not sufficiently recent.

(c) The department, at its own expense, may test additional samples from any private water supply for which a claim is submitted.

(7) PURPOSE AND AMOUNT OF AWARD. (a) If the department finds that the claimant meets all the requirements of this section and rules promulgated under this section and that the private water supply is contaminated, the department shall issue an award. The award may not pay more than 60% of the eligible costs. The award may not pay any portion of eligible costs in excess of $12,000.

(b) If the annual family income of the claimant exceeds $32,000, the amount of the award is the amount determined under par. (a) less 30% of the amount by which the claimant's income exceeds $32,000.

(c) Eligible costs under this subsection include the following items only:

1. The cost of obtaining an alternate water supply;

2. The cost of any one of the following:

a. Equipment used for treating the water;

b. Reconstructing the private water supply;

c. Constructing a new private water supply;

d. Providing for a public water supply to replace the private water supply including costs related to connection to the public water supply and costs related to special assessments and one-time municipal charges for capital improvements and services involved in providing the public water supply; or

e. Providing a connection to an existing private water supply;

3. The cost of abandoning a contaminated private water supply, if a new private water supply is constructed or if connection to a public or private water supply is provided;

4. The cost of obtaining 2 tests to show that the private water supply was contaminated if the cost of those tests was originally paid by the claimant;

5. Purchasing and installing a pump, if a new pump is necessary for the new or reconstructed private water supply; and

6. Relocating pipes, as necessary, to connect the replacement water supply to the buildings served by it.

(8) COPAYMENT. The department shall require a payment by the claimant equal to the total of the following:

(a) Two hundred fifty dollars; and

(b) All eligible costs not paid under sub. (7) in excess of $250.

(9) CONTAMINATION STANDARD; NITRATES. (a) This subsection applies to a private water supply which:

1. Is a livestock water supply or is a residential water supply which is used as a source of potable water for livestock as well as for a residence; and

2. Is used at least 3 months each year and while in use provides an estimated average of more than 100 gallons per day for consumption by livestock.

(b) Notwithstanding the requirement of contamination under sub. (7), if a private water supply meets the criteria under par. (a) and the claim is based upon contamination by nitrates and not by any other substance, the department may make an award only if the private water supply produces water containing nitrates in excess of 40 parts per million expressed as nitrate-nitrogen.

(10) ISSUANCE OF AWARD. (a) The department shall issue awards without regard to fault.

(b) Contributory negligence is not a bar to recovery and no award may be diminished as the result of negligence attributable to the claimant or to any person who is entitled to submit a claim.

(c) The department shall pay each claim within 30 days after a completed payment request is submitted. The department shall pay eligible costs under sub. (7) based upon cost tables and rules promulgated under sub. (11) (c).

(11) DENIAL OF CLAIM; LIMITS ON AWARDS. (a) *Denial of claim.* The department shall deny a claim if:

1. The claim is not within the scope of this section.

2. The claimant submits a fraudulent claim.

3. The claim is for reimbursement of costs incurred before the department determined that the claim was complete under sub. (5) (c).

4. One or more of the contaminants upon which the claim is based was introduced into the well through the plumbing connected to the well.

5. One or more of the contaminants upon which the claim is based was introduced into the well intentionally by a claimant or a person who would be directly benefited by payment of the claim.

6. All of the contaminants upon which the claim is based are naturally occurring substances and the concentration of the contaminants in water produced by the well does not significantly exceed the background concentration of the contaminants in groundwater at that location.

7. Except as provided in sub. (14), an award has been made under this section within the previous 10 years for the parcel of land where the private water supply is located.

8. A residential water supply is contaminated by bacteria or nitrates or both and is not contaminated by any other substance.

9. A livestock water supply is contaminated by bacteria and is not contaminated by any other substance.

10. The amount of the award determined under sub. (7) would be less than $100.

(am) *Emergency.* Notwithstanding par. (a) 3, the department may authorize expenditures before a claim is submitted if the department determines that an emergency situation exists. The department shall establish standards and procedures for the payment of claims in emergency situations.

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(b) *Limits on awards; purposes.* 1. An award may be issued for purchasing and installing a pump if a pump is necessary for the new or reconstructed private water supply.

2. An award may be issued for water treatment only if the contamination cannot be remedied by reconstruction or replacement of the private water supply, or connection to another water supply is not feasible.

3. An award may not be issued for the replacement of a sand point well with a drilled well unless:

a. The department determines that replacement with another sand point well is not feasible; and

b. The department determines that the person had no knowledge or reason to believe the sand point well would become contaminated at the time it was constructed.

4. An award may not be issued for the reimbursement of costs of an alternative water supply incurred before the department confirmed that contamination existed.

(c) *Limits on awards; costs determined by rule.* The department shall determine by rule the usual and customary costs of each item for which an award may be issued under sub. (7). The rule shall reflect the range of costs resulting from differences in costs of construction, labor, equipment and supplies throughout the state, various soil and bedrock conditions, sizes and depths of wells, types of well construction and other factors which may affect the costs. The department shall determine the amount of all awards according to the rules promulgated under this paragraph.

(d) *Limits on awards; amount.* Awards shall be issued subject to the following limitations on amount:

1. If the contamination can be remedied by reconstruction of the private water supply, construction of a new private water supply or connection to an existing public or private water supply, the department shall issue an award for the least expensive means of remedying the contamination.

2. If the contamination cannot be remedied by a new or reconstructed private water supply, the maximum award for connection to an existing public or private water supply is 150% of the cost of constructing a new private water supply.

3. An award for an alternate water supply is limited to the amount necessary to obtain water for a one-year period, except as provided under sub. (13).

(12) RECONSTRUCTION OR REPLACEMENT OF WELLS. If the department determines that the claimant is entitled to compensation for reconstruction of a private water supply or construction of a new private water supply, the department may issue the award only if all of the following conditions are satisfied:

(a) The well complies with casing depth and other construction requirements established by the department.

(b) If the well is a drilled well, it is constructed by a well driller licensed under ch. 162 or, if the well is a sandpoint well, it is constructed by a well driller or pump installer licensed under ch. 162.

(13) COORDINATION OF COMPENSATION AND REMEDIAL ACTION. If the secretary determines that the implementation of a response to groundwater contamination by a regulatory agency under s. 160.25 can be expected to remedy the contamination in a private water supply in 2 years or less, the secretary may order a delay in the issuance of an award for up to a 2-year period. If the secretary issues an order under this subsection, the department shall issue an award for an alternate water supply while the order is in effect or until the well is no longer contaminated, whichever is earlier. If, upon expiration of the order, the department determines that the private water supply is not contaminated, the department may not issue an award under this section.

(14) NEW CLAIMS. (a) *New contamination.* A claimant who receives an award for the purpose of constructing or reconstructing a private water supply or connection to a private water supply may submit a new claim if the contamination is from a new source and, if the previous award was for a new or reconstructed private water supply, the well was constructed properly.

(b) *Failure to eliminate contamination.* 1. A claimant who receives an award for the purpose of constructing or reconstructing a private water supply or connection to a private water supply may submit a new claim if the contamination is not eliminated and, if the award was for a new or reconstructed private water supply, the well was constructed properly.

2. Only one additional claim may be submitted under this paragraph within 10 years after an award is made.

(15) TOLLING OF STATUTE OF LIMITATIONS. Any law limiting the time for commencement of an action is tolled by the filing of a claim. The law limiting the time for commencement of the action is tolled for the period from the first filing of a claim until the department issues an award under this section. If a period of limitation is tolled by the filing of a claim, and the time remaining after issuance of the final award in which an action may be commenced is less than 30 days, the period within which the action may be commenced is extended to 30 days from the date of issuance of the final award.

(16) RELATION TO OTHER ACTIONS. (a) The existence of the relief under this section is not a bar to any other statutory or common law remedy.

(b) A person is not required to exhaust the remedy available under this section before commencing an action seeking any other statutory or common law remedy.

(c) The findings and conclusions under this section are not admissible in any civil action.

(d) The state is subrogated to the rights of a claimant who obtains an award under this section in an amount equal to the award. All moneys recovered under this paragraph shall be credited to the environmental fund for environmental repair.

(17) APPLICABILITY. (a) A claim may be submitted irrespective of the time when the contamination is or could have been discovered in the private water supply. A claim may be submitted for contamination which commenced before May 11, 1984, and continues at the time a claim is submitted under this section.

(b) This section does not apply to contamination which is compensable under subch. II of ch. 107 or s. 144.855 (4).

(18) SUSPENSION OR REVOCATION OF LICENSES. The department may suspend or revoke a license issued under ch. 162 if the department finds that the licensee falsified information submitted under this section. 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 submitted under this section.

(19) PENALTIES. Whoever does any of the following shall forfeit not less than $100 nor more than $1,000 and shall be required to repay an award issued to that person under this section:

(a) Causes or exacerbates the contamination of a private water supply for the purpose of submitting a claim under this section; or

(b) Submits a fraudulent claim under this section.

History: 1983 a. 410; 1985 a. 22, 29; 1989 a. 31; 1991 a. 39.

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

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

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

History: 1973 c. 318; 1979 c. 221 s. 635; Stats. 1979 s. 144.03.

144.04 Approval of plans. (1) Except as provided under sub. (2), 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, including the information specified under s. 144.026 (5) (a), if applicable. 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 may, if requested, outline generally what it will require. Upon receipt of such plans for approval, the department or its duly authorized representative shall notify the owner of the date of receipt. Within 90 days from the time of receipt of complete plans or within the time specified in s. 144.026 (5) (c), if applicable, 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 time period for review may be extended by agreement with the owner if the plans and specifications cannot be reviewed within the specified 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 before the expiration of the time period allowed for review 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, and shall disapprove plans that do not meet the grounds for approval specified under s. 144.026 (5) (d), if applicable. The department shall require each person whose plans are approved under this section to report that person's volume and rate of water withdrawal, as defined under s. 144.026 (1) (m), and that person's volume and rate of water loss, as defined under s. 144.026 (1) (L), if any, in the form and at the times specified by the department.

(2) The department may, by rule, exempt an owner of a specific type of system or plant from the requirements of sub. (1) or modify the requirements of sub. (1) for a specific type of system or plant.

History: 1977 c. 418; 1985 a. 60; 1991 a. 39.

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

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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 a rate not to exceed 15% 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; 1983 a. 150.

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.

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(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 borrowing under s. 24.61 (3) (a) 5 and 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; 1985 a. 49.

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.

144.08 Disposal of septage in municipal sewage systems. (1) DEFINITIONS. In this section:

(a) "Septage" means the scum, liquid, sludge or other waste from a septic tank, soil absorption field, holding tank or privy. This term does not include the waste from a grease trap.

(b) "Licensed disposer" means a person engaged in servicing, as defined in s. 146.20 (2) (f), under a license issued under s. 146.20 (3) (a).

(2) REQUIREMENT TO TREAT SEPTAGE. A municipal sewage system shall accept and treat septage from a licensed disposer during the period of time commencing on November 15 and ending on April 15. The sewage system may, but is not required to, accept and treat septage at other times during the year.

(3) EXCEPTIONS. (a) Notwithstanding sub. (2), a municipal sewage system is not required to accept septage from a licensed disposer if:

1. Treatment of the septage would cause the sewage system to exceed its operating design capacity or to violate any applicable effluent limitations or standards, water quality standards or any other legally applicable requirements, including court orders or state or federal statutes, rules, regulations or orders;

2. The septage is not compatible with the sewage system;

3. The licensed disposer has not applied for and received approval under sub. (5) to dispose of septage in the sewage system or the licensed disposer fails to comply with the disposal plan; or

4. The licensed disposer fails to comply with septage disposal rules promulgated by the municipal sewage system.

(b) The municipal sewage system shall accept that part of the total amount of septage offered for disposal which is not within the exceptions in par. (a).

(4) PRIORITIES. If the municipal sewage system can accept some, but not all, of the septage offered for disposal, the municipal sewage system may accept septage which is generated within the sewage service area before accepting septage which is generated outside of the sewage service area.

(5) DISPOSAL PLAN. (a) Each year a licensed disposer may apply to the municipal sewage system, prior to September 1, for permission to dispose of septage in the sewage system.

(b) The municipal sewage system shall approve applications for septage disposal, or reject those applications which are within the exceptions in sub. (3), no later than October 1 of each year.

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(c) The municipal sewage system may impose reasonable terms and conditions for septage disposal including:

1. Specific quantities, locations, times and methods for discharge of septage into the sewage system.

2. Requirements to report the source and amount of septage placed in the sewage system.

3. Requirements to analyze septage characteristics under sub. (6).

4. Actual and equitable disposal fees based on the volume of septage introduced into the municipal sewage system and calculated at the rate applied to other users of the municipal sewage system, and including the costs of additional facilities or personnel necessary to accept septage at the point of introduction into the municipal sewage system.

(d) The municipal sewage system shall prepare a disposal plan for each licensed disposer whose application for septage disposal is approved. The disposal plan shall consist of the approved application and all terms and conditions imposed on the licensed disposer.

(6) ANALYSIS OF SEPTAGE. The municipal sewage system may require the licensed disposer to analyze representative samples of septage placed in the sewage system in order to determine the characteristics of the septage and the compatibility of the septage with the municipal sewage system. The municipal sewage system may not require the analysis of septage from exclusively residential sources.

(7) DISPOSAL FACILITIES. A municipal sewage system which is required to accept and treat septage shall provide adequate facilities for the introduction of septage into the sewage system.

(8) MODEL REGULATION. The department shall prepare a model septage disposal regulation which may be used by municipal sewage systems in the implementation of this section.

(9) LAND DISPOSAL NOT PROHIBITED. This section shall not be construed as a prohibition of the land disposal of septage. The land disposal of septage is governed by s. 146.20.

History: 1983 a. 410; 1989 a. 31, 359.

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

144.10 Remedial action in the great lakes and their tributaries. (1) In this section:

(a) "International joint commission" has the meaning given in s. 144.026 (1) (h).

(b) "Remedial action plan" means a comprehensive plan to clean up and restore the environment in a contaminated area that is in or adjacent to Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior and that is identified as an area of concern by the international joint commission under the Great Lakes water quality agreement.

(2) The department may perform activities to clean up or to restore the environment in an area that is in or adjacent to Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior if the activities are included in a remedial action plan that is approved by the department.

(3) In selecting projects to perform under this section, the department shall consider the amount of state funds available, the availability of matching funds from federal, private or other sources, the willingness and ability of a responsible person to fund a project, the willingness and ability of a local governmental unit, as defined in s. 144.235 (1) (c), to undertake or assist in a project, the severity of the environmental contamination that a project will address and the size of the population affected by the contamination.

(4) (a) If a person provides funding for an activity that is part of a remedial action plan, that provision of funding is not evidence of liability or an admission of liability for any environmental contamination.

(b) The acceptance by the department of funding from a person for an activity that is part of a remedial action plan does not limit the ability of the department to take action against that person if the department determines that the person is responsible, in whole or in part, for environmental contamination.

History: 1991 a. 39.

144.11 Great Lakes protection fund share. (1) In this section:

(a) "International joint commission" has the meaning given in s. 144.026 (1) (h).

(b) "Remedial action plan" means a comprehensive plan to clean up and restore the environment in a contaminated area that is in or adjacent to Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior and that is identified as an area of concern by the international joint commission under the Great Lakes water quality agreement.

(2) The department may use moneys from the appropriation under s. 20.370 (2) (ah) for any of the following purposes:

(a) To implement activities included in a remedial action plan.

(b) To restore or protect fish or wildlife habitats in or adjacent to Lake Michigan or Lake Superior.

(c) For planning or providing information related to cleaning up or protecting the Great Lakes.

History: 1991 a. 39.

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; Stats. 1979 s. 144.15.

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.

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(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) (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) (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.

NOTE: Par. (c) is shown as amended eff. 6-30-93 by 1991 Wis. Act 269. Prior to 6-30-93 it reads:

(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) (ca) 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.

NOTE: Par (a) is repealed eff. 6-30-93 by 1991 Wis. Act 269.

(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) 1. The department may enter into agreements with municipalities and school districts to make payments to them from the appropriation under s. 20.370 (4) (ca) 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.

2. After June 30, 1988, and before July 1, 1990, the department may enter into agreements with municipalities to provide grants under this section from the appropriation under s. 20.370 (4) (ca) for planning for projects that the department determines are necessary to prevent a municipality from significantly exceeding an effluent limitation, as defined in s. 147.015 (6).

3. A grant under subd. 1 or 2 may not exceed 25% of the eligible costs provided in subd. 1 or 2, or $15,000, whichever is less.

4. After June 30, 1988, and before July 1, 1990, the department shall give priority to payments required under sub. (8) over agreements for grants under subd. 1 or 2, and shall give priority for grants under subd. 2 over grants under subd. 1.

NOTE: Par. (c) is repealed eff. 6-30-93 by 1991 Wis. Act 269.

(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) (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.

NOTE: Sub. (8) is shown as amended eff. 6-30-93 by 1991 Wis. Act 269. Prior to 6-30-93 it reads:

(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); 1987 a. 399; 1989 a. 31; 1991 a. 269.

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.

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(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.

(c) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

(2) STATE WATER QUALITY PLANNING ASSISTANCE PROGRAM; DESIGNATED LOCAL AGENCIES. (a) The department shall administer a program to provide state assistance to designated local agencies for water quality planning activities.

(b) The department shall establish grant eligibility criteria for designated planning agencies seeking state assistance for water quality planning activities. The department shall consider the capacity of an agency to conduct areawide planning activities in establishing these eligibility criteria.

(c) A designated planning agency may receive state assistance to conduct water quality planning activities if:

1. The designated planning agency agrees to provide planning matching funds. At a minimum, the department shall require the designated planning agency to agree to provide planning matching funds in an amount equal to the state assistance. The department may require the designated planning agency to agree to provide local matching funds in a higher amount.

2. The designated planning agency meets all grant eligibility criteria.

(3) STATE WATER QUALITY PLANNING ASSISTANCE; OTHER LOCAL GOVERNMENTAL UNITS. The department may provide financial assistance for water quality planning activities to local governmental units that are not designated local agencies.

History: 1979 c. 221; 1985 a. 29; 1991 a. 39.

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 municipal-

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ity 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) 1. Eligible projects relating to collection systems include only the following:

a. A collection system in an unsewered municipality which is constructing a new wastewater treatment plant and collection system rehabilitation which is necessary to maintain the total integrity of a sewerage system.

b. A collection system which the department orders under s. 144.07 (1) notwithstanding the outcome of the annexation referendum under s. 144.07 (1m). Notwithstanding sub. (7) (a) and any rules promulgated under this section, the department shall award funding under this subd. 1. b. in an amount that totals 60% of all costs of the project, rather than of eligible costs of the project.

c. A collection system in an unsewered community which is being connected to an existing wastewater treatment plant if the municipality applied to the department under sub. (5) for financial assistance on or after January 1, 1986, and the municipality received, before January 1, 1987, a notice under sub. (6) that the department was ready to allocate funds to the municipality.

2. Funding may not be provided for that portion of any project related to industrial capacity that is defined under 33 USC 1284 (b) (1), as amended on May 16, 1978, as subject to industrial cost recovery. Notwithstanding the federal act and regulations promulgated under that act, the state program does not require an industrial cost recovery system.

3. 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, in the case of interceptor sewers and associated appurtenances, the estimated date of operation. 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.

(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 50% of the cost of facility planning.

2m. Amendments or applications for facility planning grants received after March 1, 1987, shall be funded at 50% of the cost of the 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).

(d) If a project funded under this section fails, the department may not require the recipient of the grant to reimburse the department for costs determined to be eligible under this section if all of the following apply:

1. The applicant initiates legal action and pursues the action to completion, unless the department agrees otherwise, to recover costs from parties potentially liable for the project's failure and the legal action is not resolved before May 11, 1990.

2. The applicant agrees in writing to pay to the department, for the state-funded portion of the project, funds recovered under the legal action in excess of the cost of the legal action.

(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. Except as provided in sub. (7) (c) 4, 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).

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(7) PAYMENT. (a) 1. 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 under sub. (4) (c), if the municipality is awarded a grant before July 1, 1989.

2. 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 55% of the eligible costs of the project, except as provided under sub. (4) (c), if the municipality is awarded a grant after June 30, 1989, but before July 1, 1990.

(b) 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.

(c) 1. 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 appropriation under s. 20.445 (1) (de) and the amount authorized under sub. (10) for that fiscal year plus the unencumbered balance at the end of the preceding fiscal year for the amount authorized under sub. (10). This subdivision is not applicable to grant awards provided during fiscal years 1985-86, 1986-87, 1988-89 and 1989-90.

2. Metropolitan sewerage districts that serve 1st class cities are limited to new project grant awards of not more than $29,900,000 in fiscal year 1985-86, of not more than $35,300,000 in fiscal year 1986-87, of not more than $70,000,000 in fiscal year 1988-89 and of not more than $45,600,000 in fiscal year 1989-90 from the amounts authorized under sub. (10), plus any unallocated balances from the previous fiscal year as listed in this subdivision which the department determines, in accordance with its rules establishing a priority funding list under sub. (6), will be available for obligation during the succeeding fiscal year.

3. Sewerage districts that do not serve 1st class cities are limited to new project grant awards that, in the aggregate for all those sewerage districts, are not more than $70,500,000 in fiscal year 1988-89 and not more than $48,338,400 in fiscal year 1989-90 from the amounts authorized under sub. (10), plus any unallocated balances from the previous fiscal year as listed in this subdivision which the department determines, in accordance with its rules establishing a priority funding list under sub. (6), will be available for obligation during the succeeding fiscal year.

4. Of the additional $11,938,400 authorized in subd. 3 by 1989 Wisconsin Act 366, for fiscal year 1989-90, the department shall allocate $5,969,200 to each of the first 2 municipalities, except a metropolitan sewerage district that serves a 1st class city, whose projects have the highest rankings on the funding list under sub. (6) (a). The department may not release the additional moneys authorized in subd. 3 to such municipalities until the secretary certifies in writing that each municipality has signed an agreement with the department under which the municipality agrees to waive any further challenge to the order of placement of any of its projects on a priority funding list established by the department under sub. (6).

(8) CONDITIONS OF PAYMENT. (a) *Water conservation.* Each municipality receiving state assistance under this section for the construction of a point source pollution abatement facility shall develop and adopt a program of water conservation no less stringent than the federal requirements.

(b) *Operation and maintenance.* Each municipality receiving state assistance under this section for the construction of a point source pollution abatement facility shall develop and adopt a program of systemwide operation and maintenance of the wastewater treatment plant, including the training of personnel, no less stringent than the federal requirements.

(c) *User charges; exception.* 1. Except as provided under subd. 2, each municipality receiving state assistance under this section for the construction of a point source pollution abatement facility shall develop and adopt 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.

2. The department may issue an exemption from the requirement imposed under subd. 1 if a city or village imposes a system of equitable dedicated charges based upon assessed property values, if the city or village does not operate a wastewater treatment plant but is served by a regional wastewater treatment plant operated by a metropolitan sewerage district created under ss. 66.88 to 66.918 and if the user charges imposed by that district are approved by the department and comply with the requirements of title II of the federal act.

(d) *Prior approval.* Payment in excess of two-thirds of the state assistance provided for the eligible costs of construction may not be made until the department approves the programs required under pars. (a) and (b) and any system required under par. (c).

(e) *Rules.* The department shall promulgate rules consistent with this subsection.

(8m) REPAYMENT. The department may not require a municipality that received a construction grant under this section for a wastewater treatment system that subsequently failed to repay any portion of the grant related to the costs of that failed system if all of the following apply:

(a) The municipality received the construction grant during fiscal year 1980-81.

(b) Prior to the construction of the wastewater treatment system funded by the grant under par. (a) the municipality was an unsewered municipality.

(c) The department directed the municipality to correct the failed wastewater treatment system and the municipality received construction grant funding during fiscal year 1987-88 to make the corrections.

(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).

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(c) The maximum state assistance the department may commit in each fiscal year before fiscal year 1989-90 for future reimbursement under this subsection is an amount equal to the amount authorized under sub. (7) (c) for the subsequent fiscal year.

(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) For fiscal year 1989-90, the advance commitment shall include a provision making the reimbursement of engineering design costs conditional on the award or making of a construction grant under this section or a loan under ss. 144.241 and 144.2415. If the financial assistance that the municipality receives for construction of a treatment work is a loan, the engineering design cost reimbursement shall be a loan. After June 30, 1990, and before September 1, 1990, the department may enter into an agreement with a municipality to provide engineering design costs under this subsection if the department makes an advance commitment for the reimbursement of those costs before July 1, 1990, and the municipality receives financial assistance under this section and s. 144.2415 for construction.

(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) EXPENDITURE AUTHORIZATION. The department may expend, from the appropriation under s. 20.866 (2) (tn), the total amount which is authorized under that paragraph to be contracted for public debt and has not been expended, for new grants under this section for engineering design costs, construction costs and other costs which can be funded from bond revenue.

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

(12) SUNSET. (a) Notwithstanding sub. (6), the department may not issue a grant award under the state program for a municipality that has not submitted to the department by January 2, 1989, a facility plan which meets the requirements of this section and is approvable by the department under this chapter.

(b) Notwithstanding sub. (6), the department may not issue a grant award under the state program for planning or construction work after June 30, 1990.

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; 1983 a. 27; 1985 a. 29 ss. 1935 to 1938, 3202 (39); 1985 a. 120; 1987 a. 27, 399; 1989 a. 31, 336, 366; 1991 a. 39, 315.

144.241 Clean water fund program; financial assistance.

(1) DEFINITIONS. In this section:

(a) "Capital cost loan" means a loan to a municipality to finance its payment for capital costs to a metropolitan sewerage district organized under ss. 66.88 to 66.918.

(am) "Effluent limitation" has the meaning designated in s. 147.015 (6).

(b) "Enforceable requirement" means any of the following:

1. Those conditions or limitations of a permit under ch. 147 which, if violated, could result in the initiation of a civil or criminal action under s. 147.29.

2. Those provisions of s. 144.025 (2) (r) which, if violated could result in a departmental order under s. 144.025 (2) (s).

3. If a permit under ch. 147 has not been issued, those conditions or limitations which, in the department's judgment, would be included in the permit when issued.

4. If no permit under ch. 147 applies, any requirement which the department determines is necessary for the best practicable waste treatment technology to meet applicable criteria.

(c) "Industrial user" means any of the following:

1. Any nongovernmental, nonresidential user of a publicly owned treatment work which discharges more than the equivalent of 25,000 gallons per day of sanitary wastes, other than domestic wastes or discharges from sanitary conveniences, or discharges a volume that has the weight of biochemical oxygen demand or suspended solids at least as great as the weight found in 25,000 gallons per day of sanitary waste from residential users, and which is identified in the standard industrial classification manual, 1972, federal office of management and budget, as amended and supplemented as of October 1, 1978, under one of the following divisions:

a. Division A: agriculture, forestry, and fishing.

b. Division B: mining.

c. Division D: manufacturing.

d. Division E: transportation, communications, electric, gas, and sanitary services.

e. Division I: services.

2. Any nongovernmental user of a publicly owned treatment work which discharges wastewater to the treatment work which contains toxic pollutants or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to contaminate the sludge of any municipal system, to injure or interfere with any sewage treatment process, to constitute a hazard to humans or animals, to create a public nuisance, or to create any hazard in or have an adverse effect on the waters receiving any discharge from the treatment works.

3. All commercial users of an individual system constructed with grant assistance under s. 144.24.

(cg) "Market interest rate" means the interest at the effective rate of a revenue obligation issued by the state to fund a project loan or a portion of a project loan under this section and s. 144.2415.

(d) "Treatment work" has the meaning designated in s. 147.015 (18).

(e) "Violator of an effluent limitation" means a person or municipality that after May 17, 1988, is not in substantial compliance with the enforceable requirements of its permit issued under ch. 147 for a reason that the department determines is or has been within the control of the person or municipality.

(2) RULES. The department shall promulgate rules that are necessary for the proper execution of this section.

(2m) GENERAL DUTIES. The department shall:

(a) Administer its responsibilities under this section and s. 144.2415.

(b) Have the lead state role with the U.S. environmental protection agency.

(c) Cooperate with the department of administration in administering the clean water fund program.

(d) Have the lead state role with municipalities in providing clean water fund program information, and cooperate with the department of administration in providing such information to municipalities.

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(e) Inspect periodically clean water fund project construction to determine project compliance with construction plans and specifications approved by the department and the requirements of this section and s. 144.2415 and, if applicable, of 33 USC 1251 to 1376 and 33 USC 1381 to 1387 and the regulations promulgated thereunder.

(f) Submit a biennial budget request under s. 16.42 for the clean water fund program.

(3) ACCEPTANCE OF FEDERAL CAPITALIZATION GRANTS. The department may enter into an agreement under 33 USC 1382 with the U.S. environmental protection agency to receive a capitalization grant under 33 USC 1381 to 1387. The agreement may contain any provision required by 33 USC 1381 to 1387 and any regulation, guideline or policy adopted under 33 USC 1381 to 1387.

(3m) BIENNIAL NEEDS LIST. By May 1 of each even-numbered year, the department shall prepare and submit to the department of administration a biennial needs list that includes all of the following information:

(a) A list of wastewater treatment projects that the department estimates will receive notices of financial assistance commitment under sub. (15) during the next biennium.

(b) The estimated cost and estimated construction schedule of each project on the list, and the total of the estimated costs of all projects on the list.

(c) The estimated rank of each project on the priority list under sub. (10).

(6) METHODS OF PROVIDING FINANCIAL ASSISTANCE. (a) The department may determine whether a municipality is eligible for financial assistance under this section and s. 144.2415 for any of the following:

1. Planning, designing and constructing or replacing a treatment work.

2. Implementing a management program established under 33 USC 1329 (b).

3. Developing and implementing a conservation and management plan under 33 USC 1330.

4. A capital cost loan.

(b) In approving financial assistance, the department may use the following methods of providing financial assistance:

1. Purchasing or refinancing the obligation of a municipality if the obligation was incurred to finance the cost of constructing a water pollution control project located in this state and the obligation was initially incurred on or after May 17, 1988.

2. Purchasing or refinancing the obligation of a municipality if the obligation was incurred to finance the cost of constructing a water pollution control project located in this state and the obligation was initially incurred after March 7, 1985, and before May 17, 1988, if after giving the notice of financial assistance commitment under sub. (15) the requirements of 33 USC 1382 (b) (3) have still not been met.

3. Guaranteeing, or purchasing insurance for, municipal obligations for the construction or replacement of a treatment work if the guarantee or insurance would improve credit market access or reduce interest rates.

4. Making loans at or below the market interest rate.

5. Providing financial hardship assistance under sub. (13) from the account under s. 25.43 (2) (b).

6. Making loans under s. 144.2415 (13) for the purposes of that subsection.

7. Making grants under sub. (13m).

(7) ELIGIBILITY. (a) The department shall, by rule, establish criteria for determining which applicants and which projects are eligible to receive financial assistance under this section and s. 144.2415. The primary criteria for eligibility shall be water quality and public health. The rules for projects funded from the account under s. 25.43 (2) (a) shall be consistent with 33 USC 1251 to 1376 and 33 USC 1381 to 1387 and the regulations promulgated thereunder. The rules for projects funded from the account under s. 25.43 (2) (b) may be consistent with 33 USC 1251 to 1376 and 33 USC 1381 to 1387 and the regulations promulgated thereunder.

(b) The department may determine whether a municipality is eligible for financial assistance under this section and s. 144.2415 for any of the following types of projects:

1. Projects that the department determines are necessary to prevent a municipality from significantly exceeding an effluent limitation contained in a permit issued under ch. 147.

2. Projects needed to provide treatment to achieve compliance with an enforceable requirement changed or established after May 17, 1988, if the project is for a municipality that is in substantial compliance with its permit, issued under ch. 147, in regard to the changed or established enforceable requirements.

3. Projects for treatment work planning and design, except for the planning and design listed under subd. 6.

4. Projects for unsewered municipalities.

5. Projects for the treatment of nonpoint source pollution and urban storm water runoff.

6. Projects for the planning, design, construction or replacement of treatment works that violate effluent limitations contained in a permit issued under ch. 147.

7. Projects for which a municipality seeks a capital cost loan.

(8) INELIGIBILITY FOR AND LIMITATIONS ON FINANCIAL ASSISTANCE. (a) The following are not eligible for financial assistance from the clean water fund under this section and s. 144.2415:

1. A person or municipality that has failed to substantially comply, as specified by the rules promulgated under sub. (2), with the terms of a federal or state grant or loan used to pay the costs of studies, investigations, plans, designs or construction associated with wastewater collection, transportation, treatment or disposal or used to pay the cost of studies, investigations, plans, designs or construction associated with implementing a nonpoint source control management program.

2. Connection laterals and sewer lines that transport wastewater from structures to municipally owned or individually owned wastewater systems.

3. Public sanitary sewer mains, interceptors and individual systems which exclusively serve future development.

4. A planning, design or construction project which received financial assistance under 33 USC 1251 to 1376 or s. 144.24, except for any of the following:

a. The nonlocal share of a project which receives funding under s. 144.2415 (13).

b. The portion of a project funded under s. 144.2415 (13) relating to a collection system, even if the costs relating to the collection system were not eligible under s. 144.24.

5. During fiscal years 1989-90 to 1992-93, a person or municipality in violation of an effluent limitation contained in a permit issued under ch. 147, unless that person or municipality is eligible under s. 144.2415 (13).

(b) 1. Except as provided in subd. 2 and par. (k), the amount of reserve capacity for a project eligible for financial assistance through a method specified under sub. (6) (b) is limited to that future capacity required to serve the users of the project expected to exist within the service area of the project 10 years after the project is estimated to become operational. The department, in consultation with the demographic services center in the department of administration under s. 16.96, shall promulgate rules defining procedures for

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projecting population used in determining the amount of reserve capacity.

2. Except as provided in par. (k), the department may not determine that a municipality is eligible for financial assistance through a method specified under sub. (6) (b) for reserve capacity for a collection system, interceptors or an individual system project in an unsewered municipality.

(c) Except as provided in par. (k), financial assistance may be provided for the design, planning and construction of a collection system, interceptor or individual system project in an unsewered municipality or an unsewered area of a municipality, only if the department finds that at least two-thirds of the initial flow will be for wastewater originating from residences in existence on October 17, 1972.

(d) An unsewered municipality that is not constructing a treatment work and will be disposing of wastewater in the treatment work of another municipality is not eligible for financial assistance under this section and s. 144.2415 until it executes an agreement under s. 66.30 with another municipality to receive, treat and dispose of the wastewater of the unsewered municipality.

(e) Financial assistance may be provided to a municipality for a project only if the financial assistance is used for a project that is the most cost-effective alternative for the municipality without regard to financial assistance from the federal government and this state.

(f) Except as provided in par. (k), the department may not determine that a municipality is eligible for financial assistance through a method specified under sub. (6) (b) for the portion of a project that treats wastes from industrial users.

(g) The sum of all of the financial assistance to a municipality approved under this section and s. 144.2415 for a project may not result in the municipality paying less than 10% of the cost of the project.

(h) Except as provided in par. (k) or (m), a municipality that is a violator of an effluent limitation at the time that the notice of financial assistance commitment is given may not receive financial assistance of a method specified under sub. (6) (b) 1, 2, 3, 4 or 5 for that part of a treatment work project that is needed to correct the violation. This paragraph does not apply to a municipality that after May 17, 1988, is in compliance with a court or department order to correct a violation of the enforceable requirements of its ch. 147 permit, and that is applying for financial assistance under s. 144.2415 (13) to correct that violation.

(i) After June 30, 1991, no municipality may receive for projects an amount that exceeds 35.2% of the amount approved by the legislature under s. 144.2415 (3) (d) for that biennium.

(j) During the period beginning on July 1, 1989, and ending on June 30, 1992, no metropolitan sewerage district that serves a 1st class city may receive a total of more than $207,200,000 for financial assistance under this section and s. 144.2415 for projects on the funding list under sub. (10) (c) for fiscal year 1990-91.

(k) The restrictions specified under par. (b) 1 and 2, (c), (f) or (h) do not apply to any of the following methods of financial assistance:

1. A loan at the market interest rate.

2. A purchase or refinancing of an obligation at fair market value and at the market interest rate.

3. A guarantee or a purchase of insurance for a municipal obligation which will permit the municipality credit market access not otherwise available or which will reduce the interest rate on the obligation to not less than the market rate.

