

- 1755 -

83 WisACT 410

1983 Assembly Bill 595

Date of enactment: May 4, 1984  
Date of publication: May 10, 1984

**1983 Wisconsin Act 410**  
**(Vetoed in Part)**

AN ACT *to repeal* 20.370 (2) (cc), 20.370 (2) (cj), 97.34 (8), 144.441 (6) (a), 144.441 (6) (e), 144.441 (6) (f), 144.64 (3) (b), 144.715 and 146.20 (1); *to renumber* subchapter VI of chapter 144, 92.15, 92.16, 144.441 (1), 144.441 (3) (f), 144.441 (6) (g) to (i), 144.442, 144.76 (10), 144.952 and 144.965 (title); *to renumber and amend* 144.441 (2) (a), 144.64 (3) (a), 144.965 (1), 144.965 (2) (a), 144.965 (2) (b), 144.965 (3) and 144.965 (4); *to amend* chapter 92 (title), 15.01 (4), 15.06 (1) (a), 15.06 (3) (a), 15.09 (5), 29.29 (4), 59.07 (51), 59.97 (1), 62.23 (7) (c), 94.64 (4) (am), 94.64 (8m) (a), 94.69 (intro.) and (10), 94.71 (3) (c), 97.34 (1) to (6), 97.34 (10) and (11), 140.77 (1), 143.15 (5), 144.435 (1), 144.44 (1m) (c), 144.44 (2) (b) (intro.), 144.44 (2) (nm) 3. b, 144.44 (7), 144.441 (3) (d) and (e), 144.441 (5) (a), 144.441 (6) (b), 144.441 (6) (c), 144.76 (7) (c), 145.02 (1), 145.02 (3) (f), 145.13, 145.20 (2) (f), 145.24 (1), 146.20 (title), 146.20 (2) (e) and (f) and 146.20 (3) (title) and (a); *to repeal and recreate* 144.442, 144.76 (6), 146.20 (2) (c), 146.20 (3) (d) and 146.20 (6); and *to create* chapter 160, subchapter I (title) of chapter 92, subchapter II of chapter 92, subchapter VI of chapter 144, 15.06 (1) (e), 15.06 (3) (a) 4, 15.107 (11), ~~15.337 (1)~~, 15.341 (5), 15.345 (5), 15.347 (13), 18.13 (4), 20.115 (1) (s), 20.370 (1) (da) and (dj), 20.370 (2) (cn), (dr), (ds), (dt), (du), (dv) and (dw), 20.370 (2) (eb) and (ec), 20.370 (2) (eq) and (es), 20.370 (2) (ka), 20.370 (3) (dj), 20.435 (1) (q), 20.445 (1) (dm), 20.445 (1) (q), 25.17 (1) (en), 25.17 (1) (gm), 25.46, 25.48, 30.275, 30.93, 59.067, ~~59.872~~, 60.74 (1) (a) 7, 70.32 (1m), 70.327, 70.395 (2) (k), 71.03 (2) (g), 85.16, 85.18, 93.07 (9), 94.64 (4) (an), 94.645, 94.68 (4), 94.681, 97.34 (1), 101.02 (16), 101.09, 101.14 (5), 101.142, 143.15 (8) and (9), 144.08, 144.44 (4) (f) and (g), 144.44 (7) (b), 144.441 (1) (c), 144.441 (3) (f), 144.441 (7), 144.62 (13), 144.76 (10), 144.76 (12), 144.77, 144.795, 145.01 (16) and (17), 145.12 (4), 145.19 (6), 145.20 (2) (h), 145.24, 146.20 (2) (g) and (2m), 146.20 (4g), (4m), (4s) and (5m), 147.018, 147.02 (3) (f), 147.033, ~~147.034~~, 162.07, 165.075, 165.076, 227.01 (11) (aa) and 227.01 (11) (ac) of the statutes, *relating to* groundwater management, management of the Fox river, creating a groundwater fund, creating an environmental repair fund, creating a Fox river management commission, creating a groundwater coordinating council, creating a certification standards review council, ~~animal waste management, creating an animal waste management council,~~ creating a compensation program for well contamination, creating a scenic urban waterways program, imposing various groundwater fees, imposing various surcharges, providing for laboratory certification, including groundwater protection among the purposes for which zoning power may be exercised, permitting optional county regulation of private well water supply, providing for studies, allowing the waiver of certain solid waste requirements for certain research projects, creating exemptions from the waste facility siting process, affecting the authority of the public intervenor, affecting property valuation and assessment, providing for an inventory of petroleum product storage tanks, providing for an advisory committee, creating an exemption from income taxation, granting rule-making authority, imposing penalties and making appropriations.

**Vetoed  
in Part**

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

SECTION 1b. 15.01 (4) of the statutes is amended to read:

15.01 (4) "Commission" means a 3-member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the tax appeals commission which shall consist of 5 members ~~and~~<sub>2</sub> the Wisconsin waterways commission which shall consist of 5 members ~~and~~<sub>2</sub> the Fox river management commission which shall consist of 7 members. A Wisconsin group created for participation in a continuing interstate body shall be known as a "commission,"<sub>2</sub> but is not a commission for purposes of s. 15.06.

SECTION 1d. 15.06 (1) (a) of the statutes is amended to read:

15.06 (1) (a) ~~The~~ Except as otherwise provided under this section, the members of commissions shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 6-year terms expiring on March 1 of the odd-numbered years, ~~except for~~<sub>2</sub>.

(ag) Members of the Wisconsin waterways commission whose members shall be nominated by the governor, and with the advice and consent of the senate appointed,<sub>1</sub> for staggered 5-year terms.

SECTION 1f. 15.06 (1) (e) of the statutes is created to read:

15.06 (1) (e) Members of the Fox river management commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for 3-year terms.

SECTION 1h. 15.06 (3) (a) of the statutes is amended to read:

15.06 (3) (a) A commissioner ~~shall~~ may not hold any other office or position of profit or pursue any other business or vocation, but shall devote his or her entire time to the duties of his or her office. This paragraph does not apply to ~~the~~<sub>2</sub>.

1. The commissioner of insurance ~~not to the~~<sub>2</sub>.

2. The members, except the chairman chairperson, of the tax appeals commission ~~not to the chairman or~~<sub>2</sub>.

3. The members of the Wisconsin waterways commission.

SECTION 1j. 15.06 (3) (a) 4 of the statutes is created to read:

15.06 (3) (a) 4. The members of the Fox river management commission.

SECTION 1k. 15.09 (5) of the statutes is amended to read:

15.09 (5) POWERS AND DUTIES. ~~A~~ Unless otherwise provided by law, a council shall advise the head of the department or independent agency in which it is created and shall function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

SECTION 1m. 15.107 (11) of the statutes is created to read:

15.107 (11) CERTIFICATION STANDARDS REVIEW COUNCIL. (a) *Creation.* There is created in the department of administration a certification standards review council consisting of 9 members.

