CHAPTER 281

WATER AND SEWAGE

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

SUBCHAPTER I

DEFINITIONS

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

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

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

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

(8) "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.

(9) "Person" means an individual, owner, operator, corporation, limited liability company, 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 (12), 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. 283, or source material, as defined in s. 254.31 (10), special nuclear material, as defined in s. 254.31 (11), or by−product material, as defined in s. 254.31 (3).

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

(17) "Wastewater" means all sewage.

(18) "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, 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 this state or its jurisdiction.

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

(20) "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: 1995 a. 227.

A dealer's refusal to sell the manufacturer's products after filing a complaint under sub. (2) (bd) 2. is a violation of that provision, and consequently of sub. (3) (a) 4., entitling the manufacturer to treble damages under sub. (9) (am). American Suzuki Motor Corp. v. Bill Kummer, Inc. 65 F (3d) 1381 (1995).

SUBCHAPTER II

WATER RESOURCES

281.11 Statement of policy and purpose. The department 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 subchapter 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 subchapter and all rules and orders promulgated under this subchapter shall be liberally construed in favor of the policy objectives set forth in this subchapter. In order to achieve the policy objectives of this subchapter, 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.

History: 1995 a. 227 s. 374.

The supreme court 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. Village of Sussex v. Dept. of Natural Resources, 68 W (2d) 187, 228 NW (2d) 173.

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.

281.12 General department powers and duties. (1) 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.

(3) The department, upon request, shall consult with and advise owners who have installed or are about to install systems or plants, as to the most appropriate water source 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 is not required to prepare plans.

(5) 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.

History: 1995 a. 227 ss. 376, 383, 385, 987; 1995 a. 378 s. 42.

The DNR's general supervision and control over the state's waters is not so sweeping as to authorize the DNR to ban all activities that might adversely affect water quality or to establish limitations for any one specific industry. Rusk County Citizen Action Group, Inc. v. DNR, 203 W (2d) 1, 552 NW (2d) 110 (Ct. App. 1996).

281.13 Surveys and research. (1) (a) 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 sources in this state, for the following purposes:

1. To determine the nature and condition of the unpolluted natural water sources.

2. To determine to what extent the natural water sources are being contaminated by sewage from cities, villages and towns.

3. To determine to what extent the natural water sources are being polluted by other wastes.

4. To assist in determining the best sources of water.

(b) 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 subsection into effect.

(3) 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.

History: 1995 a. 227 ss. 372, 382; 1995 a. 378 s. 40; 1997 a. 35.

281.15 Water quality standards. (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 systems, 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 section.

(3) Subsection (2) does not apply to rules promulgated under this section by the department for any substance before November 10, 1987.

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

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

History: 1995 a. 227 s. 377; 1995 a. 378 s. 41.

281.16 Water quality protection; nonpoint sources.

(1) DEFINITIONS. In this section:

(a) "Agricultural facility" means a structure associated with an agricultural practice.

(b) "Agricultural practice" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising.

(c) "Livestock operation" means a feedlot or other facility or a pasture where animals are fed, confined, maintained or stabled.

(d) "Navigable waters" has the meaning given in s. 281.31 (2) (d).

(e) "Nonpoint source" means a facility or practice that causes, or has the potential to cause, nonpoint source water pollution.

(f) "Nonpoint source water pollution" means pollution of waters of the state that does not result from a point source, as defined in s. 283.01 (12).

(g) "Water quality management area" means any of the following:

1. The area within 1,000 feet from the ordinary high−water mark of navigable waters that consist of a lake, pond or flowage, except that, for a navigable water that is a glacial pothole lake, "water quality management area" means the area within 1,000 feet from the high−water mark of the lake.

2. The area within 300 feet from the ordinary high−water mark of navigable waters that consist of a river or stream.

3. A site that is susceptible to groundwater contamination or that has the potential to be a direct conduit for contamination to reach groundwater.

(h) Notwithstanding s. 281.01 (18), " waters of the state" has the meaning given in s. 283.01 (20).

(2) NONPOINT SOURCES THAT ARE NOT AGRICULTURAL. (a) The department shall, by rule, prescribe performance standards for nonpoint sources that are not agricultural facilities or agricultural practices. The performance standards shall be designed to achieve water quality standards by limiting nonpoint source water pollution.

(b) The department shall, by rule, specify a process for the development and dissemination of technical standards to implement the performance standards under par. (a).

(3) NONPOINT SOURCES THAT ARE AGRICULTURAL. (a) The department of natural resources, in consultation with the department of agriculture, trade and consumer protection, shall promulgate rules prescribing performance standards and prohibitions for agricultural facilities and agricultural practices that are nonpoint sources. The performance standards and prohibitions shall be designed to achieve water quality standards by limiting nonpoint source water pollution. At a minimum, the prohibitions shall include all of the following:

1. That a livestock operation may have no overflow of manure storage structures.

2. That a livestock operation may have no unconfined manure pile in a water quality management area.

3. That a livestock operation may have no direct runoff from a feedlot or stored manure into the waters of the state.

4. That a livestock operation may not allow unlimited access by livestock to waters of the state in a location where high concentrations of animals prevent the maintenance of adequate sod cover.

(b) The department of agriculture, trade and consumer protection, in consultation with the department of natural resources, shall promulgate rules prescribing conservation practices to implement the performance standards and prohibitions under par. (a) and specifying a process for the development and dissemination of technical standards to implement the performance standards and prohibitions under par. (a).

(c) Using the process specified under par. (b), the department of agriculture, trade and consumer protection shall develop and disseminate technical standards to implement the performance standards and prohibitions under par. (a). The department of agriculture, trade and consumer protection shall disseminate alternative technical standards for situations in which more than one method exists to implement the performance standards and prohibitions.

(d) The conservation practices and technical standards under pars. (b) and (c) shall at a minimum cover animal waste management, nutrients applied to the soil and cropland sediment delivery.

(e) An owner or operator of an agricultural facility or practice that is in existence before October 14, 1997, may not be required by this state or a municipality to comply with the performance standards, prohibitions, conservation practices or technical standards under this subsection unless cost−sharing is available, under sub. (5) or s. 92.14 or 281.65 or from any other source, to the owner or operator. For the purposes of this paragraph, sub. (4) and ss. 92.07 (2), 92.105 (1), 92.15 (4) and 823.08 (3) (c) 2., the department of natural resources shall promulgate rules that specify criteria for determining whether cost−sharing is available under sub. (5) or s. 281.65 and the department of agriculture, trade and consumer protection shall promulgate rules that specify criteria for determining whether cost−sharing is available under s. 92.14 or from any other source. The rules may not allow a determination that cost−sharing is available to meet local regulations under s. 92.07 (2), 92.105 (1) or 92.15 that are consistent with or that exceed the performance standards, prohibitions, conservation practices or technical standards under this subsection unless the cost−sharing is at least 70% of the cost of compliance or is from 70% to 90% of the cost of compliance in cases of economic hardship, as defined in the rules.

(4) APPLICATION TO ANIMAL FEEDING OPERATIONS. If the department issues a notice of discharge under ch. 283 for an animal feeding operation, the performance standards, prohibitions, conservation practices and technical standards under sub. (3) apply to the animal feeding operation, except that if the animal feeding operation is in existence before October 14, 1997, the performance standards, prohibitions, conservation practices and technical standards only apply if the department determines that cost−sharing is available to the owner or operator of the animal feeding operation under sub. (5), s. 92.14 or 281.65 or from any other source.

(5) COST−SHARING FOR COMPLIANCE. From the appropriation under s. 20.866 (2) (te) or (tf), the department shall provide cost−sharing grants to persons to whom cost−sharing is not available

from other sources for projects to assist agricultural facilities to comply with the performance standards, prohibitions, conservation practices and technical standards under sub. (3). The department shall promulgate rules for the administration of the program under this subsection.

History: 1997 a. 27.

281.17 Water quality and quantity; specific regulations. (1) 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. 281.35 applies to the proposed construction, the application shall comply with s. 281.35 (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. 281.35 (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. 281.35, if applicable. The department shall require each person issued an approval under this subsection to report that person's volume and rate of withdrawal, as defined under s. 281.35 (1) (m), and that person's volume and rate of water loss, as defined under s. 281.35 (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 subsection.

(2) 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.

(3) The department shall promulgate rules establishing an examining program for the certification of operators of water systems, wastewater treatment plants and septage servicing vehicles operated under a license issued under s. 281.48 (3), setting such standards as the department finds necessary to accomplish the purposes of this chapter and chs. 285 and 289 to 299, including requirements for continuing education. The department may charge applicants a fee for certification. All moneys collected under this subsection for the certification of operators of water systems, wastewater treatment plants and septage servicing vehicles shall be credited to the appropriation under s. 20.370 (4) (bL). No person may operate a water systems, wastewater treatment plant or septage servicing vehicle without a valid certificate issued under this subsection. The department may suspend or revoke a certificate issued under this subsection for a violation of any statute or rule relating to the operation of a water system 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 subsection who shall be responsible for plant operations, unless the department by rule provides otherwise. In this subsection, "wastewater treatment plant" means a system or plant used to treat industrial wastewater, domestic wastewater or any combination of industrial wastewater and domestic wastewater.

(5) 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.

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

(7) 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.

(8) The department may establish, administer and maintain a safe drinking water program no less stringent than the requirements of the safe drinking water act, 42 USC 300f to 300j−26.

(9) The department may require owners of water systems to demonstrate the technical, managerial and financial capacity to comply with national primary drinking water regulations under 42 USC 300g−1 and may assist owners of water systems to develop that capacity.

History: 1995 a. 227 ss. 380, 384, 387, 389, 392, 418, 420; 1995 a. 378 s. 43; 1997 a. 27, 35.

Madison's power to forbid chemical treatment of Madison lakes was withdrawn by s. 144.025 (2) (i) [now 281.17 (2)]. Wis. Environmental Decade, Inc. v. DNR, 85 W (2d) 518, 271 NW (2d) 69 (1978).

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 s. 144.025 (2) (i) [now 281.17 (2)]. Applications for permits to chemically treat aquatic nuisances under s. 144.025 (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 s. 144.025 (1). 63 Atty. Gen. 260.

281.19 Orders. (1) 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.

(2) (a) The department may issue special orders directing particular owners to remedy violations of the safe drinking water program under s. 281.17 (8) and (9) or 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. After receiving the notice, the attorney general shall commence an action under s. 299.95.

NOTE: Par. (a) is shown as affected by two acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c).

(b) 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 par. (a).

(3) 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.

(4) The department may, under s. 254.59, order or cause the abatement of any nuisance affecting the waters of the state.

(5) 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. 281.41, and to construct such system within a specified time.

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

(7) In cases of noncompliance with any order issued under sub. (2) or (5) or s. 281.20 (1), 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 subsection including powers granted municipalities under ss. 66.076 and 66.20 to 66.26. It shall also be eligible for financial assistance under ss. 281.55, 281.57, 281.58 and 281.59.

(8) 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 or s. 281.20 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: 1995 a. 227 ss. 378, 379, 381, 386, 388, 390, 391, 397, 987; 1997 a. 27, 193; s. 13.93 (2) (c).

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 s. 144.025 (2) (c) [now s. 281.19 (1)]. Wis. Environmental Decade v. DNR, 82 W (2d) 97, 260 NW (2d) 674.

The department of natural resources has the authority to order a municipality to construct a public water supply, 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.

281.20 Orders; nonpoint source pollution. (1) Under the procedure specified in sub. (3), the department may do any of the following:

(a) Order or cause the abatement of pollution which the department, in consultation with the department of agriculture, trade and consumer protection if the source is agricultural, has determined to be significant and caused by a nonpoint source, as defined in s. 281.65 (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, except that under this paragraph the department may not order or cause the abatement of any pollution caused primarily by animal waste or of pollution from an agricultural source that is located in a priority watershed or priority lake area unless the source is designated as a critical site in a priority watershed or priority lake plan under s. 281.65 (5m) or a modification to such a plan under s. 281.65 (5s).

(b) If it provided notice under s. 281.65 (5w), order the owner or operator of a source that is designated as a critical site in a priority watershed or priority lake plan under s. 281.65 (5m) or in a modification to such a plan under s. 281.65 (5s) to implement best management practices, but not with respect to any pollution caused primarily by animal waste.

(3) (a) 1. If the department determines that it is authorized to issue an order under sub. (1) (a) to abate pollution caused by a nonpoint source, the department shall send a written notice of intent to issue the order to abate the pollution to the person whom the department determines to be responsible for the nonpoint source.

2. If the department determines under sub. (1) (b) that an owner or operator is required to implement best management practices in a priority watershed or priority lake area, the department shall send a written notice of intent to issue an order to implement the designated best management practices to the owner or operator.

3. The notice of intent to issue an order shall describe the department's findings and intent, and shall include a date by which that person is required to abate the pollution or implement the best management practices. 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 subsection, 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.

(b) If the nonpoint source that is the subject of a notice under par. (a) is agricultural, the department shall send the notice to the land conservation committee created under s. 92.06 of any county in which the source is located. If the notice is issued under par. (a) 2., the land conservation committee may disapprove issuance of an order within 60 days after the department issues the notice of intent to issue the order.

(c) If the nonpoint source which is the subject of a notice under par. (a) is agricultural, the department shall send the notice to the department of agriculture, trade and consumer protection. The department of agriculture, trade and consumer protection shall do all of the following:

1. 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 under sub. (1) (a) a listing of management practices which, if followed, would reduce pollution to an amount determined to be acceptable by the department, in consultation with either the department of agriculture, trade and consumer protection or the land conservation committee. 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. The department of agriculture, trade and consumer protection shall provide to each person receiving a notice an explanation of financial aids and technical assistance which may be available to the person for the abatement of pollution or the implementation of best management practices from the department of agriculture, trade and consumer protection under s. 92.14 and from other sources.