(L) The total amount of capital cost loans made under this section and s. 144.2415 may not exceed $120,000,000, and no capital cost loan funds may be released under this section and s. 144.2415 until the secretary of administration has found in writing that all of the following facts have occurred:

1. The cities of Brookfield, Mequon, Muskego and New Berlin and the villages of Butler, Elm Grove, Germantown, Menomonee Falls and Thiensville have signed an agreement with a metropolitan sewerage district organized under ss. 66.88 to 66.918, under which each municipality agrees to pay some portion of the amount of $120,000,000 authorized in this paragraph to the metropolitan sewerage district for the district's capital costs and the sum of the amount that each municipality agrees to pay equals at least $120,000,000.

2. The agreement in subd. 1 has also been signed by the metropolitan sewerage district organized under ss. 66.88 to 66.918.

(m) A municipality that is in substantial compliance with the enforceable requirements of its ch. 147 permit on the date that it submits its application for financial assistance under sub. (9) remains eligible for state financial assistance in the same tier under sub. (12) for which it was eligible on the date that it submitted its application, whether or not the municipality violates such ch. 147 permit requirements, if all of the following occur:

1. The municipality submits its application for financial assistance under this section and s. 144.2415 on or before June 30, 1990.

2. The department has approved the municipality's facility plan on or before June 30, 1989.

(9) APPLICATION. (a) A municipality which desires to participate in the program under this section and s. 144.2415 shall submit an application for participation to the department. The application shall be in such form and include such information as the department and the department of administration prescribe. The department shall review applications for participation in the program under this section and s. 144.2415. The department shall determine which applications meet the eligibility requirements and criteria under subs. (6), (7), (8), (10) and (13).

(b) A municipality seeking financial assistance, except for a municipality seeking a capital cost loan, for a project under this section and s. 144.2415 shall complete a staged facility plan, design plans and specifications and an environmental analysis sequence as required by the department by rule.

(c) If a municipality is serviced by more than one sewerage district for wastewater pollution abatement, each service area of the municipality shall be considered a separate municipality for purposes of obtaining financial assistance under this section and s. 144.2415.

(d) The department of administration and the department jointly may charge and collect service fees, established by rule, which shall cover the estimated costs of reviewing and acting upon the application and servicing the financial assistance agreement. No service fee established by rule under this paragraph may be charged to or collected from an applicant for financial assistance under s. 144.2415 (13).

(f) The fees collected under par. (d) shall be credited to the clean water fund.

(10) PRIORITY. (a) The department shall establish a priority list under 33 USC 1381 to 1387 which ranks each project. The ranking on the priority list shall be based on all of the following:

1. The type of project and the order in which it is listed under sub. (7) (b) 1 to 7.

2. The impact of the project on groundwater and surface water quality.

3. The impact of the project on public health.

4. Any other factor determined by the department.

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(b) Each municipality shall, in a writing postmarked no later than December 31, notify the department of its intent to apply for financial assistance under this section and s. 144.2415 in the next state fiscal year. Only those municipalities that so notify the department and that before July 1 of the next year submit a complete application meeting the requirements under sub. (9) (a), design plans and specifications if required under s. 144.04 which are approvable by the department under this chapter and a sequence meeting the requirements of sub. (9) (b) may be included on the funding list under par. (c) and considered for financial assistance under this section and s. 144.2415 in the next state fiscal year.

(c) The department shall annually establish a funding list for each fiscal year that ranks projects of municipalities that submit a financial assistance application under sub. (9) and meet the requirements specified in par. (b) in the same order as they appear on the priority list established under par. (a).

(d) If sufficient funds are not available to fund all applications for financial assistance under this section and s. 144.2415 in any fiscal year, the department shall allocate available funding to projects in the order in which they appear on the funding list under par. (c) for that year. The department may not issue a notice of financial assistance commitment for a project that is on the funding list if the municipality is not ready to begin construction of the project within 3 months after the department is ready to issue a notice of financial assistance commitment.

(e) If funds remain available for a fiscal year after providing financial assistance to all municipalities on the funding list under par. (c), the department may issue a notice of financial assistance commitment to a municipality that meets all of the requirements under this section and s. 144.2415, except the requirement under par. (b) to submit a complete application and design plans and specifications, if required under s. 144.04, before July 1.

(f) Before July 1, 1991, projects not specified under sub. (7) (b) 4, including projects eligible under s. 144.2415 (13), may not receive financial assistance that would total, for all of those projects, an amount that exceeds 95% of the amount that the legislature approves under s. 144.2415 (3) (d) for that biennium, unless all applications under sub. (7) (b) 4, including projects eligible under s. 144.2415 (13), on the funding list are approved first.

(11) APPROVAL. (a) The department shall specify the method by which financial assistance is to be provided for each application that it approves. The methods by which the department may provide financial assistance are the methods specified under sub. (6) (b).

(b) For municipalities meeting the financial hardship assistance requirements under sub. (13), the department may approve financial hardship assistance and shall specify the method by which it will provide financial hardship assistance, including but not limited to a combination of loans at or below the market rate and grants, deferred payment loans, state payment of the loan for a number of years, or longer amortization periods.

(c) The department may not approve financial assistance under this section and s. 144.2415 for a project that is not on the priority list under sub. (10) (a).

(d) In approving financial assistance under this section and s. 144.2415, the department shall adhere to the amount approved by the legislature for each biennium under s. 144.2415 (3) (d).

(12) LOAN INTEREST RATES. (a) The types of projects for which municipalities may receive loans under this section and s. 144.2415 shall be classified as follows for the purpose of setting the percentage of market interest rates on loans funding such projects:

1. Tier 1 projects are those projects specified in sub. (7) (b) 1 and 2, except as restricted by sub. (8) (b), (c), (f) or (h).

2. Tier 2 projects are those projects specified in sub. (7) (b) 4 and 5, except as restricted by sub. (8) (b), (c), (f) or (h).

3. Tier 3 projects are those projects specified in sub. (7) (b) 6 and 7, and those portions of projects under tiers 1 and 2 that are restricted by sub. (8) (b), (c), (f) or (h).

4. A planning and design project specified in sub. (7) (b) 3 shall be classified under subd. 1, 2 or 3 based on the type of treatment work construction or replacement project for which the planning and design project is undertaken.

(c) The department shall establish, by rule, the percentage of market interest rates on loans for each tier of projects specified in par. (a) 1, 2 or 3, consistent with the following standards:

1. The percentage of market interest rates established shall, to the extent possible, fully allocate the amount of public debt authorized under s. 20.866 (2) (tc), the amount authorized under s. 144.2415 (3) (d) and the amount of revenue obligations authorized under s. 144.2415 (4) (f).

2. A different percentage of market interest rate shall be established for each tier of projects in par. (a). Tier 3 projects shall receive market interest rate. Tier 1 projects shall receive a percentage of market interest rate that is lower than the percentage of market interest rate on tier 2 projects.

3. The department, in establishing percentage of market interest rates, shall attempt to ensure that those rates do not result in any of the following:

a. Beginning in fiscal year 1991, increases in all state water pollution abatement general obligation debt service costs greater than 4% annually in the fiscal year in which the rates are established and in the following fiscal year.

b. State water pollution abatement general obligation debt service costs greater than 50% of all general obligation debt service costs in the fiscal year in which the rates are established and in any of the following 3 fiscal years.

(d) Upon receipt of a request in writing from the department, the department of administration shall prepare in writing, and submit to the department, estimates of the debt service costs specified in par. (c) 3. The department shall use such estimates in establishing the percentage of market interest rates consistent with the standards specified in par. (c) 3. The department of administration, concurrently with the department's submitting a notice under s. 227.19 (2) of proposed rules authorized under this subsection, shall submit such estimates to the chief clerk of each house for distribution to the appropriate standing committees under s. 13.172 (3).

(f) The department may request the joint committee on finance to take action under s. 13.101 (11) to modify the percentage of market interest rates established by rule for tier 1 and tier 2 projects.

(13) FINANCIAL HARDSHIP ASSISTANCE. (a) The department shall rank each municipality applying for financial assistance under this section and s. 144.2415, including a municipality applying for financial assistance under s. 144.2415 (13), based on its ability to pay for the construction and operation costs of its project. The department shall establish, by rule, the procedure that it uses to rank the municipalities, which shall use all of the following to measure ability to pay, except as provided under par. (bm):

1. Total charges imposed on residential users in the municipality that relate to wastewater treatment as a percentage of the total adjusted gross income of residents of the municipality.

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2. Total charges imposed by the municipality that relate to wastewater treatment as a percentage of the total equalized value of property in the municipality.

(am) Except as provided under par. (bm), a municipality qualifies for financial hardship assistance if the percentage under par. (a) 1 exceeds 1.5 and if the percentage under par. (a) 2 places the municipality in the 25% of municipalities with the highest percentage under par. (a) 2.

(b) Except as provided under par. (bm), the department shall allocate available financial hardship assistance to municipalities that qualify for financial hardship assistance under par. (am), for projects on the funding list under sub. (10) (c), in the order that the projects appear on the funding list under sub. (10) (c).

(bm) The department may establish, by rule, factors to rank under this subsection a federally recognized American Indian tribe or band to which the department determines it cannot apply the factor specified in par. (a) 2.

(c) 1. The department may approve financial hardship assistance under this subsection only for a municipality for which the department approves financial assistance under sub. (11) or s. 144.2415 (13).

2. A municipality that is a violator of an effluent limitation may not receive financial hardship assistance under this subsection for that part of a treatment work project that is needed to correct the violation. This subdivision does not apply to a municipality that after May 17, 1988, is in compliance with a court or department order to correct a violation of the enforceable requirements of its ch. 147 permit, and that is applying for financial assistance under s. 144.2415 (13) to correct that violation.

(d) The department may approve financial hardship assistance under this subsection to a municipality meeting the requirements of this subsection.

(e) The total amount of financial hardship assistance approved in any year under this subsection may not exceed 12% of the amount approved by the legislature under s. 144.2415 (3) (d) for that biennium.

(f) The department may not approve financial hardship assistance under this section and s. 144.2415 before January 1, 1991.

(13m) MINORITY BUSINESS DEVELOPMENT AND TRAINING PROGRAM. (a) The department shall make grants to projects that are eligible for financial assistance under this section and s. 144.2415 and that are identified as being part of the minority business development and training program under s. 66.905 (2) (b).

(b) Grants provided under this subsection are not included for the purposes of determining under sub. (8) (i) the amount that a municipality may receive for projects under this section and s. 144.2415. Grants awarded under this subsection are not considered for the purposes of sub. (11) (d) or s. 144.2415 (3) (d).

(14) CONDITIONS OF FINANCIAL ASSISTANCE. (b) As a condition of receiving financial assistance under this section and s. 144.2415, a municipality shall do all of the following:

1. Establish a dedicated source of revenue for the repayment of any financial assistance.

4. Comply with those provisions of 33 USC 1381 to 1387, this chapter and ch. 147 and the regulations and rules promulgated thereunder that the department specifies.

5. Develop and adopt a program of water conservation as required by the department.

6. Develop and adopt a program of systemwide operation and maintenance of the treatment work, including the training of personnel, as required by the department.

7. Develop and adopt a system of equitable user charges to ensure that each recipient of treatment work services pays its proportionate share of the costs of the operation and maintenance of the treatment work. The user fee system shall be in compliance with 33 USC 1284 (b) and the regulations promulgated thereunder. The department may issue an exemption from the requirement imposed under this subdivision if a city or village imposes a system of equitable dedicated charges based upon assessed property values, if the city or village does not operate a treatment work but is served by a regional wastewater treatment plant operated by a metropolitan sewerage district created under ss. 66.88 to 66.918 and if the user charges imposed by that district are approved by the department and comply with 33 USC 1284 (b).

8. Demonstrate to the satisfaction of the department that the municipality is ready to begin construction within 90 days after it receives a notice of financial assistance commitment under sub. (15).

(15) FINANCIAL ASSISTANCE COMMITMENTS. (a) Subject to pars. (b) and (c), the department shall issue a notice of financial assistance commitment to a municipality within 90 days after all of the following occur:

1. The department determines under sub. (9) (a) that the application meets eligibility requirements under sub. (7), (8) and (10).

2. The department approves plans and specifications under s. 144.04.

3. The department of administration certifies in writing to the department that the municipality meets the conditions of receiving financial assistance established under s. 144.2415 (9) (am) and (b).

(am) The notice of financial assistance commitment shall include the conditions that the municipality must meet to secure the financial assistance and shall include the estimated loan payment and repayment schedules, as determined by the department and the department of administration, and other terms of the financial assistance.

(b) The department may not issue a notice of financial assistance commitment for a loan to a municipality that the department of administration determines is unlikely to be able to repay the principal and interest on it according to the terms of the financial assistance.

(c) The department may issue a notice of financial assistance commitment to a municipality only after the amount under s. 144.2415 (3) (d) for the biennium in which that year falls has been approved by the legislature under s. 144.2415 (3) (d).

(e) The department may not issue a notice of financial assistance commitment to a municipality unless the municipality has agreed in writing to accept the financial assistance offered through the clean water fund program. The department, at the request of the municipality, may release a municipality from such an agreement.

(21) CONSTRUCTION. This section shall be liberally construed in aid of the purposes of this section.

History: 1987 a. 399; 1989 a. 31, 336, 366; 1991 a. 32, 39, 189.

144.2415 Clean water fund program; financial management. (1) DEFINITIONS. In this section:

(a) "Effluent limitation" has the meaning given in s. 147.015 (6).

(b) "Market interest rate" means the interest at the effective rate of a revenue obligation issued by the state to fund a project loan or a portion of a project loan under this section and s. 144.241.

(c) "Municipality" means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sew-

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erage district or federally recognized American Indian tribe or band in this state.

(d) "Subsidy" means the amounts provided by the clean water fund to projects receiving financial assistance under this section and s. 144.241 for the following purposes:

1. To reduce the interest rate of clean water fund loans from market rate to a subsidized rate.

2. To provide for financial hardship assistance, including grants.

3. To reduce interest rates for the portion of a loan for additional costs under sub. (3) (g).

(e) "Treatment work" has the meaning given in s. 147.015 (18).

(f) "Violator of an effluent limitation" means a person or municipality that after May 17, 1988, is not in substantial compliance with the enforceable requirements of its permit issued under ch. 147 for a reason that the department determines is or has been within the control of the person or municipality.

(2) GENERAL DUTIES. The department of administration shall:

(a) Administer its responsibilities under this section and s. 144.241.

(b) Cooperate with the department in administering the clean water fund program.

(c) Accept and hold any letter of credit from the federal government through which the state receives federal capitalization grant payments and disbursements to the clean water fund.

(2m) INVESTMENT MANAGEMENT; CLEAN WATER FUND. (a) The department of administration may:

1. Subject to par. (b), direct the investment board under s. 25.17 (2) (d) to make any investment of the clean water fund, or in the collection of the principal and interest of all moneys loaned or invested from such fund.

2. Subject to par. (b), purchase or acquire, commit on a standby basis to purchase or acquire, sell, discount, assign, negotiate, or otherwise dispose of, or pledge, hypothecate or otherwise create a security interest in, loans as the department of administration may determine, or portions or portfolios of participations in loans, made or purchased under this section. The disposition may be at the price and under the terms that the department of administration determines to be reasonable and may be at public or private sale.

(b) The department of administration shall take an action under par. (a) only if all of the following conditions occur:

1. The action provides a financial benefit to the clean water fund.

2. The action does not contradict or weaken the purposes of the clean water fund.

3. The building commission approves the action before the department of administration acts.

(3) FINANCIAL MANAGEMENT; BIENNIAL FINANCE PLAN. (a) By August 1 of each even-numbered year, the department of administration and the department jointly shall prepare a biennial finance plan that includes all of the following information:

1. An estimate of wastewater treatment needs of the state for the 4 fiscal years of the next 2 biennia.

2. The total amount of financial assistance planned to be provided or committed to municipalities for projects during the 4 fiscal years of the next 2 biennia.

3. The sources of the financial assistance planned to be provided or committed to municipalities during the 4 fiscal years of the next 2 biennia.

4. The extent to which the clean water fund will be maintained in perpetuity, and the extent to which the clean water fund will retain its purchasing power, meet the requirements of this section and s. 144.241 to provide financial assistance for water quality pollution abatement needs and nonpoint source water pollution management needs, and provide a stable and sustainable annual level of financial assistance under this section and s. 144.241 proportional to the state's long-term water pollution abatement and management needs and priorities.

5. A fund balance sheet, cash flow of existing loans and commitments, report of loans and commitments, fund profits and losses including yield on prior year loans, the estimated fund capital available for commitments in each of the next 4 fiscal years, and the projected clean water fund balance for each of the next 20 years given existing commitments and financial conditions.

5m. The estimated spending level and percentage of market interest rate for the types of projects specified under s. 144.241 (7) (b) 1 to 3.

6. An amount equal to the estimated present value of subsidies for all clean water fund loans and grants expected to be made for the wastewater treatment projects listed in the biennial needs list under s. 144.241 (3m), discounted at a rate of 7% per year to the first day of the biennium for which the biennial finance plan is prepared.

7. A discussion of the assumptions made in calculating the amount under subd. 6.

8. The amount of any service fee expected to be charged during the next biennium under this section to an applicant.

9. The impact of the biennial finance plan on the guidelines under par. (b).

(b) The department of administration and the department shall consider the following as guidelines in preparing the biennial finance plan:

1. That all state water pollution abatement general obligation debt service costs should not increase more than 4% annually.

2. That all state water pollution abatement general obligation debt service costs should not exceed 50% of all general obligation debt service costs to the state.

(bm) The department and the department of administration jointly shall prepare and submit copies of all of the following to the building commission under s. 13.48 (26), to the joint committee on finance and to the chief clerk of each house of the legislature, for distribution under s. 13.172 (3) to the appropriate legislative standing committees generally responsible for legislation related to environmental issues:

1. By August 1 of each even-numbered year, the version of the biennial finance plan initially prepared as part of the budget process.

2. When the biennial budget is submitted to the legislature under s. 16.45, the version of the biennial finance plan that contains material approved by the governor for inclusion in the budget.

3. No later than 7 days after the day on which the governor signs the biennial budget, a version of the biennial finance plan, updated to reflect the adopted biennial budget act.

(br) The joint committee on finance and each standing committee may submit to the building commission its recommendations and comments regarding each version of the biennial finance plan, and whether the version of the biennial finance plan updated to reflect the adopted biennial budget act should be approved or disapproved as specified under s. 13.48 (26). If the building commission disapproves the version of the biennial finance plan that is updated to reflect the adopted biennial budget act, the department and the department of administration shall submit a revised biennial finance plan to the building commission.

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(c) No moneys from the clean water fund may be expended in a biennium until the legislature reviews and approves all of the following, either in 1989 Wisconsin Act 366 for the 1989-91 biennium or as part of the biennial budget act for any other biennium:

1. An amount that is specified for that biennium under par. (d) and, for any biennium after the 1989-91 biennium, is based on the amount included in the biennial finance plan under par. (a) 6.

2. The amount of public debt, authorized under s. 20.866 (2) (tc), that the state may contract for the purposes of s. 144.241 and this section.

3. The amount of revenue obligations, authorized under sub. (4) (f), that may be issued for the purposes specified in s. 25.43 (3).

(d) The amount that is specified under par. (c) 1 and approved by the legislature under this paragraph is:

1. Equal to $179,304,000 during the 1989-91 biennium and, for projects on the fiscal year 1990-91 funding list under s. 144.241 (10) (c) only, during fiscal year 1991-92.

2. Equal to $100,305,000 during the 1991-93 biennium, in addition to any amount under subd. 1 used during fiscal year 1991-92.

3. Equal to $1,000 for any biennium after the 1991-1993 biennium.

(e) The department may expend, for financial assistance in a biennium other than financial hardship assistance under s. 144.241 (13) (e), an amount up to 80% of the amount approved by the legislature under par. (d). The department may expend such amount only from the percentage of the amount approved under par. (d) that is not available under par. (f) for financial hardship assistance or under par. (g) for additional costs.

(f) The department may expend, for financial hardship assistance in a biennium under s. 144.241 (13) (e), an amount up to 12% of the amount approved by the legislature under par. (d) for that biennium. The department may expend such amount only from the percentage of the amount approved by the legislature under par. (d) that is not available under par. (e) for financial assistance or under par. (g) for additional costs.

(g) 1. The department may expend, for additional costs directly associated with those projects in each biennium that are approved for financial assistance by the department, an amount up to 8% of the amount approved by the legislature under par. (d) for that biennium.

2. The department may expend the amount under subd. 1 only from the percentage of the amount approved by the legislature under par. (d) that is not available under par. (e) for financial assistance or under par. (f) for financial hardship assistance. No municipality may receive additional financial assistance under this paragraph in an amount greater than 10% of the amount specified in subd. 1.

(i) Using the amount approved under par. (d) as a base, the department of administration and the department shall calculate the present value of the actual subsidy of each clean water fund loan or grant to be made for those projects in each biennium that are approved for financial assistance by the 2 departments. The present value shall be discounted as provided under par. (a) 6.

(j) No later than January 1 of each even-numbered year, the department of administration and the department jointly shall submit a report, to the building commission and committees as required under par. (bm), on the implementation of the amount established under par. (d) as required under s. 144.241 (11) (d), and on the operations and activities of the clean water fund program for the previous biennium and for the fiscal year during which the report is prepared.

(4) REVENUE OBLIGATIONS (a) The clean water fund program is a revenue-producing enterprise or program as defined in s. 18.52 (6).

(am) Deposits, appropriations or transfers to the clean water fund for the purposes specified in s. 25.43 (3) may be funded with the proceeds of revenue obligations issued subject to and in accordance with subch. II of ch. 18 or in accordance with subch. IV of ch. 18 if designated a higher education bond.

(b) The department of administration may, under s. 18.56 (5) and (9) (j), deposit in a separate and distinct fund in the state treasury or in an account maintained by a trustee outside the state treasury, any portion of the revenues derived under s. 25.43 (1). The revenues deposited with a trustee outside the state treasury are the trustee's revenues in accordance with the agreement between this state and the trustee or in accordance with the resolution pledging the revenues to the repayment of revenue obligations issued under this subsection.

(c) The building commission may pledge any portion of revenues received or to be received in the fund established in par. (b) or the clean water fund to secure revenue obligations issued under this subsection. The pledge shall provide for the transfer to the clean water fund of all pledged revenues, including any interest earned on the revenues, which are in excess of the amounts required to be paid under s. 20.320 (1) (c) and (u) for the purposes specified in s. 25.43 (3). The pledge shall provide that the transfers be made at least twice yearly, that the transferred amounts be deposited in the clean water fund and that the transferred amounts are free of any prior pledge.

(d) The department of administration shall have all other powers necessary and convenient to distribute the pledged revenues and to distribute the proceeds of the revenue obligations in accordance with subch. II of ch. 18 or in accordance with subch. IV of ch. 18 if designated a higher education bond.

(e) The department of administration may enter into agreements with the federal government or its agencies, political subdivisions of this state, individuals or private entities to insure or in any other manner provide additional security for the revenue obligations issued under this subsection.

(f) Revenue obligations may be contracted by the building commission when it reasonably appears to the building commission that all obligations incurred under this subsection can be fully paid on a timely basis from moneys received or anticipated to be received. Revenue obligations issued under this subsection shall not exceed $1,297,755,000 in principal amount, excluding obligations issued to refund outstanding revenue obligation notes.

(g) Unless otherwise expressly provided in resolutions authorizing the issuance of revenue obligations or in other agreements with the holders of revenue obligations, each issue of revenue obligations under this subsection shall be on a parity with every other revenue obligation issued under this subsection and in accordance with subch. II of ch. 18 or with subch. IV of ch. 18 if designated a higher education bond.

(9) CONDITIONS OF FINANCIAL ASSISTANCE. (a) A loan approved under this section and s. 144.241 shall be for no longer than 20 years, as determined by the department of administration and the department, be fully amortized not later than 20 years after the original date of the note, and require the repayment of principal and interest, if any, to begin not later than 12 months after the expected date of completion of the

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project that it funds, as determined by the the department of administration and the department.

(am) The department of administration, in consultation with the department, may establish those terms and conditions of a financial assistance agreement that relate to its financial management, including what type of municipal obligation, as set forth under s. 66.36, is required for the repayment of the financial assistance. Any terms and conditions established under this paragraph by the department of administration shall comply with the requirements of this section and s. 144.241. In setting such terms and conditions, the department of administration may consider factors that the department of administration finds are relevant, including the type of municipal obligation evidencing the loan or a municipality's creditworthiness.

(b) As a condition of receiving financial assistance under this section and s. 144.241, a municipality shall do all of the following:

1. Pledge the security, if any, required by the rules promulgated by the department of administration under this section and s. 144.241.

2. Demonstrate to the satisfaction of the department of administration the financial capacity to assure sufficient revenues to operate and maintain the project for its useful life and to pay the debt service on the obligations that it issues for the project.

(11) FINANCIAL ASSISTANCE PAYMENTS. (a) The department may make a financial assistance commitment to a municipality for which the department issues a notice of financial assistance commitment under this section if the municipality meets the condition under s. 144.241 (14) (b) 8 and the other requirements established by the department and the department of administration under this section and s. 144.241.

(am) The department of administration shall make the financial assistance payments to a municipality to which the department has made a financial assistance commitment under par. (a).

(b) If a municipality fails to make a principal repayment or interest payment after its due date, the department of administration shall place on file a certified statement of all amounts due under this section and s. 144.241. After consulting the department, the department of administration may collect all amounts due by deducting those amounts from any state payments due the municipality or may add a special charge to the amount of taxes apportioned to and levied upon the county under s. 70.60. If the department of administration collects amounts due, it shall remit those amounts to the fund to which they are due and notify the department of that action.

(c) The department of administration may not make the last payment under a financial assistance agreement until the department and the department of administration determine that the project is completed and meets all requirements of the section and s. 144.241 and that the conditions of the financial assistance agreement are met.

(12) MUNICIPAL OBLIGATIONS. The department of administration may purchase or refinance obligations specified in s. 144.241 (6) (b) 1 or 2 and guarantee or purchase insurance for municipal obligations specified in s. 144.241 (6) (b) 3 if the department approves the financial assistance under this section and s. 144.241 and gives a notice of financial assistance commitment under this section.

(13) LOANS FOR TRANSITION PROJECTS. (a) 1. Notwithstanding any other provision of this section and s. 144.241, a municipality that submits to the department by January 2, 1989, a facility plan meeting the requirements of s. 144.24 which is approvable under this chapter and that does not receive a grant award before July 1, 1990, only because the municipality is following a schedule contained in the facility plan and approved by the department and the municipality is in compliance with all applicable schedules contained in a permit issued under ch. 147 or because there are insufficient grant funds under s. 144.24, is eligible to receive financial assistance under this paragraph. The form of the financial assistance is a loan with an interest rate of 2.5% per year except that s. 144.241 (8) (b), (f) and (k) applies to projects receiving financial assistance under this paragraph.

2. Notwithstanding any other provision of this section or s. 144.241, the department shall make all loans under subd. 1 to municipalities ready to construct treatment works before the department provides or approves any other financial assistance under this section except for loans under par. (b).

(b) 1. Notwithstanding any other provision of this section or s. 144.241, an unsewered municipality is eligible to receive financial assistance under this paragraph, in the form of a loan with an interest rate of 2.5% per year, which may be for original financing or refinancing for a collection system that is ineligible for financial assistance under s. 144.24 because of s. 144.24 (4) (b) 1 and that is being connected to an existing wastewater treatment plant if all of the following apply:

a. The municipality applies to the department for financial assistance under s. 144.24 (5) for a construction project during 1988.

b. Before January 1, 1989, the department issues a notice under s. 144.24 (6) that the department is ready to allocate funds to the municipality for the project.

c. The municipality invites bids for the project in 1989.

d. The municipality receives a grant under s. 144.24 for the construction of the project from the list developed by the department under s. 144.24 (6) (a) for applications received in 1988.

1m. Notwithstanding any other provision of this section or s. 144.241, a town sanitary district is eligible to receive financial assistance under this paragraph, in the form of a loan with an interest rate of 2.5% per year, for the extension of a collection system into an unsewered area that is added to the sanitary district if all of the following apply:

a. The department has awarded a grant to the town sanitary district under s. 144.24 (4) (b) 1. c. for a collection system.

b. The department determines that extension of the collection system into the unsewered area is necessary and cost-effective.

c. The sanitary district invites bids for and begins construction of the extension of the collection system before January 1, 1990.

2. Section 144.241 (8) (b), (f) and (k) applies to projects receiving financial assistance under this paragraph.

3. Notwithstanding any provision of this section or s. 144.241, the department shall annually allocate funds for loans under subds. 1 and 1m before the department provides or approves any other financial assistance under this section or s. 144.241.

(e) The department of administration and the department may not make loans under s. 144.241 (20), 1987 stats., as affected by 1989 Wisconsin Acts 31, 336 and 366, or under this subsection to a metropolitan sewerage district that serves a 1st class city that total more than $230,900,000.

(13m) LEGISLATIVE MORAL OBLIGATION. The building commission may, at the time the loan is made, by resolution designate a loan made under this section and s. 144.241 as one to which this subsection applies. If at any time the payments received or expected to be received from a municipality on any loan so designated are pledged to secure revenue obliga-

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tions of the state issued pursuant to subch. II of ch. 18 and are insufficient to pay when due principal of and interest on such loan, the department of administration shall certify the amount of such insufficiency to the secretary of administration, the governor and the joint committee on finance. If the certification is received by the secretary of administration in an even-numbered year before the completion of the budget under s. 16.43, the secretary of administration shall include the certified amount in the budget compilation. In any event, the joint committee on finance shall introduce in either house, in bill form, an appropriation of the amount so requested for the purpose of payment of the revenue obligation secured thereby. Recognizing its moral obligation to do so, the legislature hereby expresses its expectation and aspiration that, if ever called upon to do so, it shall make the appropriation.

(14) RULES. The department of administration shall promulgate rules that are necessary for the proper execution of this section.

(15) CONSTRUCTION. This section shall be liberally construed in aid of the purposes of this section.

History: 1989 a. 366 ss. 40, 63, 65, 66, 97, 99, 106, 108 to 110, 115; 1991 a. 32, 39, 189, 315.

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, except that the department need not determine the cost-effectiveness of projects performed under a contract awarded under s. 66.905.

(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).

History: 1981 c. 20, 317; 1983 a. 27; 1985 a. 29.

144.25 Financial assistance; nonpoint source water pollution abatement. (1) The purposes of the nonpoint source pollution abatement financial assistance 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 for 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 lakes identified under sub. (4) (cd) and priority watersheds

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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, except for dredgings, identified in areawide water quality management plans, which are determined to be the most effective means of preventing or reducing pollutants generated from nonpoint sources, or from the sediments of inland lakes polluted by nonpoint sources, to a level compatible with water quality objectives established under this section and which do not have an adverse impact on fish and wildlife habitat. The practices, techniques or measures include land acquisition, storm sewer rerouting and the removal of structures necessary to install structural urban best management practices, facilities for the handling and treatment of milkhouse wastewater, repair of fences built using grants under this section and measures to prevent or reduce pollutants generated from mine tailings disposal sites for which the department has not approved a plan of operation under s. 144.44 (3).

(am) "Governmental unit" means any governmental unit including, but not limited to, a county, city, village, town, metropolitan sewerage district created under ss. 66.20 to 66.26 or 66.88 to 66.918, town sanitary district, public inland lake protection and rehabilitation district, regional planning commission or drainage district operating under ch. 89, 1961 stats., or ch. 88. "Governmental unit" does not include the state or any state agency.

(b) "Nonpoint source" means a land management activity which contributes to runoff, seepage or percolation which adversely affects or threatens the quality of waters of this state and which is not a point source as defined under s. 147.015 (12).

(be) "Priority lake" means any lake or group of lakes that the department has identified under sub. (4) (cd).

(bs) "Priority lake area" means a priority lake and the area surrounding the priority lake designated by the department for the implementation of the nonpoint source pollution abatement project for the priority lake.

(c) "Priority watershed" means any large-scale or small-scale watershed which the department has identified under sub. (4) (c).

(d) "Structural urban best management practices" means detention basins, wet basins, infiltration basins and trenches and wetland basins.

(4) The department shall:

(a) Administer the nonpoint source water pollution program under this section.

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

(ar) Serve as the designated state agency with the federal environmental protection agency on all aspects related to the nonpoint source program management requirements of P.L. 100-4, including the development and submittal of the nonpoint source assessment report and management program required under P.L. 100-4, section 316 and preparation of the annual grant application for federal funding from the environmental protection agency to implement that program.

(as) Consult with the department of agriculture, trade and consumer protection in developing any federal grant application under par. (ar). Every application is subject to s. 16.54 and shall include the proposed expenditures of federal nonpoint source water pollution abatement grant moneys and the allocation of such moneys between the department and the department of agriculture, trade and consumer protection.

(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) Through the continuing planning process under s. 147.25, identify those priority watersheds where the need for nonpoint source water pollution abatement is most critical. The department shall prepare project funding lists for large-scale and small-scale projects subject to the approval of the department of agriculture, trade and consumer protection.

(cd) Identify, through the continuing planning process under s. 147.25, the lakes where the need for nonpoint source water pollution abatement is most critical and identify for those lakes the best management practices necessary to meet water quality objectives. The department shall collect the information necessary to determine the need to designate lakes as priority lakes. The department shall prepare project funding lists for projects affecting priority lakes subject to the approval of the department of agriculture, trade and consumer protection.

(cm) Identify watershed areas in the Milwaukee river basin as priority watershed areas, notwithstanding par. (c), and identify the best management practices necessary to meet water quality objectives in those watershed areas. For the purposes of this paragraph, the Kinnickinnic river shall be treated as being within a watershed area in the Milwaukee river basin. The department shall appoint an advisory committee which represents appropriate local interests to assist it in the planning and implementation of projects and best management practices in these watershed areas. The advisory committee shall include a member of the county board from each county with any area in the Milwaukee river basin.

(d) Review and approve the detailed program for implementation prepared by the designated local management agencies identified under par. (b).

(dm) Establish water quality objectives for each priority watershed and priority lake and identify the best management practices to achieve the water quality objectives.

(dr) Appoint a committee for each priority watershed and priority lake, to advise the department, the department of agriculture, trade and consumer protection and the counties, cities and villages concerning all aspects of the nonpoint source pollution abatement financial assistance program. Each committee shall include at least 2 farmers as members if the priority watershed or priority lake area includes property in agricultural use. Each committee shall include at least 2 representatives of a public inland lake protection and rehabilitation district that is within the priority watershed or priority lake area or, if one does not exist, of riparian property owners.

(e) Promulgate rules, in consultation with the department of agriculture, trade and consumer protection, as are necessary for the proper execution and administration of the program under this section. The rules shall include standards and specifications concerning best management practices which are required for eligibility for cost-sharing grants under this section. The department may waive the standards and specifications in exceptional cases. Only persons involved in the administration of the program under this section and persons who are grant recipients or applicants are subject to the rules promulgated under this paragraph. Any rule promulgated under this paragraph which relates or pertains to agricultural practices relating to animal waste handling and treatment are subject to s. 13.565.

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(f) Administer the distribution of grants and aids to governmental units for local administration and implementation of the program under this section. A grant awarded under this section may be used for technical assistance, educational and training assistance, ordinance development and administration, cost-sharing for management practices and capital improvements, plan preparation under par. (g), easements or other activities determined by the department to satisfy the requirements of this section.

(g) In cooperation with the department of agriculture, trade and consumer protection and the appropriate governmental unit, prepare priority watershed and priority lakes plans to implement nonpoint source water pollution abatement projects and storm water control activities described in sub. (8c) in priority watersheds and priority lake areas. In preparing the plans, the department shall:

1. Conduct the planning process in a cost-effective and timely manner and scale the planning process in accordance with the scale and nature of the pollution problem addressed in the plan.

2. Promote significant participation from the department of agriculture, trade and consumer protection and other state agencies, governmental units and other persons located in any priority watershed or in any priority lake area that is the subject of the plan.

3. Prepare a water resource assessment, set water quality goals, identify critical management areas and analyze alternative management practices for the area which is the subject of the plan.

4. In cooperation with the department of agriculture, trade and consumer protection, incorporate the appropriate best management practices into the plan.

5. Determine whether any county, city, village or town within the area which is the subject of the plan, as a condition of a grant under this section, should be required to develop a construction site erosion control ordinance under s. 59.974 or a manure storage ordinance under s. 92.16 in order to meet the water quality goals established in the plan.

6. Determine the specific plan components to be prepared by any appropriate governmental units in the watershed or in the area of the project affecting the priority lake, after determining the technical, financial and staffing capability of that governmental unit.