(b) *Membership.* 1. The secretary of administration shall appoint 8 members as follows:

a. One member to represent municipalities having wastewater treatment plants with average flows of more than 5,000,000 gallons per day.

b. One member to represent municipalities having wastewater treatment plants with average flows of less than 5,000,000 gallons per day.

c. One member to represent industrial laboratories with permits issued under ch. 147.

d. One member to represent commercial laboratories.

- 1757 -

83 WisACT 410

- e. One member to represent public water utilities.
- f. One member to represent solid and hazardous waste disposal facilities.
- g. One member with a demonstrated interest in laboratory certification.
- h. One member who is a farmer actively engaged in livestock production to represent agricultural interests.

2. The chancellor of the university of Wisconsin-Madison shall appoint one member to represent the state laboratory of hygiene.

(c) *Terms.* Members of the council shall serve for 3-year terms. A person may not serve more than 2 consecutive terms on the council.

~~SECTION 11. 15.137 (1) of the statutes is created to read:  
15.137 (1) ANIMAL WASTE MANAGEMENT COUNCIL. There is created in the department of agriculture, trade and consumer protection an animal waste management council consisting of 10 members representing environmental, agricultural and other interests and having a demonstrated interest in and knowledge of animal waste management to advise the department regarding the development and implementation of the animal waste management program created under ss. 92.20 to 92.30. The council shall be appointed by and shall serve at the pleasure of the secretary of the department.~~

**Vetoed  
in Part**

SECTION 11. 15.341 (5) of the statutes is created to read:

15.341 (5) FOX RIVER MANAGEMENT COMMISSION. The Fox river management commission has the program responsibilities specified for the commission under s. 30.93.

SECTION 1x. 15.345 (5) of the statutes is created to read:

15.345 (5) FOX RIVER MANAGEMENT COMMISSION. There is created in the department of natural resources a Fox river management commission consisting of 7 members.

SECTION 2. 15.347 (13) of the statutes is created to read:

15.347 (13) GROUNDWATER COORDINATING COUNCIL. (a) *Creation.* There is created a groundwater coordinating council, attached to the department of natural resources under s. 15.03. The council shall perform the functions specified under s. 160.50.

(b) *Members.* The groundwater coordinating council shall consist of the following members:

1. The secretary of natural resources.
2. The secretary of industry, labor and human relations.
3. The secretary of agriculture, trade and consumer protection.
4. The secretary of health and social services.
5. The secretary of transportation.
6. The president of the university of Wisconsin system.
7. The state geologist.
8. One person to represent the governor.

~~9. One person who is a member of a local health department under s. 140.09, appointed by the governor to represent local health departments.~~

**Vetoed  
in Part**

(c) *Designees.* Under par. (b), agency heads may appoint designees to serve on the council, if the designee is an employe or appointive officer of the agency who has sufficient authority to deploy agency resources and directly influence agency decision making.

(d) *Terms.* Members appointed under par. (b) 8 ~~and 9~~ shall be appointed to 4-year terms.

**Vetoed  
in Part**

(e) *Staff.* The state agencies with membership on the council and its subcommittees shall provide adequate staff to conduct the functions of the council.

(f) *Meetings.* The council shall meet at least twice each year and may meet at other times on the call of 3 of its members. Section 15.09 (3) does not apply to meetings of the council.

(g) *Annual report.* In August of each year the council shall submit to the head of each agency with membership on the council, the members of the appropriate standing committees of the legislature and the governor, a report which summarizes the operations and activities of the council during the fiscal year concluded on the preceding June 30, describes the state of the groundwater resource and its management and sets forth the recommendations of the council. The annual report shall include a description of the current groundwater quality in the state, an assessment of groundwater management programs, information on the implementation of ch. 160 and a list and description of current and anticipated groundwater problems. In each annual report, the council shall include the dissents of any council member to the activities and recommendations of the council.

SECTION 3m. 18.13 (4) of the statutes is created to read:

18.13 (4) PUBLIC INTERVENOR. Notwithstanding s. 165.075, the public intervenor does not have authority to initiate any action or proceeding concerning the issuance of obligations by the building commission under this chapter.

SECTION 4. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

			1983-84	1984-85
<b>20.115</b>	<b>Agriculture, trade and consumer protection, department of</b>			
(1 )	<b>FOOD AND TRADE REGULATION</b>			
(s )	Groundwater--standards; implementation	SEG A	0	101,800
<b>20.370</b>	<b>Natural resources, department of</b>			
(1 )	<b>RESOURCE MANAGEMENT</b>			
(da)	Water resources--Fox river management	GPR A	0	0
(2 )	<b>ENVIRONMENTAL STANDARDS</b>			
(dr)	Solid waste management--environmental repair fund	SEG A	0	0
(dt)	Solid waste management--environmental repair; administration	SEG A	0	554,600
(du)	Solid waste management--hazardous substances spills program	SEG C	0	41,400
(dv)	Solid waste management--abandoned containers	SEG C	0	50,000
(dw)	Solid waste management--federal superfund cost share	SEG C	0	0
(eb)	Compensation for well contamination--payments	GPR C	500,000	0
(ec)	Compensation for well contamination--administration	GPR A	<del>150,000</del>	155,000
(eq)	Groundwater--standards; implementation	SEG A	0	236,700
(es)	Groundwater--monitoring	SEG A	0	557,900
(ka)	Scenic urban waterways	GPR C	0	200,000
(3 )	<b>ENFORCEMENT</b>			
(dj)	Environmental quality--laboratory certification	PR A	0	17,500

**Vetoed  
in Part**

- 1759 -

83 WisACT 410

**20.435 Health and social services,  
department of**

(1 ) **HEALTH SERVICES PLANNING,  
REGULATION AND DELIVERY**

(q ) Groundwater--standards;  
implementation SEG A 0 87,800

**20.445 Industry, labor and human relations,  
department of**

(1 ) **INDUSTRY, LABOR AND  
HUMAN RELATIONS**

(dm) Storage tank inventory GPR A 0 25,000  
(q ) Groundwater--standards;  
implementation SEG A 0 0

SECTION 5. 20.115 (1) (s) of the statutes is created to read:

20.115 (1) (s) *Groundwater — standards; implementation.* From the groundwater fund, the amounts in the schedule to develop groundwater standards and implement ch. 160.

SECTION 5m. 20.370 (1) (da) and (dj) of the statutes are created to read:

20.370 (1) (da) *Water resources — Fox river management.* From the general fund, the amounts in the schedule for Fox river management activities under s. 30.93 (2) and (3) and for the payment of expenses and per diems under s. 30.93 (5).

(dj) *Water resources — Fox river management; fees.* From the general fund, all moneys received from user fees imposed under s. 30.93 (3) for Fox river management activities under s. 30.93 (2) and (3) and for the payment of expenses and per diems under s. 30.93 (5).

SECTION 7. 20.370 (2) (cc) of the statutes, as affected by 1983 Wisconsin Act 27, is repealed.

SECTION 8. 20.370 (2) (cj) of the statutes, as affected by 1983 Wisconsin Act 27, is repealed.