2. Issue a report to the department within one year after the date of the notice describing the actions taken by the person receiving the notice and a recommendation as to whether the department should issue an order to abate the pollution or implement the best management practices. Notwithstanding par. (a), the department may not issue an order 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.

(d) The department may issue a temporary emergency order prior to issuing a notice under par. (a) if all of the following apply:

1. The department determines that the pollution is causing or will cause severe water quality degradation.

2. The abatement action required by the order does not involve a capital expenditure.

3. If the nonpoint source is agricultural, the department provides a copy of the temporary emergency order 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.

4. As soon as practicable after issuing the temporary emergency order, the department issues a written notice of intent to issue an order under pars. (a) and (b) or rescinds the temporary emergency order.

(5) (a) Except as provided in par. (c), if the department issues a notice under sub. (3) (a) 2., the source is agricultural and no land conservation committee disapproves the proposed order under sub. (3) (b), the owner or operator of the critical site may obtain a review of the proposed order by filing a written request with the land and water conservation board within 60 days after the expiration of the time limit under sub. (3) (b). If the land conservation committee of any county in which a source is located disapproves of a proposed order under sub. (3) (b), the department may obtain a review of that disapproval by filing a written request with the land and water conservation board within 60 days after receiving the decision of the land conservation committee.

(b) The owner or operator of a critical site may request a contested case hearing under ch. 227 to review the decision of the land and water conservation board under par. (a) by filing a written request with the department within 60 days after receiving an adverse decision of the land and water conservation board.

(c) The owner or operator of a critical site who obtains review of the critical site determination under any or all of the review procedures in s. 281.65 (7) may not obtain review of a proposed order under this subsection.

History: 1995 a. 227 ss. 393, 394, 395.

281.22 Fees for water quality determinations for wetlands. (1) AMOUNT OF FEES. The department shall charge a fee for determining whether a project complies with the standards of water quality promulgated by rule under s. 281.15 that are applicable to wetlands. The fee for each project shall be $100.

(2) ADJUSTMENTS IN FEES. (a) The department shall refund the fee if the applicant requests a refund before the department determines that the application for the determination is complete. The department may not refund a fee after the department determines that the application is complete.

(b) If the applicant applies for a permit after the project is begun or after it is completed, the department shall charge an amount equal to twice the amount of the fee that it would have charged under this section.

(c) If more than one fee under this section or s. 30.28 (2) (a) or 31.39 (2) (a) is applicable to a project, the department shall charge only the highest fee of those that are applicable.

(d) The department, by rule, may increase the fee specified in sub. (1).

(2m) FEE FOR EXPEDITED SERVICE. (a) The department, by rule, may charge a supplemental fee for a determination under sub. (1) that is in addition to the fee charged under sub. (1) if all of the following apply:

1. The applicant requests in writing that the determination be issued within a time period that is shorter than the time limit promulgated under par. (b) for the determination.

2. The department verifies that it will be able to comply with the request.

(b) If the department promulgates a rule under par. (a), the rule shall contain for a time limit for making determinations under sub. (1).

(3) EXEMPTIONS. This section does not apply to any federal agency or state agency.

History: 1995 a. 27; 1995 a. 227 s. 398; Stats. 1995 s. 281.22; 1997 a. 27.

SUBCHAPTER III

WATER QUALITY AND QUANTITY; GENERAL REGULATIONS

281.31 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. 59.692, 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. 59.692 (1) (b).

(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. 59.692, a construction site erosion control and storm water management zoning ordinance authorized under s. 59.693, 60.627, 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 avail-

able from state, regional and federal agencies, the university of Wisconsin, local units of government and other sources.

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

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

1. Domestic uses shall be generally preferred.

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

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

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

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

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

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

(7) The department, the municipalities and all state agencies shall mutually 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. 59.692, 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; 1993 a. 246; 1995 a. 201; 1995 a. 227 s. 432; Stats. 1995 s. 281.31.

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.

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

(2) STATE STORM WATER MANAGEMENT PLAN. The department, in consultation with the department of commerce, shall promulgate by rule a state storm water management plan. This state plan is applicable to 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 of natural resources in which that agency agrees to regulate activities related to storm water management. The department shall coordinate the activities of agencies, as defined under s. 227.01 (1), in storm water management and make recommendations to these agencies concerning activities related to 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 at sites where the construction activities do not include the construction of a building and to 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 for storm water management established under this paragraph are applicable to the state plan under sub. (2). The department shall encourage a city, village, town or county to comply with minimum standards established under this paragraph for any construction site erosion control and storm water management zoning ordinance enacted under s. 59.693, 60.627, 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 at sites where the construction activities do not include the construction of a building shall provide for the regulation of any construction activity, at such a site, that:

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 zoning ordinance for construction site erosion control at sites where the construction activities do not include the construction of a building and for storm water management in the form of an administrative rule. 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 city, village, town or county that 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 ordinances under sub. (4), shall extend assistance to municipalities under this section, shall prepare the plan under sub. (2), 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; 1993 a. 16, 246; 1995 a. 27 ss. 4303cm, 9116 (5); 1995 a. 201; 1995 a. 227 s. 434; Stats. 1995 s. 281.33.

281.35 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. 281.17 (1) or 281.41.

(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), 196.98, 281.17 (1) or 281.41.

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. 281.01 (9) 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. 283.31 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. 281.17 (1) 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. 281.41 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, 281.17 (1) or 281.41 for a new approval or a modification of its existing approval if either of the following conditions applies:

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. 281.12 (1) and 283.83 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. 281.12 (1) and 283.83 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.

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.

(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; 1995 a. 227 s. 400; Stats., 1995 s. 281.35.

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

SUBCHAPTER IV

WATER AND SEWAGE FACILITIES; SEPTAGE DISPOSAL

281.41 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. 281.35 (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. 281.35 (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. 281.35 (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. 281.35 (1) (m), and that person's volume and rate of water loss, as defined under s. 281.35 (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; 1995 a. 227 s. 405; Stats., 1995 s. 281.41.

281.43 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) (a) 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. The clerk of the governmental unit receiving the service shall extend the amount shown in the statement as a charge on the tax roll, in the following manner:

1. If the service rendered is available to substantially all improved real estate in the member governmental unit receiving the service, the charges shall be placed upon the tax roll of the member governmental unit as a general tax.

2. If the service rendered is for the benefit of public highways in, or real estate owned or operated by, the member governmental unit receiving the service, the charges for the service shall be placed upon the tax roll of the member governmental unit as a general tax.

3. If the service rendered does not come under the provisions of subd. 1. or 2., the charges for the service shall be placed upon the tax roll of the 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 the tax roll under the provisions of this subdivision, the clerk of the member governmental unit furnishing the service shall itemize the statement showing separately the amount charged to each parcel of real estate benefited.

(b) If, due to delay in determination, a charge described in par. (a) cannot be extended on the tax roll of any particular year, it shall be extended as soon as possible.

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

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

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

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

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

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

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

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

(d) Such sewerage commission shall constitute a body corporate by the name of "(Insert name of governmental units or area) Sewerage Commission," by which in all proceedings it shall thereafter be known. It may purchase, take and hold real and personal property for its use and convey and dispose of the same. This grant of power shall be retroactive to September 13, 1935 for commissions formed prior to January 1, 1972. Except as provided in this subsection the sewerage commissioners shall have the power and proceed as a common council and board of public works in cities in carrying out the provisions of par. (c). All 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; 1995 a. 225; 1995 a. 227 s. 408; Stats. 1995 s. 281.43; 1997 a. 35.

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.

281.45 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; 1995 a. 227 s. 407; Stats. 1995 s. 281.45.

281.47 Sewage drains; sewage discharge into certain lakes. (1) (a) When any city, village, town or owner has constructed or constructs a sewage system complying with s. 281.41, the outflow or effluent from such system may be discharged into any stream or drain constructed pursuant to law, but no such outflow of untreated sewage or effluent from a primary or secondary treatment plant from a city, village, town, town sanitary district or metropolitan sewage district in a county having a population of 240,000 or more, according to the latest U.S. bureau of census figures available including any special census of municipalities within the county, any part of which is located within a drainage basin which drains into a lake of more than 2 square miles and less

than 16 square miles in area, shall be discharged directly into, or through any stream, or through any drain, into such a lake located within 18 miles of the system or plant of such city, village, town, town sanitary district or metropolitan sewage district. All necessary construction of plant, system or drains for full compliance with this subsection in the discharge of untreated sewage or sewage effluent from all existing primary or secondary plants shall be completed by September 1, 1970, and the plans for any new system or plant shall include provisions for compliance with this subsection. The department may at any time order and require any owner of an existing plant to prepare and file with it, within a prescribed time, preliminary or final plans or both, for proposed construction to comply with this subsection.

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

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

(d) Any person violating this subsection or any order issued in furtherance of compliance therewith shall forfeit to the state not less than $100 nor more than $500 for each violation, failure or refusal. Each day of continued violation is deemed a separate offense. No such penalty shall be invoked during the time that any petition for review of an order is pending under s. 281.19 (8) until final disposition thereof by the courts, if judicial review is sought under ch. 227.

(2) The city, village or town 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 6 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; 1993 a. 246; 1995 a. 227 s. 406; Stats. 1995 s. 281.47; 1997 a. 254.

281.48 Servicing septic tanks, soil absorption fields, holding tanks, grease traps and privies.

(2) DEFINITIONS. In this section:

(b) "Grease trap" means a watertight tank for the collection of grease present in sewage and other wastes, and from which grease may be skimmed from the surface of liquid waste for disposal.

(c) "Privy" means a cavity in the ground or a portable above−ground device constructed for toilet uses which receives human excrement either to be partially absorbed directly by the surrounding soil or stored for decomposition and periodic removal.

(d) "Septage" means the scum, liquid, sludge or other waste in a septic tank, soil absorption field, holding tank, grease trap or privy.

(e) "Septic tank" means and includes a septic toilet, chemical closet and any other watertight enclosure used for storage and decomposition of human excrement, domestic or industrial wastes.

(f) "Servicing" means removing septage from a septic tank, soil absorption field, holding tank, grease trap or privy and disposing of the septage.

(g) "Soil absorption field" means an area or cavity in the ground which receives the liquid discharge of a septic tank or similar wastewater treatment device.

(2m) POWERS OF THE DEPARTMENT. The department shall have general supervision and control of servicing septic tanks, soil absorption fields, holding tanks, grease traps and privies.

(3) LICENSE; CERTIFICATION. (a) *License; application.* Every person before engaging in servicing in this state shall submit an application for a license on forms prepared by the department. Except as provided in ss. 299.07 and 299.08, if the department, after investigation, is satisfied that the applicant has the qualifications, experience, understanding of proper servicing practices, as demonstrated by the successful completion of an examination given by the department, and equipment to perform the servicing in a manner not detrimental to public health it shall issue the license. The license fee shall accompany all applications.

(b) *Expiration date of license.* All licenses issued under this section for a period beginning before July 1, 1997, are for one year. All licenses issued under this section for a period beginning after June 30, 1997, are for 2 years. All licenses issued under this section expire on June 30. Application for renewal shall be filed on or before June 1 and if filed after that date a penalty shall be charged. The department shall promulgate a rule setting the amount of the penalty for late filing.

(c) *Wisconsin sanitary licensee.* Any person licensed under this section shall paint on the side of any vehicle that is used for servicing, the words "Wisconsin Sanitary Licensee" and immediately under these words "License No. ...." with the number of the license in the space so provided with letters and numbers at least 2 inches high; and all lettering and numbering shall be in distinct color contrast to its background.

(d) *License exception.* A farmer who disposes of septage on land is exempt from the licensing requirement under par. (a) if all of the following apply:

1. The farmer removes the septage from a septage system that is located on the same parcel of land on which the septage is disposed.

2. The farmer disposes of no more than 3,000 gallons of septage per week on the same parcel of land.

3. The farmer complies with all statutes and rules applicable to servicing.

4. The farmer has sufficient land that is suitable for septage disposal.

(e) *Operator certification.* No person, except for a farmer exempted from licensing under par. (d), may service a septage system or operate a septage servicing vehicle unless the person is certified as an operator of a septage servicing vehicle under s. 281.17 (3).

(4g) RULES ON SERVICING. The department shall promulgate rules relating to servicing septic tanks, soil absorption fields, holding tanks, grease traps and privies in order to protect the public health against unsanitary and unhealthful practices and conditions, and to protect the surface waters and groundwaters of the state from contamination by septage. The rules shall comply with ch. 160. The rules shall apply to all septage disposal, whether undertaken pursuant to a license or registration under sub. (3). The rules shall require each person with a license under sub. (3)

to maintain records of the location of sites serviced and the volume and location of septage disposed.

(4m) SITE LICENSES. (a) The department may require a soil test and a license for any location where septage is stored or disposed of on land, except that the department may not require a soil test and a license for septage disposal in a licensed solid waste disposal facility. In determining whether to require a license for a site, the department shall consider the septage disposal needs of different areas of the state.

(b) Notwithstanding par. (a), the department may not require a license for a location where septage is disposed of on land if:

1. The septage is removed from a septic tank, soil absorption field, holding tank, grease trap or privy which is located on the same parcel where the septage is disposed of;

2. No more than 3,000 gallons of septage per week are disposed of on the property; and

3. The person complies with all applicable statutes and rules in removing and disposing of the septage.

(c) If a location is exempt from licensing under par. (b), the department may require the person who services the septic tank, soil absorption field, holding tank, grease trap or privy to register the disposal site with the department and provide information to show that sufficient land area is available for disposal.

(4s) FEES. (a) The department shall collect the following fees:

1. For a license under sub. (3) (a) to a state resident, for each vehicle used for servicing, $25 if the license period begins before July 1, 1997, and $50 if the license period begins after June 30, 1997.

