

**1991 Assembly Bill 976**

Date of enactment: **April 30, 1992**  
Date of publication\*: **May 13, 1992**

# **1991 WISCONSIN ACT 300**

**AN ACT to renumber and amend** 144.382; **to amend** 20.370 (2) (ch), 144.31 (3) (b) (intro.), 144.382 (title), 144.48 (2), 144.99, 159.07 (7) (c) 1. e., 159.07 (7) (c) 3 and 159.07 (8) (a) (intro.) and (c); and **to create** 144.31 (3) (bm) 4, 144.382 (1) (title), 144.382 (2), 144.393 (10), 144.407 and 144.48 (1) (a), (am) and (bm), (3) (am) and (d) and (5) of the statutes, **relating to:** transportation and disposal of medical waste, approval of medical waste incinerators, certification of incinerator operators, granting rule-making authority and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 20.370 (2) (ch) of the statutes is amended to read:

20.370 (2) (ch) *Air management — emission analysis.* All moneys received from fees collected under s. 144.382 (3)(e)(1)(c) 3. for the purpose of reviewing and preparing analyses of emissions from certain medical waste incinerators.

**SECTION 2.** 144.31 (3) (b) (intro.) of the statutes is amended to read:

144.31 (3) (b) (intro.) 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 have the capacity to burn more than 5 tons per day burn solid waste. The certification requirements shall take effect on July 1, 1990 January 1, 1993. The department shall do all of the following:

**SECTION 3.** 144.31 (3) (bm) 4 of the statutes is created to read:

144.31 (3) (bm) 4. A solid waste treatment facility of a type exempted from the program by the department by rule.

**SECTION 4.** 144.382 (title) of the statutes is amended to read:

**144.382 (title) Testing emissions from medical waste incinerators.**

**SECTION 5.** 144.382 of the statutes is renumbered 144.382 (1), and 144.382 (1) (a), (b) 1. (intro.) and c. and 2 and (c) 1. and 2., as renumbered, are amended to read:

144.382 (1) (a) *Applicability.* This section subsection 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 5 tons or more per day and is located in Burnett, Dunn, Kenosha, Milwaukee, Ozaukee, Pierce, Polk, Racine, St. Croix, Walworth, Washington or Waukesha county.

(b) 1. (intro.) A person operating or responsible for the operation of a medical waste incinerator described in sub. (1) 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:

c. Every 2 years following the testing under subd. 2 1. b.

2. A person operating or responsible for the operation of a medical waste incinerator described in sub. (1) par. (a) shall report the results of the testing under par. (a) subd. 1 to the department and the city, village or town in which the medical waste incinerator is located.

(c) 1. The department shall provide an analysis of the test results submitted under sub. (2) par. (b) 2, to the city, village or town in which the medical waste incinerator is located.

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2. The city, village or town in which the medical waste incinerator is located shall publish the analysis provided under par. (a) subd. 1 as a class 1 notice under ch. 985.

**SECTION 6.** 144.382 (1) (title) of the statutes is created to read:

**144.382 (1)** (title) TESTING FOR HAZARDOUS SUBSTANCES.

**SECTION 7.** 144.382 (2) of the statutes is created to read:

**144.382 (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.

**SECTION 8.** 144.393 (10) of the statutes is created to read:

**144.393 (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 the effective date of this paragraph .... [revisor inserts date], 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

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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).

**SECTION 9.** 144.407 of the statutes is created to read:

### **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 the effective date of this subsection .... [revisor inserts date], or has an air pollution control permit on the effective date of this subsection .... [revisor inserts date].

**(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.

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(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 the effective date of this paragraph .... [revisor inserts date], 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 the effective date of this paragraph .... [revisor inserts date], and that are used by the hospitals, nursing homes or clinics identified in the 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 the effective date of this subsection .... [revisor inserts date], 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.

**SECTION 10.** 144.48 (1) (a), (am) and (bm), (3) (am) and (d) and (5) of the statutes are created to read:

144.48 (1) (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.

(bm) "Nursing home" has the meaning given in s. 50.01 (3).

(3) (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).

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

(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.

**SECTION 11.** 144.48 (2) of the statutes, as created by 1991 Wisconsin Act 39, is amended to read:

144.48 (2) MEDICAL WASTE REDUCTION. Every 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.

**SECTION 12.** 144.99 of the statutes is amended to read:

**144.99 Penalties.** Any person who violates this chapter, except ss. 144.30 to 144.426, 144.48 (4) (b) 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.

**SECTION 13.** 159.07 (7) (c) 1. e. of the statutes is amended to read:

159.07 (7) (c) 1. e. "Treatment area" means a room or area in a hospital or clinic the primary use of which is to provide emergency care, diagnosis or radiological treatment ~~or to perform surgical procedures~~; an obstetrics delivery room in a hospital; a room for a patient in a hospital; a room for a resident in a nursing home, other than a patient's room; or a room or area in a hospital, clinic or nursing home, identified by the department by rule, in which infectious waste ~~may be~~ is generated.

**SECTION 14.** 159.07 (7) (c) 3. of the statutes is amended to read:

159.07 (7) (c) 3. A person may not burn medical waste at a medical waste incinerator 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 unless the person complies with s. 144.382 (1), if applicable, and obtains from each generator of the medical waste a copy of the policies under sub. (8) (a) and the annual assessment under sub. (8) (b).

**SECTION 15.** 159.07 (8) (a) (intro.) and (c) of the statutes are amended to read:

159.07 (8) (a) (intro.) A generator of medical waste that sends waste to a medical waste incinerator described in sub. (7) (e) 3. shall develop policies concerning reduction of medical waste, as defined in sub. (7) (c) 1. cg., including all of the following:

(c) The operator of the medical waste incinerator described in sub. (7) (e) 3. shall retain a copy of the source reduction policy and the annual assessment and provide it to the department upon request. The department may analyze and disseminate the information that it obtains under this paragraph.

**SECTION 16. Nonstatutory provisions.** (1) MEDICAL WASTE MANAGEMENT RULES. The department of natural resources shall submit the proposed rules required under section 144.48 (3) of the statutes, as affected by this act, to the legislative council staff for review under section 227.15 (1) of the statutes no later than September 1, 1992.

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(2) MEDICAL WASTE INCINERATOR APPROVAL RULES.

The department of natural resources shall submit the proposed rules required under section 144.393 (10) (e) of the statutes, as created by this act, to the legislative council staff for review under section 227.15 (1) of the statutes no later than December 1, 1992.

(3) MEDICAL WASTE INCINERATOR NEED AND SITING.

The department of natural resources shall administer section 144.393 (10) of the statutes, as created by this act, on a case-by-case basis during the period prior to the effective date of the rules promulgated under section 144.393

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(10) (e) of the statutes, as created by this act.

**SECTION 17. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of section 144.48 (2) of the statutes takes effect on the first day of the 13th month beginning after publication.

(2) The treatment of section 144.382 of the statutes and the creation of section 144.382 (1) (title) and (2) of the statutes take effect on the first day of the 9th month beginning after publication.