SECTION 9. 20.370 (2) (cn), (dr), (ds), (dt), (du), (dv) and (dw) of the statutes are created to read:

20.370 (2) (cn) *Solid waste management — environmental repair; federal funds.* All moneys received from the federal government for environmental repair of solid and hazardous waste facilities, as authorized by the governor under s. 16.54, for such purposes.

(dr) *Solid waste management — environmental repair fund.* From the environmental repair fund, the amounts in the schedule for the purpose of administering a program of environmental repair of solid and hazardous waste disposal facilities under s. 144.442.

(ds) *Solid waste management — investment and local impact fund; environmental repair.* From the investment and local impact fund, all moneys received under s. 70.395 (2) (k) for the purpose of making payments for the environmental repair of mining waste sites under s. 144.442.

(dt) *Solid waste management — environmental repair; administration.* From the environmental repair fund, the amounts in the schedule for the administration of s. 144.442.

(du) *Solid waste management — hazardous substances spills program.* From the environmental repair fund, the amounts in the schedule for the administration of the hazardous substances spills program under s. 144.76.

(dv) *Solid waste management — abandoned containers.* From the environmental repair fund, the amounts in the schedule for the administration of the abandoned container program under s. 144.77.

**Vetoed  
in Part**

(dw) *Solid waste management — federal superfund cost share.* From the environmental repair fund, the amounts in the schedule for payment of the state's share of environmental repair which is funded under 42 USC 9601, et seq., and any additional costs which the state is required to incur under 42 USC 9601, et seq.

SECTION 9m. 20.370 (2) (eb) and (ec) of the statutes are created to read:

20.370 (2) (eb) *Compensation for well contamination — payments.* As a continuing appropriation, the amounts in the schedule for the purpose of paying compensation under s. 144.027.

(ec) *Compensation for well contamination — administration.* The amounts in the schedule for the purpose of administering s. 144.027.

SECTION 10. 20.370 (2) (eq) and (es) of the statutes are created to read:

20.370 (2) (eq) *Groundwater — standards; implementation.* From the groundwater fund, the amounts in the schedule to develop groundwater standards and implement ch. 160.

(es) *Groundwater — monitoring.* From the groundwater fund, the amounts in the schedule to conduct groundwater monitoring activities.

SECTION 10m. 20.370 (2) (ka) of the statutes is created to read:

20.370 (2) (ka) *Scenic urban waterways.* From the general fund, as a continuing appropriation, the amounts in the schedule to administer a program for scenic urban waterways under s. 30.275.

SECTION 11. 20.370 (3) (dj) of the statutes is created to read:

20.370 (3) (dj) *Environmental quality — laboratory certification.* From the general fund, the amounts in the schedule for the purpose of administering and enforcing s. 144.95. All moneys received from fees under s. 144.95 (9) shall be credited to this appropriation. During fiscal year 1984-85, the department may expend and encumber up to the amount specified in the schedule for this appropriation in that fiscal year notwithstanding the actual amount received from fees under s. 144.95 (9). Notwithstanding ss. 16.50 (2), 16.52, 20.002 (11) and 20.903, the department may report a deficit in this appropriation on June 30, 1985, or on June 30, 1986, and this deficit shall be considered an encumbrance on the appropriation under this paragraph for the subsequent fiscal year. The department may not report a deficit in this appropriation at the close of any fiscal year after the 1985-86 fiscal year.

SECTION 12. 20.435 (1) (q) of the statutes is created to read:

20.435 (1) (q) *Groundwater — standards; implementation.* From the groundwater fund, the amounts in the schedule to develop groundwater standards and implement ch. 160.

SECTION 12m. 20.445 (1) (dm) of the statutes is created to read:

20.445 (1) (dm) *Storage tank inventory.* The amounts in the schedule to conduct an inventory of unused underground petroleum product storage tanks under s. 101.142.

SECTION 13. 20.445 (1) (q) of the statutes is created to read:

20.445 (1) (q) *Groundwater — standards; implementation.* From the groundwater fund, the amounts in the schedule to develop groundwater standards and implement ch. 160.

SECTION 14. 25.17 (1) (en) of the statutes is created to read:

25.17 (1) (en) Environmental repair fund (s. 25.46);

SECTION 15. 25.17 (1) (gm) of the statutes is created to read:

25.17 (1) (gm) Groundwater fund (s. 25.48);

SECTION 16. 25.46 of the statutes is created to read:

**25.46 Environmental repair fund.** There is established a separate nonlapsible trust fund designated as the environmental repair fund, to consist of:

- (1) The fees and surcharges imposed under s. 144.442 (2) and (3);
- (2) All moneys recovered under s. 144.442 (9); and
- (3) All moneys received from reimbursements under s. 144.76 (6) (c) 1.

SECTION 17. 25.48 of the statutes is created to read:

**25.48 Groundwater fund.** There is established a separate nonlapsible trust fund designated as the groundwater fund, to consist of:

- (1) The fees imposed under s. 94.64 (4) (an).
- (2) The fees and late payment fees imposed under s. 94.681 (2).
- (3) The fees imposed under s. 101.14 (5).
- (4) The fees imposed under s. 144.441 (7).
- (5) The fees imposed under s. 145.19 (6).
- (6) The fees imposed under s. 146.20 (4s) (d).
- (7) The fees imposed under s. 147.033.

SECTION 18. 29.29 (4) of the statutes is amended to read:

29.29 (4) **USE OF PESTICIDES.** The department of natural resources, after public hearing, may adopt rules governing the use of any pesticide which it finds is a serious hazard to wild animals other than those it is intended to control, and the making of reports thereon. In making such determinations, the department to the extent relevant shall consider the need for pesticides to protect the well-being of the general public. It shall obtain the recommendation of the pesticide review board and such rules, other than rules to protect groundwater adopted to comply with ch. 160, are not effective until approved by the pesticide review board. "Pesticide" has the meaning designated in s. 94.67.

SECTION 18e. 30.275 of the statutes is created to read:

**30.275 Scenic urban waterways.** (1) **LEGISLATIVE INTENT.** In order to afford the people of this state an opportunity to enjoy water-based recreational activities in close proximity to urban areas, to attract out-of-state visitors and to improve the status of the state's tourist industry, it is the intent of the legislature to improve some rivers and their watersheds. For this purpose a system of scenic urban waterways is established, but no river shall be designated as a scenic urban waterway without legislative act.

(2) **DESIGNATION.** The Illinois Fox river and its watershed is designated a scenic urban waterway and shall receive special management as provided under this section.

(3) **DUTIES OF DEPARTMENT.** The department in connection with scenic urban waterways shall:

- (a) Provide active leadership in the development of a practical management policy.
- (b) Consult with other state agencies and planning committees and organizations.
- (c) Collaborate with municipal governing bodies and their development committees or boards in producing a mutually acceptable program for the preservation, protection and enhancement of the rivers and watersheds.
- (d) Administer the management program.
- (e) Seek the cooperation of municipal officials and private landowners in implementing land use practices to accomplish the objectives of the management policy.
- (f) Act as coordinator under this section.