2. For a license under sub. (3) (a) to a nonresident, for each vehicle used for servicing, $50 if the license period begins before July 1, 1997, and $100 if the license period begins after June 30, 1997.

4. For a site licensed under sub. (4m) which is 20 acres or larger, $60.

(b) The department may establish by rule a fee for a site licensed under sub. (4m) which is less than 20 acres.

(d) In addition to the license fee under par. (a) 1. or 2., the department shall collect from each licensee a groundwater fee of $50 if the license period begins before July 1, 1997, and $100 if the license period begins after June 30, 1997. The moneys collected under this paragraph shall be credited to the environmental fund for environmental management.

(5) AUTHORITY TO SUSPEND OR REVOKE LICENSES. (a) The department may and upon written complaint shall make investigations and conduct hearings and may suspend or revoke any license if the department finds that the licensee has:

2. Made a material misstatement in the application for license or any application for a renewal thereof.

3. Demonstrated incompetency in conducting servicing.

4. Violated any provisions of this section or any rule prescribed by the department or falsified information on inspection forms under s. 145.245 (3).

(b) The department may not reissue a license for a period of one year after revocation under par. (a).

(c) The department may promulgate by rule a procedure for the temporary suspension of a license.

(5m) COUNTY REGULATION. (a) A county may submit to the department an application to regulate the disposal of septage on land. The county shall include in its application a complete description of the proposed county program, including a proposed ordinance and forms and information on plans for personnel, budget and equipment. The department shall investigate the capability of the county to implement a regulatory program under this subsection and shall approve or deny the application based on the county's capability. If the department approves the county application, the county may adopt and enforce a septage disposal ordinance.

(b) The county septage disposal ordinance shall apply uniformly to the entire area of the county. No city, village or town may adopt or enforce a septage disposal ordinance if the county has adopted such an ordinance. If a city, village or town adopts a septage disposal ordinance, the ordinance shall conform with requirements applicable to a county septage disposal ordinance under this section.

(c) The site criteria and disposal procedures in a county ordinance shall be identical to the corresponding portions of rules promulgated by the department under this section. The county shall require the person engaged in septage disposal to submit the results of a soil test conducted by a soil tester certified under s. 145.045 and to obtain an annual license for each location where the person disposes of septage on land, except that the county may not require a license for septage disposal in a licensed solid waste disposal facility. The county shall maintain records of soil tests, site licenses, county inspections and enforcement actions under this subsection. A county may not require licensing or registration for any person or vehicle engaged in septage disposal. The county may establish a schedule of fees for site licenses under this paragraph. The county may require a bond or other method of demonstrating the financial ability to comply with the septage disposal ordinance. The county shall provide for the enforcement of the septage disposal ordinance by penalties identical to those in s. 281.98.

(d) The department shall monitor and evaluate the performance of any county adopting a septage disposal ordinance. If a county fails to comply with the requirements of this subsection or fails adequately to enforce the septage disposal ordinance, the department shall conduct a public hearing in the county seat upon 30 days' notice to the county clerk. As soon as practicable after the hearing, the department shall issue a written decision regarding compliance with this subsection. If the department determines that there is a violation of this subsection, the department shall by order revoke the authority of the county to adopt and enforce a septage disposal ordinance. At any time after the department issues an order under this paragraph, a county may submit a new application under par. (a). The department may enforce this section and rules adopted under this section in any county which has adopted a septage disposal ordinance.

(5s) CITATIONS. (a) 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 subs. (2) to (5).

(b) Notwithstanding s. 23.66 (4), the department shall promulgate rules establishing the basic amount of the deposit that may be made under s. 23.66 (1) by a person to whom a citation is issued under par. (a). The rules shall specify a different amount for each offense under subs. (2) to (5).

History: 1979 c. 34; 1981 c. 1 s. 47; 1983 a. 189, 410, 538; 1989 a 31; 1991 a. 39; 1993 a. 344; 1995 a. 227 s. 841, 843; Stats. 1995 s. 281.48; 1997 a. 27, 191, 237.

281.49 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. 281.48 (2) (f), under a license issued under s. 281.48 (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.

(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. 281.48.

History: 1983 a. 410; 1989 a. 31, 359; 1995 a. 227 s. 409; Stats. 1995 s. 281.49.

SUBCHAPTER V

FINANCIAL ASSISTANCE

281.51 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; 1995 a. 227 s. 423; Stats. 1995 s. 281.51.

281.53 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. 281.17 (8), 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 system 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 system for which a grant is sought if the reasonable and necessary capital costs of achieving compliance with those standards are an amount equal to an amount that is greater than $150 times the population that is served by the contaminated water system.

(3) The department shall rank applicants for grants under this section on the basis of the severity of risk to human health 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; 1995 a. 227 s. 399; Stats. 1995 a. 281.53; 1995 a. 378 s. 44; 1997 a. 35.

281.55 Financial assistance program. (1) The legislature finds that state financial assistance for the construction and financing of pollution prevention and abatement facilities is a

public purpose and a proper state government function in that the state is trustee of the waters of the state and that such financial assistance is necessary to protect the purity of state waters.

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

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

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

(c) All municipalities and school districts are eligible for agreements under sub. (6) (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.

(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).

(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.

(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.

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; 1995 a. 227 s. 421; Stats. 1995 s. 281.55.

281.56 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. 281.55. Receipt of aid under this section makes the applicant ineligible for aid under s. 281.55.

(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; 1995 a. 227 s. 422; Stats. 1995 s. 281.56.

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

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

(3) DEFINITIONS. In this section:

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

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

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

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

(b) 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. 281.43 (1) notwithstanding the outcome of the annexation referendum under s. 281.43 (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).

(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. 20.143 (3) (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).

(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. 281.58 and 281.59. 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. 281.59 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.

(10m) LOAN FOR MODIFICATION OR REPLACEMENT OF AN INNOVATIVE OR ALTERNATIVE PROJECT. Notwithstanding subs. (2), (4) to (10) and (12), during the 1997−99 fiscal biennium, the department shall provide a loan of $1,300,000 to a municipality for all of the planning, design and construction costs incurred after June 30, 1995, for the modification or replacement of a failed innovative or alternative point source pollution abatement facility for which the department issued written approval of eligibility under 40 CFR 35.2032 before December 10, 1996, and which requires additional construction to eliminate discharge of effluent to groundwater and to establish a new surface water outfall. The department may not charge any interest on the loan and may not require the municipality to repay the loan until the municipality receives a grant from the federal environmental protection agency for the modification or replacement of the point source pollution abatement facility. If the federal environmental protection agency denies the grant, the department shall forgive the loan.

(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; 1995 a. 27; 1995 a. 227 s. 424; Stats. 1995 s. 281.57; 1997 a. 27.

281.58 Clean water fund program; financial assistance.

(1) DEFINITIONS. In this section:

(ae) "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.

(ai) "Clean water fund program" means the program administered under this section with financial management provided under s. 281.59.

(am) "Effluent limitation" has the meaning designated in s. 283.01 (6).

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

1. Those conditions or limitations of a permit under ch. 283 which, if violated, could result in the initiation of a civil or criminal action under s. 283.89.

2. Those provisions of s. 281.19 (5) which, if violated could result in a departmental order under s. 281.19 (7).

3. If a permit under ch. 283 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. 283 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. 281.57.

(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 the clean water fund program.

(cm) "Median household income" means median household income determined by the U.S. bureau of the census as adjusted by the department to reflect changes in household income since the most recent federal census.

(cs) "Residential user" means a structure or part of a structure, including a mobile home, that is used primarily as a home, residence or sleeping place by one person or 2 or more persons maintaining a common household and that uses a publicly owned treatment work. "Residential user" does not include an institutional, commercial, industrial or governmental facility.

(d) "Treatment work" has the meaning designated in s. 283.01 (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. 283 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 its responsibilities under this section.

(2m) GENERAL DUTIES. The department shall:

(a) Administer its responsibilities under the clean water fund program.

(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.

(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. 281.59 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. (a) 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.

(b) The department may enter into an agreement with the U.S. environmental protection agency to receive a grant for federal financial hardship assistance under P.L. 104−134, Title III. The agreement may contain any provision required by 40 CFR part 31 or other environmental protection agency regulations that apply to grant recipients.

(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 apply for financial assistance under the clean water fund program 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. (8e).

(6) METHODS OF PROVIDING FINANCIAL ASSISTANCE. (a) The department may determine whether a municipality is eligible for financial assistance under the clean water fund program 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) The following methods of providing financial assistance may be used under the clean water fund program:

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

5m. Providing federal financial hardship assistance grants under sub. (13) from the account under s. 25.43 (2) (ae).

6. Making loans under s. 281.59 (13) for the purposes of that subsection.

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

8. Providing payments to the board of commissioners of public lands to reduce principal or interest payments, or both, on loans made to municipalities under subch. II of ch. 24 by the board of commissioners of public lands for projects that are eligible for financial assistance under the clean water fund program.

(7) ELIGIBILITY. (a) The department shall, by rule, establish criteria for determining which applicants and which projects are eligible to receive financial assistance under the clean water fund program. The primary criteria for eligibility shall be water quality and public health. The rules for clean water fund 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 clean water fund 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 the clean water fund program 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. 283.

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. 283, 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. 283.

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 program:

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. 281.57, except for any of the following:

a. The nonlocal share of a project which receives funding under s. 281.59 (13).

b. The portion of a project funded under s. 281.59 (13) relating to a collection system, even if the costs relating to the collection system were not eligible under s. 281.57.

5. During fiscal years 1989−90 to 1994−95, a person or municipality in violation of an effluent limitation contained in a permit issued under ch. 283, unless that person or municipality is eligible under s. 281.59 (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 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 the clean water fund program 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 the clean water fund program for a project may not result in the municipality paying less than 30% of the cost of the project.

(h) Except as provided in par. (k), a municipality that is a violator of an effluent limitation at the time that the application for a treatment work project is approved under sub. (9m) may not receive financial assistance of a method specified under sub. (6) (b) 1., 2., 3., 4. or 5. for that part of the 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. 283 permit, and that is applying for financial assistance under s. 281.59 (13) to correct that violation.

(i) After June 30, 1991, no municipality may receive for projects in a biennium an amount that exceeds 35.2% of the amount approved by the legislature under s. 281.59 (3e) (b) for that biennium.

(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 the clean water fund program may not exceed $120,000,000, and no capital cost loan funds may be released under the clean water fund program 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.

(8e) PRIORITY. The department shall establish a priority list in accordance with 33 USC 1381 to 1387 which ranks each project. The ranking on the priority list shall be based on all of the following:

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

(b) The impact of the project on groundwater and surface water quality.

(c) The impact of the project on public health.

(cm) A factor that gives higher priority than would otherwise be given to a project to serve more than one municipality if all of the following apply:

1. Each municipality to be served by the project has a population of 2,500 or less.

2. At least one of the municipalities to be served by the project has a wastewater treatment system that is unusable because of failures of the system.

3. The municipalities to be served by the project are submitting an application for a new joint treatment work.

4. At least one of the municipalities to be served by the treatment work has been ordered to upgrade a current system.

NOTE: Par. (cm) is created eff. 7−1−01 by 1997 Wis. Act 27.

(d) Any other factor determined by the department.

(8m) NOTICE OF INTENT TO APPLY. (a) A municipality shall submit notice to the department of its intent to apply for financial assistance under this section and s. 281.59. A municipality shall submit the notice at least 6 months before the beginning of the fiscal year in which it will request to receive financial assistance. The notice shall be in a form prescribed by the department and the department of administration.

(c) The department may waive par. (a) upon the written request of a municipality.

(8s) FACILITY PLAN. A municipality seeking financial assistance for a project under this section, except for a municipality seeking a capital cost loan, shall complete a facility plan as required by the department by rule.

(9) APPLICATION. (a) After the department approves a municipality's facility plan submitted under sub. (8s), the municipality 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 and shall include design plans and specifications that are approvable by the department under this chapter. The department shall review applications for participation in the clean water fund program. The department shall determine which applications meet the eligibility requirements and criteria under subs. (6), (7), (8), (8m) and (13).

(ae) A municipality that submits an application under par. (a) without design plans and specifications may obtain an initial determination of financial eligibility from the department of administration. The department of natural resources may not approve a municipality's application until the municipality submits approvable design plans and specifications.

(am) A municipality may not submit more than one application under par. (a) for any single project in any 12−month period except that this paragraph does not apply to applications for financial assistance for additional costs of an approved project.

(b) A municipality seeking financial assistance, except for a municipality seeking a capital cost loan, for a project under the clean water fund program shall complete 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 the clean water fund program.

(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. 281.59 (13).

(e) If the governor's recommendation, as set forth in the executive budget bill, for the amount under s. 281.59 (3e) (b), the amount available under s. 20.866 (2) (tc) or the amount available under s. 281.59 (4) (f) for a biennium is 85% or less of the amount of present value subsidy, general obligation bonding authority or revenue bonding authority, respectively, requested for that biennium in the biennial finance plan submitted under s. 281.59 (3) (bm) 1., the department shall inform municipalities that, if the governor's recommendations are approved, clean water fund program assistance during a fiscal year of that biennium will only be available to municipalities that submit financial assistance applications by the June 30 preceding that fiscal year.

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

(9m) ACCEPTANCE OF APPLICATION; ALLOCATION OF FUNDING. (a) Subject to pars. (c) and (d), the department shall approve an application after all of the following occur:

1. The department determines that the project meets the eligibility requirements and criteria under subs. (7), (8), (8m) and (8s).

2. The department of administration initially determines that the municipality will meet the requirements of s. 281.59 (9) (b).

(c) The department may approve an application under par. (a) in a year only after the amount under s. 281.59 (3e) (b) for the biennium in which that year falls has been approved by the legislature under s. 281.59 (3e) (b).