8. Establish an implementation plan for each priority watershed and priority lake, including all of the following:

a. A list of the best management practices identified under par. (dm) that are most critically needed to achieve water quality objectives in the priority watershed or priority lake.

b. A procedure for establishing implementation priorities to meet the needs identified in subd. 8. a. with the highest priority given to significant sources of nonpoint pollution that substantially inhibit the achievement of water quality objectives.

c. Consultation with the committee appointed under par. (dr) concerning the implementation plan.

d. A requirement to review the implementation plan periodically and to modify the implementation plan to reflect the agreements entered into by landowners and operators to implement best management practices.

e. Provisions for public notice and education concerning the implementation plan in the period during which grants are available to governmental units and landowners and operators, in order to achieve the greatest level of voluntary participation.

9. Complete the planning process in all priority watersheds by December 31, 2000.

(h) Designate a governmental unit to perform the inventory required under sub. (4m) (a).

(i) Cooperate with the department of agriculture, trade and consumer protection under s. 92.14 (6).

(j) A governmental unit may use a grant under this section for training required under s. 92.18 or for any other training necessary to prepare personnel to perform job duties related to this section. The department may contract with any person from the appropriations under s. 20.370 (4) (cc) and (cq) for services to administer or implement this chapter, including information and education and training.

(o) Annually, in cooperation with the department of agriculture, trade and consumer protection, submit a report on the progress of the program under this section to the land conservation board.

(p) Jointly with the department of agriculture, trade and consumer protection, prepare the plan required under s. 92.14 (13). The department shall review and approve or disapprove the plan and shall notify the land conservation board of its final action on the plan. The department shall implement any part of the plan for which the plan gives it responsibility.

(pm) Jointly with the department of agriculture, trade and consumer protection, develop the forms required under s. 92.14 (14).

(q) Consult with the department of agriculture, trade and consumer protection when it prepares the information which it submits to the department of administration under s. 16.42.

(r) Jointly with the department of agriculture, trade and consumer protection, develop the standards under sub. (5) (c).

(4m) (a) Any governmental unit or regional planning commission designated by the department under sub. (4) (h) shall prepare an inventory of nonpoint source water pollution in the watershed which is the subject of the plan under sub. (4) (g) and submit the inventory to the department for incorporation into the plan.

(b) Every plan prepared for an area under sub. (4) (g) shall include all of the following:

1. The inventory for that area prepared under par. (a).

2. A water resource assessment of that area.

3. The identification of critical surface water and groundwater protection management areas within that area and the agricultural and nonagricultural best management practices to be applied to that area.

4. A plan implementation schedule developed in cooperation with the appropriate governmental unit or designated local management agency identified under sub. (4) (b).

5. A grant disbursement and project management schedule.

6. An integrated resource management strategy to protect or enhance fish and wildlife habitat, aesthetics and other natural resources.

7. A comprehensive management strategy to manage agricultural and nonagricultural nonpoint source water pollution affecting surface water or groundwater, including animal waste, fertilizer, pesticides, storm water, construction site erosion and other nonpoint sources of water pollution.

(c) The department shall submit a copy of any plan it completes under this subsection to any county located in or containing any watershed which is a subject of the plan and to the department of agriculture, trade and consumer protection. That county and the department of agriculture, trade and consumer protection shall review the plan, approve or disapprove the plan and notify the department of natural resources of its action on the plan.

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(d) If the department receives a plan under par. (c) which has been approved by every county to which it was sent and by the department of agriculture, trade and consumer protection, the department shall approve the plan as an element of the appropriate areawide water quality management plan under P.L. 92-500, section 208.

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

(a) Approve or disapprove the project funding list of any priority watershed or priority lakes project about which it receives notice under sub. (4) (c) or (cd).

(b) Prepare sections of the priority watershed or priority lake plan relating to farm-specific implementation schedules, requirements under ss. 92.104 and 92.105, animal waste management and selection of agriculturally related best management practices and submit those sections to the department for inclusion under sub. (4m) (b).

(c) Jointly with the department, develop technical standards for agriculturally related best management practices.

(d) Develop a grant disbursement and project management schedule for agriculturally related best management practices to be included in a plan established under sub. (4) (g) and identify recommendations for implementing activities or projects under ss. 92.10, 92.104 and 92.105.

(e) Identify areas within a priority watershed or priority lake area that are subject to activities required under ss. 92.104 and 92.105.

(f) Provide implementation assistance as identified and approved in the priority watershed or priority lake plan under sub. (4) (g).

(5m) Upon completion of plans by the department under sub. (4) (g), the governmental unit or regional planning commission under sub. (4m) and the department of agriculture, trade and consumer protection under sub. (5), the department shall prepare and approve the final plan for a priority watershed or priority lake.

(6) The appropriate governmental unit is responsible for local administration and implementation of priority watershed and priority lakes projects and 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 appropriate governmental unit shall certify to the department that it has complied with this paragraph.

(d) Participate in the plan preparation under contract with the department. The department shall determine the specific plan components which will be prepared depending upon the technical, financial and staffing capability of the appropriate governmental unit.

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

(a) Governmental units and individual landowners or operators are 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).

(cm) Grants may be provided from the appropriations under s. 20.370 (4) (cc) and (cq) to applicants for projects affecting priority lakes identified under sub. (4) (cd) if the project is in conformance with areawide water quality management plans and the purposes specified under sub. (1).

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

(e) Except as provided in sub. (8c), 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

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

(gm) The department may exceed the limit under par. (g) and any limit imposed by rule on the total amount of a grant in cases of economic hardship, as defined by the department by rule. The department may issue grants that exceed those limits to no more than 10% of the landowners or operators who receive grants under this section.

(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%.

(hm) Notwithstanding pars. (g) and (h), the department may not increase a cost-sharing grant above 50% of the cost of land acquisition, storm sewer rerouting or the removal of structures necessary to install structural urban best management practices.

(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.

(L) A grant may not be made to an individual if the department receives a certification under s. 46.255 (7) that the individual is delinquent in child support or maintenance payments.

(n) The department shall identify by rule the types of cost-shared practices and the minimum grant amounts for cost-sharing grants that require any subsequent owner of the property to maintain the cost-shared practice for the life of the cost-shared practice, as determined by the department.

(o) The department shall provide grants for animal waste storage facilities in amounts not to exceed $20,000.

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(8c) The department may distribute a grant to a municipality that is required to control storm water discharges under 33 USC 1342 (p) in a priority watershed or priority lake area for practices, techniques or measures to control storm water discharges if those practices, techniques or measures are identified in the plan under sub. (4) (g) for the priority watershed or priority lake area.

(8e) The department may not require a person who received a cost-sharing grant to repay the cost-sharing grant on the basis of a violation of this section, rules promulgated under this section or the grant agreement, if, at the time of the violation, the person who received the grant no longer owns or operates the land for which the department provided the grant. This subsection applies without regard to whether the person received the grant before, on or after May 16, 1992.

(8m) If the department determines under sub. (4) (g) 5 that a county, city, village or town should be required to develop a construction site erosion control ordinance under s. 59.974 or a manure storage ordinance under s. 92.16, that county, city, village or town shall make a commitment to develop and adopt the ordinance as a condition of receiving a grant under this section.

(9) The department may distribute grants and aids to state agencies, including itself, for administration and implementation of the nonpoint source water pollution abatement program on land under state ownership or control for projects affecting priority lakes identified under sub. (4) (cd) or in priority watershed areas. The department may distribute grants and aids to itself for the purchase of easements in priority watershed areas.

(10) To the greatest extent practicable, the department, the department of agriculture, trade and consumer protection and the administering and implementing governmental unit shall encourage and utilize the Wisconsin conservation corps for appropriate projects.

History: 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309.

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.

144.253 Lake management planning grants. (1) In this section, "qualified lake association" means a group incorporated under ch. 181 that meets all of the following conditions:

(a) Specifies in its articles of incorporation or bylaws that a substantial purpose of its being incorporated is to support the protection or improvement of one or more inland lakes for the benefit of the general public.

(b) Demonstrates that the substantial purpose of its past actions was to support the protection or improvement of one or more inland lakes for the benefit of the general public.

(c) Allows to be a member any individual who for at least one month each year resides on or within one mile of an inland lake for which the association was incorporated.

(d) Allows to be a member any individual who owns real estate on or within one mile of an inland lake for which the association was incorporated.

(e) Does not limit or deny the right of any member or any class of members to vote as provided under s. 181.16 (1).

(f) Has been in existence for at least one year.

(g) Has at least 25 members.

(h) Requires payment of an annual membership fee of not less than $10 nor more than $25.

(1m) The department shall develop and administer a financial assistance program to provide lake management planning grants for projects to provide information on the quality of water in lakes, including mill ponds, in order to improve water quality assessment and planning and aid in the selection of activities to abate pollution of lakes.

(2) The department may provide a grant of 75% of the cost of a lake management planning project up to a total of $10,000 per grant.

(3) The department shall promulgate rules for the administration of the lake management planning grant program which shall include all of the following:

(a) Eligible recipients to consist of counties, cities, towns, villages, qualified lake associations, town sanitary districts, public inland lake protection and rehabilitation districts and other local governmental units, as defined in s. 66.299 (1) (a), that are established for the purpose of lake management.

(b) Eligible activities, which shall include data collection, water quality assessment and nonpoint source pollution evaluation.

(4) At the completion of a lake management planning project, upon request of the recipient of a grant under this section, the department may approve recommendations made as a result of the project as eligible activities for a lake management grant under s. 144.254.

History: 1989 a. 31; 1989 a. 160 ss. 1, 3, 4; 1989 a. 359; 1991 a. 39, 269.

144.254 Lake management grants. (1) The department shall develop and administer a financial assistance program to provide grants for lake management projects that will improve or protect the quality of water in lakes or the natural ecosystems of lakes.

(2) The department may provide a grant under this section for up to 50% of the cost of a lake management project but may not provide more than $100,000 per grant.

(3) The department shall promulgate rules to administer and to determine eligibility for the program under this section. The rules shall include all of the following:

(a) A designation of eligible recipients, which shall include counties, cities, towns, villages, qualified lake associations, as defined in s. 144.253 (1), town sanitary districts, public inland lake protection and rehabilitation districts and other local governmental units, as defined in s. 66.299 (1) (a), that are established for the purpose of lake management.

(b) A designation of eligible activities, which shall include all of the following:

1. The purchase of land or of a conservation easement, as defined in s. 700.40 (1) (a), if the eligible recipient enters into a contract under sub. (4) and if the purchase will substantially contribute to the protection or improvement of a lake's water quality or its natural ecosystem.

2. The restoration of a wetland, as defined in s. 23.32 (1), if the restoration will protect or improve a lake's water quality or its natural ecosystem.

3. The development of local regulations or ordinances that will protect or improve a lake's water quality or its natural ecosystem.

4. An activity that is approved by the department and that is needed to implement a recommendation made as a result of a plan to improve or protect the quality of water in a lake or the natural ecosystem of a lake.

(c) The department may not promulgate a rule designating dam maintenance and repair as an eligible activity for grants under this section.

(4) (a) In order to receive a grant for a purchase under sub. (3) (b) 1, the recipient shall enter into a contract with the department that contains all of the following provisions:

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1. Standards for the management of the property to be acquired.

2. A prohibition against using the property to be acquired as security for any debt unless the department approves the incurring of the debt.

3. A prohibition against the property being closed to the public unless the department determines it is necessary to protect wild animals, plants or other natural features.

4. A clause that any subsequent sale or transfer of the property to be acquired is subject to pars. (b) and (c).

(b) The recipient of the grant may subsequently sell or transfer the acquired property to a 3rd party other than a creditor of the recipient if all of the following apply:

1. The department approves the subsequent sale or transfer.

2. The party to whom the property is sold or transferred enters into a new contract with the department that contains the provisions under par. (a).

(c) The recipient of the grant may subsequently sell or transfer the acquired property to satisfy a debt or other obligation if the department approves the sale or transfer.

(d) If the recipient violates any essential provision of the contract, title to the acquired property shall vest in the state.

(e) The instrument conveying the property to the recipient shall state the interest of the state under par. (d). The contract entered into under par. (a) and the instrument of conveyance shall be recorded in the office of the register of deeds of each county in which the property is located.

History: 1991 a. 39

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.

(e) "Regulation" means ordinances enacted under ss. 59.971, 61.351, 62.23 (7) and 62.231 and refers to 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) "Shorelands" means the lands specified under par. (e) and s. 59.971 (1).

(g) "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.

(2m) Notwithstanding any other provision of law or administrative rule, a shoreland zoning ordinance required under s. 59.971, a construction site erosion control and storm water management zoning ordinance authorized under s. 59.974, 61.354 or 62.234 or a wetland zoning ordinance required under s. 61.351 or 62.231 does not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not adjacent to a natural navigable stream or river;

(b) Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching; and

(c) Such lands are maintained in nonstructural agricultural use.

(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

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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 cooperate 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; 1983 a. 189, 416.

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.

144.265 Damage to water supplies. (1) In this section:

(a) "Private water supply" has the meaning specified under s. 144.442 (1) (cm), except this term excludes a well which is not a source of water for humans unless the well is constructed by drilling.

(b) "Regulated activity" means an activity for which the department may issue an order under this chapter, 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 private water supply to become contaminated, polluted or unfit for consumption by humans, livestock or poultry, 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 fit for consumption by humans, livestock and poultry, repair the private water supply or replace the private 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 caused a private water supply to become contaminated, polluted or unfit for consumption by humans, livestock or poultry, and if the regulated activity is an approved facility, as defined in s. 144.442 (1) (a), the department may conduct a hearing under s. 144.442 (6) (f). If the damage to the private 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 environmental fund that are available for environmental repair to treat the water to render it drinkable, or to repair or replace the private water supply, and to reimburse the town, village or city for the cost of providing water under sub. (4). If the damage to the private water supply is not caused by an occurrence not anticipated in the plan of operation, if the damage does not pose a substantial hazard to public health or welfare, or if moneys in the environmental fund that may be used for environmental repair are insufficient, the department may order the owner or operator of the regulated activity to treat the water to render it fit for consumption by humans, livestock and poultry, or to repair or replace the private 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 private water supply to become contaminated, polluted or unfit for consumption by humans, livestock or poultry, the court may order the defendant to treat the water to render it fit for consumption by humans, livestock and poultry, repair the private water supply or replace the private 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 private water supply is located may submit the following information to the town, village or city where the private 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 private 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 private water supply is located. The town, village or city shall supply necessary amounts of water to replace that water formerly obtained from the damaged private 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 private 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 private 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; 1983 a. 27 s. 2202 (38); 1983 a. 410 ss. 75g to 77g; Stats. 1983 s. 144.265; 1989 a. 31.

144.266 Construction site erosion control and storm water management. (1) OBJECTIVES. To aid in the fulfillment of the state's role as trustee of its navigable waters, to promote public health, safety and general welfare and to protect natural resources, it is declared to be in the public interest to make studies, establish policies, make plans, authorize municipal construction site erosion control and storm water management zoning ordinances for the efficient use, conservation, development and protection of this state's groundwater, surface water, soil and related resources and establish a state construction site erosion control and storm water management plan for the efficient use, conservation, development and protection of this state's groundwater, surface water, soil and related resources while at the same time encouraging sound economic growth in this state. The purposes of the municipal ordinances and state plan shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; prevent and control soil erosion; prevent and control the adverse effects of storm water; protect spawning grounds, fish and aquatic life; con-

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trol building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.

(2) STATE CONSTRUCTION SITE EROSION CONTROL AND STORM WATER MANAGEMENT PLAN. The department shall promulgate by rule a state construction site erosion control and storm water management plan. This state plan is applicable to construction activities contracted for or conducted by any agency, as defined under s. 227.01 (1) but also including the office of district attorney, unless that agency enters into a memorandum of understanding with the department in which that agency agrees to regulate activities related to construction site erosion control and storm water management. The department shall coordinate the activities of agencies, as defined under s. 227.01 (1), in construction site erosion control and storm water management and make recommendations to these agencies concerning activities related to construction site erosion control and storm water management.

(3) STANDARDS. (a) 1. Except as restricted under subd. 2, the department shall establish by rule minimum standards for activities related to construction site erosion control and storm water management.

2. The department, in cooperation with the department of transportation, shall establish by rule minimum standards for activities related to construction site erosion control and storm water management if those activities concern street, highway, road or bridge construction, enlargement, relocation or reconstruction.

3. Minimum standards established under this paragraph are applicable to the state construction site erosion control and storm water management plan. The department shall encourage a county, city or village to comply with these minimum standards for any construction site erosion control and storm water management zoning ordinance enacted under s. 59.974, 61.354 or 62.234.

4. The department shall identify low-cost practices which would enable a person to comply with these minimum standards.

(b) The minimum standards for construction site erosion control shall provide for the regulation of any construction activity which:

1. Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more.

2. Involves the excavation or filling or a combination of excavation and filling which affects 400 cubic yards or more of dirt, sand or other excavation or fill material.

3. Involves street, highway, road or bridge construction, enlargement, relocation or reconstruction.

4. Involves the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of 300 feet or more.

5. Requires a subdivision plat approval or a certified survey.

(c) The minimum standards for storm water management shall provide for the regulation of any construction activity which:

1. Is a residential development with a gross aggregate area of 5 acres or more.

2. Is a residential development with a gross aggregate area of 3 acres or more with at least 1.5 acres of impervious surfaces.

3. Is a development other than a residential development with a gross aggregate area of 3 acres or more.

4. Is likely to result in storm water runoff which exceeds the safe capacity of the existing drainage facilities or receiving body of water, which causes undue channel erosion, which increases water pollution by scouring or the transportation of particulate matter or which endangers downstream property.

(4) MODEL ORDINANCES; STATE PLAN; DISTRIBUTION. The department shall prepare a model construction site erosion control and storm water management zoning ordinance in the form of an administrative rule. The model ordinance shall be based upon the state construction site erosion control and storm water management plan. The model ordinance is subject to s. 227.19 and other provisions of ch. 227 in the same manner as other administrative rules. Following the promulgation of the model ordinance as a rule, the department shall distribute a copy of the model ordinance to any county, city or village which submits a request. The department shall distribute a copy of the state plan to any agency which submits a request.

(5) COOPERATION. The department, the municipalities and all state agencies shall cooperate 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, shall prepare model construction site erosion control and storm water management zoning ordinances, shall extend assistance to municipalities under this section, shall prepare a state construction site erosion control and storm water management plan, shall encourage uniformity through the implementation of this plan and the utilization of memoranda of understanding which are substantially similar to the plan and shall extend assistance to agencies under this section.

History: 1983 a. 416; Stats. 1983 s. 144.265; 1983 a. 538 s. 150; Stats. 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31.

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

History: 1979 c. 221 s. 624; Stats. 1979 s. 144.27.

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", or "source" if not otherwise modified, means any facility, building, structure, installation, equipment, vehicle or action that emits or may emit an air contaminant directly, indirectly or in combination with another facility, building, structure, installation, 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 ambient air increment and the baseline concentration if a baseline concentration is established.

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(3r) "Architectural coating" means a coating applied to a stationary structure, including a parking lot, and its appurtenances or to a mobile home.

(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 42 USC 7475 or the first application for an air pollution control permit under s. 144.391 for a major source located in an attainment area, whichever occurs first, less any contribution from stationary sources identified in 42 USC 7479 (4).

(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.

(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.

(13) "Existing source" means a stationary source that is not a new source or a modified source.

(14) "Federal clean air act" means the federal clean air act, 42 USC 7401 to 7671q, and regulations issued by the federal environmental protection agency under that act.

(14m) "Growth accommodation" means the amount of volatile organic compounds specified in s. 144.40 (1) (a).

(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.

(16) "Major source" means a stationary source that is capable of emitting an air contaminant in an amount in excess of an amount specified by the department by rule under s. 144.31 (1) (r).

(19e) "Minor source" means a stationary source that is not a major source.

(20) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of emissions of an air contaminant or that results in the emission of an air contaminant not previously emitted, subject to rules promulgated under s. 144.31 (1) (s).

(20e) "Modified source" means a stationary source on which modification commences after November 15, 1992.

(20s) "New source" means a stationary source on which construction, reconstruction or replacement commences after November 15, 1992.

(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.

(22r) "Reasonably available control technology" means that control technology which provides the lowest emission rate that a particular source is capable of achieving by the application of control technology that is reasonably available considering technological and economic feasibility.

(22rm) "Regulated pollutant" means any of the following, except for carbon monoxide:

(a) A volatile organic compound.

(b) An oxide of nitrogen.

(c) A pollutant regulated under 42 USC 7411 or 7412.

(d) A pollutant for which a national primary ambient air quality standard has been promulgated under 42 USC 7409.

(22s) "Replenishment implementation period" means the period between August 1, 1987, and December 31 of the year by which the department requires full compliance with rules required to be promulgated under s. 144.40 (3).

(23) "Stationary source" means any facility, building, structure or installation that directly or indirectly emits or may emit an air contaminant only from a fixed location. A stationary source includes an air contaminant source that 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.

(24) "Volatile organic compound" means an organic compound" which participates in an atmospheric photochemical reaction, as determined by the department by rule.

(25) "Volatile organic compound accommodation area" means Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington and Waukesha counties and any other county specified by the department by rule in response to a finding by the federal environmental protection agency that the county is to be included in the volatile organic compound accommodation area.

History: 1971 c. 125, 130, 211; 1977 c. 377; 1979 c. 34, 221; 1987 a. 27, 399; 1989 a. 31; 1991 a. 269, 302.

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

Cleaning the Air: Wisconsin's Air Quality Laws. Burke. Wis. Law. Aug. 1992.

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.

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(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 the plans. The rules or control strategies submitted to the federal environmental protection agency under the federal clean air act for control of atmospheric ozone shall conform with the federal clean air act unless, based on the recommendation of the natural resources board or the head of the department, as defined in s. 15.01 (8), of any other department, as defined in s. 15.01 (5), that promulgates a rule or establishes a control strategy, the governor determines that measures beyond those required by the federal clean air act meet any of the following criteria:

1. The measures are part of an interstate ozone control strategy implementation agreement under sub. (4) signed by the governor of this state and of the state of Illinois.

2. The measures are necessary in order to comply with the percentage reductions specified in 42 USC 7511a (b) (1) (A) or (c) (2) (B).

(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.

(n) Prepare an annual report which states the total nitrogen oxide and sulfur dioxide emissions from all stationary sources in this state. This report may be combined with other reports published by the department.

(o) If federal legislation is enacted that establishes sulfur dioxide or nitrogen oxide controls for the purpose of reducing acid deposition, prepare a report, in consultation with the public service commission, this state's electric utilities, industries and environmental groups, recommending ways to coordinate state law with federal law. The department, after holding a public hearing on the report, shall submit the report to the governor and the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), within 6 months after the enactment of the federal legislation.

(p) Promulgate by rule the actions or events which constitute the reconstruction of a major source.

(q) Promulgate by rule the actions or events which constitute the shutdown of a facility.

(r) Promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source and that may limit the classification of a major source to specified categories of stationary sources and to specific air contaminants.

(s) Promulgate rules, consistent with the federal clean air act, that modify the meaning of the term "modification" as it relates to specified categories of stationary sources, to specific air contaminants and to amounts of emissions or increases in emissions.

(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.

(g) Establish by rule, consistent with the federal clean air act, the amount of offsetting emissions reductions required under s. 144.393 (2) (a).

(3) (a) In this subsection, "solid waste treatment" has the meaning given in s. 144.43 (7r).

(b) The department shall, by rule, establish a program for the certification of persons participating in or responsible for the operation of solid waste treatment facilities that burn solid waste. The certification requirements shall take effect on January 1, 1993. The department shall do all of the following:

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

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

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

4. Impose fees for the operator training and certification program.

5. Require that there be one or more certified operators on the site of a solid waste treatment facility at all times during the facility's hours of operation.

(bm) The program under par. (b) does not apply with respect to any of the following:

1. A facility described in s. 159.07 (7) (bg).

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2. A solid waste treatment facility for the treatment of hazardous waste.

3. A solid waste treatment facility for high-volume industrial waste as defined in s. 144.44 (7).

4. A solid waste treatment facility of a type exempted from the program by the department by rule.

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

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

(e) The department may suspend or revoke an operator's certification for failure to comply with ss. 144.30 to 144.426, rules promulgated under those sections or conditions of operation made applicable to a solid waste treatment facility by the department.

(4) After May 14, 1992, the governor may enter into an agreement with the governor of the state of Illinois, that may also include the governors of the states of Indiana and Michigan, that specifies measures for the control of atmospheric ozone that are necessary in order to implement an interstate ozone control strategy to bring an area designated under 42 USC 7407 (d) as an ozone nonattainment area into attainment with the ambient air quality standard for ozone if the area includes portions of this state and the state of Illinois.

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); Stats. 1979 s. 144.31; 1985 a. 182 s. 57; 1985 a. 296; 1987 a. 27, 186; 1989 a. 56, 335; 1991 a. 300, 302.

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 consistent 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) Except as provided in sub. (2), the department shall make any record, report or other information obtained in the administration of ss. 144.30 to 144.426 and 144.96 available to the public.

(2) The department shall keep confidential any part of a record, report or other information obtained in the administration of ss. 144.30 to 144.426 and 144.96, other than emission data or an air pollution control permit, upon a showing satisfactory to the department by any person that the part of a record, report or other information would, if made public, divulge a method or process that is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.

(3) Subsection (2) does not prevent the disclosure of any information to a representative of the department for the purpose of administering ss. 144.30 to 144.426 and 144.96 or to an officer, employe or authorized representative of the federal government for the purpose of administering the federal clean air act. When the department provides information that is confidential under sub. (2) to the federal government, the department shall also provide a copy of the application for confidential status.

History: 1971 c. 125 s. 522 (2); 1979 c. 34; 1979 c. 221 s. 2202 (39); 1981 c. 335 s. 26; 1991 a. 302.

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 or permits issued 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); 1991 a. 302.

144.36 Small business stationary source technical and environmental compliance assistance program. (1) DEFINITION. In this section, "small business stationary source" means a stationary source designated under sub. (2) (a) or, except as provided in sub. (2) (b), a stationary source that satisfies all of the following criteria:

(a) Is owned or operated by a person that employs 100 or fewer individuals.

(b) Is a small business concern, as determined under 15 USC 632 (a).

(c) Is not a major stationary source, as defined in rules promulgated by the department.

(d) Does not emit 50 tons or more per year of any regulated pollutant.

(e) Emits a total of less than 75 tons per year of all regulated pollutants.

(2) DESIGNATIONS AND EXCLUSIONS. (a) In response to a petition by a stationary source, the department may, by rule, designate as a small business stationary source any stationary source that does not meet the criteria of sub. (1) (c), (d) or (e) but that does not emit a total of more than 100 tons per year of all regulated pollutants.

(b) The department may, by rule, after consultation with the administrators of the federal environmental protection agency and the federal small business administration, exclude from the definition of small business stationary source any category or subcategory of stationary source that the department determines to have sufficient technical and financial capabilities to meet the requirements of the federal clean air act without the assistance provided under this section.

(3) ASSISTANCE PROGRAM. The department shall, in cooperation with the small business ombudsman clearinghouse under s. 560.03 (9), develop and administer a small business stationary source technical and environmental compliance assistance program. The program shall include all of the following:

(a) Mechanisms to develop, collect and coordinate information concerning methods and technologies that small business stationary sources can use to comply with the federal clean air act and programs to encourage lawful cooperation among small business stationary sources or other persons to further compliance with the federal clean air act.

(b) Mechanisms for providing small business stationary sources with information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution and with other assistance in pollution prevention and accidental release detection and prevention.

(c) A compliance assistance program that assists small business stationary sources in determining applicable requirements under ss. 144.30 to 144.426 and 144.96 and in receiving air pollution control permits in a timely and efficient manner.

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(d) Mechanisms to ensure that small business stationary sources receive notice of their rights under the federal clean air act and state laws implementing the federal clean air act in a manner and form that assures reasonably adequate time for small business stationary sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under the federal clean air act.

(e) Mechanisms for referring small business stationary sources to qualified auditors to determine compliance with the federal clean air act and state laws implementing the federal clean air act and other mechanisms for informing small business stationary sources of their obligations under the federal clean air act and state laws.

(f) Procedures for consideration of a request from a small business stationary source for alteration of any required work practice or technological method of compliance with ss. 144.30 to 144.426 or of the schedule of measures that must be taken to implement a required work practice or method of compliance before an applicable compliance date, based on the technological and financial capability of the small business stationary source.

(4) GRANTING ALTERATIONS. The department may not grant an alteration under sub. (3) (f) unless the alteration complies with the requirements of the federal clean air act and any applicable plan under s. 144.31 (1) (f). If those applicable requirements are set forth in federal regulations, the department may only grant alterations authorized in those regulations.

History: 1991 a. 302.

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.

(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 ss. 227.01 (13) and 227.10 (1), documents issued under this subsection are not rules.

(3) REVIEW. The documents issued under sub. (2) may be reviewed under ss. 227.42 and 227.52.

(4) PROCEDURES. (a) For any document issued under sub. (2), the department shall hold a public hearing and follow the procedures in this subsection.

(b) 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.

(c) 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.

(d) 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.

(e) 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; 1985 a. 182 s. 57; 1989 a. 56.

144.3712 Employe trip reduction program. (1) AREAS. (a) The department shall issue documents that describe the areas of the state in which employe trip reduction programs are required by 42 USC 7511a (d) (1) (B).

(b) The department may, by rule, determine areas of the state, other than areas described under par. (a), in which the department will require employe trip reduction programs. The department may not require an employe trip reduction program in an area unless that requirement is authorized under s. 144.31 (1) (f).

(c) Notwithstanding ss. 227.01 (13) and 227.10 (1), a document issued under par. (a) is not a rule. A document issued under par. (a) may be reviewed under ss. 227.42 and 227.52.

(2) REQUIREMENTS. The department shall promulgate by rule requirements for employers who are located in areas described under sub. (1) (a) or (b) to implement programs to reduce work-related trips and miles traveled by employes. The department shall develop the rules in accordance with the guidance issued by the administrator of the federal environmental protection agency under 42 USC 7408 (f). The rules shall require that each employer who employs 100 or more persons in an area described under sub. (1) (a) or (b) increase average passenger occupancy per vehicle in commuting trips between home and workplace during peak travel periods by not less than 25% above the average passenger occupancy per vehicle for all such trips in the area as of November 15, 1992, or any later date specified by the federal environmental protection agency.

(3) COMPLIANCE PLANS. If an employer is located in an area that is described before November 15, 1993, by the department under sub. (1) (a) or (b) and is subject to the rules promulgated under sub. (2), the employer shall submit to the department, no later than November 15, 1994, a plan that demonstrates that the employer will comply with the rules no later than November 15, 1996.

History: 1991 a. 302.

144.3714 Clean fuel fleet program. (1) DEFINITIONS. In this section:

(a) "Clean alternative fuel" has the meaning given in 42 USC 7581 (2).

(b) "Clean-fuel vehicle" has the meaning given in 42 USC 7581 (7).

(c) "Covered fleet" has the meaning given in 42 USC 7581 (5).

(2) AREAS. (a) The department shall issue documents that describe the areas of the state in which clean-fuel vehicle programs are required under 42 USC 7511a (c) (4) (A).

(b) The department may, by rule, determine areas of the state, other than areas described under par. (a), in which the department will require clean-fuel vehicle programs. The department may not require a clean-fuel vehicle program in an area unless that requirement is authorized under s. 144.31 (1) (f).

(c) Notwithstanding ss. 227.01 (13) and 227.10 (1) a document issued under par. (a) is not a rule. A document

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issued under par. (a) may be reviewed under ss. 227.42 and 227.52.

(3) REQUIREMENTS. The department shall promulgate by rule requirements for the use of clean-fuel vehicles and clean alternative fuels by operators of covered fleets in areas identified under sub. (2) (a) or (b). The rules shall be in accordance with the requirements applicable to covered fleets under 42 USC 7586 and regulations promulgated under that provision.

History: 1991 a. 302.

144.3716 Reformulated gasoline. (1) DEFINITIONS. In this section, "reformulated gasoline" means gasoline formulated to reduce emissions of volatile organic compounds and toxic air pollutants as provided in 42 USC 7545 (k) (1) to (3).

(2) AREAS. (a) The department shall issue documents that describe the areas of the state in which the use of reformulated gasoline is required under 42 USC 7545 (k) (5).

(am) The department shall issue documents that describe areas of the state, other than areas described under par. (a) or (b), in which the use of reformulated gasoline is required, if the governor designates the areas in an application under 42 USC 7545 (k) (6) that is approved by the administrator of the federal environmental protection agency.

(b) The department may, by rule, determine areas of the state, other than areas described under par. (a) or (am), in which the department will require the use of reformulated gasoline. The department may not require the use of reformulated gasoline in an area unless that requirement is authorized under s. 144.31 (1) (f).

(c) Notwithstanding ss. 227.01 (13) and 227.10 (1), a document issued under par. (a) or (am) is not a rule. A document issued under par. (a) may be reviewed under ss. 227.42 and 227.52.

(3) PROHIBITIONS. (a) Except as provided in par. (b), beginning on January 1, 1995, no person may sell gasoline in an area described under sub. (2) (a), (am) or (b) unless the gasoline satisfies the minimum specifications for reformulated gasoline under s. 168.04.

(b) The secretary, with the approval of the administrator of the federal environmental protection agency, may grant temporary waivers from the prohibition under par. (a) if fuel that satisfies the minimum specifications for reformulated gasoline is unavailable.

History: 1991 a. 302.

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 permit or 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; 1991 a. 302.

144.374 Operation permit dates. (1) OPERATION PERMIT REQUIREMENT DATE. The department shall promulgate by rule a schedule of the dates when an operation permit is required for various categories of stationary sources.

(2) OPERATION PERMIT APPLICATION DATE. (a) The department shall promulgate by rule a schedule of the dates when an operation permit application is required to be submitted for various categories of existing sources.

(b) A person who is required to obtain a construction permit shall submit an application for an operation permit with the application for the construction permit.

History: 1979 c. 221; 1985 a. 182 s. 57; 1989 a. 56; 1991 a. 302.

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).

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(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 standard 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).

(5m) LIMITATION ON IMPOSITION OF EMISSION STANDARDS. The department may not impose emission standards on a coal-powered car ferry that was manufactured before 1954 and has operated only on Lake Michigan if the coal-powered car ferry does not burn coal with a higher sulfur content than the coal burned before May 2, 1990.

(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; 1989 a. 247.

Discussion of promulgation of emission standards under this section. Wis. Hosp. Ass'n v. Nat. Resources Bd., 156 W (2d) 688, 457 NW (2d) 879 (Ct. App. 1990).

144.38 Classification, reporting and monitoring. (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.

(2) The department may, by rule or in an operation permit, require the owner or operator of an air contaminant source to monitor the emissions of the air contaminant source or to monitor the ambient air in the vicinity of the air contaminant source and to report the results of the monitoring to the department. The department may specify methods for conducting the monitoring and for analyzing the results of the monitoring. The department shall require the owner or operator of a major source to report the results of any required monitoring of emissions from the major source to the department no less often than every 6 months.

History: 1991 a. 302.

144.382 Testing emissions from medical waste incinerators. (1) TESTING FOR HAZARDOUS SUBSTANCES. (a) *Applicability.* This subsection applies to a medical waste incinerator, as defined in s. 159.07 (7) (c) 1. cr., that has a capacity of 5 tons or more per day.

(b) *Requirements.* 1. A person operating or responsible for the operation of a medical waste incinerator described in par. (a) shall test emissions of particulates, dioxins, furans, arsenic, lead, hexavalent chromium, cadmium, mercury and any other hazardous substance identified by the department by rule, at least as often as follows:

a. During the initial 90-day period of operation.

b. One year following the initial 90-day period of operation.

c. Every 2 years following the testing under subd. 1. b.

2. A person operating or responsible for the operation of a medical waste incinerator described in par. (a) shall report the results of the testing under subd. 1 to the department and the city, village or town in which the medical waste incinerator is located.

(c) *Analysis.* 1. The department shall provide an analysis of the test results submitted under par. (b) 2 to the city, village or town in which the medical waste incinerator is located.

2. The city, village or town in which the medical waste incinerator is located shall publish the analysis provided under subd. 1 as a class 1 notice under ch. 985.

3. The department may charge the person operating or responsible for the operation of the medical waste incinerator a fee for reviewing and preparing the analysis of the test results.

NOTE: Sub. (1) is shown as renumbered from s. 144.382 and amended eff. 2-1-93 by 1991 Wis. Act 300. Prior to 2-1-93 s. 144.382 reads:

144.382 TESTING EMISSIONS FROM CERTAIN MEDICAL WASTE INCINERATORS. (1) APPLICABILITY. This section applies to a medical waste incinerator, as defined in s. 159.07 (7) (c) 1. cr., that begins operation on or after January 1, 1990, has a capacity of 25 tons or more per day and is located in Burnett, Dunn, Kenosha, Milwaukee, Ozaukee, Pierce, Polk, Racine, St. Croix, Walworth, Washington or Waukesha county.