(4) **DEPARTMENT AUTHORITY.** The department in connection with scenic urban waterways may:

- (a) Acquire and develop land for parks, open spaces, scenic easements, public access, automobile parking, fish and wildlife habitat, woodlands, wetlands and trails.
- (b) Lay out and develop scenic drives.
- (c) Undertake projects to improve surface water quality and surface water flow.
- (d) Provide grants to municipalities to undertake any of the activities under pars. (a) to (c).

SECTION 18f. 30.93 of the statutes is created to read:

**30.93 Fox river management.** (1) DEFINITIONS. As used in this section:

- (a) "Commission" means the Fox river management commission.
- (b) "Fox river locks and facilities" means structures, appurtenances and real property on or near the Fox river, including locks, dams and related structures and facilities under the ownership or control of the federal government on April 1, 1984.
- (c) "Long-term agreement" means any agreement which involves the ~~retention of ownership rights by the state of the~~ continuation of leasing obligations by this state for, or the continuation of responsibility for the management, operation ~~or maintenance~~ by this state of any Fox river locks and facilities beyond October 15, 1985.
- (d) "Short-term agreement" means any agreement which does not involve the retention of ownership rights by this state of, the continuation of leasing obligations by this state for, or the continuation of responsibility for the management, operation ~~or maintenance~~ by this state of any Fox river locks and facilities beyond October 15, 1985; and which does not in any other way obligate or restrict the state on or after October 15, 1985.

Vetoed  
in Part

Vetoed  
in Part

(2) AUTHORITY TO NEGOTIATE AND ENTER INTO AGREEMENTS WITH THE FEDERAL GOVERNMENT. (a) *Negotiations.* The commission is authorized to enter into negotiations with the federal government on behalf of the state concerning:

- 1. The leasing by the state of Fox river locks and facilities ~~or the transferring of the ownership of Fox river locks and facilities to the state.~~
- 2. The assumption by the state of responsibility for the management, operation ~~or maintenance~~ of Fox river locks and facilities.

Vetoed  
in Part

(b) *Short-term agreements.* Prior to October 16, 1985, the commission is authorized to enter into only short-term agreements with the federal government concerning Fox river locks and facilities.

(c) *Long-term agreements.* On and after October 16, 1985, the commission is authorized to enter into long-term agreements with the federal government concerning Fox river locks and facilities.

Vetoed  
in Part

(3) AUTHORITY TO MANAGE FOX RIVER LOCKS AND FACILITIES. If an agreement is entered into with the federal government, the commission may assume responsibility for the management, operation ~~and maintenance~~ of the Fox river locks and facilities. The commission may charge user fees for services it provides in the management, operation ~~and maintenance~~ of the Fox river locks and facilities. The commission shall prepare a biennial budget which shall be submitted to the department concerning activities to be performed under this subsection. The commission may hire staff and employees to perform activities under this subsection subject to the requirements of s. 16.505.

(4) RULES. If, in exercising its authority under sub. (3), the commission determines that rules are needed, the commission may submit proposed rules to the department. The department may promulgate these rules under ch. 227.

(5) COMMISSIONERS. Members of the commission shall not receive a salary but are entitled to reimbursement for their actual and necessary expenses and, in addition, to a per diem payment of \$25 for each day on which they were actually and necessarily engaged in the performance of their duties.



SECTION 18g. 59.067 of the statutes is created to read:

**59.067 Optional well code ordinances.** (1) DEFINITIONS. As used in this section:

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

(b) "Private well" has the meaning specified by rule by the department under s. 162.07 (2).

(c) "Well" has the meaning specified under s. 162.02 (3).

(2) PERMITS. If authorized by the department under s. 162.07 (1), a county may adopt and enforce a well construction or pump installation ordinance or both. Provisions of the ordinance shall be in strict conformity with ch. 162 and with rules of the department under ch. 162. The ordinance may require that a permit be obtained before construction, installation, reconstruction or rehabilitation of a private well or installation or substantial modification of a pump on a private well, other than replacement of a pump with a substantially similar pump. The county may establish a schedule of fees for issuance of the permits and for related inspections. The department, under s. 162.07 (4), may revoke the authority of a county to enforce its ordinance if the department finds that the ordinance or enforcement of the ordinance does not conform to ch. 162 and rules of the department under ch. 162.

(3) EXISTING WELLS. With the approval of the department under s. 162.07 (1), a county may adopt and enforce an ordinance in strict conformity with ch. 162 and with department rules under ch. 162, as they relate to existing private wells. The department, under s. 162.07 (4), may revoke the authority of a county to enforce its ordinance if the department finds that the ordinance or enforcement of the ordinance does not conform to ch. 162 and rules of the department under ch. 162.

(4) ENFORCEMENT. A county may provide for enforcement of ordinances adopted under this section by forfeiture or injunction or both. The district attorney or county corporation counsel may bring enforcement actions.

(5) OTHER MUNICIPALITIES. No city, village or town may adopt or enforce an ordinance regulating matters covered by ch. 162 or by department rules under ch. 162.

SECTION 18j. 59.07 (51) of the statutes is amended to read:

59.07 (51) BUILDING AND SANITARY CODES. Adopt building and sanitary codes, make necessary rules and regulations in relation thereto and provide for enforcement of the codes, rules and regulations by forfeiture or otherwise. The codes, rules and regulations do not apply within cities, villages or towns which have adopted ordinances or codes concerning the same subject matter. "Sanitary code" does not include a private sewage system ordinance adopted under s. 59.065. "Building and sanitary codes" does not include well code ordinances adopted under s. 59.067.

SECTION 18m. 59.872 of the statutes is created to read:

~~59.872 Animal waste management. A board may assume certain administrative functions under the animal waste management program created under ss. 92.20 to 92.30. These functions include the investigation of complaints and the provision of technical and other assistance. Before a board may exercise these administrative functions, the board shall enter into an agreement with the department of agriculture, trade and consumer protection and the assumption of these functions is required to be approved by that department. If the board assumes these administrative functions, it shall assign responsibility for these functions to the land conservation committee.~~

**Vetoed  
in Part**

SECTION 19. 59.97 (1) of the statutes is amended to read:

59.97 (1) PURPOSE. It is the purpose of this section to promote the public health, safety, convenience and general welfare; to encourage planned and orderly land use development; to protect property values and the property tax base; to permit the careful planning and efficient maintenance of highway systems; to ensure adequate highway,

utility, health, educational and recreational facilities; to recognize the needs of agriculture, forestry, industry and business in future growth; to encourage uses of land and other natural resources which are in accordance with their character and adaptability; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to preserve wetlands; to conserve soil, water and forest resources; to protect the beauty and amenities of landscape and man-made developments; to provide healthy surroundings for family life; and to promote the efficient and economical use of public funds. To accomplish this purpose the county board of any county may plan for the physical development and zoning of territory within the county as set forth in this section and shall incorporate therein the master plan adopted under s. 62.23 (2) or (3) and the official map of any city or village in the county adopted under s. 62.23 (6).

SECTION 20. 60.74 (1) (a) 7 of the statutes is created to read:

60.74 (1) (a) 7. Encourage the protection of groundwater resources.