(d) The department may not approve an application under par. (a) for a project that is not on the priority list under sub. (8e).

(e) 1. Except as provided under par. (f) and sub. (13), if a sufficient amount of subsidy is available under s. 281.59 (3e) (b) for the municipality's project, based on the calculation under s. 281.59 (3e) (f), when the department approves the application under par. (a), the department of administration shall allocate that amount to the project.

2. If a sufficient amount of subsidy is not available under s. 281.59 (3e) (b) for the municipality's project when the department approves the application under subd. 1., the department shall place the project on a list for allocation when additional subsidy becomes available.

(f) If the amount approved under s. 281.59 (3e) (b), the amount available under s. 20.866 (2) (tc) or the amount available under s. 281.59 (4) (f) for a biennium is 85% or less of the amount of present value subsidy, general obligation bonding authority or revenue bonding authority, respectively, requested for that biennium in the biennial finance plan submitted under s. 281.59 (3) (bm) 1., all of the following apply:

1. The department shall establish a funding list for each fiscal year of the biennium that ranks projects of municipalities that submit financial assistance applications under sub. (9) (a) no later than the June 30 preceding the fiscal year in the same order that they appear on the priority list under sub. (8e).

2. The department of administration shall allocate funding to projects in the order in which they appear on the funding list under subd. 1.

(fm) The department, in consultation with the department of administration, shall promulgate, by rule, methods to establish deadlines for actions that must be taken by a municipality to which subsidy has been allocated. The methods may provide for extending deadlines under specified circumstances. If a municipality fails to meet a deadline, including any extension, the department of administration shall release the amount of subsidy allocated to the municipality's project.

(g) In allocating subsidy under this subsection, the department of administration shall adhere to the amount approved by the legislature for each biennium under s. 281.59 (3e) (b).

(11) TYPE OF FINANCIAL ASSISTANCE. (a) Except as provided in par. (b), the department of administration shall specify the method by which financial assistance is to be provided for each approved application.

(b) For municipalities meeting the financial hardship assistance requirements under sub. (13), the department of natural resources may approve financial hardship assistance.

(12) LOAN INTEREST RATES. (a) 1. Except as modified under par. (f) and except as restricted by sub. (8) (b), (c), (f) or (h), the interest rate for projects specified in sub. (7) (b) 1. and 2. is 55% of market interest rate.

2. Except as modified under par. (f) and except as restricted by sub. (8) (b), (c), (f) or (h), the interest rate for projects specified in sub. (7) (b) 5. is 65% of market interest rate.

3. Except as modified under par. (f) and except as restricted by sub. (8) (b), (c), (f) or (h), the interest rate for projects specified in sub. (7) (b) 4. is 70% of market interest rate.

4. The interest rate for projects specified in sub. (7) (b) 6. and 7. and for those portions of projects under subd. 1. that are restricted by sub. (8) (b), (c), (f) or (h) is market interest rate.

5. The interest rate for a planning and design project specified in sub. (7) (b) 3. shall be determined under subd. 1., 2., 3. or 4. based on the type of project for which the planning and design are undertaken.

(c) The department and the department of administration shall attempt to ensure all of the following:

1. That increases in all state water pollution abatement general obligation debt service costs do not exceed 4% annually.

2. That state water pollution abatement general obligation debt service costs are not greater than 50% of all general obligation debt service costs in any fiscal year.

(f) The department and the department of administration jointly may request the joint committee on finance to take action under s. 13.101 (11) to modify the percentage of market interest rates established in par. (a) 1. to 3.

(13) FINANCIAL HARDSHIP ASSISTANCE. (b) A municipality with an application that is approved under sub. (9m) is eligible for state financial hardship assistance for the project costs that are eligible under the clean water fund program, except for costs to which sub. (8) (b), (c), (f) or (h) applies, if the municipality meets all of the following criteria:

1. The median household income in the municipality is 80% or less of the median household income in this state.

2. The estimated total annual charges per residential user in the municipality that relate to wastewater treatment would exceed 2% of the median household income in the municipality without assistance under this subsection.

(be) A municipality with an application that is approved under sub. (9m) is eligible for federal financial hardship assistance for the project costs that are eligible under the clean water fund program, except for costs to which sub. (8) (b), (c), (f) or (h) applies, if the municipality meets all of the following criteria:

1. The population of the municipality is 3,000 or less.

2. The municipality is a rural community, as determined by the department.

3. The municipality lacks centralized wastewater treatment or collection systems or needs improvements to onsite wastewater treatment systems and federal financial hardship assistance will improve public health or reduce an environmental risk.

4. The per capita annual income of residents to be served by the project does not exceed 80% of national per capita annual income, based on the most recent data available from the U.S. bureau of the census.

5. On the date that the municipality applies for assistance, the unemployment rate for the county in which the municipality is located exceeds by 1% or more the average yearly national unemployment rate most recently reported by the federal bureau of labor statistics.

(bs) If a municipality is eligible for state financial hardship assistance under par. (b) and for federal financial hardship assistance under par. (be), the department may determine whether to provide state financial hardship assistance, federal financial hardship assistance or both for the municipality's project.

(c) The department shall provide assistance so that estimated total annual charges per residential user in the municipality that relate to wastewater treatment do not exceed 2% of the median household income in the municipality, if possible. The department may not reduce the amount of financial hardship assistance for a municipality's project due to the municipality receiving assistance for the project from another source unless the combination of financial hardship assistance plus the assistance from the other source would reduce the estimated total annual charges per residential user in the municipality that relate to wastewater treatment to less than 2% of the median household income in the municipality.

(cm) The amount and type of assistance to be provided to a municipality that receives state financial hardship assistance shall be determined under rules promulgated by the department. Assistance to be provided to a municipality that receives federal financial hardship assistance shall be in the form of a grant for a portion of the project costs plus a loan at the interest rate under sub. (12) for the type of project being funded. The maximum amount of subsidy that a municipality receiving federal financial hardship assistance may receive is equal to the amount of subsidy that the municipality would have received if it had received state financial hardship assistance. If a municipality receives state financial hardship assistance and federal financial hardship assistance for a project, the total amount of the subsidy for the project may not exceed the amount of subsidy that the municipality would have received if it had received only state financial hardship assistance. Subsection (8) (g) does not apply to the amount of a federal financial hardship assistance grant that a municipality may receive.

(d) The department shall establish a financial hardship assistance funding list for each fiscal year that ranks projects of municipalities that are eligible under par. (b) or (be), and that submit complete financial assistance applications under sub. (9) (a) no later than June 30 of the preceding fiscal year, in the same order that they appear on the priority list under sub. (8e).

(e) Subject to par. (em), in each fiscal year, the department shall allocate financial hardship assistance under this subsection in the following order:

2. Assistance under par. (b) for projects that were on a funding list under par. (d) for a prior fiscal year, that have not previously received funding and that were in the top 20% of projects on the priority list under sub. (8e) for the prior fiscal year, starting with projects on the funding list for the earliest fiscal year.

3. Assistance under par. (b) for projects on the current fiscal year's funding list under par. (d) in the order that they appear on the funding list.

(em) 1. In a fiscal year, if all available state financial hardship assistance has been allocated under par. (e) and federal financial hardship assistance remains to be allocated, the department may allocate federal financial hardship assistance to projects that are eligible for federal financial hardship assistance under par. (be), but that are lower on the funding list than projects that are eligible only for state financial hardship assistance under par. (b), beginning with the next project on the funding list that is eligible for federal financial hardship assistance.

2. In a fiscal year, if all available federal financial hardship assistance has been allocated and state financial hardship assistance remains to be allocated, the department may allocate state financial hardship assistance to projects that are eligible for state financial hardship assistance under par. (b), but that are lower on the funding list than projects that are eligible only for federal financial hardship assistance under par. (be), beginning with the next project on the funding list that is eligible for state financial hardship assistance.

(f) The department shall promulgate, by rule, a formula for estimating operating, maintenance and replacement costs for determining estimated wastewater treatment user charges under this subsection.

(13m) MINORITY BUSINESS DEVELOPMENT AND TRAINING PROGRAM. (a) The department shall make grants to projects that are eligible for financial assistance under the clean water fund program 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 the clean water fund

program. Grants awarded under this subsection are not considered for the purposes of sub. (9m) (e) or s. 281.59 (3e) (b).

(14) CONDITIONS OF FINANCIAL ASSISTANCE. (b) As a condition of receiving financial assistance under the clean water fund program, a municipality shall do all of the following:

1. Establish a dedicated source of revenue, that is acceptable to the department of administration under s. 281.59 (9) (am) and (b), for the repayment of any financial assistance.

4. Comply with those provisions of 33 USC 1381 to 1387, this chapter and chs. 283, 285 and 289 to 299 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). The department may provide that the system of user charges for a project with estimated construction costs of $750,000 or less need only cover the costs of debt service and equipment replacement funds.

(15) FINANCIAL ASSISTANCE COMMITMENTS. (a) The department and the department of administration may, at the request of a municipality, issue a notice of financial assistance commitment to the municipality after all of the following occur:

1. The department approves the municipality's application under sub. (9m) (a) and the department of administration has allocated subsidy for the municipality's project.

2. The department approves plans and specifications under s. 281.41.

(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 repayment schedules and other terms of the financial assistance.

(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; 1993 a. 16; 1995 a. 27; 1995 a. 227 s. 425; Stats. 1995 s. 281.58; 1997 a. 27, 237.

281.59 Environmental improvement fund; financial management.

(1) DEFINITIONS. In this section:

(ag) "Clean water fund program" means the program administered under s. 281.58, with financial management provided under this section.

(am) "Effluent limitation" has the meaning given in s. 283.01 (6).

(as) "Land recycling loan program" means the program administered under s. 281.60, with financial management provided under this section.

(b) "Market interest rate" means the interest at the effective rate of a revenue obligation issued by the state to fund a loan or a portion of a loan for a project under the clean water fund program.

(c) "Municipality" means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district, metropolitan sewerage district or federally recognized American Indian tribe or band in this state.

(cm) "Safe drinking water loan program" means the program administered under s. 281.61, with financial management provided under this section.

(d) "Subsidy" means the amounts provided from the environmental improvement fund to clean water fund program, safe drinking water loan program and land recycling loan program projects for the following purposes:

1. To reduce the interest rate of clean water fund program, safe drinking water loan program and land recycling loan program loans from market rate to a subsidized rate.

2. For the clean water fund program only, to provide for financial hardship assistance, including grants.

(e) "Treatment work" has the meaning given in s. 283.01 (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. 283 for a reason that the department determines is or has been within the control of the person or municipality.

(1m) ESTABLISHMENT OF PROGRAMS. (a) There is established a clean water fund program, administered under s. 281.58, with financial management provided under this section.

(b) There is established a safe drinking water loan program, administered under s. 281.61, with financial management provided under this section.

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

(a) Administer its responsibilities under this section and ss. 281.58, 281.60 and 281.61.

(b) Cooperate with the department in administering the clean water fund program, the safe drinking water loan program and the land recycling loan 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 environmental improvement fund.

(2m) INVESTMENT MANAGEMENT; ENVIRONMENTAL IMPROVEMENT 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 environmental improvement fund, or in the collection of the principal and interest of all moneys loaned or invested from that 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 environmental improvement fund.

2. The action does not contradict or weaken the purposes of the environmental improvement fund.

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

(3) FINANCIAL MANAGEMENT; BIENNIAL FINANCE PLAN. (a) By October 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 the wastewater treatment, safe drinking water and land recycling project 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 for projects under subd. 1. during the next biennium.

4. The extent to which the funding for the clean water fund program and the safe drinking water loan program, in the environmental improvement fund, will be maintained in perpetuity.

4m. A chart showing detailed projected sources and uses of funds for projects under subd. 1. during the next biennium.

5. The most recent available audited financial statements of the past operations and activities of the clean water fund program, the safe drinking water loan program and the land recycling loan program, the estimated environmental improvement fund capital available in each of the next 4 fiscal years for the clean water fund program and the safe drinking water loan program, and the projected environmental improvement fund balance for the clean water fund program and the safe drinking water loan program for each of the next 20 years given existing obligations and financial conditions.

5m. The percentage of market interest rate for the projects under subd. 1.

6. An amount equal to the estimated present value of subsidies for all clean water fund program loans and grants expected to be made for the wastewater treatment projects listed in the biennial needs list under s. 281.58 (3m), except for federal financial hardship assistance grants under s. 281.58 (13), discounted at a rate of 7% per year to the first day of the biennium for which the biennial finance plan is prepared.

6e. An amount equal to the estimated present value of subsidies for all loans under the land recycling loan program to be made during the biennium for which the biennial finance plan is prepared, discounted at a rate of 7% per year to the first day of that biennium.

6m. An amount equal to the estimated present value of subsidies for all loans under the safe drinking water loan program to be made during the biennium for which the biennial finance plan is prepared, discounted at a rate of 7% per year to the first day of that biennium.

7. A discussion of the assumptions made in calculating the amounts under subds. 6., 6e. and 6m.

8. The amount and description of any fee expected to be charged during the next biennium under this section.

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

(b) The department of administration and the department shall consider as a guideline in preparing the portion of the biennial finance plan for the clean water fund program 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 October 1 of each even−numbered year, the version of the biennial finance plan initially prepared as part of the budget process.

2. No later than 30 days after the day on which the biennial budget is submitted to the legislature under s. 16.45, amendments to the biennial finance plan that update the plan to reflect material approved by the governor for inclusion in the budget.

3. No later than 30 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 amendments to 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.

(j) No later than November 1 of each odd−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 sub. (3e) (b) as required under s. 281.58 (9m) (e), and on the operations and activities of the clean water fund program, the safe drinking water loan program and the land recycling loan program for the previous biennium.