(2) REQUIREMENTS. (a) A person operating or responsible for the operation of a medical waste incinerator described in sub. (1) shall test emissions of particulates, dioxins, furans, arsenic, lead, hexavalent chromium, cadmium, mercury and any other hazardous substance identified by the department by rule, at least as often as follows:

1. During the initial 90-day period of operation.

2. One year following the initial 90-day period of operation.

3. Every 2 years following the testing under subd. 2.

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(b) A person operating or responsible for the operation of a medical waste incinerator described in sub. (1) shall report the results of the testing under par. (a) to the department and the city, village or town in which the medical waste incinerator is located.

(3) ANALYSIS. (a) The department shall provide an analysis of the test results submitted under sub. (2) (b) to the city, village or town in which the medical waste incinerator is located.

(b) The city, village or town in which the medical waste incinerator is located shall publish the analysis provided under par. (a) as a class 1 notice under ch. 985.

(c) The department may charge the person operating or responsible for the operation of the medical waste incinerator a fee for reviewing and preparing the analysis of the test results.

(2) CONTINUOUS MONITORING. A person operating or responsible for the operation of a medical waste incinerator, as defined in s. 159.07 (7) (c) 1. cr., shall continuously monitor emissions from the medical waste incinerator.

NOTE: Sub. (2) is created eff. 2-1-93 by 1991 Wis. Act 300.

History: 1989 a. 335; 1991 a. 300.

144.385 Sulfur dioxide emission limitations before 1993; major utilities. (2) DEFINITIONS. As used in this section:

(a) "Commission" means the public service commission.

(am) "Environmental dispatching" means the operation of the various units under the ownership or control of a major utility in a manner that minimizes the discharge of sulfur dioxide emissions rather than minimizing the cost of operation.

(b) "Major utility" means a Class A utility, as defined under s. 199.03 (4), which generates electricity or an electrical cooperative association organized under ch. 185, if the total sulfur dioxide emissions from all stationary air contaminant sources in this state under the ownership or control of the utility or association exceeded 5,000 tons in any year after 1979.

(3) SULFUR DIOXIDE EMISSION LIMITATIONS FOR MAJOR UTILITIES. (a) *Total annual emission limitation.* Except as provided under pars. (c) to (g), the total annual sulfur dioxide emissions from all major utilities may not exceed 500,000 tons beginning with calendar year 1985.

(b) *Individual annual emission limitation, applicable only if total limitation is exceeded.* Except as provided under pars. (c) to (g), the sulfur dioxide emissions from a major utility may not exceed the individual sulfur dioxide limitation specified in the joint annual operation plan under sub. (4) if the total annual sulfur dioxide limitation under par. (a) is exceeded.

(c) *Variance procedure, conditions.* A major utility may request a variance from its individual annual emission limitation which applies under par. (b) by submitting the request to the commission and the department. No request for a variance may be submitted if the department has served the major utility with written notice under s. 144.423 that the major utility has violated par. (b). Upon receipt of a request, the commission shall, within 45 days, determine if any of the following variance conditions exists and shall report its determination to the department:

1. A major electrical supply emergency within or outside this state.

2. A major fuel supply disruption.

3. An extended and unplanned disruption in the operation of a nuclear plant or low sulfur coal-fired boiler.

4. The occurrence of an uncontrollable event not anticipated in the joint annual operation plan under sub. (4).

5. A plan by the major utility to install and place into operation new technological devices that will enable the major utilities to meet the total annual emission limitation under par. (a).

(d) *Compliance plan required.* With the request for a variance, the major utility shall submit its plan for achieving or returning to compliance with its individual annual emission limitation. If the request is based on a variance condition specified under par. (c) 1 to 4, the request shall include an explanation of why the major utility cannot achieve or remain in compliance by using fuel with a lower sulfur content or by environmental dispatching.

(e) *Grant of variance.* The department shall grant a request for a variance if the commission determines that a variance condition exists and the department determines that the major utility's compliance plan is adequate.

(f) *Denial of variance.* The department shall deny a request for a variance if the commission determines that no variance condition exists or if the department determines that the major utility's compliance plan is not adequate.

(g) *Time limit for response.* The department shall grant or deny a request for a variance within 90 days after its receipt of the request.

(4) JOINT ANNUAL OPERATION PLAN. (a) *Submission, contents.* The major utilities shall submit a joint annual operation plan to the department on or before October 1 of each year. The joint annual operation plan shall include individual annual operation plans, individual sulfur dioxide limitations for each major utility and other details on how the utilities intend to cooperate in operating their electrical supply systems in order to comply with the total annual emission limitation.

(b) *Individual annual operation plan.* Each major utility shall submit an individual annual operation plan as a part of the joint annual operation plan. The individual annual operation plan shall include, at a minimum:

1. The expected electricity demand.

2. The expected operation characteristics of each unit, including:

a. The order to be used in placing the units into operational production.

b. The planned maintenance of any units and how the maintenance is expected to affect the methods of meeting electricity demands.

3. The amount and sulfur content of coal, other fossil fuel or other materials to be used for each unit in operational production. The sulfur content shall be expressed in pounds of sulfur dioxide per million British thermal units of heat input.

4. The anticipated sulfur dioxide emissions from each unit.

5. Contingency plans for unexpected events or increased demand including a summary of generation costs and costs for reducing sulfur dioxide emissions.

6. The major utility's individual sulfur dioxide emission limitation.

(c) *Review.* The department shall review and comment on the joint annual operation plan after consulting with the commission. If no joint annual operation plan is submitted or if the department determines, after consulting with the commission, that the plan does not provide for compliance with the total annual emission limitation the department shall establish for each major utility an annual limit on sulfur dioxide emissions that will ensure compliance with sub. (3) (a). The department shall promulgate by rule a method for establishing the annual limits.

(6) NO IMPACT ON OTHER PROVISIONS. Nothing in this section exempts an air contaminant source from the provisions of ss. 144.30 to 144.38 and 144.391 to 144.426 and compliance with this section is not a defense to a violation of those provisions.

(7) DETERMINATION OF COMPLIANCE. The department shall determine compliance with sub. (3) using data submitted by the major utilities. Each major utility shall provide the

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department with any information needed to determine compliance.

(8) PENALTY. Notwithstanding s. 144.426, if the total annual emission limitation under sub. (3) (a) is exceeded, each major utility which violates sub. (3) (b) shall forfeit not less than $25,000 nor more than $50,000 for each violation. Each day of continued violation constitutes a separate offense. If more than one major utility violates sub. (3) (b), the department may recommend the imposition of forfeitures in amounts which are proportionate to the degree to which each major utility caused or contributed to the violation of the total annual sulfur dioxide emission limitation based upon the major utility's responsibility under the joint annual operation plan.

(9) This section does do not apply after December 31, 1992.

History: 1983 a. 414; 1985 a. 296; 1989 a. 56

NOTE: Section 1 of 1985 Wis. Act 296 is entitled "Legislative intent, policy and goals; sulfur dioxide and nitrogen oxide emission limitations." Act 296 amended this section and created ss. 144.386 to 144.389.

144.386 Sulfur dioxide emission rates after 1992; major utilities. (1) DEFINITIONS. In this section:

(a) "Annual emissions" means the number of pounds of sulfur dioxide emissions from all boilers under the ownership or control of a major utility in a given year.

(b) "Annual heat input" means the heat input, measured in millions of British thermal units, from all boilers under the ownership or control of a major utility in a given year.

(c) "Boiler" means a fossil fuel-fired boiler.

(d) "Commission" means the public service commission.

(e) "Environmental dispatching" means the operation of the various units under the ownership or control of a major utility in a manner that minimizes the discharge of sulfur dioxide emissions rather than minimizing the cost of operation.

(f) "Major utility" means a Class A utility, as defined under s. 199.03 (4), which generates electricity or an electrical cooperative association organized under ch. 185, if the total sulfur dioxide emissions from all stationary air contaminant sources in this state under the ownership or control of the utility or association exceeded 5,000 tons in any year after 1979.

(g) "Traded emissions" means the pounds of sulfur dioxide emissions in a given year that a major utility which is the grantor in an agreement under sub. (2) (b) 1. makes available to the major utility which is the grantee in the agreement.

(2) CORPORATE EMISSION RATE; TRADING. (a) Except as provided under sub. (4), beginning with 1993, the average number of pounds of sulfur dioxide emissions per million British thermal units of heat input from all boilers under the ownership or control of a major utility for any year may not exceed 1.20.

(b) 1. Two major utilities may enter into an agreement for trading emissions unless the sum of the proposed traded emissions and the projected annual emissions of the grantor major utility for the year to which the agreement will apply would exceed the actual annual emissions of the grantor major utility in 1985.

2. To determine whether the major utility that is the grantor in an agreement under subd. 1. is in compliance with par. (a) in a given year, the department shall add the traded emissions and the grantor's annual emissions and divide the sum by the annual heat input of the grantor.

3. To determine whether the major utility that is the grantee in an agreement under subd. 1. is in compliance with par. (a) in a given year, the department shall subtract the traded emissions from the grantee's annual emissions and divide the difference by the annual heat input of the grantee.

(3) ANNUAL COMPLIANCE PLAN REQUIRED. (a) *Submission, contents.* On or before October 1 of each year beginning with 1992, each major utility shall submit to the department and the commission a plan for achieving compliance with the emission rate under sub. (2) (a). The plan shall include, at a minimum:

1. The major utility's expected electricity demand.

2. The major utility's annual operation plan.

3. The expected operation characteristics of each boiler, including:

a. The order to be used in placing the boilers into operational production.

b. The planned maintenance schedule for each boiler and how the maintenance is expected to affect the methods of meeting electricity demands.

4. The amount and sulfur content of coal, other fossil fuel or other materials to be used for each boiler in operational production. The sulfur content shall be expressed in pounds of sulfur dioxide per million British thermal units of heat input.

5. The anticipated sulfur dioxide emissions from each boiler.

6. Contingency plans for unexpected events or increased demand including a summary of generation costs and the anticipated additional costs for reducing sulfur dioxide emissions under those circumstances.

7. The methods that will be used to achieve compliance with sub. (2) (a) in the following year including, if applicable, the provisions of any trading agreement under sub. (2) (b) 1.

8. The total anticipated annual sulfur dioxide emissions from all boilers under the ownership or control of the major utility for each of the next 3 years.

(b) *Review.* The department shall review the adequacy of each compliance plan and, after consulting with the commission, shall approve or disapprove the plan within 90 days after its receipt.

(4) VARIANCE. (a) *Request; variance conditions.* A major utility may request a variance from the emission rate under sub. (2) (a) by submitting the request to the commission and the department. No request for a variance may be submitted if the department has served the major utility with written notice under s. 144.423 that the major utility has violated sub. (2) (a). Upon receipt of a request, the commission shall, within 45 days, determine if any of the following variance conditions exists and shall report its determination to the department:

1. A major electrical supply emergency within or outside this state.

2. A major fuel supply disruption.

3. An extended and unplanned disruption in the operation of a nuclear plant or low sulfur coal-fired boiler under the ownership or control of the major utility.

4. The occurrence of an uncontrollable event not anticipated in the plan submitted under sub. (3).

5. A plan by the major utility to install and place into operation new technological devices that will enable it to achieve compliance with sub. (2) (a).

(b) *Compliance plan required.* With the request for a variance, the major utility shall submit its plan for achieving compliance with the emission rate. If the request is based on a variance condition specified under par. (a) 1. to 4., the request shall include an explanation of why the major utility cannot achieve or remain in compliance by using fuel with a lower sulfur content or by environmental dispatching.

(c) *Grant of variance.* The department shall grant a request for a variance if the commission determines that a variance

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condition exists and the department determines that the major utility's compliance plan is adequate.

(d) *Denial of variance.* The department shall deny a request for a variance if the commission determines that no variance condition exists or if the department determines that the major utility's compliance plan is not adequate.

(e) *Time limit for response.* The department shall grant or deny a request for a variance within 90 days after its receipt of the request.

(5) NO IMPACT ON OTHER PROVISIONS. Nothing in this section exempts a major utility from any provision of ss. 144.30 to 144.38 or 144.391 to 144.426. Compliance with this section is not a defense to a violation of any of those provisions.

(6) DETERMINATION OF COMPLIANCE. The department shall determine compliance with sub. (2) (a) using data submitted by the major utilities. Each major utility shall provide the department with any information needed to determine compliance.

(7) PENALTY. Notwithstanding s. 144.426, any major utility that exceeds the annual emission rate under sub. (2) (a) in violation of this section shall forfeit not less than $100,000 nor more than $500,000 for each year of violation.

History: 1985 a. 296.

144.387 Sulfur dioxide emission rates; state-owned facilities. (1) LIMIT. After June 30, 1988, the average number of pounds of sulfur dioxide emissions per million British thermal units of heat input during any year from any large source, as defined under s. 144.388 (1) (a), that is owned by this state may not exceed 1.50.

(2) COMPLIANCE. The department shall determine compliance with sub. (1) using data submitted by state agencies. Each state agency shall provide the department with any information needed to determine compliance.

(3) NONCOMPLIANCE; REPORT REQUIRED. If the department determines that any large source owned by this state is not in compliance with sub. (1), the department shall submit to the governor and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (2), a report of the noncompliance and recommendations for bringing the large source into compliance.

History: 1985 a. 296.

144.388 Sulfur dioxide emission goals after 1992; major utilities and other large air contaminant sources. (1) DEFINITIONS. In this section:

(a) "Large source" means a stationary source in this state, other than a fossil fuel-fired boiler under the ownership or control of a major utility, that had sulfur dioxide emissions averaging at least 1,000 tons annually in the most recent 5-year period, that became operational before May 2, 1986, and that is not a boiler subject to the standard of performance for new stationary sources for sulfur dioxide emissions established under s. 144.375 (4).

(b) "Major utility" has the meaning given under s. 144.386 (1) (f).

(2) GOALS. It is the goal of this state that, beginning with 1993, total annual sulfur dioxide emissions do not exceed the following:

(a) From all major utilities and large sources, 325,000 tons.

(b) From all fossil fuel-fired boilers under the ownership and control of the major utilities, 250,000 tons.

(c) From all large sources, 75,000 tons.

(3) EXCESS EMISSIONS; DEPARTMENT REPORT REQUIRED. (a) If the department determines, based on its annual report under s. 144.31 (1) (n), that the total annual sulfur dioxide emissions from all major utilities and large sources exceeded 325,000 tons in the previous year, or if the department projects, based on the amounts anticipated by the major utilities under s. 144.386 (3) (a) 8 and the department's estimates of emissions from large sources, that the total sulfur dioxide emissions in this state will exceed 325,000 tons in any of the 3 succeeding years, the department shall determine if the actual or projected excess emissions are or will be attributable to the major utilities, the large sources or both.

(b) 1. If the department determines that the excess emissions are or will be attributable to the major utilities, the department shall, after consulting with the commission, prepare a report containing a recommendation as to whether the goal specified under sub. (2) (b) should be replaced with an enforceable limit. If so, the report shall include the department's recommendation for a cost-effective mechanism for ensuring compliance with the limit, including any necessary changes in s. 144.386. The department shall hold a public hearing on the report.

2. The department shall submit the report required under this paragraph to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3).

(c) 1. If the department determines that the excess emissions are or will be attributable to the large sources, the department shall, after consulting with the commission, prepare a report containing a recommendation as to whether the goal specified under sub. (2) (c) should be replaced with an enforceable limit. If so, the report shall include the department's recommendation for a cost-effective mechanism for ensuring compliance with the limit. The department shall hold a public hearing on the report.

2. The department shall submit the report required under this paragraph to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3).

(d) If the department determines that the excess emissions are or will be attributable to both the major utilities and the large sources, the department shall comply with both pars. (b) and (c). The reports and public hearings required under those paragraphs may be combined.

History: 1985 a. 296; 1987 a. 186.

144.389 Nitrogen oxide emission goal; major utilities. (1) DEFINITIONS. In this section:

(a) "Commission" means the public service commission.

(b) "Major utility" has the meaning given under s. 144.386 (1) (f).

(2) GOAL. It is the goal of this state that, beginning with 1991, the total annual nitrogen oxide emissions from all major utilities do not exceed 135,000 tons.

(3) STUDY. (a) The department shall conduct a study to determine the most cost-effective methods for reducing nitrogen oxide emissions in the state. The commission shall assist the department in preparing those portions of the study pertaining to electric utilities. The department shall complete the study before July 1, 1988. The department shall solicit the cooperation of this state's electric utilities, industries and environmental groups in conducting the study.

(b) The purposes of the study shall be the following:

1. To determine the amount of nitrogen oxide emissions in this state. The department may request any person to provide information necessary in making this determination. Any person receiving such a request shall comply with the request.

2. To investigate and determine the costs of specific types of available nitrogen oxide emission control options including, but not limited to, the following:

a. Retrofit controls for utility and industrial boilers.

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b. Motor vehicle inspection and maintenance programs.

c. The establishment of stricter nitrogen oxide emission standards for new motor vehicles.

3. To investigate the possible effects on sulfur dioxide emissions resulting from implementing nitrogen oxide controls.

4. To investigate the interaction between sulfur dioxide emissions and nitrogen oxide emissions from stationary sources and the potential for permitting a stationary source an increased level of either type of emission in exchange for reducing the other type, if this state imposes limits on both types of emissions.

(c) The department, in consultation with the commission, shall prepare a report, which shall include all of the following:

1. A summary of the results of research on the environmental effects of nitrogen oxide emissions.

2. A summary of the results of the study under pars. (a) and (b).

3. Recommendations for achieving nitrogen oxide emission reductions through annual emission rates or total annual emission limits.

(d) The department shall hold a public hearing on the report.

(e) The department shall submit the report required under this subsection to the governor and the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), before January 1, 1989.

History: 1985 a. 296; 1987 a. 186.

144.391 Air pollution control permits. (1) NEW OR MODIFIED SOURCES. (a) *Construction permit.* 1. Except as provided in sub. (6), no person may commence construction, reconstruction, replacement or modification of a stationary source unless the person has a construction permit from the department.

2. A construction permit may authorize the initial operation of a stationary source for a period specified in the permit to allow testing of the stationary source's equipment and monitoring of the emissions associated with the equipment.

(b) *Operation permit.* Except as provided in par. (a) 2. or sub. (6), no person may operate a new source or a modified source unless the person has an operation permit from the department.

(2) EXISTING SOURCES. (a) *Operation permit requirement.* Except as provided in sub. (6) or s. 144.3925 (7), no person may operate an existing source after the operation permit requirement date specified under s. 144.374 (1) unless the person has an operation permit from the department.

(b) *Elective operation permit.* A person may apply for an operation permit for one or more points of emission from an existing source for which an operation permit is not required. No person may operate a stationary 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 operation permit under this paragraph, the election may not be withdrawn and the stationary source may not be operated without the operation permit beginning on the date that the operation permit is first issued.

(3m) GENERAL OPERATION PERMITS. The department may, by rule, specify types of stationary sources that may obtain general operation permits. A general operation permit may cover numerous similar stationary sources. A general operation permit shall require any stationary source that is covered by the general operation permit to comply with ss. 144.392 to 144.399. The department shall issue a general operation permit using the procedures and criteria in ss. 144.3925 to 144.399.

(4m) PERMIT FLEXIBILITY. The department shall allow a person to make a change to an existing source that has an operation permit, or for which the person has submitted a timely and complete application for an operation permit, for which the department would otherwise first require an operation permit revision, without first requiring a revision of the operation permit if the change is not a modification, as defined by the department by rule, and the change will not cause the existing source to exceed the emissions allowable under the operation permit, whether expressed as an emission rate or in terms of total emissions. Except in the case of an emergency, a person shall notify the department and, for permits required under the federal clean air act, the administrator of the federal environmental protection agency in writing at least 21 days before the date on which the person proposes to make a change to an existing source under this subsection. A person may not make a proposed change to an existing source if the department informs the person before the end of that 21-day period that the proposed change is not a change authorized under this subsection. The department shall promulgate rules establishing a shorter time for advance notification of changes under this subsection in case of emergency.

(5) EXEMPTION FROM ADDITIONAL PERMIT REQUIREMENTS FOR APPROVED RELOCATED SOURCES. (a) *Approved relocated source.* A source is an approved relocated source if all of the following requirements are met:

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 written notice to the department at least 20 days prior to relocation and the department does not object to the relocation.

5. The source in its new location meets all applicable emission limitations and any visibility requirements in the department's rules and does not violate an ambient air increment or ambient air quality standard.

6. The source is not an affected source as defined in 42 USC 7651a (1).

(b) *Exempt from additional permits.* Notwithstanding subs. (1) and (2), 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.

(7) COMPLIANCE. A person who obtains a permit under this section shall comply with all terms and conditions of the permit.

History: 1979 c. 34, 221; 1991 a. 302.

144.392 Construction permit application and review. (1m) APPLICANT NOTICE REQUIRED. A person who is required to obtain or who seeks a construction permit shall apply to the department for a permit to construct, reconstruct, replace or modify 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 or modification will meet the requirements of ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections.

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(3) ANALYSIS. The department shall prepare an analysis regarding the effect of the proposed construction, reconstruction, replacement or modification on ambient air quality and a preliminary determination on the approvability of the construction permit application, within the following time periods after the receipt of the plans, specifications and other information:

(a) *Major source construction permits.* For construction permits for major sources, within 120 days.

(b) *Minor source construction permits.* For construction permits for minor sources, within 30 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 stationary source would be constructed, reconstructed, replaced or modified 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 or modification, 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 or modification, 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 or modification 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 construction 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 (3).

(8) DEPARTMENT DETERMINATION; ISSUANCE. (a) *Criteria, considerations.* The department may approve the construction permit application and issue a construction 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.* The department shall act on a construction 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 a major source that is located in an attainment area, the department shall complete its responsibilities under s. 1.11 within one year.

(9) MINING HEARING. If a hearing on the construction 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; 1985 a. 182 s. 57; 1991 a. 302.

144.3925 Operation permit; application, review and effect. (1) APPLICANT NOTICE REQUIRED. A person who is required to obtain an operation permit for a stationary source shall apply to the department for the permit on or before the operation permit application date specified under s. 144.374 (2). The department shall specify by rule the content of applications under this subsection. If required by the federal clean air act, the department shall provide a copy of the complete application to the federal environmental protection agency. The department may not accept an application submitted to the department before November 15, 1992, as an application under this subsection.

(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) REVIEW; NOTICE; PUBLICATION. (a) The department shall review an application for an operation permit. Upon completion of that review, the department shall prepare a preliminary determination of whether it may approve the application and a public notice. The public notice shall include all of the following:

1. A brief description of the stationary source.

2. The department's preliminary determination of whether it may approve the application.

3. Notice of the opportunity for public comment and the date by which comments must be submitted to the department.

4. Notice of the opportunity to request a public hearing.

5. Any other information that the department determines is necessary to inform the public about the application.

(b) The department shall provide the notice prepared under par. (a) to all of the following:

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1. The applicant.

2. Any local air pollution control agency that has a program under s. 144.41 that is approved by the department and that has jurisdiction over the area in which the stationary source is located.

3. Any regional planning agency, any county planning agency and any public library located in the area that may be affected by emissions from the stationary source.

4. Any person or group that requests the notice.

5. Any city, village, town or county that has jurisdiction over the area in which the stationary source is located.

6. If required by the federal clean air act, the federal environmental protection agency.

7. If required by the federal clean air act, any state that is within 50 miles of the stationary source and any state that is contiguous to this state and whose air quality may be affected by emissions from the stationary source.

(c) The department shall publish the notice prepared under par. (a) as a class 1 notice under ch. 985 in a newspaper published in the area that may be affected by emissions from the stationary 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 an operation permit for a stationary source if requested by any state that received notice under sub. (3) (b) or any other person 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 determines 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 (3).

(5m) PROPOSED PERMIT; RESPONSE TO COMMENTS; ENVIRONMENTAL PROTECTION AGENCY OBJECTION. (a) After considering any public comments concerning an application, the department may prepare a proposed operation permit or deny the application for an operation permit. If the criteria in ss. 144.393 and 144.3935 are met, the department shall prepare a proposed operation permit. If required by the federal clean air act, the department shall provide a copy of a proposed operation permit to the federal environmental protection agency. If a state has submitted recommendations in response to the notice under sub. (3) (b) 7 and the department has not accepted those recommendations, the department shall notify that state and the federal environmental protection agency in writing of its decision not to accept the recommendations and the reasons for that decision.

(b) The federal environmental protection agency may object in writing to the issuance of an operation permit that it determines is not in compliance with the federal clean air act or an implementation plan prepared under s. 144.31 (1) (f). The department shall respond in writing to the objection if the federal environmental protection agency provides the reasons for the objection and submits the objection to the department and the applicant within 45 days after receiving either a copy of the proposed operation permit under par. (a) or notice under par. (a) of the department's decision not to accept the recommendations of another state.

(c) 1. If the department receives an objection from the federal environmental protection agency under this subsection, the department may not issue the operation permit unless the department revises the proposed operation permit to satisfy the objection.

2. If the department has issued an operation permit before receiving an objection from the federal environmental protection agency that is based on a petition submitted under 42 USC 7661d (b) 2 and the federal environmental protection agency modifies, terminates or revokes the operation permit, the department shall issue an operation permit that is revised to satisfy the objection.

(d) The requirements under pars. (a) to (c) do not apply with respect to an application for an operation permit for a stationary source that is in a category that the department excludes, by rule, from those requirements because the source is not required to obtain a permit under the federal clean air act or that the federal environmental protection agency excludes from those requirements under 42 USC 7661d (d).

(e) This subsection does not apply before the federal environmental protection agency approves this state's air pollution control permit program under 42 USC 7661a (d) or (g).

(6) DEPARTMENT DETERMINATION; ISSUANCE. (a) The department shall approve or deny the operation permit application for an existing source. The department shall issue the operation permit for an existing source if the criteria established under ss. 144.393 and 144.3935 are met. The department shall issue an operation permit for an existing source or deny the application within 18 months after receiving a complete application, except that the department may, by rule, extend the 18-month period for specified existing sources by establishing a phased schedule for acting on applications received within one year after the effective date of the rule promulgated under sub. (1) that specifies the content of applications for operation permits. The phased schedule may not extend the 18-month period for more than 3 years.

(b) The department shall approve or deny the operation permit application for a new source or modified source. The department shall issue the operation permit for a new source or modified source if the criteria established under s. 144.393 are met. The department shall issue an operation permit for a new source or modified source or deny the application within 180 days after the permit applicant submits to the department the results of all equipment testing and emission monitoring required under the construction permit.

(c) If required by the federal clean air act, the department shall provide a copy of an operation permit to the federal environmental protection agency.

(7) OPERATION CONTINUED DURING APPLICATION. If a person timely submits a complete application for an existing source under sub. (1) and submits any additional information requested by the department within the time set by the department, the existing source may not be required to discontinue operation and the person may not be prosecuted for lack of an operation permit until the department acts under sub. (6).

(8) DELAY IN ISSUING PERMITS. (a) If the department fails to issue an operation permit or to deny the application within the period specified in sub. (6) or in a rule promulgated under sub. (6), that failure is considered a final decision on the application solely for the purpose of obtaining judicial review under ss. 227.52 and 227.53 to require the department to act on the application without additional delay.

(b) Paragraph (a) does not apply if the department's failure to act is due to the applicant's failure to submit a complete

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application and any additional information requested by the department in a timely manner.

(9) EFFECT OF PERMIT. (a) Except as provided in par. (b), the issuance of an operation permit, including an operation permit that contains a compliance schedule, does not preclude enforcement actions based on violations of ss. 144.30 to 144.426 that occur before, on or after the date that the operation permit is issued. The inclusion of a compliance schedule in an operation permit does not preclude enforcement actions based on violations of ss. 144.30 to 144.426 to which the compliance schedule relates, whether or not the source is violating the compliance schedule.

(b) Unless precluded by the administrator of the federal environmental protection agency under 42 USC 7661c (f), compliance with all emission limitations included in an operation permit is considered to be compliance with all emission limitations established under ss. 144.30 to 144.426 and emission limitations under the federal clean air act that are applicable to the stationary source as of the date of issuance of the operation permit if the permit includes the applicable emission limitations or the department, in acting on the application for the operation permit, determines in writing that the emission limitations do not apply to the stationary source and the operation permit includes that determination.

History: 1979 c. 221; 1985 a. 182 s. 57; 1991 a. 302.

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 requirements.* The stationary source will meet all applicable emission limitations and other requirements 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 stationary source will not degrade the air quality in an area sufficiently to prevent the construction, reconstruction, replacement, modification or operation of another stationary source if the department received plans, specifications and other information under s. 144.392 (2) for the other stationary source prior to commencing its analysis under s. 144.392 (3) for the former stationary source. This paragraph does not apply to an existing source required to have [a] an operation permit.

(2) REQUIREMENTS FOR PERMITS FOR NEW OR MODIFIED MAJOR SOURCES IN NONATTAINMENT AREAS. The department may approve the application for a construction permit or operation permit for a major source that is a new source or modified source and is located in a nonattainment area if the department finds that the major source meets the requirements under sub. (1) and it finds that all of the following conditions are met:

(a) *Emission offsets.* By the time the major source is to commence operation, sufficient offsetting emissions reductions have been obtained so that total allowable emissions from the major source and from other air contaminant sources in the area designated by the department will be sufficiently less than the total emissions allowed prior to the application for the construction permit or operation 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 major source will be at the lowest achievable emission rate.

(c) *Applicant's other major sources meet or on schedule to meet requirements.* All other major sources that are located in this state and that are owned or operated by the permit applicant or by any entity controlling, controlled by or under common control with the permit applicant, as determined under s. 180.1140 (6), 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 and are in compliance with or are on schedule to come into compliance with all applicable emission limitations and emission standards under the federal clean air act.

(d) *Analysis of alternatives.* Based on an analysis of alternative sites, sizes, production processes and environmental control techniques for any major source that is located in an area designated under 42 USC 7407 (d), that the benefits of the construction or modification of the major source significantly outweigh the environmental and social costs imposed as a result of the major source's location, construction or modification.

(3) REQUIREMENTS FOR PERMITS FOR NEW OR MODIFIED MAJOR SOURCES IN ATTAINMENT AREAS. The department may approve the application for a construction permit or operation permit for a major source that is a new source or a modified source and is located in an attainment area if the department finds that the major 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.

(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

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source already has an air pollution control permit and the source already meets the requirements as a condition of that permit.

(7) USE OF VOLATILE ORGANIC COMPOUND GROWTH ACCOMMODATION. (a) Subject to the conditions and restrictions specified in this subsection, the department shall grant use of the growth accommodation as a means for a stationary source to comply with either sub. (1) (b) or (2) (a), or both subs. (1) (b) and (2) (a).

(b) Upon application by a source, the department shall certify to the applicant a growth accommodation credit in the amount requested subject to all of the following conditions:

1. The applicant demonstrates to the satisfaction of the department that it is unable, through reasonable means which could include installation of the best available control technology, to eliminate its need for a growth accommodation credit by reducing emissions of volatile organic compounds from any stationary sources that it owns or operates in the volatile organic compound accommodation area. If the department determines that an applicant could, through reasonable means, reduce the amount of growth accommodation credit applied for by reducing emissions of volatile organic compounds from any stationary sources that it owns or operates in the volatile organic compound accommodation area, the department shall certify to the applicant a growth accommodation credit equal to the amount requested by the applicant minus the amount by which the department finds the source could, through reasonable means, reduce emissions from other stationary sources that it owns or operates in the volatile organic compound accommodation area.

2. Except as provided in s. 144.399 (5) (d), the applicant is in compliance or is complying with an approved schedule to be in compliance with ss. 144.30 to 144.426 and 144.96 with respect to all stationary sources that it owns or operates and has paid the fees required under s. 144.399 (5).

3. Except as provided in subd. 8, the growth accommodation reported for the current year under s. 144.40 (2) (b) 1, after reduction by the amount of the proposed growth accommodation credit and any growth accommodation credits issued since the date of the report, is greater than 2,500 tons.

4. If the growth accommodation reported for the current year under s. 144.40 (2) (b) 1, less a reduction by the amount of any growth accommodation credits issued since the date of the report under s. 144.40 (2) (b) 1, is greater than 3,000 tons, the department may certify to the applicant no more than the amount of the growth accommodation reported for the current year under s. 144.40 (2) (b) 1, less the sum of 2,750 tons and any growth accommodation credits issued since the date of the report under s. 144.40 (2) (b).

5. If the growth accommodation reported for the current year under s. 144.40 (2) (b) 1, after reduction by the amount of any growth accommodation credits issued since the date of the report under s. 144.40 (2) (b) 1, is greater than 2,500 tons but less than or equal to 3,000 tons, the department may certify no more than 250 tons to the applicant in that year.

6. The applicant agrees to forfeit any unused growth accommodation credits that the department determines the applicant does not need, as provided under sub. (8).

7. The applicant agrees not to sell or transfer any amount of the growth accommodation credit to any person other than the department.

8. If the growth accommodation reported for the current year under s. 144.40 (2) (b) 1, after reduction by the amount of the proposed growth accommodation credit and any growth accommodation credits issued since the date of the report, would be 2,500 tons or less, the department may certify to the applicant a growth accommodation credit in the amount determined under this section if, because of facility shutdowns or replenishment activities under s. 144.40 that have occurred, the growth accommodation for the next succeeding year after reduction by the amount of the growth accommodation credit will be greater than 2,500 tons.

9. An applicant shall inform the department of the date or dates when it will need to use any given amount of the growth accommodation credit. The department shall certify to the applicant the proper amount of the growth accommodation credit on the date which the applicant states it will need it and shall reserve the proper amount of the growth accommodation credit for certification to the applicant upon the date needed, except for any amount which is forfeited under sub. (8). The department may use reserved growth accommodation credits to certify temporary growth accommodation credits which expire on or before the date when they are certified to the source which reserved them.

10. Upon request by an applicant, the department may certify to the applicant a growth accommodation credit which expires upon a date designated in the permit. The applicant shall sign a statement to acknowledge the expiration date of the permit. Growth accommodation credits issued under this subdivision may be certified from growth accommodation credits reserved by another source under subd. 9.

(c) Nothing in this subsection grants the recipient of a growth accommodation credit a property right to emit volatile organic compounds.

(d) Notwithstanding pars. (a) and (b) (intro.), the department may not grant use of the growth accommodation under this subsection for an air pollution control permit application submitted after July 1, 1992, as long as the growth accommodation area is designated under 42 USC 7407 as an ozone nonattainment area.

(8) FORFEITURE OF GROWTH ACCOMMODATION CREDITS. Within 4 years after the department certifies, under sub. (7), a growth accommodation credit to an applicant or reserves for the future use of an applicant a growth accommodation credit, and at least every 4 years thereafter, the department shall determine whether the certified or reserved growth accommodation credit is reasonably necessary for the applicant's current use and future plans. If the department determines that any amount of the certified or reserved growth accommodation credit is not reasonably necessary for the applicant's current use and if the applicant cannot demonstrate to the satisfaction of the department that any amount of the certified or reserved growth accommodation credit is reasonably necessary for the applicant's future plans, the applicant shall forfeit an amount of the growth accommodation credit, as determined by the department. The department shall deposit the forfeited amount of the growth accommodation credit in the growth accommodation replenishment.

(9) RESTRICTION ON EMISSION REDUCTION OPTION PROGRAMS. (a) No emissions of volatile organic compounds may be used in an emission reduction option program if:

1. The program involves a grantee of emissions of volatile organic compounds that is different than the grantor of emissions of volatile organic compounds; and

2. The emissions of volatile organic compounds specified in the program are from a recorded source.

(b) In this subsection, "recorded source" means a stationary source in the volatile organic compound accommodation area owned or operated by any person who owns or operates on May 17, 1988, a stationary source whose actual 1980 emissions of volatile organic compounds are recorded as zero

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in the 1982 plan approved by the U.S. environmental protection agency under 42 USC 7502 (a).

(10) REQUIREMENTS FOR MEDICAL WASTE INCINERATORS. (a) In this subsection, "medical waste incinerator" has the meaning given in s. 159.07 (7) (c) 1. cr.

(b) In addition to the requirements under subs. (1) to (3), the department may approve an application submitted after May 14, 1992, for a permit required or allowed under s. 144.391 for the construction of a medical waste incinerator or for the modification of a medical waste incinerator that expands the capacity of the medical waste incinerator only if it finds that the new or modified medical waste incinerator will be needed and that the site of the medical waste incinerator is appropriate.