SECTION 21. 62.23 (7) (c) of the statutes is amended to read:

62.23 (7) (c) *Purposes in view.* Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

SECTION 21g. 70.32 (1m) of the statutes is created to read:

70.32 (1m) In addition to the factors set out in sub. (1), the assessor shall consider the environmental impairment of the value of the property because of the presence of a solid or hazardous waste disposal facility.

SECTION 21m. 70.327 of the statutes is created to read:

**70.327 Valuation and assessment of property with contaminated wells.** In determining the market value of real property with a contaminated well or water supply, the assessor shall take into consideration the time and expense necessary to repair or replace the well or private water supply in calculating the diminution of the market value of real property attributable to the contamination.

SECTION 22. 70.395 (2) (k) of the statutes is created to read:

70.395 (2) (k) Prior to the beginning of each fiscal year, the board shall certify to the department of administration for payment from the investment and local impact fund any sum necessary for the department of natural resources to make payments under s. 144.442 for the environmental repair of mining waste sites, if moneys in the environmental repair management fund are insufficient to make complete payments during that fiscal year. This sum may not exceed the balance in the environmental repair fund at the beginning of that fiscal year or 50% of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

SECTION 22m. 71.03 (2) (g) of the statutes is created to read:

71.03 (2) (g) All amounts received in accordance with s. 144.027.

SECTION 23. 85.16 of the statutes is created to read:

**85.16 Storage of highway salt.** (1) DEFINITIONS. In this section:

(a) "Highway salt" means bulk quantities of a chloride intended for application to highways during winter months, and includes mixtures in any proportion of sand and chlorides.

(b) "Waters of the state" has the meaning specified under s. 144.01 (19).

(2) STORAGE OF HIGHWAY SALT. Every person who stores highway salt shall comply with the standards adopted under sub. (3).

(3) STANDARDS. The department shall adopt by rule standards for the storage of highway salt for the purpose of protecting the waters of the state from harm due to contamination by dissolved chlorides. The rule shall comply with ch. 160. The rule may include different standards for various types of chlorides, or for mixtures of sand and chlorides. The rule may not require the storage of mixtures of sand and chlorides in a building or structure. The rule may include different standards for various storage facilities and conditions, quantities of highway salt and times during the year when salt is stored. All standards under this section shall provide substantially similar protection for the waters of the state.

(4) INFORMATION. The department may collect and publish information relating to this section and distribute it to municipalities and persons subject to this section.

(5) ENFORCEMENT. (a) The department shall enforce this section.

(b) The department may enter and inspect, during regular business hours, places where highway salt is stored on private or public property.

(c) The department shall conduct periodic inspections, at least once annually, of each location where highway salt is stored, to ascertain compliance with this section.

(d) The department shall issue special orders directing and requiring compliance with the rules and standards of the department adopted under this section whenever, in the judgment of the department, the rules or standards are threatened with violation, are being violated or have been violated.

(e) The circuit court for any county where violation of such an order occurs has jurisdiction to enforce the order by injunctive and other appropriate relief.

(6) PENALTY. Any person who violates this section or any rule or order adopted under this section shall forfeit not less than \$10 nor more than \$1,000 for each violation. Each violation of this section or any rule or order under this section constitutes a separate offense and each day that a violation continues is a separate offense.

SECTION 24. 85.18 of the statutes is created to read:

**85.18 Groundwater protection.** The department shall comply with the requirements of ch. 160 in the administration of any program, responsibility or activity assigned or delegated to it by law.

SECTION 24b. Chapter 92 (title) of the statutes is amended to read:

CHAPTER 92  
SOIL AND WATER CONSERVATION  
AND ANIMAL WASTE MANAGEMENT

SECTION 24e. Subchapter I (title) of chapter 92 of the statutes is created to read:

CHAPTER 92  
SUBCHAPTER I  
SOIL AND WATER CONSERVATION  
(to precede s. 92.01)

SECTION 24k. 92.15 of the statutes, as created by 1983 Wisconsin Act 27, is renumbered 92.32, and 92.32 (2) (intro.), as renumbered, is amended to read:

92.32 (2) (intro.) The Except as provided under sub. (3m), the department may make payments under this section only to a county which:

SECTION 24n. 92.16 of the statutes, as created by 1983 Wisconsin Act 27, is renumbered 92.34.

SECTION 24q. Subchapter II of chapter 92 of the statutes is created to read:

CHAPTER 92  
SUBCHAPTER II  
ANIMAL WASTE MANAGEMENT

~~92.20 Name. Sections 92.20 to 92.30 are known and may be cited as the "animal waste management law".~~

~~92.22 Legislative findings; purpose. (1) The legislature finds that improper management of animal wastes contributes to the pollution of the waters of the state and that regulation of animal waste management is necessary to achieve state water quality goals and standards. The legislature further finds that necessary regulation of animal waste management can be most effectively conducted by the department working in close cooperation with the department of natural resources.~~

~~(2) The purpose of the animal waste management program is to direct the department to promulgate and enforce rules necessary to regulate management of animal waste in the interest of meeting state water quality goals and standards, and to bring the state into compliance with the requirements of the federal clean water act, 33 USC 1251 to 1376, and rules adopted under that act as 40 CFR 122.54 and 40 CFR 412.~~

**Vetoed  
in Part**

~~92.24 Definitions. In this subchapter unless the context requires otherwise:~~

~~(1) "Council" means the animal waste management council created under s. 15.137 (1).~~

~~(2) "Department" means the department of agriculture, trade and consumer protection.~~

~~(3) "Waters of the state" has the meaning specified under s. 144.01 (19).~~

~~92.26 Department authority. (1) The department shall develop and implement an animal waste management program to minimize the pollution of the waters of the state caused by animal wastes and to meet state and federal water quality goals and standards.~~

~~(2) The department shall promulgate rules governing implementation of ss. 92.20 to 92.30 and 92.36 to 92.40 and necessary for the efficient administration and enforcement of those sections. These rules shall be consistent with the state requirements for the pollutant discharge elimination system under ch. 147. These rules shall provide for the coordination of ss. 92.20 to 92.30 with the Wisconsin farmers program fund under ss. 92.32 and 92.34.~~

~~(3) The department may investigate complaints concerning the pollution of the waters of the state by animal wastes and possible violations of this subchapter and rules adopted or orders or permits issued under this subchapter.~~

~~(4) The department may prepare guidelines and technical assistance materials for the purpose of aiding persons in handling, storage and disposal of animal waste to meet the purposes of this subchapter. The department shall cooperate with the university of Wisconsin extension in the preparation and distribution of these materials.~~

~~(5) The department may issue notices of discharge and may issue, enforce, and revoke orders and permits to prevent or abate the pollution of the waters of the state.~~

~~(6) In administering and enforcing this subchapter, the department has all the powers and authority vested in it under ch. 93.~~

~~92.28 Animal waste management council. The department shall consult with the council in the promulgation of rules under this subchapter and in the preparation of guidelines and technical assistance materials for aiding persons in the handling, storage and disposal of animal wastes.~~

~~92.30 Interagency coordination. The department shall enter into an agreement with the department of natural resources to coordinate the animal waste management program with the pollutant discharge elimination system under ch. 147, the nonpoint source water pollution abatement program under s. 144.25 and other related programs administered by the department of natural resources. The agreement shall include a mechanism for ensuring that water quality information and standards developed by the department of natural resources are integrated into the animal waste management program.~~

Vetoed  
in Part

92.32 (3m) The department may make payments under this section directly to farmers who receive a notice of discharge related to animal waste or who are required to apply for a permit under ch. 147.