(3e) CLEAN WATER FUND PROGRAM EXPENDITURES. (a) No moneys may be expended for the clean water fund program in a biennium until the legislature reviews and approves all of the following as part of the biennial budget act for the biennium:

1. An amount of present value of the subsidy for the clean water fund program, except for federal financial hardship assistance grants under s. 281.58 (13), that is specified for that biennium under par. (b) and is based on the amount included in the biennial finance plan under sub. (3) (a) 6.

2. The amount of public debt, authorized under s. 20.866 (2) (tc), that the state may contract for the purposes of the clean water fund program.

3. The amount of revenue obligations, authorized under sub. (4) (f), that may be issued for the purposes of the clean water fund program.

(b) The amount of present value of the subsidy for the clean water fund program that is required to be specified under par. (a) 1. and approved by the legislature under this paragraph is as follows:

1. Equal to $90,200,000 during the 1997−99 biennium.

3. Equal to $1,000 for any biennium after the 1997−99 biennium.

(c) The department of administration may allocate amounts approved under par. (b) as the present value of subsidies for financial assistance under the clean water fund program, including financial hardship assistance and assistance for the additional costs of approved projects. The department of administration may allocate amounts from the amount approved under par. (b) for a biennium until December 30 of the fiscal year immediately following the biennium for projects for which complete applications under s. 281.58 (9) (a) are submitted before the end of the biennium.

(d) The department may expend, for financial assistance in a biennium other than financial hardship assistance under s. 281.58 (13) (e), an amount up to 85% of the amount approved by the legislature under par. (b). The department may expend such amount only from the percentage of the amount approved under par. (b) that is not available under par. (e) for financial hardship assistance.

(e) The department may expend, for financial hardship assistance, other than federal financial hardship assistance grants under s. 281.58 (13) (be), in a biennium under s. 281.58 (13) (e), an amount up to 15% of the amount approved by the legislature under par. (b) for that biennium. The department may expend such amount only from the percentage of the amount approved by the

legislature under par. (b) that is not available under par. (d) for financial assistance.

(f) Using the amount approved under par. (b) as a base, the department of administration shall calculate the present value of the actual subsidy of each clean water fund program 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 sub. (3) (a) 6.

(3m) LAND RECYCLING LOAN PROGRAM EXPENDITURES. (a) No moneys may be expended for the land recycling loan program in a biennium until the legislature reviews and approves, as part of the biennial budget act for the biennium, an amount of present value of the subsidy for the land recycling loan program that is specified for that biennium under par. (b) and is based on the amount included in the biennial finance plan under sub. (3) (a) 6e.

(b) The amount of present value of the subsidy for the land recycling loan program that is approved by the legislature under this paragraph is as follows:

1. Equal to $4,500,000 during the 1997−99 biennium.

2. Equal to $1,000 for any biennium after the 1997−99 biennium.

(c) The department of administration may allocate amounts approved under par. (b) as the present value of subsidies for financial assistance under the land recycling program.

(d) Using the amount approved under par. (b) as a base, the department of administration shall calculate the present value of the actual subsidy of each land recycling loan made for those projects in each biennium that are approved for financial assistance. The present value shall be discounted as provided under sub. (3) (a) 6e.

(3s) SAFE DRINKING WATER LOAN PROGRAM EXPENDITURES. (a) No moneys may be expended for the safe drinking water loan program in a biennium until the legislature reviews and approves all of the following as part of the biennial budget act for the biennium:

1. An amount of present value of the subsidy for the safe drinking water loan program that is specified for that biennium under par. (b) and is based on the amount included in the biennial finance plan under sub. (3) (a) 6m.

2. The amount of public debt, authorized under s. 20.866 (2) (td), that the state may contract for the purposes of the safe drinking water loan program.

(b) The amount of present value of the subsidy for the safe drinking water loan program that is approved by the legislature under this paragraph is as follows:

1. Equal to $21,000,000 during the 1997−99 biennium.

2. Equal to $1,000 for any biennium after the 1997−99 biennium.

(c) The department of administration may allocate amounts approved under par. (b) as the present value of subsidies for financial assistance under the safe drinking water program.

(d) Using the amount approved under par. (b) as a base, the department of administration shall calculate the present value of the actual subsidy of each safe drinking water loan made for those projects in each biennium that are approved for financial assistance. The present value shall be discounted as provided under sub. (3) (a) 6m.

(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 environmental improvement fund for the purposes of the clean water fund program 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 environmental improvement fund to secure revenue obligations issued under this subsection. The pledge shall provide for the transfer to the environmental improvement 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 of the clean water fund program. The pledge shall provide that the transfers be made at least twice yearly, that the transferred amounts be deposited in the environmental improvement 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 the clean water fund program, the safe drinking water loan program or the land recycling loan program shall be for no longer than 20 years, as determined by the department of administration, 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 project that it funds, as determined by the department of administration.

(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. 281.58, 281.60 or 281.61. In setting the terms and conditions, the department of administration may consider factors that the department of administration finds are relevant, including the type of obligation evidencing the loan, the pledge of security for the obligation and the applicant's creditworthiness.

(b) As a condition of receiving financial assistance under the clean water fund program, the safe drinking water loan program

or the land recycling loan program, an applicant 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. 281.58, 281.60 or 281.61.

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 of natural resources and the department of administration may enter into a financial assistance agreement with an applicant for which the department of administration has allocated subsidy under s. 281.58 (9m), 281.60 (8) or 281.61 (8) if the applicant meets the conditions under sub. (9) and the other requirements under this section and s. 281.58, 281.60 or 281.61.

(am) The department of administration shall make the financial assistance payments to an applicant that has entered into a financial assistance agreement under par. (a) or to the applicant's designated agent.

(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. 281.58, 281.60 or 281.61. 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 retain the last payment under a financial assistance agreement until the department of natural resources and the department of administration determine that the project is completed and meets the applicable requirements of this section and s. 281.58, 281.60 or 281.61 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. 281.58 (6) (b) 1. or 2. and guarantee or purchase insurance for municipal obligations specified in s. 281.58 (6) (b) 3. if the department of administration and the department of natural resources approve the financial assistance under this section and s. 281.58.

(13) LOANS FOR TRANSITION PROJECTS. (a) 1. Notwithstanding any other provision of this section and s. 281.58, a municipality that submits to the department by January 2, 1989, a facility plan meeting the requirements of s. 281.57 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. 283 or because there are insufficient grant funds under s. 281.57, 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. 281.58 (8) (b), (f) and (k) applies to projects receiving financial assistance under this paragraph.

2. Notwithstanding any other provision of this section or s. 281.58, 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. 281.58, 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. 281.57 because of s. 281.57 (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. 281.57 (5) for a construction project during 1988.

b. Before January 1, 1989, the department issues a notice under s. 281.57 (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. 281.57 for the construction of the project from the list developed by the department under s. 281.57 (6) (a) for applications received in 1988.

1m. Notwithstanding any other provision of this section or s. 281.58, 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. 281.57 (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 281.58 (8) (b), (f) and (k) applies to projects receiving financial assistance under this paragraph.

3. Notwithstanding any provision of this section or s. 281.58, 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. 281.58.

(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 the clean water fund program 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 obligations 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.

(13s) POWERS. The department of administration may audit, or contract for audits of, projects receiving financial assistance under the clean water fund program, the safe drinking water loan program and the land recycling loan program.

(14) RULES. The department of administration shall promulgate rules that are necessary for the proper execution of this section and of its responsibilities under ss. 281.58, 281.60 and 281.61.

(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; 1993 a. 16; 1995 a. 27; 1995 a. 227 s. 426; Stats. 1995 s. 281.59; 1995 a. 452; 1997 a. 27, 237.

281.60 Land recycling loan program. (1) DEFINITIONS. In this section:

(a) "Eligible applicant" means political subdivision.

(am) "Landfill" has the meaning given in s. 289.01 (20).

(b) "Land recycling loan program" means the program administered under this section with financial management provided under s. 281.59.

(c) "Market interest rate" means the interest at the effective rate of a revenue obligation issued by this state to fund a loan or portion of a loan for a clean water fund program project under s. 281.58.

(d) "Political subdivision" means a city, village, town or county.

(e) "Site or facility" has the meaning given in s. 292.35 (1) (f).

(2) GENERAL. The department and the department of administration may administer a program to provide financial assistance to eligible applicants for projects to remedy environmental contamination of sites or facilities at which environmental contamination has affected groundwater or surface water or threatens to affect groundwater or surface water. The department and the department of administration may provide financial assistance under this section to an eligible applicant only if the eligible applicant owns the contaminated site or facility. The department and the department of administration may not provide financial assistance under this section to remedy environmental contamination at a site or facility that is not a landfill if the eligible applicant caused the environmental contamination.

(2r) METHODS OF PROVIDING FINANCIAL ASSISTANCE. The following methods of providing financial assistance may be used under the land recycling loan program:

(a) Making loans below the market interest rate for projects described in sub. (2).

(b) Purchasing or refinancing the obligation of an eligible applicant if the obligation was incurred to finance the cost of a project described in sub. (2) and the obligation was initially incurred after May 17, 1988.

(c) Guaranteeing, or purchasing insurance for, obligations incurred to finance the cost of projects described in sub. (2) if the guarantee or insurance will provide credit market access or reduce interest rates.

(d) Providing payments to the board of commissioners of public lands to reduce principal or interest payments, or both, on loans made to political subdivisions under subch. II of ch. 24 by the board of commissioners of public lands for projects that are eligible for financial assistance under the land recycling loan program.

(3) NOTICE OF INTENT TO APPLY. (a) An eligible applicant shall submit notice of its intent to apply for financial assistance under the land recycling loan program. An eligible applicant shall submit the notice at least 6 months before the beginning of the fiscal year in which it will request to receive funding. The notice shall be in a form prescribed by the department and the department of administration.

(b) The department may waive par. (a) upon the written request of an eligible applicant.

(5) APPLICATION. After submitting a notice of intent to apply under sub. (3) (a) or obtaining a waiver under sub. (3) (b), an eligible applicant shall submit an application for land recycling loan program financial assistance to the department. The eligible applicant shall submit the application before the date established by the department by rule. The application shall be in the form and include the information required by the department and the department of administration. An eligible applicant may not submit more than one application per project per year.

(6) PRIORITY LIST. The department shall establish a priority list that ranks each land recycling loan program project. The department shall promulgate rules for determining project rankings based on the potential of projects to reduce environmental pollution and threats to human health and, for sites and facilities that are not landfills, the extent to which projects will prevent the development of undeveloped land by making land available for redevelopment after a cleanup is conducted. Before the department establishes the priority list, the department shall consider the recommendations of the department of administration and the department of commerce.

(7) APPROVAL OF APPLICATION. The department shall approve an application received under sub. (5) after all of the following occur:

(a) The project is ranked on the priority list under sub. (6).

(b) The department determines that the project meets the eligibility requirements under this section.

(c) The department of administration determines that the eligible applicant will meet the requirements of s. 281.59 (9) (b).

(d) The legislature has approved an amount under s. 281.59 (3m) (b) for the biennium.

(8) FUNDING LIST; ALLOCATION OF FUNDING. (a) The department shall establish a funding list for each fiscal year that ranks projects of eligible applicants that submit approvable applications under sub. (5) in the same order that they appear on the priority list under sub. (6). If sufficient funds are not available to fund all approved applications for financial assistance, the department of administration shall allocate funding to projects that are approved under sub. (7) in the order that they appear on the funding list, except as follows:

1. The department of administration may not allocate more than 40% of the available funds in each fiscal year to projects to remedy contamination at landfills.

2. In any biennium, no eligible applicant may receive more than 25% of the amount established under s. 281.59 (3m) (b) for that biennium.

(b) In allocating subsidy under this subsection, the department of administration shall adhere to the amount approved by the legislature for each biennium under s. 281.58 (3m) (b).

(8m) CONDITIONS OF FINANCIAL ASSISTANCE. As a condition of receiving financial assistance under the land recycling loan program, an eligible applicant shall do all of the following:

(a) Establish a dedicated source of revenue for the repayment of the financial assistance.

(b) Comply with those provisions of 33 USC 1381 to 1387, this chapter, and the rules and regulations promulgated under those provisions, that the department specifies.

(c) Allow access to the project by representatives of the department for the purpose of making inspections.

(9) FINANCIAL ASSISTANCE COMMITMENTS. The department and the department of administration may, at the request of an eligible applicant, issue a notice of financial assistance commitment after the eligible applicant's application for land recycling loan program financial assistance has been approved and funding has been allocated under sub. (8) for the eligible applicant's project. The notice of financial assistance commitment shall specify the conditions that the eligible applicant must meet to secure financial assistance and shall include the estimated repayment schedules and other terms of financial assistance.

(10) DEADLINE FOR CLOSING. If funding is allocated to a project under sub. (8) for a loan and the loan is not closed within 12 months after the date on which funding is allocated, the department of administration shall release the funding allocated to the project.

(11) LOAN INTEREST RATES. The interest rate on a land recycling loan program loan shall be 55% of market interest rate.

(11m) SERVICE FEE. The department and the department of administration shall jointly charge and collect an annual service

fee for reviewing and acting upon land recycling loan program applications and servicing financial assistance agreements. The fee shall be in addition to interest payments at the rate under sub. (11). For the 1997−99 fiscal biennium, the service fee shall be 0.5% of the loan balance. Fee amounts for later biennia shall be established in the biennial finance plan under s. 281.59 (3) (a) 8. The department and the department of administration shall specify in the biennial finance plan a fee designed to cover the costs of reviewing and acting upon land recycling loan program applications and servicing financial assistance agreements.

(12) SALE OF SITE OR FACILITY. (a) An eligible applicant may not sell a site or facility, or portion of a site or facility, for which the eligible applicant has received a loan under this section, while the loan is outstanding, for less than fair market value.