(c) The department shall consider all of the following in evaluating the need for the proposed medical waste incinerator:

1. An approximate service area for the proposed medical waste incinerator that encompasses all sources of waste that could potentially be burned in the medical waste incinerator. The department shall delineate the service area based on the economics of waste collection, transportation and treatment.

2. The quantity of waste that could potentially be burned in the proposed medical waste incinerator and that is generated within the anticipated service area.

3. The remaining capacity or design capacity of other solid waste facilities, if those facilities are located within the anticipated service area of the proposed medical waste incinerator and are currently providing or are expected to provide solid waste management for any sources of solid waste that could potentially be burned in the medical waste incinerator.

4. The quantity of waste having the potential to be burned in the medical waste incinerator that may be managed in an effective recycling program created under s. 159.11.

5. The potential for reducing the quantity of waste having the potential to be burned in the medical waste incinerator by reducing the amount of waste that is generated within the anticipated service area and the potential for using alternative technologies for disposing of the waste.

(d) The department may not determine that the site of a proposed medical waste incinerator is appropriate if the medical waste incinerator or the transportation of solid waste to the medical waste incinerator will have an adverse effect that is both substantial and unreasonable on any of the following:

1. Existing recreational land uses.

2. Land or surface water that has any of the characteristics under s. 23.27 (2).

3. Scenic vistas of statewide significance.

4. Residential property.

5. Schools, churches, hospitals, nursing homes or day care facilities.

6. Projected land uses identified in any municipal master plan or official map that is in effect at least 15 months prior to the submission to the department of the permit application, if the land uses are expected to occur during the site life of the medical waste incinerator and any expansions of the medical waste incinerator.

(e) The department shall promulgate rules for making the findings under par. (b).

History: 1979 c. 34, 221; 1981 c. 314 s. 146; 1985 a. 182 s. 57; 1987 a. 27, 399; 1989 a. 56; 1991 a. 300, 302.

144.3935 Criteria for operation permits for existing sources. (1) ISSUANCE TO SOURCES NOT IN COMPLIANCE; FEDERAL OBJECTION. (a) Notwithstanding s. 144.393, the department may issue an operation permit for an existing source that does not comply with the requirements in the operation permit, in the federal clean air act, in an implementation plan under s. 144.31 (1) (f) or in s. 144.393 when the operation permit is issued if the operation permit includes all of the following:

1. A compliance schedule that sets forth a series of remedial measures that the owner or operator of the existing source must take to comply with the requirements with which the existing source is in violation when the operation permit is issued.

2. A requirement that, at least once every 6 months, the owner or operator of the existing source submit reports to the department concerning the progress in meeting the compliance schedule and the requirements with which the existing source is in violation when the operation permit is issued.

(b) Notwithstanding par. (a) and s. 144.393, the department may not issue an operation permit to an existing source if the federal environmental protection agency objects to the issuance of the operation permit as provided in s. 144.3925 (5m) unless the department revises the operation permit to meet the objection.

(2) ONE-YEAR MORATORIUM ON REVOCATION. (a) The department may not revoke an operation permit for an existing source for one year after the issuance of that permit based upon failure of the existing 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 an operation permit and ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections which apply to the existing source after issuance of an operation permit under this section.

History: 1979 c. 221, 355; 1991 a. 302.

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 and to ensure compliance with the federal clean air act if each condition is one of the following and if each 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.

(7m) The terms for use of growth accommodation credits under s. 144.393 (7) or (8), including the dates that the source expects to use the credits.

(8) Requirements concerning entry and inspection as provided in s. 144.34.

(9) Monitoring, record-keeping, reporting and compliance certification requirements.

(10) Requirements to submit compliance plans and schedules and progress reports.

(11) Conditions necessary to implement 42 USC 7651 to 7651o and regulations under 42 USC 7651 to 7651o concerning acid deposition control.

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(12) Other conditions applicable to the source under the federal clean air act.

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

History: 1979 c. 34, 221; 1987 a. 27; 1991 a. 302

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.

(f) *Local request.* A request for changes in the air pollution control permit of a medical waste incinerator, as defined in s. 159.07 (7) (c) 1. cr., that has a capacity of 5 tons or more per day made by the governing body of a city, village or town in which the medical waste incinerator is located if the department determines that the changes are reasonable to protect the public health and the environment.

(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.

NOTE: This section is repealed and recreated eff. 7-1-93 by 1991 Wis. Act 302 to read:

144.395 PERMIT REVISION, SUSPENSION AND REVOCATION. The department shall promulgate rules establishing criteria and procedures for revising, suspending and revoking air pollution control permits.

History: 1979 c. 34, 221; 1989 a. 335; 1991 a. 302

144.396 Permit duration and renewal. (1) CONSTRUCTION. Unless otherwise specified in the permit, a construction 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 construction permit for the purposes of commencing or completing construction, reconstruction, replacement or modification. Unless otherwise specified in a construction permit, the department may only extend the term of the permit for up to 18 additional months beyond the original 18-month period. If construction, reconstruction, replacement or modification is not completed within the term specified in the permit or any extension granted by the department, the applicant shall apply for a new construction permit.

(2) OPERATION. The department shall specify the term of an operation permit in the operation permit. The term of an operation permit issued under s. 144.3925 or renewed under sub. (3) may not exceed 5 years from the date of issuance or renewal.

(3) RENEWAL. (a) A permittee shall apply for renewal of an operation permit at least 12 months before the operation permit expires. The permittee shall include any new or revised information needed to process the application for renewal.

(b) The department shall follow the procedures in s. 144.3925 in renewing an operation permit for a new source, a modified source or an existing source.

History: 1979 c. 34, 221; 1991 a. 302

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) RULE MAKING. The department may promulgate rules for the payment and collection of reasonable fees for all of the following:

(a) *Application for permit.* Reviewing and acting upon any application for a construction permit.

(c) *Request for exemption.* Reviewing and acting upon any request for an exemption from the requirement to obtain an air pollution control permit.

(2) FEES FOR PERSONS REQUIRED TO HAVE OPERATION PERMITS. (a) The department shall promulgate rules for the payment and collection of fees by the owner or operator of a stationary source for which an operation permit is required. The rules shall provide all of the following:

1. That fees collected in a year are based on actual emissions of all regulated pollutants and any other air contaminant specified by the department in the rules in the preceding year.

2. Except as provided under par. (c), that the fees collected in 1993 are $18 per ton of each regulated pollutant.

2g. Except as provided under par. (c), that the fees collected in 1994 are $25 per ton increased by the percentage by which the consumer price index, as defined in 42 USC 7661a (b) (3) (B) (v), for 1993 exceeds the consumer price index for 1989.

2r. That the fees collected in each year after 1994 are calculated by increasing the fees collected in the preceding year by the percentage by which the consumer price index, as defined in 42 USC 7661a (b) (3) (B) (v), increased in the preceding year.

3. That fees are not based on emissions by an air contaminant source in excess of 4,000 tons per year of each regulated pollutant, except that, subject to par. (am), this limitation does not apply to a major utility, as defined in s. 144.385 (2)

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(b), that owns or operates a phase I affected unit as listed in Table A of 42 USC 7651c.

4. That during 1995 to 1999, no fee is required to be paid under this subsection for emissions from any affected unit under 42 USC 7651c.

(am) The department may not charge a major utility fees on emissions in excess of 4,000 tons per year of each regulated pollutant beyond the amount necessary to recover the fees that would have been charged for any phase I affected unit under 42 USC 7651c owned by that major utility if the prohibition in par. (a) 4 did not exist.

(b) The fees collected under par. (a) shall be credited to the appropriations under s. 20.370 (2) (bg) and (8) (mg) for the following:

1. The costs of reviewing and acting on applications for operation permits; implementing and enforcing operation permits except for court costs or other costs associated with an enforcement action; monitoring emissions and ambient air quality; preparing rules and materials to assist persons who are subject to the operation permit program; ambient air quality modeling; preparing and maintaining emission inventories; and any other direct and indirect costs of the operation permit program.

2. Costs of any other activities related to stationary sources of air contaminants.

(c) The department may promulgate a rule reducing any operation permit fee required to be paid under par. (a) by small business stationary sources to take into account the financial resources of small business stationary sources.

(4) INFORMATION ON FEES. In promulgating rules under subs. (1) and (2), the department shall provide information on the costs upon which the proposed fees are based.

(5) GROWTH ACCOMMODATION USE FEE. (a) A one-time growth accommodation use fee shall be imposed at the time of application upon any person who obtains a certified growth accommodation credit under s. 144.393 (7). If the amount of credit per calendar year varies between calendar years, the amount of the fee shall be based upon the largest annual credit for any calendar year. If the person submits more than one application in any calendar year, the fee for the application shall be based upon the largest cumulative credit obtained for any calendar year. A fee is nonrefundable, except that in determining a fee for an application in any calendar year, the department shall credit once to the person an amount equal to any fee previously paid in the same calendar year. All fees collected under this subsection shall be deposited in the general fund.

(b) Except as provided in par. (d), if the amount of the growth accommodation credit obtained by the person in a calendar year is less than 40 tons, the amount of the fee shall be determined by multiplying the amount of the growth accommodation credit certified to the person, expressed in tons per year, by $100 per ton.

(c) Except as provided in par. (d), if the amount of the growth accommodation credit obtained by the person in a calendar year is 40 tons or more, the amount of the fee shall be determined by multiplying the amount of the growth accommodation credit certified to the person, expressed in tons per year, by $200 per ton.

(d) A stationary source which is operating without an air pollution control permit required under s. 144.391 but which can demonstrate to the satisfaction of the department the ability to comply with ss. 144.30 to 144.426 and 144.96 after obtaining a growth accommodation credit under s. 144.393 (7) shall be required to pay an amount from $200 to $1,000 times the amount of the growth accommodation credit certified to the person, expressed in tons per year.

(6) USE OF CERTAIN FEES. The department shall use moneys collected under subs. (1) and (5) for the purposes in subs. (1) and (5). If moneys collected under subs. (1) and (5) exceed the amounts necessary for the purposes specified in subs. (1) and (5), the department may use the excess for other activities to control air pollution in this state.

History: 1979 c. 34, 221; 1987 a. 27; 1989 a. 56; 1991 a. 39, 269.

144.40 Volatile organic compounds growth accommodation and replenishment. (1) GROWTH ACCOMMODATION CALCULATION. (a) The growth accommodation for any specified year, as calculated by the department, is the predicted emissions specified in par. (b) minus the sum of:

1. Net actual emissions specified in par. (c);

2. Net certified accommodation credits specified in par. (d);

3. Net offset credits specified in par. (e); and

4. Set asides specified in par. (f).

(b) Predicted emissions are the total predicted annual emissions of volatile organic compounds in the volatile organic compound accommodation area necessary to attain and maintain the ambient air quality standard for ozone for the year 2 years before the specified year, as set forth in the plan approved by the U.S. environmental protection agency under 42 USC 7502 (a).

(c) Net actual emissions are the total actual annual emissions of all volatile organic compounds in the volatile organic compound accommodation area for the year 2 years before the specified year as reported under sub. (2) (a) minus:

1. The sum of the annual emissions of volatile organic compounds attributable to shutdowns of facilities in the volatile organic accommodation area during the previous year; and

2. If a rule has been promulgated under sub. (3), the sum of the annual emissions reductions of volatile organic compounds attributable to the sources subject to the rule promulgated under sub. (3) during the previous year.

(d) Net certified accommodation credits are the sum of all volatile organic compound growth accommodation credits certified to date under s. 144.393 (7) or (8) minus the sum of the actual annual emissions of volatile organic compounds for the year 2 years before the specified year attributable to the sources receiving volatile organic compound growth accommodation credits certified to date under s. 144.393 (7) or (8).

(e) Net offset credits are the sum of all allowable emissions of volatile organic compounds authorized to date attributable to sources subject to an annual volatile organic compounds emission limitation that is specified in an air pollution control permit to operate under an emission reduction option or specified as an emission credit under a plan approved by the U.S. environmental protection agency under 42 USC 7502 (a) or in reports submitted to the U.S. environmental protection agency under the plan minus the sum of the actual annual emissions of volatile organic compounds for the year 2 years before the specified year attributable to sources subject to an annual volatile organic compounds emission limitation that is specified in an air pollution control permit to operate under an emission reduction option or specified as an emission credit under a plan approved by the U.S. environmental protection agency under 42 USC 7502 (a) or in reports submitted to the U.S. environmental protection agency under the plan.

(f) Set asides are:

1. Fifteen percent of the annual emissions of volatile organic compounds attributable to shutdowns of facilities in the volatile organic compound accommodation area since January 1, 1987; and

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2. If a rule has been promulgated under sub. (3), 15% of the sum of the annual emissions reductions of volatile organic compounds attributable, since January 1, 1987, to the sources subject to the rule promulgated under sub. (3).

(2) ANNUAL REPORTS. The department shall prepare an annual report by January 15, which may be combined with other reports published by the department, that:

(a) States, on a calendar year basis, the total annual emissions, for the year 2 years before the year in which the report is prepared, of all volatile organic compounds in the volatile organic compound accommodation area, except methylene chloride and methyl chloroform and other volatile organic compounds that the department determines by rule to be compounds that do not contribute to the formation of ozone in the troposphere.

(b) Includes an annual plan for the management of the volatile organic compounds growth accommodation and replenishment and the growth accommodation replenishment grant program. At a minimum, the plan shall:

1. Indicate the amount of the growth accommodation at the beginning of the year.

2. Indicate the likely amount of the growth accommodation at the end of the year.

3. Report the status of the development and implementation of plans or rules under subs. (3) to (5).

4. Report if, during the prior year, the replenishment implementation period has expired.

(3) GROWTH ACCOMMODATION REPLENISHMENT. The department shall:

(a) Promulgate rules under s. 144.42 (6) (e), relating to the inspection of vehicles for tampering with air pollution control equipment.

(b) Promulgate rules restricting the amount of volatile organic compounds that may be contained in architectural coatings sold at retail in the volatile organic compound accommodation area or for use by a service provider in the volatile organic compound accommodation area. The department may exempt from a rule under this paragraph one or more categories of architectural coatings, based upon the type of coating or the use to which a coating is put, if it would be technically impractical to prohibit a category of architectural coating. The proposed rules shall include a provision to allow for the limited sale and use of the supplies of prohibited architectural coatings that retailers and suppliers in the volatile organic compound area already have in stock at the time of promulgation of the rules.

(c) Promulgate rules requiring persons who refinish auto bodies in the volatile organic compound accommodation area to use compounds, as solvents to clean painting and related equipment, that do not react to form ozone in the troposphere. The proposed rules shall allow the use of cleaning solvents containing volatile organic compounds that were purchased before the effective date of the proposed rules.

(4) REPORT ON NEW REPLENISHMENT MECHANISMS. After expiration of the replenishment implementation period, if the department reports under sub. (2) (b) 1 or determines at any other time that the growth accommodation is less than 3,500 tons, the department shall, with the advice of the department of development, submit a report to the chief clerk of each house of the legislature for distribution to the appropriate standing committees of the legislature under s. 13.172 (3) on how to most effectively and equitably replenish the growth accommodation. The report shall review existing studies and data to evaluate the accuracy of this state's state implementation plan with respect to the effect of emissions from inside and outside the volatile organic compound accommodation area on the ambient air quality within the area.

(5) CONTINGENT RESTRICTIONS ON EXISTING SOURCES. If at any time the department finds that the growth accommodation is less than 2,500 tons and determines that it is unlikely that the growth accommodation will exceed 2,500 tons in the report under sub. (2) (b) 1 for the following year because of the inadequacy of replenishment activities at the time or because of facility shutdowns, the department shall implement the rules that specify emission limitations for emissions of volatile organic compounds from stationary sources located in the volatile organic compound accommodation area that were required to report their emissions under s. 144.96 during calendar year 1987. The emission limitations shall be designed to ensure that the growth accommodation in the subsequent year is not less than 2,500 tons. The emission limitations may not be more restrictive than the lowest achievable emission rate. The department shall implement the emission limitations by source category. For the purpose of this section, the department shall determine a source category according to the type and level of emissions. The department may also use other characteristics which relate to air pollution to determine source categories. The department shall implement the emission limitations based upon ease of implementation, cost-effectiveness and the relative equity of imposing a limitation upon a source category, given any prior limitations of emissions imposed upon that source category. To the extent feasible, the emission limitations shall provide affected sources the opportunity to choose to be subject to either an annual emission limitation or a more restrictive applicable reasonably available control technology rule than was in effect in 1987.

History: 1987 a. 27, 399; 1991 a. 302.

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.

144.403 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 144.401 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. 227.42 (1) or who submitted comments in the public comment process under s. 144.3925 (4) or (5) 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 144.401.

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(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.

(4) REVIEW OF DEPARTMENT DETERMINATIONS. An air pollution control permit, part of an air pollution control permit or determination by the department under ss. 144.391 to 144.401 is not subject to review in any civil or criminal enforcement action for a violation of ss. 144.30 to 144.426. This subsection does not restrict the ability of a person to challenge an administrative rule as provided in s. 227.40 (2).

History: 1979 c. 34, 221; 1985 a. 182 s. 57; 1991 a. 302.

144.404 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; 1987 a. 27; Stats. 1987 s. 144.404.

144.405 Gasoline vapor recovery. (1) DEFINITIONS. In this section:

(a) "Gasoline dispensing facility" means a place where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.

(b) "Retail station" means a gasoline dispensing facility where gasoline is sold at retail.

(c) "Vapor control system" means a system that gathers vapors of organic compounds, including gasoline and benzene, released during the operation of transfer, storage or processing equipment and processes the vapors to prevent their emission into the atmosphere.

(3) RULES. (a) The department shall promulgate rules, based on requirements under 42 USC 7511a, that require the owner or operator of a retail station that is located in an ozone nonattainment area with a classification under 42 USC 7511 (a) of moderate or worse to install and operate a vapor control system that is approved by the department on the equipment that is used to dispense gasoline to a motor vehicle gasoline tank or other fuel tank.

(b) The department shall establish vapor recovery efficiency standards for vapor control systems approved under par. (a). The department shall use nationally recognized methods to determine the vapor recovery efficiency of vapor control systems.

(4) IMPLEMENTATION OF REQUIREMENTS. (a) The rules promulgated under sub. (3) shall have an effective date of November 15, 1992. The rules shall apply the requirements under sub. (3) beginning on November 15, 1993, except that the requirements under sub. (3) shall apply beginning on May 15, 1993, to retail stations the construction of which begins after November 15, 1990.

(b) The department may not require the owner or operator of a retail station that is located in this state to install or operate a vapor control system for gasoline dispensing equipment before November 15, 1993, or, if construction of the retail station begins after November 15, 1990, before May 15, 1993.

(5) GRANTS. (a) The department shall develop, implement and administer a program to provide financial assistance to the owner or operator of a retail station. Only the following costs are eligible for reimbursement under the program:

1. Costs directly incurred after August 15, 1991, for the design, acquisition and installation of a vapor control system necessary for the owner or operator to comply with the requirements under sub. (3) on those portions of a retail station located in an ozone nonattainment area with a classification under 42 USC 7511 (a) of moderate or worse that relate to a stationary storage tank installed on or before August 15, 1991, or on those portions of a retail station located in an ozone nonattainment area with a classification under 42 USC 7511 (a) of moderate or worse that relate to a stationary storage tank installed after August 15, 1991, that does not increase the stationary storage tank capacity of the retail station in existence on August 15, 1991.

(b) An applicant who seeks assistance under this subsection shall submit an application in a form and manner specified by the department and shall comply with any inspection requirements established by the department.

(c) The department shall award a grant to each applicant who submits a complete application under par. (b) for costs allowable under par. (a). The amount of the grant may not exceed 95% of the first $25,000 in costs and 90% of the next $15,000 in costs incurred by the applicant. If the department promulgates a rule under par. (e), it shall determine the costs based upon the rule promulgated under par. (e).

(d) The department may not award a grant under this subsection after March 14, 1995.

(e) The department may determine by rule the usual and customary costs of each item for which a grant may be awarded under this subsection. The rule shall establish cost tables and shall reflect the range of costs resulting from differences in costs of construction, labor, equipment, supplies and other relevant factors throughout the state.

History: 1991 a. 39.

144.407 Medical waste incinerator moratorium. (1) In this section, "medical waste incinerator" means a facility for solid waste treatment, as defined in s. 144.43 (7r), that burns medical waste, as defined in s. 159.07 (7) (c) 1. cg.

(1g) Except as provided in sub. (1m), (1r) or (1w), the department may not issue an air pollution control permit for the construction or modification of a medical waste incinerator or an initial license under s. 144.44 (4) for a medical waste incinerator.

(1m) Subsection (1g) does not apply to the issuance of a license under s. 144.44 (4) for ash management for a medical waste incinerator that is operating on May 14, 1992, or has an air pollution control permit on May 14, 1992.

(1r) Subsection (1g) does not apply to the issuance of an air pollution control permit or a license under s. 144.44 (4) for the construction or modification of a medical waste incinerator by one or more hospitals, as defined in s. 50.33 (2), clinics, as defined in s. 159.07 (7) (c) 1. a., or nursing homes, as defined in s. 50.01 (3), if all of the following apply:

(a) The construction or modification is designed to treat medical waste generated by one or more hospitals, clinics or nursing homes that are identified in the application for the air pollution control permit or the license under s. 144.44 (4) and that are located in the county in which the medical waste incinerator is located or in an adjacent county in this state.

(b) If the air pollution control permit is for modification of a medical waste incinerator, the modification does not expand the capacity of the medical waste incinerator, except that if the modified medical waste incinerator replaces one or more other medical waste incinerators that are in operation on May 14, 1992, and that are used by the hospitals, nursing homes or clinics identified in the application for the air pollution control permit, the modification may increase the capacity of the medical waste incinerator that is proposed to be modified by no more than the capacity of the medical waste incinerators that it replaces.

(c) If the air pollution control permit is for construction of a medical waste incinerator, the proposed medical waste incinerator replaces one or more medical waste incinerators that are in operation on May 14, 1992, and that are used by the hospitals, nursing homes or clinics identified in the

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application for the air pollution control permit and the proposed medical waste incinerator does not have a greater capacity than the medical waste incinerators that it replaces.

(1w) Subsection (1g) does not apply to the issuance of an air pollution control permit or a license under s. 144.44 (4) for the modification of a medical waste incinerator in operation on May 14, 1992, if the modification is designed to allow the medical waste incinerator to achieve compliance with the federal clean air act or the department's rules concerning the emission of hazardous air contaminants and does not expand the medical waste incinerator's capacity.

(2) This section does not apply after July 1, 1995.

History: 1991 a. 300

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 cooperative 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 program 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, 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 by any deadline established by the federal act and to maintain those standards after any deadline established by the federal act.

(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.

(d) The requirements 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 any deadline established by the federal act, or that these standards will not be maintained in the county after any deadline established by the federal act 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 of 1967 or earlier.

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

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(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 motorcycle as defined in s. 340.01 (32).

(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 fail to maintain in good working order or 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 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.

(e) *Rule making.* The department shall promulgate rules that specify the requirements for the inspection of motor vehicles for the occurrence of tampering with air pollution control equipment.

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; 1983 a. 243; 1987 a. 27; 1991 a. 39.

144.422 Recovery of ozone-depleting refrigerants. (1) DEFINITION. In this section, "ozone-depleting refrigerant" has the meaning given in s. 100.45 (1) (d).

(2) SALVAGING REFRIGERATION EQUIPMENT. After June 30, 1992, except as provided in sub. (2m), no person, including a state agency, as defined in s. 234.75 (10), may perform salvaging or dismantling of mechanical vapor compression refrigeration equipment in the course of which ozone-depleting refrigerant is or may be released or removed unless the person certifies all of the following to the department:

(a) That the person uses equipment that is approved by the department to transfer ozone-depleting refrigerant from mechanical vapor compression refrigeration equipment into storage tanks whenever it performs those activities.

(b) That the individuals who use the equipment under par. (a) have, or are under the supervision of individuals who have, the qualifications established under sub. (3) (a) 1.

(2m) SCRAP METAL PROCESSORS. (a) In this subsection, "scrap metal processor" has the meaning given in s. 84.31 (2) (h).

(c) After June 30, 1992, except as provided in par. (d), any person who sells, gives or transports mechanical vapor compression refrigeration equipment to a scrap metal processor shall do all of the following:

1. Transfer ozone-depleting refrigerant from the mechanical vapor compression refrigeration equipment into a storage tank as provided in sub. (2) (a) and (b) or obtain and possess documentation that another person performed that transfer.

2. Provide documentation to the scrap metal processor that it has complied with subd. 1.

(d) Paragraph (c) does not apply to a person who sells, gives or transports mechanical vapor compression refrigeration equipment to a scrap metal processor that agrees in writing to transfer the ozone-depleting refrigerant into a storage tank as provided in sub. (2) (a) and (b).

(2r) RELEASE. (a) During the salvaging, dismantling or transporting of mechanical vapor compression refrigeration equipment, no person may knowingly or negligently release ozone-depleting refrigerant to the environment, except for minimal releases that occur as a result of efforts to transfer ozone-depleting refrigerant into storage tanks.

(am) No person may knowingly or negligently release from a storage tank to the environment ozone-depleting refrigerant that was removed during the salvaging, dismantling or transporting of mechanical vapor compression refrigeration equipment, except that this paragraph does not apply to minimal releases that occur as a result of efforts to transfer ozone-depleting refrigerant into mechanical vapor compression refrigeration equipment or other storage tanks.

(b) Any person who transports, for purposes of salvaging or dismantling, mechanical vapor compression refrigeration equipment that contains ozone-depleting refrigerant shall certify to the department that it complies with par. (a), except that this paragraph does not apply to an individual who transports his or her personal mechanical vapor compression refrigeration equipment.

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

(a) Promulgate rules for the administration of this section including establishing all of the following:

1. Qualifications, which may include training or certification requirements, for individuals who use equipment to transfer ozone-depleting refrigerant from mechanical vapor compression refrigeration equipment into storage tanks.

2. Fees to cover the cost of administering subs. (2), (2m) and (2r) (b).

(b) Approve equipment for the transfer of ozone-depleting refrigerant from mechanical vapor compression refrigeration equipment into storage tanks.

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

(4) PENALTIES. (a) Any person who violates sub. (2) shall be required to forfeit not less than $100 nor more than $1,000. Each act of salvaging or dismantling in violation of sub. (2) constitutes a violation.

(b) Any person who violates sub. (2m) (c) shall be required to forfeit not less than $100 nor more than $1,000. Each sale, giving or transporting in violation of sub. (2m) (c) constitutes a violation.

(c) Any person who violates sub. (2r) shall be required to forfeit not less than $100 nor more than $1,000. Each release in violation of sub. (2r) constitutes a violation.

History: 1989 a. 284; 1991 a. 97.

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

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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. 144.422 (4) or 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.

(2) The notice under sub. (1) (a) 1 for an alleged violation of rules promulgated under s. 144.405 (3) may include a tag or other notice placed on the dispensing equipment that is alleged to be in violation of rules promulgated under s. 144.405 (3).

History: 1971 c. 125 s. 522 (2); 1977 c. 377; 1979 c. 34 s. 980h; 1979 c. 221 s. 2202 (39); Stats. 1979 s. 144.423; 1989 a. 284; 1991 a. 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; Stats. 1979 s. 144.424.

144.426 Penalties for violations relating to air pollution. (1) Except as provided in s. 144.422 (4), 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.

(2) (a) Except as provided in par. (b), any person who intentionally commits an act that violates, or fails to perform an act required by, ss. 144.30 to 144.426, except s. 144.422, or any rule promulgated, any permit issued or any special order issued under those sections, except s. 144.422, shall be fined not more than $25,000 per day of violation or imprisoned for not more than 6 months or both.

(b) If the conviction under par. (a) is for a violation committed after another conviction under par. (a), the person shall be fined not more than $50,000 per day of violation or imprisoned for not more than 2 years or both.

History: 1979 c. 34; 1989 a. 284, 289.

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) (b).

(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).

(2w) "Landfill" means a solid waste facility for solid waste disposal.

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

(3m) "Municipal waste landfill" means a solid waste disposal facility that is not one of the following:

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

(b) A hazardous waste disposal facility.

(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 6991i, as amended on November 8, 1984.

(4r) "Solid waste disposal" means the discharge, deposit, injection, dumping or placing of any solid waste into or on any land or water. This term does not include the transportation, storage or treatment of solid waste.

(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 facili-

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ties, 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 reduction, storage, collection, transporting, processing, reuse, recycling, composting, energy recovery from 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; 1983 a. 425, 426; 1987 a. 384; 1989 a. 335.

Violation of rules promulgated under 144.43 and 144.44 does not give rise to private right of action. Fortier v. Flambeau Plastics, 164 W. (2d) 639, 476 NW (2d) 593 (Ct. App. 1991).

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.

(f) Provide technical assistance for the closure of a solid waste disposal facility that is a nonapproved facility, as defined in s. 144.441 (1) (c).

(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.

(e) Inspect solid waste facility construction projects to determine compliance with ss. 144.43 to 144.47 and rules promulgated and licenses issued under those sections.

History: 1979 c. 34; 1987 a. 27; 1989 a. 335.

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.* 1. An owner or operator of a solid waste facility may seek confidential treatment of any records or other information furnished to or obtained by the department in the administration of ss. 144.43 to 144.47 and 144.96.

2. A licensed hauler who transports solid waste to a facility listed in s. 144.453 (1) may seek confidential treatment of information submitted under s. 144.453 (1) (d).

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

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

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

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authorized representative, to protect the confidentiality of the records or other information.

History: 1979 c. 34; 1979 c. 221 s. 2202 (39); 1981 c. 374; 1987 a. 384; 1989 a. 335.

144.434 Inspections. Any officer, employe or authorized representative of the department may enter and inspect any property, premise or place on or at which a solid waste facility is located or is being constructed or installed, or inspect any record relating to solid waste management of any person who generates, transports, treats, stores or disposes of solid waste, at any reasonable time for the purpose of ascertaining the state of compliance with ss. 144.43 to 144.47 and rules promulgated under those sections. No person may refuse entry or access to any officer, employe or authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials. No person may obstruct, hamper or interfere with any such inspection. The department, if requested, shall furnish to the owner or operator of the premises a report setting forth all facts found which relate to compliance status.

History: 1979 c. 34; 1981 c. 374 s. 148; 1987 a. 384.

144.435 Solid waste management standards. (1) The department shall promulgate rules establishing minimum standards for the location, design, construction, sanitation, operation, monitoring and maintenance of solid waste facilities. Following a public hearing, the department shall promulgate rules relating to the operation and maintenance of solid waste facilities as it deems necessary to ensure compliance and consistency with the purposes of and standards established under the resource conservation and recovery act, except that the rules relating to open burning shall be consistent with s. 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 this chapter and chs. 30 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.

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

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

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

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

4. Impose fees for the operator training and certification program.

5. Require that there be one or more certified operators on the site of a solid waste disposal facility, except for a facility designed for the disposal of high-volume industrial waste, as defined in s. 144.44 (7) (a) 1, at all times during the facility's hours of operation.

(b) The department may not apply the requirements established under par. (a) to a nonapproved facility, as defined in s. 144.441 (1) (c), until January 1, 1992.

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

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

(e) The department may suspend or revoke an operator's certification for failure to comply with ss. 144.43 to 144.47, rules promulgated under those sections or conditions of operation made applicable to a solid waste disposal facility by the department.

(4) (a) No person engaged in the construction, operation or maintenance of a solid waste disposal facility or hazardous waste disposal facility may dismiss, discipline, demote, transfer, reprimand, harass, reduce the pay of, discriminate against or otherwise retaliate against any employe, or threaten to take any of those actions, because the employe reported to any supervisor, appointing authority, law enforcement official, member of the governing body of the local governmental unit in which the solid waste disposal facility or hazardous waste disposal facility is located or the department any information gained by the employe which the employe reasonably believes demonstrates a violation of ss. 144.43 to 144.47 or rules promulgated under those sections.

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

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

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

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

History: 1975 c. 83; 1977 c. 377; 1979 c. 34 ss. 984rb, 2102 (39) (g); Stats. 1979 s. 144.435; 1981 c. 86 s. 71; 1981 c. 374; 1983 a. 410; 1989 a. 335; 1991 a. 32.

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; Stats. 1979 s. 144.436; 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.

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

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

History: 1971 c. 130; 1973 c. 305; 1975 c. 20; 1977 c. 377; 1979 c. 34 s. 984rt; Stats. 1979 s. 144.437; 1981 c. 374 s. 148; 1983 a. 27.

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) "Approved facility" has the meaning given in s. 144.441 (1) (a).

(am) "Class 1 proceeding" has the meaning specified under s. 227.01 (3) (a).

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

(bm) "Hazardous constituent" means any constituent designated by the department under s. 144.62 (2) (c).

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

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

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

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

(b) *Determination if initial site report is complete.* Within 30 days after an initial site report is submitted, the department shall either determine that the initial site report is complete or notify the applicant in writing that the initial site report is not complete and specify the information which is required to be submitted before the initial site report is complete. The department shall notify the applicant in writing when the initial site report is complete.

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

(bn) *Standard notice.* The waste facility siting board shall develop and print a standard notice designed to inform an affected municipality of the time limits and requirements for participation in the negotiation and arbitration process under s. 144.445. An applicant shall submit a copy of this standard notice, if it has been printed, with any written request submitted under par. (b).

(c) *Attempts to obtain local approvals required.* Following applications for local approvals under par. (b) and prior to submitting a feasibility report, any applicant subject to s. 144.445 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 under sub. (1c) (a) or in a feasibility report or environmental impact report, the applicant may petition the department to waive the applicability of the local approval to the applicant. If a petition is received, the department shall promptly schedule a hearing on the matter and notify the local government of the hearing. If the department determines at the hearing that the local approval is unreasonable, the department shall waive the applicability of the local approval to the applicant.

(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 subject to s. 144.445 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. In addition to the requirements specified under par. (fm), the rules may specify special requirements for a feasibility report relating to any hazardous waste facility. The department may require a feasibility report to be prepared by a registered professional engineer. A feasibility report shall include:

1. 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.

2. 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.

3. A description of how the proposed facility relates to any applicable county solid waste management plan approved under s. 144.437.

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

5. The proposed date of closure for the facility.

6. Sufficient information to make the determination of need for the facility under this subsection unless the facility is exempt under par. (nr).

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

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

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

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

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

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

(g) *Determination if a feasibility report is complete.* Within 60 days after a feasibility report is submitted, the department

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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.* At the same time an applicant submits a feasibility report to the department, the applicant shall submit a copy of that feasibility report to each participating municipality under s. 144.445 (6) (b). 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 for a solid waste disposal facility or within 45 days after the notice for a hazardous waste facility is published. The notice shall describe the methods by which a hearing may be requested under 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 for a solid waste disposal facility, or within 45 days after the notice under par. (k) is published for a hazardous waste facility, any county, city, village or town, the applicant or any 6 or more persons may file a written request for an informational hearing on the matter with the department. The request shall indicate the interests of the municipality or persons who file the request and state the reasons why the hearing is requested.

(m) *Request for treatment as a contested case.* Within 30 days after the notice under par. (k) is published for a solid waste disposal facility, or within 45 days after the notice under par. (k) is published for a hazardous waste facility, any county, city, village or town, the applicant or any 6 or more persons may file a written request that the hearing under par. (L) be treated as a contested case, as provided under s. 227.42. A county, city, village or town, the applicant or any 6 or more persons have a right to have the hearing treated as a contested case only if:

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.

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

(nm) *Determination of need; issues considered.* A feasibility report shall contain an evaluation to justify the need for the proposed facility unless the facility is exempt under par. (nr). The department shall consider the following issues in evaluating the need for the proposed facility:

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

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

3. The design capacity of the following facilities located within the anticipated service area of the proposed facility:

a. Approved facilities, as defined under s. 144.441 (1) (a), including the potential for expansion of those facilities on contiguous property already owned or controlled by the applicant.

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b. Nonapproved facilities, as defined under s. 144.442 (1) (c), which are environmentally sound. It is presumed that a nonapproved facility is not environmentally sound unless evidence to the contrary is produced.

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

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

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

f. Solid waste incinerators licensed by the department.

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

4. If the need for a proposed municipal facility cannot be established under subds. 1 to 3, the extent to which the proposed facility is needed to replace other facilities of that municipality at the time those facilities are projected to be closed in the plans of operation.