~~92.36 Injunctive relief. In addition to or in place of any other penalty or remedy provided under ss. 92.20 to 92.40, the department may initiate an action in circuit court for a temporary or permanent injunction to prevent, restrain or enjoin a violation of ss. 92.20 to 92.40 or any rule, order or permit issued under ss. 92.20 to 92.30.~~

Vetoed  
in Part

~~92.40 Penalties. Any person who violates ss. 92.20 to 92.30 or any permit, rule or order issued under ss. 92.20 to 92.30 shall forfeit not less than \$100 nor more than \$500. Any person who knowingly violates ss. 92.20 to 92.30 or any permit, rule or order issued under ss. 92.20 to 92.30 may be fined not less than \$500 nor more than \$5,000 or imprisoned not more than one year in the county jail or both. Each day of violation constitutes a separate offense.~~

SECTION 25. 93.07 (9) of the statutes is created to read:

93.07 (9) GROUNDWATER PROTECTION. To comply with the requirements of ch. 160 in the administration of any program, responsibility or activity assigned or delegated to it by law.

SECTION 26. 94.64 (4) (am) of the statutes is amended to read:

94.64 (4) (am) In addition to the inspection fee under par. (a), a research fee of 10 cents per ton shall be paid to the department for all fertilizer sold or distributed in this state with a minimum fee of \$1 for 10 tons or less, ~~except that specialty fertilizers as defined in s. 94.64 (1) (e) shall be exempted from payment of a research fee.~~

SECTION 27. 94.64 (4) (an) of the statutes is created to read:

94.64 (4) (an) In addition to the fees under pars. (a) and (am), a groundwater fee of 10 cents per ton shall be paid to the department for all fertilizers sold or distributed in this state, with a minimum fee of \$1 for aggregate sales of 10 tons or less. All moneys collected under this paragraph shall be credited to the groundwater fund.

SECTION 28. 94.64 (8m) (a) of the statutes is amended to read:

94.64 (8m) (a) *Use of funds.* At the end of each fiscal year, the moneys collected under sub. (4) (am) shall be forwarded to the university of Wisconsin system ~~under the custody of the college of agricultural and life sciences of the university of Wisconsin-Madison~~ to be used for research on soil management, soil fertility and, plant nutrition problems and for research on groundwater problems which may be related to fertilizer usage; for dissemination of the results of the research; and for other designated activities tending to promote the correct usage of fertilizer materials.

SECTION 29. 94.645 of the statutes is created to read:

**94.645 Fertilizer and pesticide storage.** (1) DEFINITIONS. In this section:

(a) "Bulk fertilizer" has the meaning specified under s. 94.64 (1) (f).

(b) "Bulk pesticide" means liquid pesticide in a container larger than 55 gallons or solid pesticide in undivided quantities greater than 100 pounds.

(c) "Distribute" means to import, consign, sell, offer for sale, solicit orders for sale or otherwise supply fertilizer or pesticide for sale or use in this state.

(d) "Fertilizer" has the meaning specified under s. 94.64 (1) (a), except that this term does not include anhydrous ammonia.

(e) "Manufacture" means to process, granulate, compound, produce, mix, blend or alter the composition of fertilizer or to manufacture, formulate, prepare, compound, propagate, package, label or process any pesticide.

(f) "Pesticide" has the meaning specified under s. 94.67 (25).

(g) "Waters of the state" has the meaning specified under s. 144.01 (19).

(2) STORAGE. (a) Except as provided in par. (b), every person who manufactures or distributes bulk fertilizer or bulk pesticides shall comply with the storage standards adopted under sub. (3).

(b) This section does not apply to containers for liquid pesticide larger than 55 gallons if the larger containers are designed for emergency storage of leaking containers which are 55 gallons or smaller and are used only for that purpose.

(3) RULES. The department shall adopt by rule standards for the storage of bulk fertilizer or bulk pesticides, for the purpose of protecting the waters of the state from harm due to contamination by fertilizer or pesticides. The rule shall apply to all persons who manufacture or distribute bulk fertilizer or bulk pesticides. The rule shall comply with ch. 160. The rule may include different standards for new and existing facilities, but all standards shall provide substantially similar protection for the waters of the state.

(4) ENFORCEMENT. (a) The department shall enforce this section. The department may, by special order under s. 93.18, prohibit a violation of rules promulgated under this section and require necessary measures to correct the violation. Special orders may be issued on a summary basis, without prior complaint, notice or hearing, where necessary to protect public health or the environment. A summary special order is subject to a subsequent right of hearing before the department, if a hearing is requested within 10 days after the date on which the order is served. Any party affected by the special order may request a preliminary or informal hearing pending the scheduling and conduct of a full hearing. Hearings, if requested, shall be conducted as expeditiously as possible after receipt of a request for hearing. Enforcement of a summary special order shall not be stayed pending hearing, except as otherwise ordered by the department.

(b) The circuit court for any county where violation of such an order occurs has jurisdiction to enforce the special order by injunctive and other appropriate relief.

(5) PENALTIES. Any person who violates this section or any rule or order adopted under this section shall forfeit not less than \$10 nor more than \$1,000 for each violation. Each violation of this section or any rule or order under this section constitutes a separate offense and each day of continued violation is a separate offense.

SECTION 30. 94.68 (4) of the statutes is created to read:

94.68 (4) The department may require a person licensed under sub. (1) to submit to the department any information which is needed in the administration of ss. 94.67 to 94.71 or ch. 160. The licensee may designate any information submitted under this subsection as a trade secret. The department may require the licensee to substantiate that the information is in fact a trade secret. Any information which the department determines to be a trade secret shall be kept confidential by the department. The department may enter into agreements with any person to allow for the review of trade secret information if the department ensures that the trade secret information will be kept confidential. The department may require a licensee to submit a summary of trade secret information for the purpose of providing information to the public.