(b) If an eligible applicant sells a site or facility, or portion of a site or facility, for which the eligible applicant has received a loan under this section, the eligible applicant shall do the following:

1. If the sale proceeds are less than or equal to the remaining loan balance, pay the sale proceeds to the department of administration to repay all or a portion of the loan.

2. If the sale proceeds are greater than the remaining loan balance but less than or equal to the cost of the land plus the cost of the cleanup, pay an amount equal to the remaining loan balance to the department of administration and retain the remainder of the sale proceeds.

3. If the sale proceeds are greater than the cost of the land plus the cost of the cleanup, pay to the department of administration an amount equal to the remaining loan balance plus the lesser of 75% of the amount by which the sale proceeds exceed the cost of the land plus the cost of the cleanup or the amount of subsidy incurred for the project and retain the remainder of the sale proceeds.

(13) DUTIES OF THE DEPARTMENT. The department shall do all of the following:

(a) Seek approval of the federal environmental protection agency for the use of funds under 33 USC 1381 to 1387 for the land recycling loan program.

(b) Promulgate rules establishing eligibility criteria for applicants and projects under this section.

(c) Promulgate rules that are necessary for the execution of its responsibilities under the land recycling loan program.

(d) Cooperate with the department of administration in administering the land recycling loan program.

(e) Submit a biennial budget request under s. 16.42 for the land recycling loan program.

(f) Have the lead role with the federal environmental protection agency concerning the land recycling loan program.

(g) Have the lead role with eligible applicants in providing land recycling loan program information, and cooperate with the department of administration in providing that information to eligible applicants.

(h) Periodically inspect land recycling loan program projects to determine project compliance with the requirements of this section.

(i) By May 1 of each even−numbered year, prepare and submit to the department of administration a biennial needs list that includes all of the following information:

1. A list of land recycling loan program projects that the department estimates will apply for financial assistance under the land recycling loan program during the next biennium.

2. The estimated cost and estimated construction schedule of each project on the list under subd. 1., and the total of the estimated costs of all projects on the list under subd. 1.

3. The estimated rank of each project on the priority list under sub. (6).

History: 1997 a. 27, 237.

281.61 Safe drinking water loan program.

(1) DEFINITIONS. In this section:

(a) "Local governmental unit" means a city, village, town, county, town sanitary district, public inland lake protection and rehabilitation district or municipal water district.

(b) "Market interest rate" means the interest at the effective rate of a revenue obligation issued by this state to fund a loan or portion of a loan for a clean water fund program project under s. 281.58.

(c) "Public water system" means a water system providing piped water to the public for human consumption if the water system has at least 15 service connections or regularly serves an average of at least 25 individuals daily for at least 60 days each year.

(d) "Safe drinking water loan program" means the program administered under this section, with financial management provided under s. 281.59.

(2) GENERAL. The department and the department of administration shall administer a program to provide financial assistance to local governmental units for projects for the planning, designing, construction or modification of public water systems, if the projects will facilitate compliance with national primary drinking water regulations under 42 USC 300g−1 or otherwise significantly further the health protection objectives of the Safe Drinking Water Act, 42 USC 300f to 300j−26.

(2g) INELIGIBLE PROJECTS. A local governmental unit is not eligible for financial assistance under this section if the local governmental unit does not have the technical, managerial or financial capacity to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to 300j−26, or the public water system operated by the local governmental unit is in significant noncompliance with any requirement of a primary drinking water regulation or variance under 42 USC 300g−1 unless the financial assistance will ensure compliance with the Safe Drinking Water Act.

(2r) METHODS OF PROVIDING FINANCIAL ASSISTANCE. The following methods of providing financial assistance may be used under the safe drinking water loan program:

(a) Making loans below the market interest rate for projects described in sub. (2).

(b) Purchasing or refinancing the obligation of a local governmental unit if the obligation was incurred to finance the cost of a project described in sub. (2) and the obligation was initially incurred after July 1, 1993.

(c) Guaranteeing, or purchasing insurance for, obligations incurred to finance the cost of projects described in sub. (2) if the guarantee or insurance will provide credit market access or reduce interest rates.

(d) Providing payments to the board of commissioners of public lands to reduce principal or interest payments, or both, on loans made to local governmental units under subch. II of ch. 24 by the board of commissioners of public lands for projects that are eligible for financial assistance under the safe drinking water loan program.

(3) NOTICE OF INTENT TO APPLY. (a) A local governmental unit shall submit notice of its intent to apply for financial assistance under the safe drinking water loan program at least 6 months before the beginning of the fiscal year in which it intends to receive the financial assistance. The notice shall be in a form prescribed by the department and the department of administration.

(b) If a local governmental unit does not apply for financial assistance by April 30 of the 2nd year following the year in which it submitted notice under par. (a), the local governmental unit shall submit a new notice under par. (a).

(c) The department may waive par. (a) or (b) upon the written request of a local governmental unit.

(4) ENGINEERING REPORT. A local governmental unit seeking financial assistance for a project under this section shall submit an engineering report, as required by the department by rule.

(5) APPLICATION. After the department approves a local governmental unit's engineering report submitted under sub. (4), the local governmental unit shall submit an application for safe drinking water financial assistance to the department. The applicant shall submit the application before the April 30 preceding the beginning of the fiscal year in which the applicant wishes to receive the financial assistance. The application shall be in the form and include the information required by the department and the department of administration and shall include plans and specifications that are approvable by the department under this section. An applicant may not submit more than one application per project per year.

(6) PRIORITY LIST. The department shall establish a priority list that ranks each safe drinking water loan program project. The department shall promulgate rules for determining project rankings that, to the extent possible, give priority to projects that address the most serious risks to human health, that are necessary to ensure compliance with the Safe Drinking Water Act, 42 USC 300f to 300j−26, and that assist local governmental units that are most in need on a per household basis, according to affordability criteria specified in the rules.

(7) APPROVAL OF APPLICATION. The department shall approve an application received under sub. (5) after all of the following occur:

(a) The project is ranked on the priority list under sub. (6).

(b) The department determines that the project meets the eligibility requirements under this section.

(c) The department of administration determines that the local governmental unit will meet the requirements of s. 281.59 (9) (b).

(d) The legislature has approved an amount under s. 281.59 (3s) (b) 1. for the biennium.

(8) FUNDING LIST; ALLOCATION OF FUNDING. (a) The department shall establish a funding list for each fiscal year that ranks projects of local governmental units that submit approvable applications under sub. (5) in the same order that they appear on the priority list under sub. (6). If sufficient funds are not available to fund all approved applications for financial assistance, the department of administration shall allocate funding to projects that are approved under sub. (7) in the order that they appear on the funding list, except as follows:

1. The department of administration shall allocate to projects for public water systems that regularly serve fewer than 10,000 persons 15% of the available funds in each fiscal year or such lesser amount that fully funds the eligible projects for those public water systems.

2. In any biennium, no local governmental unit may receive more than 25% of the amount established under s. 281.59 (3s) (b) for that biennium.

(b) In allocating subsidy under this subsection, the department of administration shall adhere to the amount approved by the legislature for each biennium under s. 281.59 (3s) (b).

(8m) CONDITIONS OF FINANCIAL ASSISTANCE. As a condition of receiving financial assistance under the safe drinking water loan program, a local governmental unit shall do all of the following:

(a) Establish a dedicated source of revenue for the repayment of the financial assistance.

(b) Comply with those provisions of 42 USC 300f to 300j−26 and this chapter and the regulations and rules promulgated under those provisions that the department specifies.

(c) Develop and adopt a program of water conservation as required by the department.

(d) Develop and adopt a program of systemwide operation and maintenance of the public water system, including the training of personnel, as required by the department.

(e) Develop and adopt a user fee system.

(9) FINANCIAL ASSISTANCE COMMITMENTS. The department and the department of administration may, at the request of a local governmental unit, issue a notice of financial assistance commitment after the local governmental unit's application for safe drinking water financial assistance has been approved under sub. (7) and funding has been allocated under sub. (8) for the local governmental unit's project. The notice of financial assistance commitment shall specify the conditions that the local governmental unit must meet to secure financial assistance and shall include the estimated repayment schedules and other terms of the financial assistance.

(10) DEADLINE FOR CLOSING. If funding is allocated to a project under sub. (8) for a loan and the loan is not closed before April 30 of the year following the year in which funding is allocated, the department of administration shall release the funding allocated to the project.

(11) LOAN INTEREST RATES. (a) Except as provided under par. (b), the interest rate on a safe drinking water loan program loan shall be as follows:

1. For a local governmental unit that does not meet financial eligibility criteria established by the department by rule, 55% of market interest rate.

2. For a local governmental unit that meets financial eligibility criteria established by the department by rule, 33% of market interest rate.

(b) The department and the department of administration jointly may request the joint committee on finance to take action under s. 13.101 (11) to modify the percentage of market interest rate under par. (a) 1. or 2.

(12) DUTIES OF THE DEPARTMENT. The department shall do all of the following:

(a) Promulgate rules establishing eligibility criteria for applicants and projects under this section.

(b) Promulgate rules that are necessary for the execution of its responsibilities under the safe drinking water loan program.

(c) Cooperate with the department of administration in administering the safe drinking water loan program.

(d) By May 1 of each even−numbered year, prepare and submit to the department of administration a biennial needs list that includes all of the following information:

1. A list of drinking water projects that the department estimates will apply for financial assistance under the safe drinking water loan program during the next biennium.

2. 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.

3. The estimated rank of each project on the priority list under sub. (6).

(e) Submit a biennial budget request under s. 16.42 for the safe drinking water loan program.

(f) Have the lead state role with the federal environmental protection agency concerning the safe drinking water loan program.

(g) Have the lead state role with local governmental units in providing safe drinking water loan program information, and cooperate with the department of administration in providing that information to local governmental units.

(h) Inspect periodically safe drinking water loan program project construction to determine project compliance with construction plans and specifications approved by the department and the requirements of the safe drinking water loan program.

(13) CAPITALIZATION GRANT. The department may enter into an agreement under 42 USC 300j−12 (a), with the federal environmental protection agency to receive a capitalization grant for the safe drinking water loan program.

History: 1997 a. 27.

281.62 Other drinking water quality activities. (1) In this section:

(a) "Community water system" means a public water system that serves at least 15 service connections used by year−round res-

idents of the area served by the public water system or that regularly serves at least 25 year−round residents.

(b) "Noncommunity water system" means a public water system that is not a community water system.

(c) "Public water system" has the meaning given in s. 281.61 (1) (c).

(2) (a) With the approval of the department of administration, the department may expend funds from the appropriation accounts under s. 20.320 (2) (s) and (x) for any of the following:

1. Providing a loan to the owner of a community water system or a nonprofit noncommunity water system to acquire land or a conservation easement from a willing seller or grantor to protect the source water of the water system from contamination and to ensure compliance with national primary drinking water regulations under 42 USC 300g−1.

2. Providing a loan to the owner of a community water system to do any of the following:

a. Implement voluntary source water protection measures in areas delineated as provided in 42 USC 300j−13 in order to facilitate compliance with national primary drinking water regulations under 42 USC 300g−1 or otherwise significantly further the health protection objectives of the Safe Drinking Water Act, 42 USC 300f to 300j−26.

b. Implement a program for source water quality protection partnerships as provided in 42 USC 300j−14.

3. Assisting the owner of a public water system to develop the technical, managerial and financial capacity to comply with national primary drinking water regulations under 42 USC 300g−1.

4. Delineating or assessing source water protection areas as provided under 42 USC 300j−13.

5. Protecting wellhead areas from contamination as provided in 42 USC 300h−7.

(b) In any fiscal year, the department may not expend under par. (a) more than 15% of the funds provided under 42 USC 300j−12 in that fiscal year. In any fiscal year, the department may not expend under par. (a) 1., 2., 3., 4. or 5. more than 10% of the funds provided under 42 USC 300j−12 in that fiscal year.

(3) (a) With the approval of the department of administration, the department may expend funds from the appropriation accounts under s. 20.320 (2) (s) and (x) for any of the following:

1. Public water system supervision as provided in 42 USC 300j−2 (a).

2. Technical assistance concerning source water protection.

3. Developing and implementing a capacity development strategy required under 42 USC 300g−9 (c).

4. Operator certification required under 42 USC 300g−8.

(b) In any fiscal year, the department may not expend under par. (a) more than 10% of the funds provided under 42 USC 300j−12 in that fiscal year.

(4) With the approval of the department of administration, the department may expend funds from the appropriation accounts under s. 20.320 (2) (s) and (x) to provide technical assistance to public water systems serving 10,000 or fewer persons. In any fiscal year, the department may not expend under this subsection more than 2% of the funds provided under 42 USC 300j−12 in that fiscal year.

History: 1997 a. 27.

281.625 Drinking water loan guarantee program. (1) In this section:

(a) "Community water system" means a public water system that serves at least 15 service connections used by year−round residents or that regularly serves at least 25 year−round residents.

(b) "Local governmental unit" has the meaning given in s. 281.61 (1) (a).

(c) "Noncommunity water system" means a public water system that is not a community water system.

(d) "Public water system" has the meaning given in s. 281.61 (1) (c).

(2) The department, in consultation with the department of administration, shall promulgate rules for determining whether a loan is an eligible loan under s. 234.86 (3) for a loan guarantee under s. 234.86. The rules shall be consistent with 42 USC 300j−12.

(3) The department shall determine whether a loan to the owner of a community water system or the nonprofit owner of a noncommunity water system is an eligible loan under s. 234.86 (3) for the purposes of the loan guarantee program under s. 234.86.

(4) With the approval of the department of administration, the department of natural resources may transfer funds from the appropriation accounts under s. 20.320 (2) (s) and (x) to the Wisconsin drinking water reserve fund under s. 234.933 to guarantee loans under s. 234.86.