(nr) *Determination of need; exempt facilities.* Paragraphs (f) 6, (n) 4, (nm) and (om) do not apply to:

1. Any facility which is part of a prospecting or mining operation with a permit under s. 144.84 or 144.85.

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

(nu) *Maximum number of facilities.* 1. Except as provided in subd. 2, the department may not issue a favorable determination of feasibility for a solid waste disposal facility in a 3rd class city if 2 or more approved facilities that are solid waste disposal facilities are in operation within the city in which the solid waste disposal facility is proposed to be located.

2. The prohibition in subd. 1 does not apply to an expansion of or addition to an existing approved facility that is a solid waste disposal facility by the owner or operator of the existing approved facility on property that is contiguous to the property on which the existing approved facility is located and that is owned or under option to lease or purchase by the owner or operator of the existing approved facility.

(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).

(om) *Issuance of determination of need.* Except for a facility which is exempt under par. (nr), the department shall issue a determination of need for the proposed facility at the same time the final determination of feasibility is issued. If the department determines that there is insufficient need for the facility, the applicant may not construct or operate the facility.

(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 or 45-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 or 45-day period; or

2. No hearing is requested under sub. (2) (L) within the 30-day or 45-day 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 or 45-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 or 45-day period and has a right to a hearing under that subsection. Any denial of a request for the treatment of the hearing as a contested case received within the 30-day or 45-day period under sub. (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 hearings and appeals in the department of administration shall schedule the hearing to be held within 120 days after the expiration of the 30-day or 45-day period under sub. (2) (m).

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

(e) *Determination of need; decision by hearing examiner.* If a contested case hearing is conducted under this subsection, the secretary shall issue any decision concerning determination of need, notwithstanding s. 227.46 (2) to (4). The secretary shall direct the hearing examiner to certify the record of the contested case hearing to him or her without an intervening proposed decision. The secretary may assign responsibility for reviewing this record and making recommendations concerning the decision to any employe of the department.

(3) PLAN OF OPERATION. (a) *Plan of operation required.* Prior to constructing a solid waste disposal facility or a

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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. 227.52 to 227.58 in the review of any decision under sub. (2), (2g) or (2r).

(am) *Feasibility report, certain facilities.* The department may require the applicant for a hazardous waste treatment or storage facility to submit the feasibility report and the plan of operation at the same time and, notwithstanding pars. (ag), (f) and (g), both the feasibility report and the plan of operation shall be considered at a public hearing conducted under subs. (2), (2g) and (2r), and both are subject to judicial review in a single proceeding.

(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. The proposed plan of operation shall specify the method by which the owner or operator will maintain proof of financial responsibility under s. 144.443. 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.

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

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

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

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

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

(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 par. (bh) and 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 144.73. If the department establishes that any failure to operate in accordance with the approved plan for a solid waste disposal facility is grievous and continuous, the operator is subject to suspension, revocation or denial of the operating license under sub. (4). If the operator fails to operate a hazardous waste facility in accordance with the approved plan, the department may suspend, revoke or deny the operating license under sub. (4).

(f) *Feasibility report not subject to review.* In any judicial review under ss. 227.52 to 227.58 of the department's decision to approve or disapprove a plan of operation, no element of the feasibility report, as approved by the department, is subject to judicial review.

(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

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unless the person obtains an operating license from the department. The department shall issue an operating license with a duration of one year or more except that the department may issue an initial license with a duration of less than one year. The department may deny, suspend or revoke the operating license of a solid waste disposal facility for failure to pay fees required under ss. 144.43 to 144.47 or for grievous and continuous failure to comply with the approved plan of operation under sub. (3) or, if no plan of operation exists with regard to the facility, for grievous and continuous failure to comply with the standards adopted under s. 144.435. The department may deny, suspend or revoke the operating license of a hazardous waste facility for any reason specified under s. 144.64 (2) (e). If the license application is for a solid waste disposal facility for solid waste resulting from mining operations in existence on May 21, 1978, the department shall make any determination with respect to whether disposal is being undertaken in an environmentally sound manner and shall administer compliance with the licensing requirement of this subsection in a manner which, with respect to nonhazardous solid waste, does not require substantial structural modification of the existing facility, expenditure which is not appropriate for the nonhazardous nature of the waste or interruption of the mining operation.

(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.

(c) *Notice, hazardous waste facilities.* Before issuing the initial operating license for a hazardous waste facility, the department shall give notice of its intent to issue the license by all of the following means:

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

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

3. Providing written notice to each affected municipality.

(d) *Feasibility report and plan of operation not subject to review.* In any judicial review under ss. 227.52 to 227.58 of the department's decision to issue or deny an operating license, no element of either the feasibility report or the plan of operation, as approved by the department, is subject to judicial review.

(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).

(f) *Monitoring requirements.* 1. In this paragraph, "monitoring" means activities necessary to determine whether contaminants are present in groundwater, surface water, soil or air in concentrations that require investigation or remedial action. "Monitoring" does not include investigations to determine the extent of contamination, to collect information necessary to select or design remedial action, or to monitor the performance of remedial action.

1m. Upon the renewal of an operating license for a nonapproved facility, as defined under s. 144.441 (1) (c), the department may require monitoring at the facility as a condition of the license.

2. The owner or operator of a nonapproved facility, as defined under s. 144.441 (1) (c), is responsible for conducting any monitoring required under subd. 1m.

3. The department may require by special order the monitoring of a closed solid or hazardous waste disposal site or facility which was either a nonapproved facility, as defined under s. 144.441 (1) (c), or a waste site, as defined under s. 144.442 (1) (e), when it was in operation.

4. If the owner or operator of a site or facility subject to an order under subd. 3 is not a municipality, the owner or operator is responsible for the cost of conducting any monitoring ordered under subd. 3.

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

6. The department shall promulgate rules for determining costs eligible for reimbursement under subd. 5.

(g) *Closure agreement.* Any person operating a solid or hazardous waste facility which is a nonapproved facility as defined under s. 144.442 (1) (c) may enter into a written closure agreement at any time with the department to close the facility on or before July 1, 1999. The department shall incorporate any closure agreement into the operating license. The operating license shall terminate and is not renewable if the operator fails to comply with the closure agreement. Upon termination of an operating license under this paragraph as the result of failure to comply with the closure agreement, the department shall collect additional surcharges and base fees as provided under s. 144.442 (2) and (3) and enforce the closure under ss. 144.98 and 144.99.

(4e) DAILY COVER. Within 12 months after receiving a request from a person operating a foundry or a scrap dealer in this state, the department shall modify the operating license issued under sub. (4) (a) to a person operating a municipal waste landfill to require the operator to use foundry sand from the foundry or shredder fluff from the scrap dealer's operation as daily cover at part or all of the municipal waste landfill for a period specified in the request, if all of the conditions in sub. (3) (bh) are met.

(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.

(4r) NONCOMPLIANCE WITH PLANS OR ORDERS. (a) In this subsection, "applicant" means any natural person, partnership, association or body politic or corporate that seeks to construct a solid waste disposal facility or hazardous waste facility under this section.

(b) The department may not issue a favorable determination of feasibility, approve a plan of operation or issue an operating license for a solid waste disposal facility or hazard-

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ous waste facility if the applicant or any person owning a 10% or greater legal or equitable interest in the applicant or the assets of the applicant either:

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

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

(c) Paragraph (b) does not apply if the person named in and subject to the plan or order provides the department with proof of financial responsibility ensuring the availability of funds to comply with the plan or order using a method under s. 144.443.

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

(7) WAIVERS; EXEMPTIONS. (a) *Definitions.* In this subsection:

1. "High-volume industrial waste" means fly ash, bottom ash, paper mill sludge or foundry process waste.

2. "Recycling" means the process by which solid waste is returned to productive use as material or energy, but does not include the collection of solid waste.

(am) *Waiver, emergency condition.* 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.

(b) *Waiver, research projects.* The intent of this paragraph is to encourage research projects designed to demonstrate the feasibility of recycling certain solid wastes while providing adequate and reasonable safeguards for the environment. The department may waive compliance with the requirements of ss. 144.43 to 144.47 for a project developed for research purposes to evaluate the potential for the recycling of high-volume industrial waste if the following conditions are met:

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

2. The department determines that the project is unlikely to violate any law relating to surface water or groundwater quality including this chapter or ch. 147 or 160.

3. The department reviews and approves the project prior to its initiation.

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

5. The owner or operator of the project agrees to take necessary action to maintain compliance with surface water and groundwater laws, including this chapter and chs. 147 and 160 and to take necessary action to regain compliance with these laws if a violation occurs because of the functioning or malfunctioning of the project.

(c) *Exemption from licensing or regulation; development of improved methods.* For the purpose of encouraging the development of improved methods of solid waste disposal, the department may specify by rule types of solid waste facilities that are not required to be licensed under this section or types of solid waste that need not be disposed of at a licensed solid waste disposal facility.

(d) *Exemption from regulation; single-family waste disposal.* The department may not regulate under this chapter any solid waste from a single family or household disposed of on the property where it is generated.

(e) *Exemption from licensing; agricultural landspreading of sludge.* The department may not require a license under this section for agricultural land on which nonhazardous sludges from a treatment work, as defined under s. 147.015 (18), are land spread for purpose of a soil conditioner or nutrient.

(f) *Exemption from licensing; recycling of high-volume industrial waste.* 1. Any person who generates, treats, stores or disposes of high-volume industrial waste may request the department to exempt an individual solid waste facility or specified types of solid waste facilities from ss. 144.43 to 144.47 for the purpose of allowing the recycling of any high-volume industrial waste.

2. A person who requests an exemption under subd. 1 shall provide any information requested by the department relating to the characteristics of the high-volume industrial waste, the characteristics of the site of the recycling and the proposed methods of recycling.

3. The department shall approve the requester's exemption proposal if the department finds that the proposal, as approved, will comply with this chapter and chs. 30, 31, 147, 160 and 162 and ss. 1.11, 23.40, 59.971, 59.974, 61.351, 61.354, 62.231, 62.234 and 87.30. If the proposal does not comply with one or more of the requirements specified in this subdivision, the department shall provide a written statement describing how the proposal fails to comply with those requirements. The department shall respond to an application for an exemption under this paragraph within 90 days.

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

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

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

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

(g) *Exemption from regulation; low-hazard waste.* 1. The department shall conduct a continuing review of the potential hazard to public health or the environment of various types of solid wastes and solid waste facilities. The department shall consider information submitted by any person concerning the potential hazard to public health or the environment of any type of solid waste.

2. If the department, after a review under subd. 1, finds that regulation under ss. 144.43 to 144.47 is not warranted in light of the potential hazard to public health or the environment, the department shall either:

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

b. On a case-by-case basis, exempt from regulation under ss. 144.43 to 144.47 specified types of solid waste facilities.

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

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3. The department may require periodic testing of solid wastes and impose other conditions on exemptions granted under subd. 2.

(h) *Exemption from regulation, animal carcasses.* The department may not regulate under this chapter any animal carcass buried or disposed of, in accordance with ss. 95.35 and 95.50, on the property owned or operated by the owner of the carcass, if the owner is a farmer, as defined under s. 102.04 (3).

(8) ENFORCEMENT PROCEDURES FOR OLDER FACILITIES. (a) Notwithstanding s. 144.47, for solid waste facilities licensed on or before January 1, 1977, that the department believes do not meet minimum standards promulgated under s. 144.435, the department may do any of the following:

1. Initiate action under s. 144.72.

2. Refer the matter to the department of justice for enforcement under s. 144.98.

3. Issue an order relating to the solid waste facility or refuse to relicense the solid waste facility using the procedure under par. (b).

(b) 1. Before issuing an order relating to a solid waste facility or a decision refusing to relicense a solid waste facility under par. (a) 3, the department shall notify the licensee of its intended action. The licensee, within 30 days after receipt of the notice, may request a hearing under subd. 2. If the licensee requests a hearing under subd. 2, it may not withdraw that request and proceed under subd. 3.

2. If the licensee requests a hearing, the department may not issue the order or decision until a hearing, conducted as a class 2 proceeding under ch. 227, is held unless the licensee has withdrawn the hearing request. The hearing shall be held in the county where the facility is located. At the hearing the department must establish by a preponderance of all the available evidence that the facility does not adhere to the minimum standards promulgated under s. 144.435. If the hearing examiner's decision is in favor of the department, or if the licensee has withdrawn the hearing request, the department may issue the order or decision. The order or decision is subject to judicial review under ch. 227.

3. If the licensee does not request a hearing under subd. 2, the department shall issue the order or decision. The licensee may challenge the order or decision by commencing an action in circuit court for the county in which the solid waste facility is located within 15 days after the issuance of the order or decision. The complaint shall allege that the facility adheres to the minimum standards promulgated under s. 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 proof of financial responsibility for long-term care.

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.

(10) LICENSES AND REVIEW FEES. (a) The department shall adopt by rule a graduated schedule of reasonable license and review fees to be charged for solid waste license and review activities.

(b) Solid waste license and review activities consist of reviewing feasibility reports, plans of operation, closure plans and license applications, issuing determinations of feasibility, plan of operation approvals and operating licenses, inspecting construction projects and taking other actions in administering this section.

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

History: 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; 1983 a. 27 ss. 1532m, 2200 (1); 1983 a. 36, 93; 1983 a. 189 s. 329 (16); 1983 a. 282, 298; 1983 a. 410 ss. 42 to 47, 2202 (38); 1983 a. 426, 538; 1985 a. 29 ss. 1954m, 3202 (39); 1985 a. 46; 1985 a. 182 s. 57; 1985 a. 217; 1987 a. 27, 384, 403; 1989 a. 31; 1989 a. 56 s. 259; 1989 a. 211, 335; 1991 a. 32, 39.

DNR requirements for plan of operation were final decisions under 227.15, 1983 stats. [now 227.52]; therefore, DNR was required to state its actions in conformance with 227.10, 1983 stats. [now 227.47]. Right to hearing discussed. Waste Management of Wisconsin v. DNR, 128 W (2d) 59, 381 NW (2d) 318 (1986).

Where corporation's facility violates ch. 144, corporate officer responsible for overall operation of facility is personally liable for violations. State v. Rollfink, 162 W (2d) 121, 469 NW (2d) 398 (1991).

See note to 144.43 citing Fortier v. Flambeau Plastics, 164 W (2d) 639, 476 NW (2d) 593 (Ct. App. 1991).

Sub. (2) (nm) 4 doesn't exempt municipal replacement facilities from the needs determination. 77 Atty. Gen. 81.

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144.441 Long-term care. (1) DEFINITIONS. In this section:

(a) "Approved facility" means 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).

(b) "Approved mining facility" means an approved 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).

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

(1m) 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) LONG-TERM CARE AND FINANCIAL RESPONSIBILITY; TERMINATION. (b) *Proof of financial responsibility.* 1. Except as provided in subd. 2, the owner of an approved facility shall maintain proof of financial responsibility as provided in s. 144.443 during the operation of the approved facility and for 40 years after the closing of the approved facility unless the obligation is extended under par. (f).

2. The owner of an approved facility which ceased to accept solid waste and permanently terminated disposal operations before August 15, 1991, shall maintain proof of financial responsibility as provided in s. 144.443 for the period specified in the approved plan of operation.

(c) *Long-term care responsibility for approved facilities.* Notwithstanding s. 144.441 (2) (c) 1, 1989 stats., the owner's responsibility for the long-term care of an approved facility does not terminate, except that if another person acquires the rights of ownership and is issued under s. 144.444 (1) a new operating license for the approved facility, the owner's responsibility is transferred to that other person upon the issuance of the new operating license.

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

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

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

(f) *Reduction of or exemption from tonnage fees.* The total annual tonnage fees for all solid waste received by a nonapproved facility shall be reduced by the amount of the base fee under s. 144.442 (2) for that facility. If the base fee for a nonapproved facility under s. 144.442 (2) is greater than the annual tonnage fee imposed under par. (a) for that facility, the solid or hazardous waste received by the facility is exempt from the tonnage fee for that year. The department shall establish methods by rule for estimating the total annual tonnages for all solid and hazardous wastes received by a nonapproved facility. If an estimate reveals that total annual tonnage fees for a nonapproved facility for a certain year are unlikely to exceed the base fee under s. 144.442 (2) for that year, the department shall grant an exemption under this paragraph without requiring the calculation of the actual total tonnage fees.

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

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

(b) *Tonnage fee, certain hazardous waste.* 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 par. (g), 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.

(g) *Tonnage fee, mining waste.* Notwithstanding pars. (a) to (c), 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.

(6) PAYMENTS FROM THE WASTE MANAGEMENT FUND AND RELATED PAYMENTS. (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 (h) and 1991 Wisconsin Act 39, section 9142 (2w). The department may expend moneys appropriated under s. 20.370 (2) (dq) for the purposes specified under pars. (d) and (g) and 1991 Wisconsin Act 39, section 9142 (2w). The department may expend moneys appropriated under s. 20.370 (2) (dt) for the purposes specified under par. (f). The department may expend moneys appropriated under s. 20.370 (2) (dy) and (dz) for the purposes specified under par. (h).

(c) *Payments from the investment and local impact fund.* The department may expend moneys received from the invest-

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ment and local impact fund only for the purposes specified under par. (d), only for approved mining facilities and only if moneys in the waste management fund are insufficient to make complete payments. The amount expended by the department under this paragraph may 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 proof of financial responsibility.* The department may spend moneys appropriated under s. 20.370 (2) (dq) for the costs of long-term care of an approved facility for which the plan of operation was approved under s. 144.44 (3) (c) before August 9, 1989, that accrue after the requirement to provide proof of financial responsibility expires under sub. (2) (b) or (f) as authorized under s. 144.443 (11) (b) 2.

(f) *Payment of closure and long-term care costs, forfeited bonds and similar moneys.* The department may utilize moneys appropriated under s. 20.370 (2) (dt) for the payment of costs associated with compliance with closure and long-term care requirements under s. 144.443 (11) (b) 1.

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

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

(6m) REPORT ON WASTE MANAGEMENT FUND. With its biennial budget request to the department of administration under s. 16.42, the natural resources board shall include a report on the fiscal status of the waste management fund and an estimate of the receipts by and expenditures from the fund in the current fiscal year and in the future.

(7) GROUNDWATER, SOLID WASTE CAPACITY AND WELL COMPENSATION FEES. (a) *Imposition of groundwater, solid waste capacity and well compensation fees on generators.* Except as provided under par. (f), a generator of solid or hazardous waste shall pay separate groundwater, solid waste capacity and well compensation fees for each ton or equivalent volume of solid or hazardous waste which is disposed of at a licensed solid or hazardous waste disposal facility. If a person arranges for collection or disposal services on behalf of one or more generators, that person shall pay the groundwater, solid waste capacity and well compensation fees to the licensed solid or hazardous waste disposal facility or to any intermediate hauler used to transfer wastes from collection points to a licensed facility. An intermediate hauler who receives groundwater, solid waste capacity and well compensation fees under this paragraph shall pay the fees to the licensed solid or hazardous waste disposal facility. Tonnage or equivalent volume shall be calculated in the same manner as the calculation made for tonnage fees under sub. (3).

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

(c) *Amount of groundwater, solid waste capacity and well compensation fees.* The fees imposed under this subsection are as follows:

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

2. The well compensation fee imposed under par. (a) for solid waste or hazardous waste, excluding prospecting or mining waste, is one cent per ton.

3. In this subdivision, "solid waste disposal and incineration capacity" means the sum of the total capacity remaining at the beginning of a calendar year in all existing municipal waste landfills and the total solid waste incineration capacity of all existing incinerators during the expected life of the incinerators. The solid waste capacity fee imposed under par. (a) for solid waste disposed of after January 1, 1995, excluding hazardous waste and excluding solid waste generated in this state, shall be determined by the department at the beginning of each calendar year based on a comparison of the solid waste disposal and incineration capacity in this state and in the state in which the solid waste is generated. Except as provided in subd. 4, the solid waste capacity fee is as follows:

a. For solid waste generated in a state which has a per capita solid waste disposal and incineration capacity greater than or equal to the per capita capacity in this state, $0.

b. For solid waste generated in a state which has a per capita solid waste disposal and incineration capacity greater than or equal to 75% but less than the per capita capacity in this state, $2 per ton.

c. For solid waste generated in a state which has a per capita solid waste disposal and incineration capacity greater than or equal to 50% but less than 75% of the per capita capacity in this state, $4 per ton.

d. For solid waste generated in a state which has a per capita solid waste disposal and incineration capacity greater than or equal to 25% but less than 50% of the per capita capacity in this state, $6 per ton.

e. For solid waste generated in a state which has a per capita solid waste disposal and incineration capacity less than 25% of the per capita capacity in this state, $8 per ton.

4. If the solid waste capacity fee for solid waste generated in any state remains at the same level or increases in 2 consecutive calendar years, the fee under subd. 3 is doubled. The fee shall remain doubled until solid waste generated in that state qualifies for a lower fee under subd. 3.

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

(e) *In addition to other fees.* The groundwater, solid waste capacity and well compensation fees collected and paid under par. (b) are in addition to the tonnage fee imposed under sub. (3), the environmental repair base fee imposed under s. 144.442 (2) and the environmental repair surcharge imposed under s. 144.442 (3).

(f) *Exemption from groundwater, solid waste capacity and well compensation fees, certain materials used in operation of the facility.* Solid waste materials approved by the department for lining, daily cover or capping or for constructing berms, dikes or roads within a solid waste disposal facility are not subject to the groundwater, solid waste capacity and well compensation fees imposed under par. (a), except that foundry sands or shredder fluff approved for use under s. 144.44 (3) (bh) or (4e) are subject to groundwater and well compensation fees.

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(g) *Reporting period.* The reporting period under this subsection is the same as the reporting period under sub. (3). The owner or operator of any licensed solid or hazardous waste disposal facility shall pay groundwater, solid waste capacity and well compensation fees required to be collected under par. (b) at the same time as any tonnage fees under sub. (3) are paid.

(h) *Use of groundwater, solid waste capacity and well compensation fees.* The groundwater fees collected under par. (b) shall be credited to the environmental fund for groundwater management. The well compensation and solid waste capacity fees collected under par. (b) shall be credited to the environmental fund for environmental repair.

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

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

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

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

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

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

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

History: 1977 c. 377; 1979 c. 142; 1979 c. 221 ss. 630q to 630t, 2202 (39); 1981 c. 86, 374; 1983 a. 27 ss. 1533 to 1536, 2202 (38); 1983 a. 298; 1983 a. 410 ss. 48 to 61, 2200 (38), 2202 (38); 1985 a. 29 ss. 1954mi to 1955g, 3202 (39); 1985 a. 182 s. 57; 1987 a. 384; 1989 a. 31, 335; 1991 a. 39.

144.4412 Incinerators; solid waste capacity fee. (1) DEFINITION. In this section:

(a) "Municipal solid waste treatment facility" means a solid waste facility that is designed primarily to burn or convert into fuel solid waste collected from residential or commercial sources and that is owned or operated by a municipality or county or a private entity that offers incineration or conversion services to the public, a county or a municipality.

(b) "Solid waste disposal and incineration capacity" means the sum of the total capacity remaining at the beginning of a calendar year in all existing municipal waste landfills and the total solid waste incineration capacity of all existing incinerators during the expected life of the incinerators.

(2) COLLECTION. The owner or operator of an incinerator with an operating permit or license that is approved under s. 144.391 or 144.44 (4) shall pay to the department the amount of the solid waste capacity fee required to be collected according to the amount of solid waste burned during the previous calendar year.

(3) AMOUNT OF SOLID WASTE CAPACITY FEE. The solid waste capacity fee imposed under sub. (2) for solid waste burned after January 1, 1995, shall be determined by the department at the beginning of each calendar year based on a comparison of the solid waste disposal and incineration capacity in this state and in the state in which the solid waste is generated. Except as provided in sub. (4), the solid waste capacity fee is as follows:

(a) For solid waste generated in a state which has a per capita solid waste disposal and incineration capacity greater than or equal to the per capita capacity in this state, $0.

(b) For solid waste generated in a state which has a per capita solid waste disposal and incineration capacity greater than or equal to 75% but less than the per capita capacity in this state, $2 per ton.

(c) For solid waste generated in a state which has a per capita solid waste disposal and incineration capacity greater than or equal to 50% but less than 75% of the per capita capacity in this state, $4 per ton.

(d) For solid waste generated in a state which has a per capita solid waste disposal and incineration capacity greater than or equal to 25% but less than 50% of the per capita capacity in this state, $6 per ton.

(e) For solid waste generated in a state which has a per capita solid waste disposal and incineration capacity less than 25% of the per capita capacity in this state, $8 per ton.

(4) FEE DOUBLED. If the solid waste capacity fee for solid waste generated in any state remains at the same level or increases in 2 consecutive calendar years, the fee under sub. (3) is doubled. The fee shall remain doubled until solid waste generated in that state qualifies for a lower fee under sub. (3).

(5) EXEMPTIONS. The solid waste capacity fee under sub. (3) or (4) does not apply to any of the following:

(a) Hazardous waste.

(b) Solid waste generated in this state.

(c) Solid waste generated in another state if the solid waste is converted into fuel or burned at a municipal solid waste treatment facility with an operating permit or license that is approved under s. 144.391 or 144.44 (4) prior to May 11, 1990, and the solid waste is delivered to the municipal solid waste treatment facility pursuant to a contract in effect 2 years after May 11, 1990.

(6) USE OF SOLID WASTE CAPACITY FEE. The fees collected under sub. (2) shall be credited to the environmental fund.

History: 1989 a. 335.

144.4414 Solid waste capacity fees; department determinations. Beginning on January 1, 1991, and annually thereafter, the department shall determine the solid waste disposal

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and incineration capacity, as defined in s. 144.4412 (1) (b), of this state and each adjacent state. The department shall inform the owner or operator of each solid waste disposal facility and each incinerator in this state of the amount of the solid waste capacity fee under ss. 144.441 (7) and 144.4412 for solid waste generated in each adjacent state, commencing on January 1, 1995, based on that solid waste disposal and incineration capacity determination.

History: 1989 a. 335.

144.442 Environmental repair. (1) DEFINITIONS. In this section:

(a) "Approved facility" has the meaning specified under s. 144.441 (1) (a).

(b) "Approved mining facility" has the meaning specified under s. 144.441 (1) (b).

(c) "Nonapproved facility" has the meaning specified under s. 144.441 (1) (c).

(cm) "Private water supply" means a well which is used as a source of water for humans, livestock or poultry. As used in this paragraph "livestock" has the meaning specified under s. 95.80 (1) (b).

(d) "Site or facility" means an approved facility, an approved mining facility, a nonapproved facility or a waste site.

(e) "Waste site" means any site, other than an approved facility, an approved mining facility or a nonapproved facility, where waste is disposed of regardless of when disposal occurred.

(1m) ENVIRONMENTAL REPAIR FEE FOR GENERATORS. (a) *Imposition of fee.* Except as provided under par. (f), a generator of solid or hazardous waste shall pay an environmental repair fee for each ton or equivalent volume of solid or hazardous waste which is disposed of at a licensed solid or hazardous waste disposal facility. If a person arranges for collection or disposal services on behalf of one or more generators, that person shall pay the environmental repair fee to the licensed solid or hazardous waste disposal facility or to any intermediate hauler used to transfer wastes from collection points to a licensed facility. An intermediate hauler who receives environmental repair fees under this paragraph shall pay the fees to the licensed solid or hazardous waste disposal facility. Tonnage or equivalent volume shall be calculated in the same manner as the calculation made for tonnage fees under s. 144.441 (3).

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

(cm) *Amount of environmental repair fee.* Except as provided under par. (d), the environmental repair fee imposed under par. (a) is 15 cents per ton for solid or hazardous waste received by a licensed solid or hazardous waste disposal facility after December 31, 1985, but before July 1, 1989, and 20 cents per ton for solid or hazardous waste received by a licensed solid or hazardous waste disposal facility on or after July 1, 1989.

(cp) *Amount of environmental repair fee.* Notwithstanding par. (cm) and except as provided under par. (d), the environmental repair fee imposed under par. (a) is 30 cents per ton for solid or hazardous waste, other than high-volume industrial waste, as defined in s. 144.44 (7) (a) 1, disposed of on or after January 1, 1988 but before July 1, 1989, and 50 cents per ton disposed of on or after July 1, 1989.

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

(e) *In addition to other fees.* The environmental repair fee collected and paid under par. (b) is in addition to the base fee imposed under sub. (2), the surcharge imposed under sub. (3), the tonnage fee imposed under s. 144.441 (3) and the groundwater, solid waste capacity and well compensation fees imposed under s. 144.441 (7).

(f) *Exemption from environmental repair fee; certain materials used in operation of the facility.* Solid waste materials approved by the department for lining, daily cover or capping or for constructing berms, dikes or roads within a solid waste disposal facility are not subject to the environmental repair fee imposed under par. (a), except that foundry sands or shredder fluff approved for use under s. 144.44 (3) (bh) or (4e) are subject to the environmental repair fee.

(g) *Reporting period.* The reporting period under this subsection is the same as the reporting period under s. 144.441 (3). The owner or operator of any licensed solid or hazardous waste disposal facility shall pay environmental repair fees required to be collected under par. (b) at the same time as any tonnage fees under s. 144.441 (3).

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

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

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

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

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

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

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

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required to provide the licensee with a hearing before the suspension.

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

(1s) ENVIRONMENTAL REPAIR FEE FOR GENERATORS OF HAZARDOUS WASTE. (a) A generator of hazardous waste who is required to report annually on hazardous waste activities according to rules promulgated under s. 144.62 (8) (b) shall pay an annual environmental repair fee.

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

1. A generator of hazardous waste shall pay a base fee of $100 if the generator has generated more than zero pounds in that particular year, plus $9 per ton of hazardous waste generated during the reporting year.

2. No generator may pay a fee that is greater than $10,000.

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

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

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

3. Hazardous wastes which are removed from a site or facility to repair environmental pollution.

(d) The department shall assess fees under par. (a) on the basis of the generator's report that is submitted according to the rules promulgated under s. 144.62 (8) (b).

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

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

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

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

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

(d) *Reduction of base fee; monitoring.* This paragraph applies to a nonapproved facility which is subject to the $1,000 base fee under par. (b) 2 and which is required by the department to conduct monitoring under s. 144.44 (4) (f). The base fee under par. (b) 2 shall be reduced by the cost of monitoring for the calendar year to which the base fee applies, or $900, whichever is less.

(3) ENVIRONMENTAL REPAIR SURCHARGE. (a) *Imposition of environmental repair surcharge.* If the owner or operator of a nonapproved facility is required to pay a tonnage fee under s. 144.441 (3), the owner or operator shall pay to the department an environmental repair surcharge for each calendar year.

(b) *Amount of environmental repair surcharge.* 1. With respect to solid or hazardous waste disposed of at a nonapproved facility for which the owner or operator enters into an agreement with the department to close the facility on or before July 1, 1999, the owner or operator shall pay to the department an environmental repair surcharge equal to 25% of the tonnage fees imposed under s. 144.441 (3). The 25% surcharge first applies for the calendar year in which the owner or operator enters into a closure agreement. If the owner or operator fails to comply with the closure agreement, the department shall collect the additional tonnage fees which would have been paid by the owner or operator under subd. 2 in the absence of the closure agreement.

2. With respect to solid or hazardous waste disposed of at a nonapproved facility for which the owner or operator has not entered into an agreement with the department to close the facility on or before July 1, 1999, the owner or operator shall pay to the department an environmental repair surcharge equal to 50% of the tonnage fees imposed under s. 144.441 (3).

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

(4) INVENTORY; ANALYSIS; HAZARD RANKING. (a) *Inventory.* 1. The department shall compile and maintain an inventory of sites or facilities which may cause or threaten to cause environmental pollution. In compiling the inventory, the department shall collect all relevant information about a site or facility which is or may become available. No later than January 1, 1992, the department shall complete the inventory of sites or facilities.

2. The department shall publish the inventory and any amendments to the inventory as a class 1 notice under ch. 985 in the official state newspaper under s. 985.04 or, if none exists, in a major newspaper with statewide circulation. The notice shall include a statement that the list is not subject to judicial review.

3. The decision of the department to include a site or facility on the inventory or exclude a site or facility from the inventory is not subject to judicial review.

4. Notwithstanding s. 227.01 (13) or 227.10 (1), the list of sites or facilities which results from the inventory is not a rule.

(b) *Investigation, analysis.* 1. The department may take direct action under subd. 2 or 3 or may enter into a contract with any person to take the action. The department may take action under subd. 2 or 3 regardless of whether a site or facility is included on the inventory under par. (a) or the hazard ranking list under par. (c).

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

3. The department may determine whether a site or facility presents a substantial danger to public health or welfare or the environment and evaluate the magnitude of the danger.

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(c) *Hazard ranking.* 1. The department shall promulgate by rule criteria for determining the ranking of sites and facilities which are included in the inventory under par. (a), based on the degree to which sites or facilities present a substantial danger to public health or welfare or the environment and the potential urgency of taking remedial action. To the extent applicable, the criteria shall be based on the population at risk, the potential for contamination of drinking water supplies, the potential for other direct human contact, the potential for destruction of sensitive ecosystems, the hazard potential of the hazardous substances which may be released and other appropriate factors. The department is not required to use hazard ranking criteria promulgated by the federal environmental protection agency under 42 USC 9601, et seq.

2. From time to time, the department shall issue documents, consistent with the criteria in subd. 1, which list the hazard ranking of sites and facilities which are included in the inventory under par. (a). The hazard ranking list shall include in a single category those sites or facilities determined by the department to present a substantial danger to public health or welfare or the environment. The department may include subcategories in the hazard ranking list which group together, without assigning a specific degree of risk and without establishing an individual hazard ranking, sites or facilities which do not present a substantial danger to public health or welfare or the environment. No later than January 1, 1994, the department shall complete the hazard ranking of all sites or facilities which are included in the completed inventory under par. (a). Notwithstanding s. 227.01 (13) or 227.10 (1), documents issued under this subdivision are not rules.

3. The department shall publish the hazard ranking list and any amendments to the hazard ranking list as a class 1 notice under ch. 985 in the official state newspaper under s. 985.04 or, if none exists, in a major newspaper with statewide circulation. The notice shall invite the submission of written comments within the 30-day period after the notice is published. The notice shall include a description of the procedure for requesting a public hearing and a statement that the list is not subject to judicial review.

4. Within 30 days after the hazard ranking list or any amendments to the hazard ranking list are published, any person may submit to the department a request for a public hearing. If a hearing is requested within the 30-day period, the department shall publish a notice of the hearing, at least 10 days prior to the hearing, as a class 1 notice under ch. 985 in the official state newspaper under s. 985.04 or, if none exists, in a major newspaper with statewide circulation. The department shall conduct the public hearing within 90 days after the hearing is requested. The department may publish a notice and conduct a public hearing if a request is received after the 30-day period. Notwithstanding s. 227.42, the hearing under this paragraph shall not be conducted as a contested case.

5. The decision of the department concerning the hazard ranking assigned to a site or facility is not subject to judicial review.

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

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

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

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

(5) ENVIRONMENTAL RESPONSE PLAN. The department shall promulgate by rule a waste facility environmental response plan. The plan shall contain the following provisions:

(a) Methods for preparing the inventory and conducting the analysis under sub. (4).

(b) Methods for remedial action under sub. (6).

(c) Methods and criteria for determining the appropriate extent of remedial action under sub. (6).

(d) Means of ensuring that the costs of remedial action are appropriate in relation to the associated benefits over the period of potential human exposure to substances released by the site or facility.

(e) Appropriate roles and responsibilities under this section for federal, state and local governments and for interstate and nongovernmental entities.

(6) ENVIRONMENTAL REPAIR. (b) *Department authority.* 1. The department may take direct action under subds. 2 to 9 or may enter into a contract with any person to take the action.

2. The department may take action to avert potential environmental pollution from the site or facility.

3. The department may repair the site or facility or isolate the waste.

4. The department may abate, terminate, remove and remedy the effect of environmental pollution from the site or facility.

5. The department may restore the environment to the extent practicable.

6. The department may establish a program of long-term care, as necessary, for a site or facility which is repaired or isolated.

7. The department may provide temporary or permanent replacements for private water supplies damaged by a site or facility.

8. The department may assess the potential health effects of the occurrence, not to exceed $10,000 per occurrence.

9. The department may take any other action not specified under subds. 2 to 8 consistent with this subsection in order to protect public health, safety or welfare or the environment.

(c) *Sequence of remedial action.* In determining the sequence for taking remedial action under this subsection, the department shall consider the hazard ranking of each site or facility, the amount of funds available, the information available about each site or facility, the willingness and ability of an owner, operator or other responsible person to undertake or assist in remedial action, the availability of federal funds under 42 USC 9601, et seq., and other relevant factors. The department shall give the highest priority to remedial action at sites or facilities which have caused contamination of a municipal water supply in a town with a population greater than 10,000. If any such site or facility is eligible for federal funds under 42 USC s. 9601 to 9675, but the federal funds will not be available before January 1, 2000, the department shall proceed with remedial action using state funds.