SECTION 31. 94.681 of the statutes is created to read:

**94.681 Groundwater fee; reporting requirements; license fee surcharges.** (1) DEFINITIONS. In this section:

- (a) "Licensee" means a person required to obtain a license under s. 94.68.
- (b) "Primary producer" means a licensee that manufactures an active ingredient which is used to manufacture or produce a pesticide.
- (2) GROUNDWATER FEES. (a) No licensee may manufacture, formulate, distribute, package, label or otherwise produce pesticides for sale or distribution in this state unless the licensee pays the groundwater fee under this section.
- (b) A primary producer shall pay an annual groundwater fee of \$2,000.
- (c) Except as provided under par. (d), a licensee that is not a primary producer shall pay an annual groundwater fee of \$300.
- (d) If a licensee manufactures, formulates, packages, labels or otherwise produces only one pesticide for sale or distribution in this state and the licensee is not subject to the groundwater fee under par. (a), the licensee shall pay an annual groundwater fee of \$100.
- (f) If a licensee fails to pay the correct groundwater fee, the licensee shall pay the additional amount necessary to equal the correct groundwater fee, together with a late payment fee of 20% of the additional amount due, within 45 days of receiving a request for payment from the department.
- (3) COLLECTION OF GROUNDWATER FEES. The department shall collect the groundwater fee at the same time the annual license fee is collected under s. 94.68. The moneys collected under sub. (2) shall be credited to the groundwater fund.
- (4) REPORTING REQUIREMENTS. (a) The department may require the licensee to submit sufficient information to determine whether the licensee has complied with this section.
- (b) 1. Each licensee shall submit a report to the department at the time the groundwater fee is paid listing all pesticides which are manufactured, formulated, packaged, labeled or otherwise produced by the licensee and which are actually sold or distributed in this state.
2. A licensee shall submit a report to the department if it proposes to sell or distribute any pesticide in this state not listed on the report under subd. 1 at least 15 days prior to the first sale or distribution.
- (5) LICENSE FEE SURCHARGES. (a) If the licensee fails to comply with the reporting requirements under sub. (4) (b), the licensee shall pay a license fee surcharge equal to the amount of the groundwater fee.
- (b) Each primary producer shall pay a license fee surcharge of \$2,000. The department shall collect the license fee surcharge at the same time the annual license fee is collected under s. 94.68.
- (c) License fee surcharges imposed under this subsection shall be credited to the appropriation under s. 20.115 (1) (i) for the purpose of monitoring, testing and research related to pesticides in groundwater.
- (d) The department may accept, in its discretion, monitoring, testing or research services from a licensee in place of all or part of the license fee surcharge imposed under par. (b).

SECTION 32. 94.69 (intro.) and (10) of the statutes are amended to read:

**94.69 Pesticides; rules.** (intro.) The department may ~~adopt~~ promulgate rules, ~~after public hearing:~~

(10) The department shall ~~adopt~~ promulgate rules when it determines that it is necessary for the protection of persons or property from serious pesticide hazards and that its enforcement is feasible and will substantially eliminate or reduce such hazards. In making ~~such~~ this determination the department shall consider the toxicity, hazard, effectiveness and public need for the pesticides, and the availability of less toxic or less hazardous pesticides or other means of pest control. It shall obtain the recommendations of the

pesticide review board and such rules, other than rules to protect groundwater adopted to comply with ch. 160, are not effective until approved by the pesticide review board. Such rules shall not affect the application of any other statutes or rule adopted thereunder.

SECTION 33. 94.71 (3) (c) of the statutes is amended to read:

94.71 (3) (c) In addition to other enforcement procedures, the department may, ~~as deemed necessary to protect health and the environment, by summary order and without prior notice or hearing~~ prohibit issue a special order under s. 93.18 prohibiting the use, application, storage, distribution or sale of pesticides in violation of ss. 94.67 to 94.71 or rules issued under ss. 94.67 to 94.71. ~~The order shall be in writing, have the force and effect of an order issued under s. 93.18, and~~ A special order may be issued under this paragraph to prevent or control pesticide contamination of groundwater under ss. 160.23 and 160.25. Special orders may be issued on a summary basis, without prior complaint, notice or hearing, where necessary to protect public health or the environment. A summary special order is subject to a subsequent right of hearing before the department, if requested within 10 days after the date of service on which the order is served. Any party affected by the order may request a preliminary or informal hearing pending the scheduling and conduct of a full hearing. Hearings, if requested, shall be conducted as expeditiously as possible after receipt of a request for a hearing. Enforcement of the order shall not be stayed pending action on the hearing.

SECTION 33h. 97.34 (1) to (6) of the statutes are renumbered 97.34 (2) and (4) to (8), and 94.34 (2) and (8), as renumbered, are amended to read:

97.34 (2) No person, firm or corporation ~~shall~~ may engage in the business of manufacturing or bottling or distributing at wholesale or selling at wholesale to retail establishments for the purpose of resale any soda water beverages or bottled drinking water without a license from the department. ~~But no~~ No license ~~shall~~ may be required for any of the operations of any person, firm or corporation conducted at any plant engaged wholly or partially in the manufacture of malt beverages. ~~Such~~ The license shall be granted under ~~such~~ reasonable rules and regulations as promulgated by the department ~~may from time to time prescribe and~~ may from time to time prescribe and pertaining to the proper handling and storing of ~~such~~ soda water beverages or bottled drinking water and the construction and sanitary condition of buildings and to the proper cleaning and sterilizing of all machinery, bottles or other containers used in or about the factory or premises and all containers in which the product is sold ~~and it may prescribe such.~~

(3) (a) The department shall promulgate by rule standards of purity for all ingredients used in the manufacture or bottling of such soda water beverages as will insure or bottled drinking water which ensure a pure and unadulterated product.

(b) No person may manufacture or bottle bottled drinking water for sale or distribution in this state unless the bottled drinking water complies with state drinking water standards adopted by the department of natural resources under s. 144.025 or 162.03 and with health-related enforcement standards adopted by the department of natural resources under ch. 160.

(c) The department may require testing of bottled drinking water for substances subject to any standard under par. (b) and for any other substance if the department determines that the water supply used as the source of the bottled drinking water has a potential of being contaminated, based on contamination of other water supplies or groundwater in the vicinity. The department shall adopt by rule requirements for periodic sampling and analysis for the purposes of this subsection. The department shall require all analyses to be conducted by a laboratory certified under s. 144.95.



- 1771 -

83 WisACT 410

(d) No person may manufacture or bottle bottled drinking water for sale or distribution in this state unless the location and construction of the water supply and the pump installation used by the manufacturer or bottler comply with rules promulgated by the department of natural resources under s. 162.03.

(e) The department shall publish an annual report summarizing the results of bottled drinking water sampling and analysis.

(8) No soda water beverage or bottled drinking water shall be prepared for sale, sold or offered for sale in bottles or other closed containers unless the name and principal location of the manufacturer, bottler or distributor thereof appears plainly and conspicuously on such the container or on the cap thereof, provided that no such beverage. If the container or cap of which bears the name and address of the actual manufacturer, bottler or dealer shall be deemed to be the beverage is not misbranded because of the permanent imprint on such the container or cap of the name or address, or the name and address of any other person, firm or corporation purporting to be the manufacturer, bottler, distributor or container owner if: (a) There there is also embossed, impressed or otherwise permanently printed on such the container the name, trademark or brand name of a nationally known soda water beverage which is sold only in limited areas by franchised dealers and (b) the product conforms to such the name on the container.

SECTION 33p. 97.34 (1) of the statutes is created to read:

97.34 (1) In this section:

(a) "Bottled drinking water" means all water packaged in bottles or similar containers and sold or distributed for drinking purposes. This term includes distilled water, artesian water, spring water and mineral water, whether carbonated or uncarbonated.