(5) The department may contract with the Wisconsin Housing and Economic Development Authority for the administration of the program under this section and s. 234.86.

History: 1997 a. 27.

281.63 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. 283 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. 281.57 (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; 1995 a. 227 s. 427; Stats. 1995 s. 281.63.

281.65 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 and priority watersheds where nonpoint source related water quality problems are the most severe and control is most feasible.

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

(2) In this section:

(a) "Best management practices" means practices, techniques or measures, except for dredging, identified in areawide water quality management plans, which are determined to be 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. 289.30.

(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. 283.01 (12).

(be) "Priority lake" means any lake or group of lakes that are identified under sub. (3) (am).

(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 watershed that is identified under sub. (3) (am) or (4) (cm) or (co).

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

(3) The land and water conservation board shall do all of the following:

(a) Review the lists submitted under sub. (4) (c) and (cd) and reports submitted under sub. (4) (c) and (cg).

(am) Identify priority watersheds and priority lakes as provided in sub. (3m).

(ap) Review and approve priority lake and priority watershed plans prepared under sub. (5m) and modifications to those plans prepared under sub. (5s). The board may exempt minor plan modifications from the requirement of board approval.

(at) Review rules drafted under this section and make recommendations regarding the rules before final approval of the rules by the natural resources board.

(b) Before September 1 of each even−numbered year, submit to the governor and the department a report that includes all of the following:

1. Recommendations for the amount to be appropriated for the program under this section for the following fiscal biennium.

5. Any changes that the board determines would improve the efficiency or effectiveness of the program under this section.

(bm) Whenever the board determines necessary, submit to the governor and the department recommendations concerning changes to the amounts appropriated for the program under this section or recommendations concerning any changes that would improve the efficiency or effectiveness of the program under this section.

(c) Assist counties and the department to resolve concerns about the program under this section.

(d) Establish priorities for the allocation of funds in the event that program needs exceed available funding in any fiscal biennium.

(e) After reviewing a plan submitted under sub. (4) (k), request the building commission to authorize public debt to be contracted in the amount that the board determines to be necessary for the purposes of the program under this section.

(f) Require the department and the department of agriculture, trade and consumer protection to conduct or contract for another person to conduct any evaluation or audit of the program under this section and of individual priority watershed or priority lake projects that the board determines is necessary.

(3m) (a) 1. No later than July 1, 1998, the board shall identify priority watersheds based on the list submitted under sub. (4) (c) and recommendations by the department and the department of agriculture, trade and consumer protection without regard to any priority watershed designations made before the board acts under this subdivision, except for priority watershed designations under sub. (4) (cm) or (co). The department and the department of agriculture, trade and consumer protection shall limit the number of watersheds that they recommend to the board to the number that they determine will enable the department to comply with sub. (4) (g) 9., assuming that the level of funding for the program under this section remains the same as on October 14, 1997.

2. If a watershed is designated as a priority watershed before the board acts under subd. 1. and the board does not identify the watershed as a priority watershed under subd. 1., the board shall terminate the watershed's designation as a priority watershed. This subdivision does not apply to priority watershed designations made under sub. (4) (cm) or (co).

(b) 1. No later than July 1, 1998, the board shall identify priority lakes based on the list submitted under sub. (4) (cd) and recommendations by the department and the department of agriculture, trade and consumer protection without regard to any priority lake designations made before the board acts under this subdivision.

2. If a lake is designated as a priority lake before the board acts under subd. 1. and the board does not identify the lake as a priority lake under subd. 1., the board shall terminate the lake's designation as a priority lake.

(c) If the board terminates a priority watershed or priority lake designation under this subsection, the board shall direct the department to eliminate funding for the project in the former priority watershed or priority lake area.

(d) 1. If a watershed is designated as a priority watershed before the board acts under par. (a) 1. and the board identifies the watershed as a priority watershed under par. (a) 1., the board shall direct the department to continue funding for the project in the priority watershed.

2. If a lake is designated as a priority lake before the board acts under par. (b) 1. and the board identifies the lake as a priority lake under par. (b) 1., the board shall direct the department to continue funding for the project in the priority lake area.

(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) Prepare a list of the watersheds in this state in order of the level of impairment of the waters in each watershed caused by nonpoint source pollution, taking into consideration the location of impaired water bodies that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A), and submit the list to the board no later than January 1, 1998.

(cd) Prepare a list of the lakes in this state in order of the level of impairment of the waters in the lakes caused by nonpoint source pollution, taking into consideration the location of impaired water bodies that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A), and submit the list to the board no later than January 1, 1998.

(cg) Before July 1 of each even−numbered year, submit its recommendations on the matters under sub. (3) (b) 1. and 5. to the land and water conservation board.

(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.

(co) Identify the Root River watershed as a priority watershed.

(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 water basin and 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. Each committee for a priority watershed or priority lake area with any area in the Milwaukee river basin shall include a member of the county board from each county with any area in that priority watershed or priority lake area.

(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. Before promulgating rules under this paragraph, the department shall submit the rules to the land and water conservation board for review under sub. (3) (at). The rules shall include standards and specifications concerning best management practices which are required for eligibility for cost−sharing grants under this section. The standards and specifications shall be consistent with the performance standards, prohibitions, conservation practices and technical standards under s. 281.16. The department may waive the standards and specifications in exceptional cases. The rules shall specify which best management practices are cost−effective best management practices. Only persons involved in the administration of the program under this section, persons who are grant recipients or applicants and persons who receive notices of intent to issue orders under s. 281.20 (1) (b) 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 is subject to s. 13.565.

(em) In identifying best management practices under pars. (dm) and (g) 4., identify cost−effective best management practices, as specified under par. (e), except in situations in which the

use of a cost−effective best management practice will not contribute to water quality improvement or will cause a water body to continue to be impaired as identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(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. A grant may not be used for promotional items, except for promotional items that are used for informational purposes, such as brochures or videos.

(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 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. 59.693, 60.627, 61.354 or 62.234 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.

7. Prepare a project funding list.

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.

am. Designation as critical sites those sites that are significant sources of nonpoint source pollution upon which best management practices must be implemented in order to obtain a reasonable likelihood that the water quality objectives established under par. (dm) can be achieved.

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, 2015.

(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.

(k) Before public debt is contracted for projects under this section, prepare a plan for the expenditure of the proceeds of that debt and submit the plan to the land and water conservation board.

(L) Before September 1 of each year, in consultation with the department of agriculture, trade and consumer protection, submit a budget report to the board that includes anticipated expenditures for projects under this section during the next year, criteria for ending projects under this section and, if anticipated expenditures exceed anticipated funding, a plan for reducing expenditures.

(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 and water 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 and water 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) Include the report submitted under sub. (3) (b), along with a request for all resources and any changes necessary to implement each recommendation in the report, in the information that it submits to the department of administration under s. 16.42 for the program under this section.

(s) Provide staff services to the land and water conservation board.

(t) Transfer funds from the appropriation account under s. 20.370 (6) (aa) or (aq) to the appropriation account under s. 20.115 (7) (km) at the request of the department of agriculture, trade and consumer protection, after the land and water conservation board approves the transfer, under s. 92.14 (5) (b).

(4c) (a) Beginning on July 1, 1998, a governmental unit may request funding for a priority watershed project, a priority lake project or a nonpoint source water pollution abatement project that is not in a priority watershed or a priority lake area by submitting an application to the board. An application shall be submitted before July 15 to be considered for initial funding in the following year.

(b) The department, in consultation with the department of agriculture, trade and consumer protection, shall use the system approved under par. (e) to determine the score of each project for which the board receives an application under par. (a) and shall inform the board of the scores no later than September 1 of each year.

(c) After receiving project scores under par. (b) and before November 1 of each year, the board shall select projects for funding under this section in the following year. To the extent practicable, within the requirements of this section, the board shall select projects so that projects are distributed evenly around this state.

(d) No later than April 1, 1998, the department, in consultation with the department of agriculture, trade and consumer protection, shall propose to the board a scoring system for ranking non-

point source water pollution abatement projects for which applications are submitted under par. (a). The criteria on which the scoring system is based shall include all of the following:

1. The extent to which the application proposes to use the cost−effective and appropriate best management practices to achieve water quality goals.

2. The existence in the project area of an impaired water body that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

3. The extent to which the project will result in the attainment of established water quality objectives.

4. The local interest in and commitment to the project.

5. The inclusion of a strategy to evaluate the progress toward reaching project goals, including the monitoring of water quality improvements resulting from project activities.

6. The extent to which the application proposes to use available federal funding.

7. The extent to which the project is necessary to enable the city of Racine to control storm water discharges as required under 33 USC 1342 (p).

(e) The board shall review the scoring system proposed under par. (d) and shall approve the system as submitted or shall modify and approve the system. The board shall review the system at least once every 2 years and may require the department to submit a revised system after a review.

(4e) The department of natural resources and the department of agriculture, trade and consumer protection, jointly, shall prepare a plan to allocate funding from the program under this section for staff in every county as funds become available from the completion or termination of projects under this section. The departments shall submit the plan to the land and water conservation board by July 1, 1998. The department of natural resources shall implement the plan upon the approval of the land and water conservation board.

(4g) The department may contract with any person from the appropriation account under s. 20.370 (4) (at) for services to administer or implement this section, including information and education and training services. The department shall allocate $500,000 in each fiscal year from the appropriation account under s. 20.370 (4) (at) for contracts for educational and technical assistance related to the program under this section provided by the University of Wisconsin−Extension.

(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. The department of agriculture, trade and consumer protection shall review the plan and notify the department of natural resources of its comments on the plan. A county receiving a plan under this subsection shall review the plan, approve or disapprove the plan and notify the department of natural resources of its action on the plan.

(d) After the department considers the comments of the department of agriculture, trade and consumer protection on a plan under par. (c) and receives approval of the plan by every county to which it was sent and by the land and water conservation board, the department shall designate the plan to be 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:

(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). The best management practices shall be cost−effective best management practices, as specified under sub. (4) (e), except in situations in which the use of a cost−effective best management practice will not contribute to water quality improvement or will cause a water body to continue to be impaired as identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(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), and upon receiving the approval of the land and water conservation board, the department shall prepare and approve the final plan for a priority watershed or priority lake.

(5s) The department may make modifications, including designating additional sites as critical sites, in a priority watershed or priority lake plan with the approval of every county to which the department sent the original plan under sub. (4m) (c) and of the land and water conservation board. If the owner or operator of a site prevails in a final review under sub. (7) or the site is not designated as a critical site in the original plan under sub. (5m) and the pollution is from an agricultural source and is not caused by animal waste, the department may not make a modification designating the site as a critical site unless the designation is based on a substantial increase in pollution from the site, on information about pollution from the site that was not available when the plan was prepared or on a substantial change to the criteria for designating a site as a critical site. This subsection applies to a priority watershed or priority lake plan completed before, on or after August 12, 1993.

(5w) After the land and water conservation board approves a priority watershed or priority lake plan or a modification to such a plan that designates a site to be a critical site, the department shall notify the owner or operator of that site of the designation and of the provisions in sub. (7) and either s. 281.20 or, if the pollu-

tion is caused primarily by animal waste, ss. NR 243.21 to 243.26, Wis. adm. code.

(5y) If the owner or operator of a critical site installs and maintains best management practices as provided under the priority watershed or priority lake plan, the site is no longer a critical site. The owner or operator may discontinue maintenance of a best management practice for a period during which the owner or operator changes the use of the site if the best management practice is not needed for the changed use.

(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.

(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.

(7) (a) 1. The owner or operator of a site designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. (5s) may request a review of that designation by filing a written request within 60 days after receiving notice under sub. (5w) with the land conservation committee of the county in which the site is located or, if the site is located in more than one county, with the land conservation committee of the county in which the largest portion of the site is located.

2. A county land conservation committee receiving a request under subd. 1. shall provide the owner or operator with a hearing and shall provide reasonable notice of the hearing to the owner or operator, the department and the department of agriculture, trade and consumer protection. The county land conservation committee shall conduct the hearing under this subdivision as an informal hearing. Section 68.11 (2) does not apply to the hearing. The land conservation committee shall hold the hearing in a place convenient to the owner or operator. Within 60 days after the hearing, the department shall, and the department of agriculture, trade and consumer protection may, submit a report and recommendation to the land conservation committee concerning the issues at the hearing. The land conservation committee may affirm or reverse the designation of the site as a critical site.

(b) The owner or operator of a site designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. (5s) or the department of natural resources may obtain a review of the decision of a county land conservation committee under par. (a) 2. by filing a written request with the land and water conservation board within 60 days after receiving the decision of the county land conservation committee.

(c) The owner or operator of a site designated as a critical site in a priority watershed or priority lake plan under sub. (5m) or in a modification to such a plan under sub. (5s) may request a contested case hearing under ch. 227 to review the decision of the land and water conservation board under par. (b) by filing a written request with the department within 60 days after receiving an adverse decision of the land and water conservation board.

(7m) The state share of a grant for local administration under this section may not exceed 70% of the cost of the activities for which the grant is provided if the department first provides a grant to fund those activities after June 30, 1998.

(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 to applicants for projects affecting priority lakes if the projects are 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. Grants for implementing best management practices may only be used for implementing cost−effective best management practices specified under sub. (4) (e) unless an applicant demonstrates that the use of a cost−effective best management practice will not contribute to water quality improvement or will cause a water body to continue to be impaired as identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).

(f) A cost−sharing grant shall equal the percentage of the cost of implementing the best management practice that is determined by the governmental unit submitting the application under sub. (4c) (a) and is approved by the board, except as provided under pars. (gm) and (jm) and except that a cost−sharing grant may not exceed 70% of the cost of implementing the best management practice.

(gm) The governmental unit submitting the application under sub. (4c) (a) shall exceed the limit under par. (f) in cases of economic hardship, as defined by the department by rule.