(cm) *Remedial action schedule.* The department shall commence remedial action as required under this paragraph for sites or facilities which are included on the hazard ranking list

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and are determined to present a substantial danger to public health or welfare or the environment. The department shall commence remedial action at no less than 2 of the sites or facilities by January 1, 1989. The department shall commence remedial action at all of the sites or facilities by January 1, 2000. After January 1, 1989 and before January 1, 2000, the department shall annually commence remedial action at no less than 2 of the sites or facilities.

(d) *Emergency responses.* Notwithstanding rules promulgated under this section, the hazard ranking list, the considerations for taking action under par. (c) or the remedial action schedule under par. (cm), the department may take emergency action under this section at a site or facility if delay will result in imminent risk to public health or safety or the environment. The department is not required to hold a hearing under par. (f) if emergency action is taken under this paragraph. The decision of the department to take emergency action is a final decision of the agency subject to judicial review under ch. 227.

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

(f) *Notice; hearing.* The department shall publish a class 1 notice, under ch. 985, prior to taking remedial action under this section which describes the proposed remedial action and the amount and purpose of any proposed expenditure. Except as provided under par. (d), the department shall provide a hearing to any person who demands a hearing within 30 days after the notice is published for the purpose of determining whether the proposed remedial action and any expenditure is within the scope of this section and is reasonable in relation to the cost of obtaining similar materials and services. The department is not required to conduct more than one hearing for the remedial action proposed at a single site or facility. Notwithstanding s. 227.42, the hearing shall not be conducted as a contested case. The decision of the department to take remedial action under this section is a final decision of the agency subject to judicial review under ch. 227.

(6m) MONITORING COSTS AT NONAPPROVED FACILITIES OWNED OR OPERATED BY MUNICIPALITIES. Notwithstanding the inventory, analysis and hazard ranking under sub. (4), the environmental response plan prepared under sub. (5) or the environmental repair authority, remedial action sequence and emergency response requirements under sub. (6), the department shall pay that portion of the cost of any monitoring requirement which is to be paid under s. 144.44 (4) (f) 5. from the appropriation under s. 20.370 (2) (dv) prior to making other payments from that appropriation.

(6r) MUNICIPAL INCINERATOR ASH TESTING. Notwithstanding the inventory, analysis and hazard ranking under sub. (4), the environmental response plan prepared under sub. (5), the environmental repair authority, remedial action sequence and emergency response requirements under sub. (6), or the monitoring costs under sub. (6m), the department shall pay the cost incurred by a municipality after June 30, 1986, and before January 30, 1988, for testing required to determine whether the ash from a municipally owned incinerator is hazardous. The department shall make payments under this subsection from the appropriation under s. 20.370 (2) (dv) prior to making other payments from that appropriation.

(7) PAYMENTS FROM THE INVESTMENT AND LOCAL IMPACT FUND. The department may expend moneys received from the investment and local impact fund for the purposes specified under sub. (6) only for approved mining facilities and only if moneys in the environmental fund that are available for environmental repair are insufficient to make complete payments. The amount expended by the department under this subsection may not exceed the balance in the environmental fund that is available for environmental repair 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.

(8) IMPLEMENTING THE FEDERAL SUPERFUND ACT. (a) The department may advise, consult, assist and contract with other interested persons to take action to implement the federal comprehensive environmental response, compensation and liability act of 1980, 42 USC 9601, et seq., in cooperation with the federal environmental protection agency. These actions include all of the actions under subs. (4) to (6). The department may enter into agreements with the federal environmental protection agency.

(b) The department may expend moneys from the appropriations under ss. 20.370 (2) (dv) and 20.866 (2) (tg) as required under 42 USC 9601, et seq. The department shall promulgate by rule criteria for the expenditure of moneys from the appropriations under ss. 20.370 (2) (dv) and 20.866 (2) (tg). The criteria shall include consideration of the amount of moneys available in the appropriations under ss. 20.370 (2) (dv) and 20.866 (2) (tg), the moneys available from other sources for the required sharing of costs, the differences between public and private sites or facilities, the potential for cost recovery from responsible parties and any other appropriate factors.

(c) 1. The department may require a municipality to pay a reasonable share of the amount expended by the department for a project under par. (b). The department shall base any share charged to a municipality for a project under par. (b) on the following factors:

a. The municipality's responsibility for the site or facility affected by the project.

b. The benefit that the municipality receives from the project.

c. The municipality's ability to pay for the project.

2. The total amount charged to all municipalities who are charged for the project may not exceed 50% of the amount expended by the department under par. (b) for the project.

3. The department shall promulgate rules establishing criteria for determining the responsibility, for the purposes of this subsection, of a municipality for a site or facility affected by the project under par. (b); the benefit a municipality receives from a project under par. (b); and the ability of a municipality to pay for a project under par. (b).

4. All moneys received under this paragraph shall be credited to the environmental fund for environmental repair.

(9) RECOVERY OF EXPENDITURES. (a) *Definitions.* In this subsection:

1. "Operator" means any person who operates a site or facility or who permits the disposal of waste at a site or facility under his or her management or control for consideration, regardless of whether the site or facility remains in operation and regardless of whether the person operates or permits disposal of waste at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation.

2. "Owner" means any person who owns or who receives direct or indirect consideration from the operation of a site or facility regardless of whether the site or facility remains in operation and regardless of whether the person owns or receives consideration at the time any environmental pollu-

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tion occurs. This term includes a subsidiary or parent corporation.

3. "Subsidiary or parent corporation" means any business entity, including a subsidiary, parent corporation or other business arrangement which has elements of common ownership or control or uses a long-term contractual arrangement with any person to avoid direct responsibility for conditions at a site or facility.

(b) *Applicability.* 1. This subsection does not apply to the release or discharge of a substance which is in compliance with a permit, license, approval, special order, waiver or variance issued under this chapter or ch. 30, 31 or 147, or under corresponding federal statutes or regulations.

2. This subsection applies to an owner who purchases the land where a site or facility is located only if the owner knew or should have known of the existence of the site or facility at the time of purchase.

(c) *Persons responsible.* 1. An owner or operator is responsible for conditions at a site or facility which presents a substantial danger to public health or welfare or the environment if the person knew or should have known at the time the disposal occurred that the disposal was likely to result in or cause the release of a substance into the environment in a manner which would cause a substantial danger to public health or welfare or to the environment.

2. Any person, including an owner or operator and including a subsidiary or parent corporation which is related to the person, is responsible for conditions at a site or facility which present a substantial danger to public health or welfare or the environment if:

a. The person violated any applicable statute, rule, plan approval or special order in effect at the time the disposal occurred and the violation caused or contributed to the condition at the site or facility; or

b. The person's action related to the disposal caused or contributed to the condition at the site or facility and would result in liability under common law in effect at the time the disposal occurred, based on standards of conduct for that person at the time the disposal occurred.

(d) *Right of action.* A right of action shall accrue to the state against any person responsible under par. (c) if an expenditure is made for environmental repair at the site or facility or if an expenditure is made under sub. (8).

(f) *Action to recover costs.* The attorney general shall take action as is appropriate to recover expenditures to which the state is entitled.

(g) *Disposition of funds.* If the original expenditure was made from the environmental repair fund, under s. 25.46, 1987 stats., or the environmental fund, the net proceeds of the recovery shall be paid into the environmental fund for environmental repair. If the original expenditure was made from the investment and local impact fund, the net proceeds of the recovery shall be paid into the investment and local impact fund.

(h) *Cleanup agreements; waiver of cost recovery.* The department and any person who is responsible under par. (c) may enter into an agreement regarding actions which the department is authorized to take under sub. (6). In the agreement, the department may specify those actions under sub. (6) which the responsible person may take. As part of the agreement, the department may agree to reduce the amount which the state is entitled to recover under this subsection or to waive part or all of the liability which the responsible person may have under this subsection.

(10) RELATION TO OTHER LAWS. The department shall coordinate its efforts under this section with the federal environmental protection agency acting under the comprehensive environmental response, compensation and liability act, 42 USC 9601, et seq. The department may not duplicate activities or efforts of the federal environmental protection agency if such duplication is prohibited under 42 USC 9601, et seq.

(11) LIABILITY. (a) No common law liability, and no statutory liability which is provided in other statutes, for damages resulting from a site or facility is affected in any manner by this section. The authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any other statutes or provided at common law.

(b) If a person takes any remedial action at a site or facility, whether or not an agreement is entered into with the department under sub. (9) (h), any agreement and the action taken are not evidence of liability or an admission of liability for any potential or actual environmental pollution.

(c) 1. Notwithstanding par. (a), sub. (9) and s. 144.76 and except as provided in subd. 2, a municipality that acquires ownership of property through tax delinquency foreclosure or abandonment by a bankruptcy court is not liable for the costs of environmental repair on the property or for damages caused by the release of a hazardous substance from a site or facility on the property if the municipality acquires ownership for the purpose of conducting environmental repair on the property under a plan approved by the department.

2. Subdivision 1 does not apply to costs of environmental repair necessitated by or damages caused by actions taken by the municipality.

History: 1983 a. 410; 1985 a. 29 ss. 1955m, 3202 (39); 1985 a. 182 s. 57; 1985 a. 217; 1987 a. 27, 384; 1989 a. 31, 56, 335, 359; 1991 a. 32, 39.

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

(a) "Approved facility" has the meaning given in s. 144.441 (1) (a).

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

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

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

(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 during the period specified in s. 144.441 (2) (b) or under s. 144.441 (2) (f).

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

(c) *Hazardous waste disposal, storage and treatment facilities.* If corrective action is required under s. 144.735, the

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owner or operator of the hazardous waste facility to which the requirement applies shall maintain proof of financial responsibility ensuring the availability of funds for compliance with the corrective action requirement.

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

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

1. A bond.

2. A deposit.

3. An established escrow account.

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 or the approved plan under s. 144.64 (2m). The department shall consider the request of any owner or operator to establish proof of financial responsibility under this subdivision.

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

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

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

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

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

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

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

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

3. Statements of all material contingent liabilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Accounting practices or calculations made by or suspected to have been made by the company in its financial statements which deviate from generally accepted accounting 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, long-term care and corrective action 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.

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

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

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

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

(11) CLOSURE, LONG-TERM CARE AND CORRECTIVE ACTION. (a) *Failure to comply with closure and long-term care requirements.* If the owner or operator of the facility fails to comply with the closure and any long-term care requirements in any plan of operation or approved plan under s. 144.64 (2m):

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

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

4. The department may request the department of justice to initiate court action against the owner or operator to recover

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moneys sufficient to pay the cost of complying with the closure and long-term care requirements of the plan of operation or approved plan under s. 144.64 (2m). Any moneys recovered in this type of action or as a settlement in anticipation of this type of action shall be credited to the waste management fund.

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

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

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

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

(b) *Compliance with closure and long-term care requirements.* 1. If the owner or operator of a waste facility fails to comply with the closure and any long-term care requirements in any plan of operation or approved plan under s. 144.64 (2m), the department may take action or contract with a person to take action to comply with these requirements from moneys obtained for that purpose under par. (a).

2. If the owner or operator of an approved facility for which the plan of operation was approved under s. 144.44 (3) (c) before August 9, 1989, fails to comply with long-term care requirements in the plan of operation after the requirement to provide proof of financial responsibility expires under s. 144.441 (2) (b) or (f) and if the department takes reasonable administrative and legal action to require compliance or to obtain moneys under par. (a) 4, then the department may take action or contract with a person to take action to comply with the requirements even though no moneys have been obtained under par. (a).

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

(c) *Prevention of imminent hazard; closure and long-term care.* If the owner or operator of an approved facility for which the plan of operation was approved under s. 144.44 (3) (c) before August 9, 1989, fails to comply with the closure and any long-term care requirements in any plan of operation during the period for which the owner or operator is required to provide proof of financial responsibility, if the department determines that the failure to comply with these requirements presents an imminent or substantial danger to the health or environment and if the department takes reasonable administrative and legal action to require compliance or to obtain moneys under par. (a), then the department may take action or contract with a person to take action to comply with these requirements even though no moneys have been obtained under par. (a).

(cm) *Prevention of imminent hazard; corrective action.* If the owner or operator of an approved facility for which the plan of operation was approved under s. 144.44 (3) (c) before August 9, 1989, fails to comply with any corrective action required under s. 144.735, if the department determines that the failure to comply with a corrective action requirement presents an imminent or substantial danger to the health or environment and if the department takes reasonable administrative and legal action to require compliance or to obtain moneys under par. (am), then the department may take action or contract with a person to take action to comply with a corrective action required under s. 144.735 even though no moneys have been obtained under par. (am).

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

History: 1981 c. 374; 1983 a. 27; 1983 a. 53 s. 114; 1985 a. 29 s. 3202 (39); 1987 a. 384; 1989 a. 31, 359; 1991 a. 31, 39.

144.444 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 a solid or hazardous waste disposal facility was previously operated may not undertake any activities on the land which interfere with the closed facility causing a significant threat to public health, safety or welfare.

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

See note to 144.60, citing Kelly, 67 MLR 691 (1984).

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

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consideration for the concerns of nearby residents and the affected municipalities.

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

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

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

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

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

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

(3) DEFINITIONS. In this section:

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

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

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

(d) "Local approval" includes any requirement for a permit, license, authorization, approval, variance or exception or any restriction, condition of approval or other restriction, regulation, requirement or prohibition imposed by a charter ordinance, general ordinance, zoning ordinance, resolution or regulation by a town, city, village, county or special purpose district, including without limitation because of enumeration any ordinance, resolution or regulation adopted under s. 59.065, 59.07, 59.083, 59.97, 59.971, 59.974, 60.10, 60.22, 60.23, 60.54, 60.77, 61.34, 61.35, 61.351, 61.354, 62.11, 62.23, 62.231, 62.234, 66.01, 66.052, 66.24 (8), 87.30, 91.73, 144.07, 196.58, 236.45 or 349.16 or subch. VIII of ch. 60.

(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) *Municipal participation.* An affected municipality may participate in the negotiation and arbitration process under this section if the governing body adopts a siting resolution and appoints members to the local committee within 60 days after the municipality receives the written request from the applicant under s. 144.44 (1m) (b) and if the municipality sends a copy of that resolution and the names of those members to the board within 7 days after the municipality adopts the siting resolution and appoints members to the local committee. The siting resolution shall state the affected municipality's intent to negotiate and, if necessary, arbitrate with the applicant concerning the proposed facility. An affected municipality which does not adopt a siting resolution within 60 days after receipt of notice from the applicant may not appoint members to the local committee.

(b) *Notification of participation.* Within 5 days after the board receives copies of resolutions and names of members appointed to the local committee from all affected municipalities or within 72 days after all affected municipalities receive the written request under s. 144.44 (1m) (b), the board shall submit a notification of participation by certified mail to the applicant and each participating municipality identifying the participating municipalities and the members appointed to the local committee and informing the applicant and participating municipalities that negotiations may commence or, if no affected municipality takes the actions required to participate in the negotiation and arbitration process under par. (a), the board shall notify the applicant of this fact by certified mail within that 72-day period.

(c) *Revised notification of participation.* If the board issues a notice under par. (b) and subsequently it is necessary for the applicant to submit a written request under s. 144.44 (1m) (b) to an additional affected municipality because of an error or changes in plans, the board may issue an order delaying negotiations until that affected municipality has an opportunity to participate in the negotiation and arbitration process by taking action under par. (a). Within 5 days after the board receives a copy of the resolution and the names of members appointed to the local committee by that affected municipality or within 72 days after that affected municipality receives the written request from the applicant under s. 144.44 (1m) (b), the board shall submit a revised notification of participation by certified mail to the applicant and each participating

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municipality stating the participating municipalities and members appointed to the local committee and informing the applicant and participating municipalities that negotiations may recommence or if the additional affected municipality does not take the actions required to participate in the negotiation and arbitration process under par. (a), the board shall notify the applicant and other participating municipalities of this fact by certified mail and informing them that negotiations may recommence.

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

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

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

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

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

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

NOTE: 1983 Wis. Act 128 provides in section 3 that the creation of par. (e) [rn. (g)] by Act 128 is remedial in nature and applies to solid or hazardous waste facilities for which the applicant submits requests concerning the applicability of local approvals under s. 144.44 (1m) after 3-15-82.

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

1. A town, city or village in which all or part of a facility is proposed to be located shall appoint 4 members, 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) *Disclosure of private interests.* Each member of a local committee shall file a statement with the board within 15 days after the person is appointed to the local committee specifying the economic interests of the member and his or her immediate family members that would be affected by the proposed facility and its development.

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

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

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

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

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

(7n) ADDITIONAL MUNICIPAL PARTIES. (a) *Agreement to add.* Upon the written agreement of all parties to a negotiation and arbitration proceeding commenced under this section, a municipality which does not qualify as an affected municipality under s. 144.43 (1) may be added as a party to the proceeding.

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

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

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

2. The need for the facility.

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

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

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

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

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

4. Traffic flows and patterns resulting from the facility.

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

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

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

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

(b) *Determination of negotiability.* Either party may petition the board in writing for a determination as to whether a proposal is excluded from negotiation under sub. (8) (a). A petition may be submitted to the board before a proposal is offered in negotiation. A petition may not be submitted to the board later than 7 days after the time a proposal is offered for negotiation. The board shall conduct a hearing on the matter and issue its decision within 14 days after receipt of the petition. The decision of the board is binding on the parties

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and is not subject to judicial review. Negotiation on any issue, including issues subject to a petition under this paragraph, may continue pending the issuance of the board's decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Order to continue negotiation.* The board may issue a decision ordering the applicant and the local committee to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. This section does not apply to modifications to a solid waste disposal facility which do not constitute an expansion of the facility or to a solid waste disposal facility which is exempt from the requirement of a feasibility report under 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):

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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; 1983 a. 128; 1983 a. 282 ss. 6 to 32, 34; 1983 a. 416 s. 19; 1983 a. 532 s. 36; 1983 a. 538; 1985 a. 182 s. 57; 1987 a. 27, 204, 399; 1987 a. 403 s. 256; 1991 a. 39.

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

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

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

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

History: 1983 a. 410; Stats. 1983 s. 144.795; 1983 a. 538 s. 158; Stats. 1983 s. 144.446.

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, 144.444, 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 presiding officer of each house of the legislature under s. 227.19 (2).

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

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

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

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

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

(c) "Waste tire" has the meaning given under s. 84.078 (1) (b).

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

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

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

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

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

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

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

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

(f) A site where a recovery activity, as defined in s. 159.17 (1) (a), is carried on if no more than a 6-month inventory of tires is kept on the site.

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

(h) An artificial reef constructed of waste tires.

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

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

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

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

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

(c) Tire dumps in densely populated areas.

(d) All other tire dumps.

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

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

History: 1987 a. 27, 110; 1987 a. 403 s. 256; 1989 a. 335 s. 89.

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.

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

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

(b) The location of the facility.

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

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

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

(2) MAINTENANCE OF RECORDS. Except as provided in s. 144.433 (2) (a) 2, the department shall separately maintain as a public record, for each solid waste facility, the reports required by sub. (1).

History: 1989 a. 335.

144.455 Dump closure cost-sharing grants. (1) DEFINITIONS. In this section:

(a) "Nonapproved facility" has the meaning given in s. 144.441 (1) (c).

(b) "Political subdivision" means a city, village, town, county or town sanitary district.

(2) APPLICATION. A political subdivision that closes a nonapproved facility which it owns or operates may apply to the department for a cost-sharing grant. The application shall include information requested by the department. The department may establish a deadline for applying for a cost-sharing grant.

(3) APPROVAL. The department shall approve a grant only for closure costs that it determines are reasonable and necessary. Closure costs do not include the costs of taking remedial action. The department may approve a cost-sharing grant only if the nonapproved facility is closed under the department's rules in effect on May 11, 1990, and if the closure is approved by the department.

(4) COST-SHARING GRANT AMOUNT. (a) Except as provided in par. (b), the department shall approve a cost-sharing grant equal to 50% of the amount by which the reasonable and necessary costs of closing the nonapproved facility exceed an amount equal to $10 times the population of the political subdivision, based on the most recent population estimates by the department of administration under s. 16.96. If a political subdivision closes more than one nonapproved facility, the reasonable and necessary costs incurred by the political subdivision in closing all of the nonapproved facilities shall be combined to determine the amount of the grant under this subsection. If 2 or more political subdivisions are joint owners of a nonapproved facility which is closed, the department shall use the total population of the political subdivisions in determining the amount of the grant under this subsection.

(b) A political subdivision may not receive more than $400,000 under this section. The department shall prorate grant awards if necessary to prevent the total amount of payments under sub. (5) from exceeding $20,000,000 over 10 years.

(5) PAYMENT OF GRANT. The department shall make grant payments annually over a 10-year period. Each grant payment shall equal 10% of the total grant to a political subdivision.

(6) APPLICABILITY. This section applies to any nonapproved facility that is closed by a political subdivision after January 1, 1988.

History: 1989 a. 335; 1991 a. 269.

144.46 Shoreland and floodplain zoning. Solid waste facilities are prohibited within areas under the jurisdiction of shoreland and floodplain zoning regulations adopted pursuant to ss. 59.971, 61.351, 62.231 and 87.30, except that the department may issue permits authorizing facilities in such areas.

History: 1981 c. 374 s. 148; 1983 a. 416 s. 19.

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

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

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

History: 1991 a. 50.

144.465 Review of alleged violations. Any 6 or more citizens or any municipality may petition for a review of an

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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.

144.469 Penalties. (1) (a) No person may treat, store or dispose of high-volume industrial waste, as defined under s. 144.44 (7) (a) 1, in violation of a testing requirement or condition of an exemption under s. 144.44 (7) (f) 4.

(b) No person may violate a testing requirement or condition of an exemption from regulation under s. 144.44 (7) (g) 3.

(2) A person who violates sub. (1) shall forfeit not less than $10 nor more than $25,000 for each violation. Each day of violation is a separate offense.

History: 1985 a. 46.

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

(a) "Clinic" has the meaning given in s. 159.07 (7) (c) 1. a.

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

(b) "Medical waste" means infectious waste, as defined in s. 159.07 (7) (c) 1. c., and other waste that contains or may be mixed with infectious waste.

(bm) "Nursing home" has the meaning given in s. 50.01 (3).

(c) "Solid waste disposal" has the meaning given in s. 144.43 (4r).

(d) "Solid waste facility" has the meaning given in s. 144.43 (5).

(e) "Solid waste treatment" has the meaning given in s. 144.43 (7r).

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

NOTE: Sub. (2) is shown as amended eff. 6-1-93 by 1991 Wis. Act 300. Prior to 6-1-93 it reads:

(2) MEDICAL WASTE REDUCTION. Every hospital shall implement a policy for the reduction of the amount of medical waste generated as required by the department by rule.

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

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

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

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

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

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

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

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

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

History: 1991 a. 39, 300.

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

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

1. Engine, turbine and gear lubricants.

2. Hydraulic fluid, including transmission fluid.

3. Metalworking fluid, including cutting, grinding, machining, rolling, stamping, quenching and coating oils.

4. Insulating fluid or coolant.

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

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

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

2. Distributes or markets used oil fuel.

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

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

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

1. Give the person written notice of the violation.

2. Issue a special order requiring compliance within a specified time period.

3. Refer the matter to the department of justice for enforcement under s. 144.98.

(b) *Department of justice action, disposition.* The department of justice may initiate the legal action requested by the department under par. (a) 3 after receipt of the written request. In any action commenced by it under this paragraph, the department of justice shall, prior to stipulation, consent order, judgment or other final disposition of the case, consult with the department for the purpose of determining the department's views on final disposition. The department of justice may not enter into a final disposition different than that previously discussed without first informing the department.

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

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

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

History: 1987 a. 384.

144.52 Confidentiality of records; used oil collection facilities and used oil fuel facilities. (1) RECORDS. Except as provided under sub. (2), records and other information furnished to or obtained by the department in the administration of ss. 144.50 and 159.15 are public records subject to s. 19.21.

(2) CONFIDENTIAL RECORDS. (a) *Application.* Any person subject to s. 144.50 or 159.15 may seek confidential treatment of any records or other information furnished to or obtained by the department in the administration of s. 144.50 or 159.15.

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

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

(d) *Use of confidential records.* Except as provided under par. (c) and this paragraph, the department or the department of justice may use records and other information granted confidential status under this subsection only in the administration and enforcement of s. 144.50 or 159.15. The department or the department of justice may release for general distribution records and other information granted confidential status under this subsection if the applicant expressly agrees to the release. The department or the department of justice may release on a limited basis records and other information granted confidential status under this subsection if the department or the department of justice is directed to take this action by a judge or hearing examiner under an order which protects the confidentiality of the records or other information. The department or the department of justice may release to the U.S. environmental protection agency or its authorized representative records and other information granted confidential status under this subsection if the department or the department of justice includes in each release of records or other information a request to the U.S. environmental protection agency or its authorized representative to protect the confidentiality of the records or other information.

History: 1987 a. 384; 1989 a. 335 s. 89.

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.

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(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.

The right to a decent burial: Hazardous waste and its regulation in Wisconsin. Harrington, 66 MLR 223 (1983).

Changes in the ownership of hazardous waste disposal sites: Original and successor liability. Kelly. 67 MLR 691 (1984).

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, spilling, leaking or placing of any hazardous waste into or on any land or water in a manner which may permit the hazardous waste or any hazardous constituent to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment. "Disposal" 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 site or structure for the treatment, storage or disposal of hazardous waste and includes all of the contiguous property under common ownership or control surrounding the site or structure.

(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 6991i, as amended on November 8, 1984.

(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; 1983 a. 298; 1987 a. 384.

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.

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

(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, transports, treats, stores or disposes of hazardous wastes from any provision under ss. 144.60 to 144.74 or from any rule promulgated under those sections if the generation, transportation, treatment, storage or disposal does not present a significant hazard to public health and safety or the environment.

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(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, closing and long-term care of hazardous waste facilities.

(f) Corrective action under s. 144.735.

(8m) The department may promulgate rules which specify the duration of licenses issued under s. 144.64 (2).

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

(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 components of the wastes;

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

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

(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.

(13) The department may waive compliance with any requirement under ss. 144.60 to 144.74 or shorten the time periods 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.

(14) The department may inspect hazardous waste facility construction projects to determine compliance with ss. 144.60 to 144.74 and rules promulgated and licenses issued under those sections.

History: 1977 c. 377; 1979 c. 34 s. 2102 (39) (g); 1981 c. 374 ss. 89 to 95, 148, 150; 1983 a. 298, 410; 1987 a. 27, 384.

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 hazardous 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; 1987 a. 384.

See note to 144.44 citing State v. Rollfink, 162 W. (2d) 121, 469 NW (2d) 398 (1991).

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. Record keeping 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 transporting or movement of the hazardous waste. 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 if the person applies for a license under this subsection and complies with conditions and restrictions prescribed by rule or special order by the department pending the decision on the issuance of an operating license under this subsection. This paragraph applies only if the facility was in existence on November 19,

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1980, or on a subsequent date which is the effective date of the statute or rule requiring the facility to obtain an operating license under this subsection. An interim license issued under this paragraph constitutes an operating license under this subsection.

(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) A license issued under this subsection may be denied, suspended or revoked if the applicant or licensee does any of the following:

1. Fails to pay any fee required under sub. (4).

2. Fails to comply with ss. 144.60 to 144.74 or any rule promulgated under those sections.

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

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

5. Misrepresents any relevant fact at any time.

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

(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.

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

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

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

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

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

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

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

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

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

(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; 1983 a. 27, 298, 410; 1987 a. 27, 384, 403.

144.645 License actions; hearing; public comment. (1) If the department proposes to deny, suspend or revoke a license for the reasons stated under s. 144.64 (2) (e) 2 to 6, the department shall comply with the procedures specified under this section.

(2) If the department determines that a person licensed under s. 144.64 (2) failed to comply with the rules promulgated under ss. 144.60 to 144.74 or failed to comply with the approved plan of operation under s. 144.44 (3), the department shall give written notice to the person. The notice shall state that the department proposes to deny, suspend or revoke the license and shall inform the person that a hearing may be requested within 45 days after the notice is issued.

(3) If the licensee requests a hearing within 45 days after receiving the notice under sub. (2), the department shall schedule a hearing and give notice of the hearing by publishing a class 1 notice, under ch. 985, at least 45 days prior to the date scheduled for the hearing. If the licensee requests a contested case hearing and if the conditions specified under s. 227.42 (1) (a) to (d) are satisfied, the department shall conduct the hearing as a contested case; otherwise, the department shall conduct the hearing as an informational hearing. There is no statutory right to any hearing concerning the denial, suspension or revocation of a license for the reasons stated under s. 144.64 (2) (e) 2 to 6 except as provided under this subsection.

(4) After the conclusion of any hearing under sub. (3), the department shall issue a public notice containing a copy of the proposed decision and a statement describing the opportunity for public comment during the 45-day period after the notice is given.

(5) If the licensee does not request a hearing within 45 days after receiving the notice under sub. (2), the department shall issue a public notice containing a copy of the proposed decision and a statement describing the opportunity for public comment during the 45-day period after the notice is given.

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(6) The department shall give the notice required under subs. (4) and (5) by all of the following means:

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

(b) Broadcasting a notice by radio announcement in the area where the facility is located.

(c) Providing written notice to each affected municipality.

(7) At the conclusion of the 45-day period after the department gives notice under sub. (4) or (5), the department shall issue its final decision denying, suspending or revoking the license. There is no statutory right to a hearing concerning the final decision issued under this subsection.

History: 1983 a. 298; 1985 a. 182 s. 57; 1987 a. 384.

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) or a facility subject to s. 144.64 (2m).

History: 1981 c. 374; 1983 a. 410 s. 2202 (38); 1987 a. 384.

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

History: 1977 c. 377; 1981 c. 374; 1987 a. 27, 384.

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

(d) *Use of confidential records.* Except as provided under par. (c) and this paragraph the department or the department of justice may use records and other information granted confidential status under this subsection only in the administration and enforcement of ss. 144.60 to 144.74. The department or the department of justice may release for general distribution records and other information granted confidential status under this subsection if the owner or operator expressly agrees to the release. The department or the department of justice may release on a limited basis records and other information granted confidential status under this subsection if the department or the department of justice is directed to take this action by a judge or hearing examiner under an order which protects the confidentiality of the records or other information. The department or the department of justice may release to the U.S. environmental protection agency or its authorized representative records and other information granted confidential status under this subsection if the department or the department of justice includes in each release of records or other information a request to the U.S. environmental protection agency or its authorized representative to protect the confidentiality of the records or other information.

History: 1981 c. 374; 1987 a. 384.

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

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

(b) Promptly post notice of the danger at the site at which the danger exists, or order a person responsible for the danger to post such notice.

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

(a) Issue any special order necessary to protect public health or the environment.

(b) Take any other action necessary to protect public health or the environment.

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

History: 1977 c. 377; 1987 a. 384.

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

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

(a) Give written notice to the violator of his or her failure to comply with the requirement.

(b) Issue a special order requiring compliance within a specified time period.

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

(2) DEPARTMENT OF JUSTICE ACTION; DISPOSITION. The department of justice may initiate the legal action requested by the department under sub. (1) (c) after receipt of the written request. In any action commenced by it under this subsection, the department of justice shall, prior to stipulation, consent order, judgment or other final disposition of the case, consult with the department for the purpose of determining the department's views on final disposition. The department of justice may 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; 1987 a. 384.

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

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

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

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

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

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

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

History: 1987 a. 384.

144.737 Capacity assurance plan revision and review. (1) In this section:

(a) "Board" means the hazardous pollution prevention board created under s. 15.155 (5).

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

(2) The department shall do all of the following:

(a) Monitor changes in the generation of hazardous waste in this state and the progress toward meeting the goals in the capacity assurance plan.

(b) Notify the governor and the board of any significant problems that occur or may occur in the ability to manage a type of hazardous waste in this state and of the need to change the goals in the capacity assurance plan.

(c) Each year in which submission of a revised capacity assurance plan is required by the federal environmental protection agency, at least 75 days before the federal environmental protection agency deadline for submittal, complete a draft of a revised capacity assurance plan and provide the

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draft to the board, the governor and the chief clerk of each house of the legislature for distribution under s. 13.172 (2).

(d) Hold a public informational hearing, that is not a contested case hearing under ch. 227, to solicit comments on the draft of the revised capacity assurance plan no later than 45 days after providing the draft under par. (c).

(e) Each year in which submission of a revised capacity assurance plan is required by the federal environmental protection agency, provide its proposed version of the revised capacity assurance plan, no later than 14 days prior to the federal environmental protection agency deadline for submittal, to the board, the governor and the chief clerk of each house of the legislature for distribution under s. 13.172 (2).

History: 1989 a. 325; 1991 a. 41.

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

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

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

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

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

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

2. Stores, treats, transports or disposes of any hazardous waste without a license required under s. 144.64 or in violation of a rule promulgated or special order, plan approval or term or condition of a license or variance issued under that section.

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

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

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

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

History: 1977 c. 377; 1981 c. 374; 1987 a. 384.

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

History: 1985 a. 29.

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 a hazardous substance if the department finds that existing control measures are inadequate to prevent 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, locating, monitoring, containing, removing and disposing of discharged hazardous substances.

(6) HAZARDOUS SUBSTANCES SPILLS; APPROPRIATIONS AND RELATED PROVISIONS. (a) *Contingency plan, activities resulting from discharges.* The department may utilize moneys appropriated under s. 20.370 (2) (dv), (fq) and (my) in implementing and carrying out the contingency plan developed under sub. (5) and to provide for the procurement, maintenance and storage of necessary equipment and supplies, personnel training and expenses incurred in identifying, locating, monitoring, containing, removing and disposing of discharged substances.

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(b) *Limitation on equipment expenses.* No more than 25% of the moneys available under the appropriation under s. 20.370 (2) (dv), (fq) or (my) during any fiscal year may be used for the procurement and maintenance of necessary equipment during that fiscal year.

(c) *Reimbursements.* 1. Reimbursements to the department under sub. (7) (b) shall be credited to the environmental fund for environmental repair.

2. Reimbursements to the department under section 311, federal water pollution control act amendments of 1972, P.L. 92-500, shall be credited to the appropriation under s. 20.370 (2) (my).

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

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

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

(11) 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.

(12) APPLICABILITY. (a) Action by the department under this section is not subject to s. 144.442 (4) to (9).

(b) This section applies to all releases of hazardous substances for which a notification must be made under s. 166.20 (5) (a) 2.

History: 1977 c. 377; 1979 c. 34 ss. 988, 2102 (39) (a), (g); 1981 c. 20 s. 2202 (38) (a); 1981 c. 374; 1983 a. 27, 410; 1985 a. 29 s. 3202 (39); 1987 a. 27, 342, 384; 1989 a. 31; 1991 a. 39.

Owner of property from which hazardous substance seeped into neighboring properties was required to take remedial action under (3). Seepage was "discharge" even though not related to current human activity. State v. Mauthe, 123 W. (2d) 288, 366 NW (2d) 871 (1985).

144.77 Abandoned containers. (1) DEFINITION. In this section, "abandoned container" means any container which contains a hazardous substance and is not being monitored and maintained.

(2) APPLICABILITY. (a) This section does not apply to abandoned containers which are located in an approved facility or a nonapproved facility, as defined under s. 144.442 (1).

(b) Action by the department under this section is not subject to s. 144.442 (4) to (9).

(3) 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 taking of emergency actions in relation to abandoned containers.

(b) The contingency plan shall establish procedures and techniques for locating, identifying, removing and disposing of abandoned containers.

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

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

(6) ABANDONED CONTAINERS; APPROPRIATIONS. (a) The department may utilize moneys appropriated under s. 20.370 (2) (dv), (fq) and (my) in taking action under sub. (3). The department shall utilize these moneys to provide for the procurement, maintenance and storage of necessary equipment and supplies, personnel training and expenses incurred in locating, identifying, removing and disposing of abandoned containers.

(b) No more than 25% of the total of all moneys available under the appropriation under s. 20.370 (2) (dv), (fq) and (my) may be used annually for the procurement and maintenance of necessary equipment during that fiscal year.

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(c) The department is entitled to recover moneys expended under this section from any person who caused the containers to be abandoned or is responsible for the containers.

History: 1983 a. 410; 1985 a. 29 ss. 1957, 3202 (39); 1987 a. 27, 384; 1989 a. 31; 1991 a. 39.

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

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

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

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

(c) No person who is licensed under s. 144.44 (4) or 144.64 may use the facility.

History: 1983 a. 397; 1987 a. 27.

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.