(jm) Notwithstanding par. (f), after cost−sharing grants have been available in a priority watershed or priority lake area for 36 months only a reduced grant, which may not exceed a percentage established by the department by rule of the cost of implementing the best management practice, may be provided to the owner or operator of a site designated as a critical site in a priority watershed plan under sub. (5m) or in a modification to such a plan under sub. (5s).

(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. 49.855 (7) that the individual is delinquent in child support or maintenance payments or owes past support, medical expenses or birth expenses.

(m) The department may recognize the value of a conservation easement created under s. 700.40 (2) and donated to the department, or to any person approved by the department, as constituting all or a portion of the landowner's or operator's share of a cost−sharing grant as determined under par. (f).

(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 an amount specified by the department by rule.

(p) The department may provide a cost−sharing grant to replace a structure or facility at a new location, rather than to repair or reconstruct the structure or facility, if the relocation reduces water pollution and replacement is cost−effective compared to repairing or reconstructing the structure or facility.

(8b) Beginning in 1999, if the department establishes an anticipated cost−share reimbursement amount for a year for a county that receives funding under this section and the county enters into cost−share agreements with landowners or operators that result in reimbursable amounts for the year that exceed the amount established by the department, the county shall provide reimbursement to the landowners or operators in the amount by which the reimbursable amounts exceed the amount established by the department.

(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.

(8d) The department may distribute a grant to the board of regents of the University of Wisconsin System for practices, techniques or measures to control storm water discharges on a University of Wisconsin System campus that is located in a municipality that is required to obtain a permit under s. 283.33 and that is located in a priority watershed area, a priority lake area or an area that is identified as an area of concern by the International Joint Commission, as defined in s. 281.35 (1) (h), under the Great Lakes Water Quality Agreement.

(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. 59.693, 60.627, 61.354 or 62.234 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 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.

(11) Notwithstanding subs. (3) (am) and (3m), the South Fork of the Hay River is a priority watershed for the period ending on June 30, 2001. Notwithstanding subs. (2) (a), (4) (dm), (e), (em) and (g) 4., (4m) (b) 3. and (8) (b) and (e), the department, in consultation with the local units of government involved with the priority watershed project, shall establish guidelines for the types of nonpoint source water pollution abatement practices to be eligible for cost−sharing grants in the watershed. Notwithstanding sub. (8) (f), the amount of a cost−sharing grant in the watershed may be based on the amount of pollution reduction achieved rather than on the cost of the practices installed, using guidelines developed by the department, in consultation with the local units of government involved with the priority watershed project. The department and the local governmental staff involved with the priority watershed project shall evaluate the cost effectiveness of the project and the reduction in nonpoint source water pollution associated with the project.

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; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237.

281.67 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; 1995 a. 227 s. 429; Stats. 1995 s. 281.67.

281.68 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 have articles of incorporation or bylaws which limit or deny the right of any member or any class of members to vote as permitted under s. 181.0721 (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 nonprofit conservation organizations, as defined in s. 23.0955 (1), 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. 281.69.

History: 1989 a. 31; 1989 a. 160 ss. 1, 3, 4; 1989 a. 359; 1991 a. 39, 269; 1995 a. 27; 1995 a. 227 s. 430; Stats. 1995 s. 281.68; 1997 a. 79.

281.69 Lake management and classification grants. (1) TYPES OF PROJECTS. The department shall develop and administer a financial assistance program to provide grants for the following 3 types of projects:

(a) Lake management projects that will improve or protect the quality of water in lakes or the natural ecosystems of lakes.

(b) Lake classification projects that will classify lakes by use and implement protection activities for the lakes based on their classification.

(c) Lake classification technical assistance projects conducted by nonprofit corporations that will provide educational and technical assistance.

(2) AMOUNTS OF GRANTS. (a) A grant for a lake management project may be made for up to 75% of the cost of the project but may not provide more than $200,000 per grant.

(b) A grant for a lake classification project may be made for up to 75% of the cost of the project but may not exceed $50,000 per grant.

(c) A grant for a lake classification technical assistance project may not exceed $200,000.

(3) RULES FOR LAKE MANAGEMENT PROJECT GRANTS. The department shall promulgate rules to administer and to determine eligibility for grants for lake management projects. The rules shall include all of the following:

(a) A designation of eligible recipients, which shall include nonprofit conservation organizations, as defined in s. 23.0955 (1), counties, cities, towns, villages, qualified lake associations, as defined in s. 281.68 (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.

(4) LAKE MANAGEMENT PROJECT GRANTS; PURCHASES. (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:

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 used for a purchase under sub. (3) (b) 1. 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 used for a purchase under sub. (3) (b) 1. 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.

(5) LAKE CLASSIFICATION PROJECT GRANTS. (a) The department shall promulgate rules to administer and to determine eligibility for grants for lake classification projects.

(b) The rules under par. (a) shall include guidelines to be used for lake classification. The guidelines shall require that certain factors be used in classifying each lake by use. The factors shall include all of the following:

1. The size, depth and shape of the lake.

2. The size of the lake's watershed.

3. The quality of the water in the lake.

4. The potential of the lake to be overused for recreational purposes.

5. The potential for the development of land surrounding the lake.

6. The potential of the lake to suffer from nonpoint source water pollution.

7. The type and size of the fish and wildlife population in and around the lake.

(c) The rules under par. (a) shall designate which classification and protection activities are eligible for lake classification grants.

(d) The department may award lake classification grants only to counties.

(6) LAKE CLASSIFICATION TECHNICAL ASSISTANCE GRANTS. (a) The department shall promulgate rules to administer and determine eligibility for lake classification technical assistance grants to be awarded to nonprofit corporations.

(b) A nonprofit corporation receiving a lake classification technical assistance grant shall use the grant to provide educational and technical assistance to local units of government and lake management organizations that will participate in a lake classification project.

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

History: 1991 a. 39; 1993 a. 343; 1995 a. 27; 1995 a. 227 s. 431; Stats. 1995 s. 281.69; 1997 a. 27.

SUBCHAPTER VI

COMPENSATION

281.75 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, 233 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 $65,000.

(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 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 (6) (cr) 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. 299.11.

(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 75% 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 $45,000, the amount of the award is the amount determined under par. (a) less 30% of the amount by which the claimant's income exceeds $45,000.

(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.

(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. 280 or, if the well is a sandpoint well, it is constructed by a well driller or pump installer licensed under ch. 280.

(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 management.

(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. 293.65 (4).

(18) SUSPENSION OR REVOCATION OF LICENSES. The department may suspend or revoke a license issued under ch. 280 if the department finds that the licensee falsified information submitted under this section. The department of commerce may suspend or revoke the license of a plumber licensed under ch. 145 if the department of commerce 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; 1993 a. 413; 1995 a. 27 ss. 4208 to 4210, 9116 (5); 1995 a. 227 s. 401; Stats. 1995 s. 281.75; 1997 a. 27.

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

(a) "Private water supply" means a well that is used as a water supply for humans or a well that is constructed by drilling and is used as a water supply for livestock, as defined in s. 95.80 (1) (b), or poultry.

(b) "Regulated activity" means an activity for which the department may issue an order under chs. 285 or 289 to 299 or this chapter, except s. 281.48, if the activity is conducted in violation of chs. 285 or 289 to 299 or this chapter, except s. 281.48, or in violation of licenses, permits or special orders issued or rules promulgated under chs. 285 or 289 to 299 or this chapter, except s. 281.48.

(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. 289.01 (3), the department may conduct a hearing under s. 292.31 (3) (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. 299.95, 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; 1995 a. 227 s. 433; Stats. 1995 s. 281.77.

SUBCHAPTER VII

GREAT LAKES REMEDIAL ACTION

281.81 Definitions. In this subchapter:

(1) "International joint commission" has the meaning given in s. 281.35 (1) (h).

(2) "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.

History: 1995 a. 227 s. 412.

281.83 Remedial action in the Great Lakes and their tributaries. (1) 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.

(2) 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. 281.51 (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.

(3) (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: 1995 a. 227 ss. 411, 413.

281.85 Great Lakes protection fund share. The department may use moneys from the appropriation under s. 20.370 (4) (ah) for any of the following purposes:

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

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

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

History: 1995 a. 227 ss. 414, 416; 1997 a. 27.

SUBCHAPTER VIII

GENERAL PROVISIONS; ENFORCEMENT

281.91 State agency personnel to report water pollution. Personnel of all state agencies shall report any evidence of water pollution found by them to the department.

History: 1995 a. 227 ss. 396, 987.

281.92 Limitation. Nothing in this chapter affects ss. 196.01 to 196.79 or ch. 31.

History: 1979 c. 221 s. 624; Stats. 1979 s. 144.27; 1995 a. 227 s. 435; Stats. 1995 s. 281.92.

281.94 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. 281.35 (1) (m), alleged to be in violation of s. 281.35 (3) (a), in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 281.35 (6) (a) or in violation of any rule promulgated under s. 281.35 (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; 1995 a. 227 s. 827; Stats. 1995 s. 281.94.

281.95 Remedies; water withdrawal violations. Any person who makes a withdrawal, as defined under s. 281.35 (1) (m), in violation of s. 281.35 (3) (a), in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 281.35 (6) (a) or in violation of any rule promulgated under s. 281.35 (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. 281.35 (1) (m), which is in violation of a condition, limitation or restriction of a permit or approval issued in conformance with s. 281.35 (6) (a) or in violation of any rule promulgated under s. 281.35 (4) to (6) may bring an action in the circuit court to restrain or enjoin the withdrawal.

History: 1985 a. 60; 1995 a. 227 s. 828; Stats. 1995 s. 281.95.

281.96 Visitorial powers of department. Every owner of an industrial establishment shall furnish to the department all information required by it in the discharge of its duties under subch. II, except s. 281.17 (6) and (7). 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.

History: 1995 a. 227 ss. 402, 403.

281.97 Records; inspection. 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 infor-

mation, and to ascertain if the rules and orders of the department are complied with.

History: 1995 a. 227 s. 410; Stats. 1995 s. 281.97.

281.98 Penalties. (1) Except as provided in ss. 281.47 (1) (d), 281.75 (19) and 281.99 (2), any person who violates this chapter or any rule promulgated or any plan approval, license or special order issued under this chapter shall forfeit not less than $10 nor more than $5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed or enjoined, this penalty does not accrue.

(2) In addition to the penalties provided under sub. (1) or s. 281.99 (2), the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of a violation of this chapter, including attorney fees. The department of justice shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the department or the state under this subsection. Ten percent of the money deposited in the general fund that was awarded under this subsection for the costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

History: 1995 a. 227; 1997 a. 27.

281.99 Administrative forfeitures for safe drinking water violations. (1) (a) The department may directly assess forfeitures in the amounts provided under sub. (2) for violations of safe drinking water program rules promulgated under s. 281.17 (8) or (9).

(b) 1. Subject to subd. 2., if the department proposes to assess a forfeiture for a particular violation, it shall first provide written notice of the alleged violation to the water system owner or operator. The notice shall state the amount of the proposed forfeiture, an explanation of how the amount of the proposed forfeiture was determined under sub. (2) (b) and a proposed order under par. (c). After providing the notice, the department shall attempt to negotiate with the water system owner or operator to remedy the alleged violation. If the water system owner or operator corrects the alleged violation, or if the department and the water system owner or operator reach a compliance agreement, before an order is issued under par. (c), the department may not assess a forfeiture for the alleged violation.

2. The department may directly assess a forfeiture by issuing an order under par. (c) without first providing notice if the alleged violation either creates an acute risk to public health or safety or is part of a documented pattern of noncompliance with one or more rules promulgated under s. 281.17 (8) or (9).

(c) If the department determines that a forfeiture should be assessed for a particular violation, it shall issue an order under s. 281.19 (2) (a) to the water system owner or operator alleged to have committed the violation. Except as provided in par. (b) 2., the department may not issue the order until at least 60 days after the day on which it provided notice under par. (b) 1. The order shall specify the amount of the forfeiture assessed, the violation and the rule alleged to have been violated and shall inform the licensee of the right to contest the order under sub. (3).

(2) (a) The amount of forfeitures that the department may assess under this section are as follows:

1. For water systems that serve a population of more than 10,000 persons, not less than $10 nor more than $1,000 for each day of each violation, but not more than $25,000 per violation in one order.

2. For water systems that serve a population of 10,000 persons or less, not less than $10 and not more than $500 for each day of violation, but not more than $25,000 in one order.

(b) The department, in determining the amount of forfeiture that it assesses under this section, shall consider the following factors, as appropriate:

1. The gravity of the violation, including the probability of harm to persons served by the water system.

2. Good faith exercised by the water system owner or operator, including past or ongoing efforts to correct problems or achieve compliance with the safe drinking water program.

3. Any previous violations committed by the water system owner or operator at the same water system.

4. The financial benefit to the water system owner or operator of continuing the violation.

5. Any other relevant factors.

(c) While an order issued under this section is contested, suspended, stayed or enjoined, any forfeiture under this section does not accrue.

(3) A water system owner or operator may contest the issuance of an order and the assessment of a forfeiture under this section using the procedure under ch. 227 or s. 281.19 (8). A water system owner or operator that timely requests a hearing under ch. 227 is entitled to a contested case hearing.

(4) All forfeitures shall be paid to the department within 60 days after receipt of the order or according to a schedule agreed to by the department and the water system owner or operator or, if the forfeiture is contested under sub. (3), within 10 days after receipt of the final decision after exhaustion of administrative review, unless the final decision is appealed and the order is stayed by court order. The department shall remit all forfeitures paid to the state treasurer for deposit in the school fund.

(5) The attorney general may bring an action as provided in s. 281.19 (2) (a) in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid following the exhaustion of all administrative and judicial reviews.

(6) Section 893.80 does not apply to actions commenced under this section.

History: 1997 a. 27, 237.