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

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

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

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

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

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

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

1. The commercial availability and cost of alternative products;

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

3. The acceptance of alternative products by insurance underwriters;

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

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

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

(7) The department shall adopt rules prescribing the methods and providing or designating sites and facilities for the disposal of PCBs and products containing PCBs. Such rules may require reporting by persons disposing of PCBs and products containing PCBs. Persons disposing of PCBs or products containing PCBs shall comply with such rules unless such products are exempted under sub. (3) (b) or (c). In this section, disposal does not include the disposal of PCBs in sludge produced by wastewater treatment systems under s. 144.435 (1) and chs. NR 500 to 520, Wis. adm. code, the discharge of effluents containing PCBs or the manufacture or sale of recycled paper products to which PCBs have not been intentionally added during or after manufacture for any of the uses set forth in sub. (1) (c). Nothing in this section shall exempt any person from applicable disposal or discharge limitations required or authorized under other statutes.

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

(9) The department shall enforce this section as provided in ss. 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; Stats. 1979 s. 144.79; 1981 c. 390; 1989 a. 56 ss. 176, 259.

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:

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

(2) "Mineral exploration" or "exploration", unless the context requires otherwise, means the on-site 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

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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.

(17m) "Related person" means any person that owns or operates a mining site in the United States and that is one of the following when an application for a mining permit is submitted to the department:

(a) The parent corporation of the applicant.

(b) A person that holds more than a 30% ownership interest in the applicant.

(c) A subsidiary or affiliate of the applicant in which the applicant holds more than a 30% ownership interest.

(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. Archaeological areas.

5m. Listed properties, as defined in s. 44.31 (4).

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; 1983 a. 27, 517; 1987 a. 395; 1991 a. 260.

144.815 Determination of abandonment of mining. (1) Except as provided under sub. (2), abandonment of mining occurs if there is a 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.

(2) Abandonment of mining does not occur:

(a) If the cessation of mining is due either to labor strikes or to such unforeseen developments as adverse market conditions, as determined by the department;

(b) If the cessation of mining does not continue beyond the time period specified by the department. The time limit specified by the department may not exceed 5 years for a mining operation for which a permit is issued under s. 144.85 on or after May 19, 1984. The time limit specified by the department may not exceed 10 years for a mining operation for which a permit is issued under s. 144.85 before May 19, 1984;

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(c) If the site is maintained in an environmentally stable manner, as determined by the department, during the cessation of mining; and

(d) If the reclamation of the site continues according to the reclamation plan during the cessation of mining to the extent possible.

History: 1983 a. 517 s. 1, 2.

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,

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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.

(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; 1991 a. 39.

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 groundwater 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.

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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.

144.833 Radioactive waste site exploration. (1) DEFINITIONS. As used in this section and for the purposes of determining the applicability of ss. 144.83, 144.832, 144.88 and 144.93 to 144.94:

(a) "Person" includes any person operating under a contract or under the direction of a federal agency.

(b) "Radioactive waste" means any of the following:

1. Fuel that is withdrawn from a nuclear reactor after irradiation and which is packaged and prepared for disposal.

2. Highly radioactive waste resulting from reprocessing irradiated nuclear fuel including both the liquid waste which is produced directly in reprocessing and any solid material into which the liquid waste is transformed.

3. Waste material containing alpha-emitting radioactive elements having an atomic number greater than 92 in concentrations greater than 10 nanocuries per gram.

(c) "Radioactive waste site exploration" means the on-site geologic examination from the surface of an area by core, rotary, percussion or other drilling for the purpose of determining the subsurface and geologic characteristics of an area in order to establish whether the area is suitable for a radioactive waste disposal site and includes associated activities such as clearing and preparing sites or constructing roads for drilling.

(d) "Radioactive waste disposal site" means any site or facility for the long-term storage or disposal of radioactive waste including any underground storage area and related facilities.

(2) EXPLORATION LICENSE AND RELATED PROVISIONS. (a) *Applicability.* Except as provided under par. (b), ss. 144.832 and 144.88 and rules promulgated under those sections apply to radioactive waste site exploration, to activities related to radioactive waste site exploration and to persons engaging in or intending to engage in radioactive waste site exploration or related activities in the same manner as those sections and rules are applicable to mineral exploration, to activities related to mineral exploration and to persons engaging in or intending to engage in mineral exploration or related activities.

(b) *Exception.* Notwithstanding par. (a) and s. 144.832 (3), the department may waive the bond requirement for a person who is authorized to engage in radioactive waste site exploration by a federal agency if the federal agency provides sufficient guarantees that the person or the federal agency will comply with the requirements of the department relating to termination. Notwithstanding par. (a) and s. 144.832 (3), the department may require a bond in an amount in excess of the amount specified under s. 144.832 (3) (a) to ensure that sufficient funds are available to comply with termination requirements or to abate or remedy any environmental pollution or danger to public health, safety or welfare resulting from radioactive waste site exploration.

(c) *Hearing.* The department shall conduct a public hearing in the county where radioactive waste site exploration is to occur prior to exploration.

(3) APPROVAL REQUIRED PRIOR TO DRILLING. No person may engage in radioactive waste site exploration by drilling on a parcel unless notice is provided as required under sub. (2) and s. 144.832 (4) (a) and unless the department issues a written approval authorizing drilling on that parcel. If the person seeking this approval is the federal department of energy or an agent or employe of the federal department of energy, the department may not issue the approval unless the radioactive waste review board certifies that the federal department of energy and its agents or employes have complied with any requirement imposed by the radioactive waste review board under s. 36.50 or any agreement entered into under that section.

(4) REGULATION OF EXPLORATION AND RELATED PROVISIONS. Sections 144.83, 144.93 and 144.935 and rules promulgated under those sections apply to radioactive waste site exploration, to activities related to radioactive waste site exploration and to persons engaging in or intending to engage in radioactive waste site exploration or related activities in the same manner as those sections and rules are applicable to mineral exploration, to activities related to mineral exploration and to persons engaging in or intending to engage in mineral exploration or related activities.

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(5) GROUNDWATER REGULATIONS. A person engaging in radioactive waste site exploration shall comply with any restrictions or prohibitions concerning the pollution or contamination of groundwater under ss. 144.025 or 144.80 to 144.94 or ch. 147 or any rule or order promulgated under those sections or that chapter.

(6) ENVIRONMENTAL IMPACT. Radioactive waste site exploration may constitute a major action significantly affecting the quality of the human environment. No person may engage in radioactive waste site exploration unless the person complies with the requirements under s. 1.11. Notwithstanding s. 23.40, the state may charge actual and reasonable costs associated with field investigation, verification, monitoring, preapplication services and preparation of an environmental impact statement.

(7) IMPACT ON RADIOACTIVE WASTE REVIEW BOARD. Nothing in this section limits the power or authority of the radioactive waste review board to impose more stringent requirements for the negotiation and approval of agreements under s. 36.50.

(8) IMPACT ON OTHER REQUIREMENTS. In addition to the requirements under this section, a person engaged in radioactive waste site exploration shall comply with all other applicable statutory requirements, rules and municipal ordinances and regulations. If a conflict exists between this section and another statute, rule, ordinance or requirement, the stricter provision controls.

History: 1983 a. 27; 1989 a. 31; 1991 a. 25.

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 and s. 144.026 (5) (b) and (6) (f). 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, or if an environmental impact statement is required under s. 144.852, 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

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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; 1985 a. 60; 1991 a. 259.

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).

(g) Negotiating a local agreement under s. 144.839 (3).

(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). The investment and local impact fund board shall grant operating funds to any committee that submits a request and is eligible under this subsection and s. 70.395 (2) (fm). 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 for mining-related purposes or the purposes under s. 70.395 (2) (fm).

(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; 1987 a. 399; 1991 a. 259.

144.839 Local agreements. (1) A county, town, village, city or tribal government that requires an operator to obtain an approval or permit under a zoning or land use ordinance and a county, town, village or city in which any portion of a proposed mining site is located may, individually or in conjunction with other counties, towns, villages, cities, or tribal governments, enter into one or more agreements with an operator for the development of a mining operation.

(2) An agreement under sub. (1) shall include all of the following:

(a) A legal description of the land subject to the agreement and the names of its legal and equitable owners.

(b) The duration of the agreement.

(c) The uses permitted on the land.

(d) A description of any conditions, terms, restrictions or other requirements determined to be necessary by the county, town, village, city or tribal government for the public health, safety or welfare of its residents.

(e) A description of any obligation undertaken by the county, town, village, city or tribal government to enable the development to proceed.

(f) The applicability or nonapplicability of county, town, village, city or tribal ordinances, approvals or resolutions.

(g) A provision for the amendment of the agreement.

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(h) Other provisions deemed reasonable and necessary by the parties to the agreement.

(3) A county, town, village, city or tribal government may authorize the local impact committee appointed under s. 144.838 to negotiate an agreement under this section, but the agreement may not take effect until approved by the county, town, village, city or tribal government in accordance with sub. (4).

(4) The county, town, village, city or tribal government shall hold a public hearing on an agreement under sub. (1) before its adoption. Notice of the hearing shall be provided as a class 2 notice, under ch. 985. After the public hearing, the governing body of each county, town, village, city or tribal government which is to be a party to the agreement must approve the agreement in a public meeting of the governing body.

(5) A state agency shall assist a county, town, village, city or tribal government in enforcing those provisions of a local agreement that are within the expertise of the state agency.

History: 1987 a. 399; 1991 a. 259.

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

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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.

(c) No operator may engage a general contractor or affiliate to operate a mining site if the general contractor or affiliate has been convicted of more than one felony for violation of a law for the protection of the natural environment arising out of the operation of a mining site in the United States within 10 years before the issuance of the operator's permit, unless the general contractor or affiliate receives the department's approval of a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

(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) 1. The information specified in subd. 2 concerning the occurrence of any of the following within 10 years before the application is submitted:

a. A forfeiture by the applicant, principal shareholder of the applicant or a related person of a mining reclamation bond that was sufficient to cover all costs of reclamation and was posted in accordance with a permit or other approval for a mining operation in the United States, unless the forfeiture was by agreement with the entity for whose benefit the bond was posted.

b. A felony conviction of the applicant, a related person or an officer or director of the applicant for a violation of a law for the protection of the natural environment arising out of the operation of a mining site in the United States.

c. The bankruptcy or dissolution of the applicant or a related person that resulted in the failure to reclaim a mining site in the United States in violation of a state or federal law.

d. The permanent revocation of a mining permit or other mining approval issued to the applicant or a related person if the permit or other mining approval was revoked because of a failure to reclaim a mining site in the United States in violation of state or federal law.

2. The applicant shall specify the name and address of the person involved in and the date and location of each occurrence described in subd. 1.

(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.

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(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 result in a net positive 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) Within 90 days of the completion of the public hearing record, the department shall deny the mining permit if it finds any of the following:

1. That the site is unsuitable for surface mining, if the application is for a proposed surface mine.

2. That the applicant has violated and continues to fail to comply with ss. 144.80 to 144.94 or any rule adopted under those sections.

3. That the applicant, principal shareholder of the applicant or a related person has within 10 years before the application is submitted forfeited a mining reclamation bond that was posted in accordance with a permit or other approval for a mining operation in the United States, unless the forfeiture was by agreement with the entity for whose benefit the bond was posted and the amount of the bond was sufficient to cover all costs of reclamation.

4. That the applicant, a related person or an officer or director of the applicant has, within 10 years before the application is submitted, been convicted of more than one felony for violations of laws for the protection of the natural environment arising out of the operation of a mining site in the United States, unless one of the following applies:

a. The person convicted has been pardoned for all of the felonies.

b. The person convicted is a related person or an officer or director of the applicant with whom the applicant terminates its relationship.

c. The applicant included in its permit application under sub. (1) a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

5. That the applicant or a related person has, within 10 years before the application is submitted, declared bankruptcy or undergone dissolution that resulted in the failure to reclaim a mining site in the United States in violation of a state or federal law and that failure has not been remedied and is not being remedied.

6. That, within 10 years before the application is submitted, a mining permit or other mining approval issued to the applicant or a related person was permanently revoked because of a failure to reclaim a mining site in the United States in violation of state or federal law and that failure has not been and is not being remedied.

(bm) The department may not deny a mining permit under par. (b) 3 to 6 if the person subject to the convictions, forfeiture, permanent revocation, bankruptcy or dissolution is a related person but the applicant shows that the person was not the parent corporation of the applicant, a person that holds more than a 30% ownership in the applicant, or a subsidiary or affiliate of the applicant in which the applicant holds more than a 30% interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy or dissolution.

(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; 1991 a. 259, 260.

All staff work necessary to determine whether mining permit should be granted, including evaluation of other environmental requirements, must be included in fee under (2) (a). 76 Atty. Gen. 150

144.852 Environmental impact statement. (1) The department shall prepare an environmental impact statement for every mining permit under s. 144.85. In preparing the environmental impact statement, the department shall comply with sub. (2) and s. 1.11 (2).

(2) A statement prepared under sub. (1) shall include a description of the significant long-term and short-term impacts, including impacts after the mining has ended, on all of the following:

(a) Tourism.

(b) Employment.

(c) Schools and medical care facilities.

(d) Private and public social services.

(e) The tax base.

(f) The local economy.

(g) Other significant factors.

History: 1991 a. 259

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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. 30.01 (6d), 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

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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; Stats. 1981 s. 144.855; 1985 a. 60 s. 24; 1987 a. 374.

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 performance security because of noncompliance

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with any prospecting or mining laws 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; 1991 a. 260.

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

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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.

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(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

OIL AND GAS

144.941 Definitions; oil and gas. In ss. 144.941 to 144.944:

(1) "Exploration" means the on-site geologic examination from the surface of an area by core, rotary, percussion or other drilling for the purpose of searching for oil or gas or establishing the nature and extent of a known oil or gas deposit and includes associated activities such as clearing and preparing sites or constructing roads for drilling. For the purposes of the definition of exploration, geologic examination does not include drill holes constructed for the purpose of collecting soil samples or for determining geologic information by seismic methods.

(1g) "Gas" means naturally occurring gaseous hydrocarbons.

(1m) "Oil" means naturally occurring liquid hydrocarbons.

(1s) "Principal shareholder" means any person that owns at least 10% of the beneficial interest of another person.

(2) "Production" means the process involved in the extraction of oil or gas for commercial purposes, and the construction of roads, construction, testing and completion of wells and installation and operation of pipelines, tanks and other necessary equipment for that extraction.

(3) "Related person" means any person that owns or operates an oil or gas exploration or production site in the United States and that is one of the following when an application for an oil or gas exploration or production license is submitted to the department:

(a) The parent corporation of the applicant.

(b) A person that holds more than a 30% ownership interest in the applicant.

(c) A subsidiary or affiliate of the applicant in which the applicant holds more than a 30% ownership interest.

History: 1991 a. 262.

144.942 Oil and gas exploration and production. (1) No person may engage in the exploration for oil or gas without a license from the department.

(2) No person may engage in the production of oil or gas without a license from the department.

(3) No person may commit waste in the exploration for or in the production of oil or gas.

(4) No person may conduct drilling operations for the exploration for or production of oil or gas from beneath the beds of the Great Lakes or bays or harbors that are adjacent to the Great Lakes, unless all drilling operations originate from locations above and on the landward side of the ordinary high-water mark and are conducted according to the terms of a written lease obtained from the department under s. 30.20 (2) (b).

(5) No person holding an oil or gas exploration or production license may engage a general contractor or affiliate to operate an oil or gas exploration or production site if the general contractor or affiliate has 2 or more felony convictions for violation of a law for the protection of the natural environment arising out of the operation of an oil or gas exploration or production site in the United States within 10 years before the issuance of the person's license, unless the general contractor or affiliate receives the department's approval of a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

History: 1991 a. 262.

144.943 Departmental powers and duties; oil and gas. (1) The department shall establish a licensing procedure for oil and gas exploration and production in this state. The procedure shall require the applicant to do all of the following:

(a) Submit any information that the department considers necessary to determine whether the applicant is competent to conduct oil and gas exploration, production and site reclamation and to determine whether the requirements of sub. (5) are satisfied.

(b) Submit any information necessary for the department to determine whether the proposed exploration, production and site reclamation will comply with ss. 144.941 to 144.944 and rules promulgated under those sections.

(c) Pay fees to cover the costs of plan review and licensing.

(d) File with the department a bond conditioned on the faithful performance of all of the requirements of ss. 144.941 to 144.944 and rules promulgated under those sections.

(2) The department shall promulgate rules to protect the waters of the state, air, soil, plants, fish and wildlife from the adverse effects of oil and gas exploration and production, including rules relating to all of the following:

(a) Location, construction, operation and maintenance of wells and ancillary facilities to provide the greatest practicable protection to the environment.

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(b) Disposal of waste liquids encountered or produced in oil and gas exploration and production.

(c) Plugging of wells and abandonment and reclamation of well sites and mud pits and all other ancillary facilities to provide long-term environmental protection.

(d) Reclamation of affected land when exploration and production are completed.

(e) Competence of an applicant to conduct oil and gas exploration, production and site reclamation.

(3) The department shall promulgate rules to prevent waste in the exploration for or the production of oil and gas, including rules related to all of the following:

(a) Prevention of the escape of oil or gas from one stratum to another, and water or brine into oil and gas strata.

(b) Prevention of the premature or irregular encroachment of water that reduces the total recovery of oil and gas.

(c) Prevention of fires, explosions, blowouts, seepage or caving.

(d) Secondary recovery methods of oil or gas.

(e) Spacing of wells.

(f) Regulation of well production, including the allocation of allowable production in any field or pool.

(g) Operation of wells with efficient ratios of gas to oil.

(5) The department may not issue a license for oil or gas exploration or production if it finds any of the following:

(a) That the applicant has violated and continues to fail to comply with ss. 144.941 to 144.944 or any rule promulgated under those sections.

(b) That the applicant, a principal shareholder of the applicant or a related person has, within 10 years before the application is submitted, forfeited a reclamation bond for oil or gas exploration or production that was posted in accordance with a permit, license or other approval for an oil or gas exploration or production site in the United States, unless the forfeiture was by agreement with the entity for whose benefit the bond was posted and the amount of the bond was sufficient to cover all costs of reclamation.

(c) That the applicant, a related person or an officer or director of the applicant has, within 10 years before the application is submitted, 2 or more felony convictions for violations of laws for the protection of the natural environment arising out of the operation of an oil or gas exploration or production site in the United States, unless one of the following applies:

1. The court ordered the person convicted, as part of the sentence or as a condition of probation, to engage in activities to remedy the violation and the person has complied with that order.

2. The person convicted is a related person or an officer or director of the applicant with whom the applicant terminates its relationship.

3. The applicant included in its license application under sub. (1) a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

(cm) That the applicant, a related person or an officer or director of the applicant or a related person has, within 10 years before the application is submitted, been required to forfeit more than $10,000 for a violation of a law for the protection of the natural environment arising out of the operation of an oil and gas exploration or production site in the United States, unless one of the following applies:

1. The court ordered the person who was required to forfeit more than $10,000 to engage in activities to remedy the violation and the person has complied with that order.

2. The person who was required to forfeit more than $10,000 is a related person with whom the applicant has terminated its relationship.

3. The applicant included in the license application a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the forfeiture.

(d) That the applicant or a related person has, within 10 years before the application is submitted, declared bankruptcy or undergone dissolution that resulted in the failure to reclaim an oil or gas exploration or production site in the United States in violation of a state or federal law and that failure has not been remedied and is not being remedied.

(e) That, within 10 years before the application is submitted, a license or other approval for oil or gas exploration or production issued to the applicant or a related person was permanently revoked because of a failure to reclaim an oil or gas exploration or production site in the United States in violation of state or federal law and that failure has not been and is not being remedied.

(6) The department may not deny a license for oil or gas exploration or production under sub. (5) if the person subject to the convictions, forfeiture, permanent revocation, bankruptcy or dissolution is a related person but the applicant shows that the person was not the parent corporation of the applicant, a person that holds more than a 30% ownership in the applicant, or a subsidiary or affiliate of the applicant in which the applicant holds more than a 30% interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy or dissolution.

History: 1991 a. 262

144.944 Penalties; oil and gas. (1) Any person who makes or causes to be made in an application or report required under ss. 144.941 to 144.944 a statement known to the person to be false or misleading in any material respect or who refuses to submit information required by the department under ss. 144.941 to 144.944 may be fined not less than $1,000 nor more than $5,000.

(2) Any person who violates ss. 144.941 to 144.944 or any order issued or rule promulgated under ss. 144.941 to 144.944 may be required to forfeit not less than $1,000 nor more than $10,000 for each violation. Each day of violation is a separate offense.

(3) (a) If a person makes or causes to be made in an application or report required under ss. 144.941 to 144.944 a statement known to the person to be false or misleading and that statement is material to the issuance of an exploration or production license, the department may revoke the license. If a person holding an exploration or production license repeatedly makes or causes to be made in an application or report required under ss. 144.941 to 144.944 a statement known to the person to be false or misleading in any material respect or refuses to submit information required by the department under ss. 144.941 to 144.944, the department may revoke the license.

(b) If a person holding an exploration or production license continues to violate ss. 144.941 to 144.944 after the department has issued an order to cease those violations, the department shall revoke the license.

(4) Any oil or gas produced in violation of ss. 144.941 to 144.944 or any order issued or rule promulgated under ss. 144.941 to 144.944, or any product manufactured from that oil or gas, is subject to confiscation. The department may seize that oil, gas or products and request the department of justice to commence an action to confiscate the oil, gas or products.

History: 1991 a. 262

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SUBCHAPTER VII

GENERAL ENVIRONMENTAL PROVISIONS

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

(a) "Accuracy" means the closeness of a measured value to its generally accepted value or its value based upon an accepted reference standard.

(b) "Certified laboratory" means a laboratory which performs tests for hire in connection with a covered program and which receives certification under sub. (7) or receives recognition as a certified laboratory under sub. (5).

(c) "Council" means the certification standards review council created under s. 15.107 (12).

(d) "Covered program" means test results submitted in connection with any of the following:

1. A feasibility report, plan of operation or the condition of any license issued for a solid waste facility under s. 144.44 (2), (3) and (4), or hazardous waste facility under s. 144.64 (2) (am) and (b).

2. An application for a mining permit under s. 144.85 (3).

3. Monitoring required by terms and conditions of a permit issued under ch. 147.

4. The replacement of a well or provision of alternative water supplies under s. 144.027 or 144.265.

5. Groundwater monitoring under ch. 160.

6. The management or enforcement of the safe drinking water program under s. 144.025 (2) (t) or 162.03 (1) (b) and (d).

7. The terms of department contracts when specifically required in the contracts.

8. An investigation of a discharge of a hazardous substance under s. 144.76.

9. A regulatory program specified by the department by rule if, after consultation with the council, the department finds that existing quality control programs do not provide consistent and reliable results and the best available remedy is to require that all laboratories performing the tests for that regulatory program be certified or registered.

(e) "Laboratory" means a facility which performs tests in connection with a covered program.

(f) "Precision" means the closeness of repeated measurements of the same parameter within a sample.

(g) "Registered laboratory" means a laboratory which is registered under sub. (8) or receives recognition as a registered laboratory under sub. (5).

(h) "Results" includes measurements, determinations and information obtained or derived from tests.

(i) "Test" means any chemical, bacteriological, biological, physical, radiation or microscopic test, examination or analysis conducted by a laboratory on water, wastewater, waste material, soil or hazardous substance.

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

(2) COORDINATION WITH DEPARTMENT OF HEALTH AND SOCIAL SERVICES. (a) The department shall submit to the department of health and social services any rules proposed under this section which affect the laboratory certification program under s. 143.15 (5) and to the state laboratory of hygiene for review and comment. These rules may not take effect unless they are approved by the department of health and social services within 6 months after submission.

(b) The department shall enter into a memorandum of understanding with the department of health and social services setting forth the responsibilities of each department in administering the laboratory certification programs under s. 143.15 (5) and this section. The memorandum of understanding shall include measures to be taken by each department to avoid duplication of application and compliance procedures for laboratory certification.

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

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

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

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

(5) RECOGNITION OF OTHER CERTIFICATION OR REGISTRATION. (a) *Laboratories certified by the department of health and social services.* The department shall recognize the certification of a laboratory by the department of health and social services under s. 143.15 and shall accept the results of any test conducted by a laboratory certified to conduct that category of test under that section.

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

(c) *Private organization agreements.* The department may recognize the certification, accreditation or approval of a laboratory by a private nonprofit organization if the organization's standards for certification, accreditation or approval are substantially equivalent to those established under this section. The department may negotiate with and attempt to

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enter into acceptable agreements with private nonprofit organizations for the purpose of recognition under this paragraph. The department shall publish periodically a list of those organizations whose certifications, accreditations or approvals it accepts. The department may accept the results of any tests conducted by a laboratory that it recognizes under an agreement. Any laboratory that is certified, accredited or approved by an organization with which the department has an agreement may apply to the department to be recognized under this paragraph.

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

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

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

(b) *Methodology.* 1. Accepted methodology. The department shall prescribe by rule the accepted methodology to be followed in conducting tests in each test category. The department may prescribe by rule accepted sampling protocols and documentation procedures for a specified test category to be followed by the person collecting the samples. The department may prescribe this methodology by reference to standards established by technical societies and organizations as authorized under s. 227.21 (2). The department shall attempt to prescribe this methodology so that it is consistent with any methodology requirements under the resource conservation and recovery act, as defined under s. 144.43 (4g), the federal water pollution control act, as amended, 33 USC 1251 to 1376, the safe drinking water act, 42 USC 300f to 300j-10, or the toxic substance control act, 15 USC 2601 to 2629.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1983 a. 410; 1985 a. 22 s. 11; 1985 a. 29 s. 3202 (39); 1985 a. 84 s. 8; 1985 a. 182 s. 57; 1989 a. 31; 1991 a. 32, 39.

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

History: 1983 a. 410.

144.955 Hazardous pollution prevention. (1) DEFINITIONS. In this section:

(a) "Board" means the hazardous pollution prevention board created under s. 15.155 (5).

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

(c) "Hazardous pollution prevention" means changes in processes or raw materials that reduce or eliminate the use or production of hazardous substances, toxic pollutants and hazardous waste. "Hazardous pollution prevention" does not include incineration, changes in the manner of release of a hazardous substance, toxic pollutant or hazardous waste, recycling of a hazardous substance, toxic pollutant or hazardous waste outside of the process or treatment of hazardous substances, toxic pollutants or hazardous waste after the completion of the process.

(d) "Hazardous waste" has the meaning given in s. 144.43 (2).

(e) "Program" means the hazardous pollution prevention program established under s. 36.25 (30).

(f) "Release" means emission to the air, discharge to the waters of the state or disposal on the land.

(g) "Toxic pollutants" has the meaning given in s. 147.015 (17).

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

(a) Replacing a hazardous substance used in a process with a substance that is not hazardous or is less hazardous.

(b) Reformulating a product so that the product is not hazardous or is less hazardous upon use, release or disposal.

(c) Changing processes and equipment that produce hazardous substances, toxic pollutants or hazardous waste.

(d) Improving operation of production processes and equipment.

(e) Reusing or otherwise reducing the demand for hazardous substances within processes.

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

(a) Designate an employe of the department to serve as hazardous pollution prevention coordinator and to do all of the following:

1. Serve on the board.

2. Recommend educational priorities to the university of Wisconsin-extension for the program, considering volume and toxicity of hazardous substances, toxic pollutants and hazardous waste produced, lack of compliance with environmental standards, potential for hazardous pollution prevention and projected shortfalls in hazardous waste treatment or disposal facilities under the capacity assurance plan.

3. Coordinate the department's hazardous pollution prevention efforts with those of other governmental agencies and private groups.

4. Provide training concerning hazardous pollution prevention to employes of the department.

(b) Identify all department requirements for reporting on hazardous pollution prevention and, to the extent possible and practical, standardize, coordinate and consolidate the reporting in order to minimize duplication and provide useful information on hazardous pollution prevention to the board, the legislature and the public.

(c) Assist the university of Wisconsin-extension in conducting the education program under s. 36.25 (30).

(d) Seek federal funding to promote hazardous pollution prevention.

(e) Assist the board in preparing the report under sub. (3) (f).

(3) BOARD DUTIES. The board shall do all of the following:

(a) Coordinate and monitor hazardous pollution prevention activities in this state.

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(b) Advise the department and other state agencies about the promotion of hazardous pollution prevention.

(c) Act on applications for grants under s. 560.19.

(d) Recommend educational priorities to the university of Wisconsin-extension for the program, considering volume and toxicity of hazardous substances, toxic pollutants and hazardous waste produced, lack of compliance with environmental standards, potential for hazardous pollution prevention and projected shortfalls in hazardous waste treatment or disposal facilities under the capacity assurance plan.

(e) With the assistance of the department and the program, monitor and review the program under s. 36.25 (30) (a), the hazardous pollution prevention activities of the department, and this state's implementation of the hazardous pollution prevention goals in the capacity assurance plan.

(f) With the assistance of the department and the program, prepare and submit to the governor and to the chief clerk of each house of the legislature, for distribution under s. 13.172 (2), by December 30 of each year in which the capacity assurance plan is not revised, a report on all of the following:

1. The program under s. 36.25 (30) (a).

2. The implementation of the hazardous pollution prevention goals in the capacity assurance plan.

3. The hazardous pollution prevention activities of the department.

4. The hazardous pollution prevention audit grant program under s. 560.19.

5. Other hazardous pollution prevention activities in this state.

(g) Seek private funding to promote hazardous pollution prevention.

History: 1989 a. 325, 359; 1991 a. 32, 39.

NOTE: See 1989 Wis. Act 325, which creates this section, for a declaration of legislative findings and purpose.

SUBCHAPTER VIII

GENERAL PROVISIONS, ENFORCEMENT AND PENALTIES

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

(2) (a) The department by rule shall prescribe method of analysis and form of the reports required by this section and shall establish parameters for the pollutants on which reports are required by this section. The pollutants for which parameters are to be established shall include, but are not limited to:

1. Hazardous substances;

2. Air contaminants; and

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

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

(3) (a) There is established an annual air contaminant environmental fee to be paid by each person required to report under sub. (1). The fee shall be set by the department by rule based on the concentration or quantity or both of air contaminants discharged in relation to the parameters established under sub. (2) (a). A person may not be required to pay fees on emissions under this subsection for any year for which that person is required to pay fees on those same emissions under s. 144.399 (2) (a).

(am) 1. There is established an annual wastewater discharge environmental fee.

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

3. After June 30, 1992, the fee under this paragraph shall be paid by each person required to obtain a permit under ch. 147. After June 30, 1992, the fee to be paid by a person under this paragraph shall be an amount determined under a rule promulgated by the department and shall be based on all pollutants included in the permit under ch. 147, the environmental harm caused by the pollutants discharged, the quantity of the pollutants discharged and the quality of the water receiving the discharge.

(b) In establishing an annual discharge fee schedule under par. (am) 1, the department shall distinguish between substances discharged directly to surface waters and those discharged into land disposal systems or publicly owned treatment works based on their relative impacts on the quality of groundwaters and surface waters.

(c) 1. The annual fee under par. (a) shall be designed to generate revenues equal to 100% of the amount appropriated under s. 20.370 (2) (ma) for air management for the fiscal year in which the fee is collected.

2. The annual fee under par. (am) shall be designed to generate revenues equal to 100% of the amount appropriated under s. 20.370 (2) (ma) for water resources management and wastewater management and 50% of the amount appropriated under s. 20.370 (2) (ma) for technical services for the fiscal year in which the fee is collected.

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

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

(5) The department may hold hearings relating to any aspect of the administration of the system established under this section, including, but not limited to, the assessment of 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); Stats. 1979 s. 144.96; 1983 a. 27; 1985 a. 29; 1987 a. 27; 1991 a. 39, 269.

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

History: 1991 a. 39 s. 2553; Stats. 1991 s. 144.965.

144.97 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 admin-

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istration or enforcement of the powers and duties of the department.

History: 1979 c. 221 s. 621; Stats. 1979 s. 144.952; 1983 a. 410 s. 74; Stats. 1983 s. 144.97.

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 adequate but not to exceed $100 within 20 days after the service upon them of a copy of the order and all proceedings on the part of the complainants shall be stayed until the security is filed. The department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to the last-known post-office address at least 20 days prior to the time set for the hearing. The hearing shall be held not later than 90 days after the filing of the complaint. The respondent shall file a verified answer to the complaint with the department and serve a copy on the person designated by the complainants not later than 5 days prior to the date set for the hearing, unless the time for answering is extended by the department for cause shown. For purposes of any hearing under this section the hearing examiner may issue subpoenas and administer oaths. Within 90 days after the closing of the hearing, the department shall make and file its findings of fact, conclusions of law and order, which shall be subject to review under ch. 227. If the department determines that any complaint was filed maliciously or in bad faith it shall issue a finding to that effect and the person complained against is entitled to recover the expenses of the hearing in a civil action. Any situation, project or activity which upon continuance or implementation would cause, beyond reasonable doubt, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution. This section does not apply to any part of the process for approving a feasibility report, plan of operation or license under s. 144.44 or 144.64.

History: 1979 c. 176; 1979 c. 221 s. 633; Stats. 1979 s. 144.975; 1981 c. 374, 403.

144.976 Investigation of alleged water withdrawal violations. (1) Any 6 or more residents of this state may petition for an investigation of a withdrawal, as defined under s. 144.026 (1) (m), alleged to be in violation of s. 144.026 (3) (a), in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 144.026 (6) (a) or in violation of any rule promulgated under s. 144.026 (3) (a) or (4) to (6) by submitting 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 in this state authorized to receive service of answer and other papers on behalf of the petitioners and the name and address of a person authorized to appear at a hearing on behalf of the petitioners.

(2) Upon receipt of a petition, the department shall do one of the following:

(a) If the department determines that the allegations are true, order the alleged violator to take whatever action is necessary to achieve compliance with the statute, rule, condition, limitation or restriction.

(b) Conduct a contested case hearing on the allegations of the petition. Within 60 days after the hearing, the department shall either dismiss the petition or notify the alleged violator of its finding that the allegations are true and order the alleged violator to take whatever action is necessary to achieve compliance with the statute, rule, condition, limitation or restriction.

(d) If the department determines that the allegations are untrue or that the petition was filed maliciously or in bad faith, dismiss the petition without holding a hearing.

(3) Any person who maliciously or in bad faith files a petition under sub. (1) is liable for attorney fees and damages or other appropriate relief to the person that is the subject of the petition.

History: 1985 a. 60.

144.977 Remedies; water withdrawal violations. Any person who makes a withdrawal, as defined under s. 144.026 (1) (m), in violation of s. 144.026 (3) (a), in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 144.026 (6) (a) or in violation of any rule promulgated under s. 144.026 (3) (a) or (4) to (6) is liable to any person who is adversely affected by the withdrawal for damages or other appropriate relief. Any person who is or may be adversely affected by an existing or proposed withdrawal, as defined under s. 144.026 (1) (m), which is in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 144.026 (6) (a) or in violation of any rule promulgated under s. 144.026 (4) to (6) may bring an action in the circuit court to restrain or enjoin the withdrawal.

History: 1985 a. 60.

144.98 Enforcement; duty of department of justice; expenses. The attorney general shall enforce this chapter, except s. 144.422, and all rules, special orders, licenses, plan approvals and permits of the department, except those promulgated or issued under s. 144.422. 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; Stats. 1979 s. 144.98; 1981 c. 374; 1989 a. 284.

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, 144.48 (4) (b), 144.941 to 144.944 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 does not accrue.

History: 1979 c. 34 s. 987m; 1979 c. 221; Stats. 1979 s. 144.99; 1989 a. 336; 1991 a. 262, 300, 315.

144.992 Environmental assessments. (1) If a court imposes a fine or forfeiture for a violation of a provision of this chapter, ch. 147 or 162 or s. 146.13 (2) or 146.20 or a rule or order issued under this chapter, ch. 147 or 162 or s. 146.13 (2) or 146.20, the court shall impose an environmental assessment equal to 5% of the amount of the fine or forfeiture.

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

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

(4) The clerk of the court shall collect and transmit to the county treasurer the environmental assessment and other amounts required under s. 59.395 (5). The county treasurer shall then make payment to the state treasurer as provided in s. 59.20 (5) (b). The state treasurer shall deposit the amount of the assessment in the environmental fund.

History: 1991 a. 39

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

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

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

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

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

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

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

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

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

(8) EXCLUSION. This section does not apply to any action or other proceeding for injury or threatened injury to property or person caused by a publicly owned treatment work operated under a permit for the discharge of pollutants issued by the department under ch. 147.

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

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

History: 1985 a. 291; 1987 a. 403.