(b) "Soda water beverage" means and includes all beverages commonly known as soft drinks or soda water, whether carbonated, uncarbonated, sweetened or flavored. This term does not include alcohol beverages.

SECTION 33r. 97.34 (8) of the statutes is repealed.

SECTION 33t. 97.34 (10) and (11) of the statutes are amended to read:

97.34 (10) No license ~~shall be imposed upon~~ is required under this section for the sale of soda water beverages or bottled drinking water in any public park operated by any county, city, town or village when sold by an officer or employe thereof of the municipality pursuant to any ordinance, resolution, rule or regulation enacted by the governing body of such the municipality.

(11) No license ~~shall be~~ is required under this section for the manufacture or distribution of uncarbonated soda water beverages which are manufactured or distributed or bottled drinking water by a grade A dairy plant licensed under s. 97.20 or distributed by a grade A milk distributor licensed under s. 97.22.

SECTION 34. 101.02 (16) of the statutes is created to read:

101.02 (16) The department shall comply with the requirements of ch. 160 in the administration of any program, responsibility or activity assigned or delegated to it by law.

SECTION 35. 101.09 of the statutes is created to read:

**101.09 Storage of flammable and combustible liquids.** (1) DEFINITIONS. In this section:

(a) "Combustible liquid" means a liquid having a flash point at or above 100 degrees fahrenheit and below 200 degrees fahrenheit.

(b) "Flammable liquid" means a liquid having a flash point below 100 degrees fahrenheit.

(c) "Flash point" means the minimum temperature at which a flammable or combustible liquid will give off sufficient flammable vapors to form an ignitable mixture with air near the surface of the liquid or within the vessel which contains the liquid.

(d) "Waters of the state" has the meaning specified under s. 144.01 (19).

(2) STORAGE TANKS. (a) Except as provided under pars. (b) to (d), every person who constructs, owns or controls a tank for the storage, handling or use of flammable or combustible liquid shall comply with the standards adopted under sub. (3).

(b) This section does not apply to storage tanks which require a hazardous waste license under s. 144.64.

(c) This section does not apply to storage tanks which are installed above ground level and which are less than 5,000 gallons in capacity.

(d) This section does not apply to a pressurized natural gas pipeline system regulated under 49 CFR 192 and 193.

(3) RULES. The department shall promulgate by rule construction, maintenance and abandonment standards applicable to tanks for the storage, handling or use of flammable and combustible liquids, and to the property and facilities where the tanks are located, for the purpose of protecting the waters of the state from harm due to contamination by flammable and combustible liquids. The rule shall comply with ch. 160. The rule may include different standards for new and existing tanks, but all standards shall provide substantially similar protection for the waters of the state. The rule shall include maintenance requirements related to the detection and prevention of leaks.

(4) ENFORCEMENT. (a) The department shall enforce this section.

(b) The department shall issue orders directing and requiring compliance with the rules and standards of the department adopted under this section whenever, in the judgment of the department, the rules or standards are threatened with violation, are being violated or have been violated.

(c) The circuit court for any county where violation of such an order occurs has jurisdiction to enforce the order by injunctive and other appropriate relief.

(5) PENALTIES. Any person who violates this section or any rule or order adopted under this section shall forfeit not less than \$10 nor more than \$1,000 for each violation. Each violation of this section or any rule or order under this section constitutes a separate offense and each day of continued violation is a separate offense.

SECTION 36. 101.14 (5) of the statutes is created to read:

101.14 (5) In addition to any fee charged by the department by rule for plan review and approval for the construction of a new or additional installation or change in operation of a previously approved installation for the storage, handling or use of flammable or combustible liquids, the department shall collect a groundwater fee of \$100 for each installation. The moneys collected under this section shall be credited to the groundwater fund.

SECTION 36r. 101.142 of the statutes is created to read:

**101.142 Inventory of unused underground petroleum product storage tanks.** (1) DEFINITIONS. In this section:

(a) "Petroleum product" means materials derived from petroleum, natural gas or asphalt deposits and includes gasoline, diesel and heating fuels, liquefied petroleum gases, lubricants, waxes, greases and petrochemicals.

(b) "Storage tank" means an enclosed container with a capacity in excess of 60 gallons which is used to hold a petroleum product, regardless of the duration of storage and which is intended for use as a fixed, rather than as a portable, installation.

(2) INVENTORY OF UNUSED UNDERGROUND STORAGE TANKS. The department shall undertake a program to inventory and determine the location of unused underground storage tanks. The department may require its deputies and any person engaged in the business of distributing petroleum products to provide information on the location of unused underground storage tanks. The department shall develop uniform procedures for reporting the location of unused underground storage tanks.

SECTION 37. 140.77 (1) of the statutes is amended to read:

140.77 (1) The pesticide review board created by s. 15.195 (1) shall collect, analyze and interpret information, and make recommendations to and coordinate the regulatory and informational responsibilities ~~to~~ of the state agencies, on matters relating to the use of pesticides, particularly recommendations for limiting pesticide use to those materials and amounts of pesticides found necessary and effective in the control of pests and which are not unduly hazardous to persons, animals or plants. Pesticide rules authorized by ss. 29.29 (4) and 94.69, except pesticide rules issued under s. 94.705 (2) and pesticide rules to protect groundwater promulgated to comply with ch. 160, are not effective until approved by the review board.

SECTION 38. 143.15 (5) of the statutes is amended to read:

143.15 (5) The department shall establish uniform minimum standards to be used in the evaluation and certification of laboratory examinations. The department shall establish standards by rule for the type of equivalent evaluations that a laboratory may use in place of departmental evaluations. The department shall submit any rules proposed under this subsection which affect the laboratory certification program under s. 144.95 to the department of natural resources and to the state laboratory of hygiene for review and comment. These rules may not take effect unless they are approved by the department of natural resources within 6 months after submission.

SECTION 39. 143.15 (8) and (9) of the statutes are created to read:

143.15 (8) The department shall enter into a memorandum of understanding with the department of natural resources setting forth the responsibilities of each department in administering the laboratory certification programs under sub. (5) and s. 144.95. The memorandum of understanding shall include measures to be taken by each department to avoid duplication of application and compliance procedures for laboratory certification.

(9) The department shall recognize the certification or registration of a laboratory by the department of natural resources under s. 144.95 and shall accept the results of any test conducted by a laboratory certified or registered to conduct that category of test under that section.

SECTION 39m. 144.027 of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

2. Constructed by boring or drilling.

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

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

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

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

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

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

(c) Issue awards under this section.

(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.

(c) Claims may not be submitted under this section after January 1, 1987.

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

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

1. The state.

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

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

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

5. A federal agency, department or instrumentality.

6. An interstate agency.

(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.

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

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

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

(7) PURPOSE AND AMOUNT OF AWARD. 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 80% of the eligible costs. This percentage may be reduced under sub. (10) (d). The award may not pay any portion of eligible costs in excess of \$12,000. Eligible costs include the following items only:

- (a) The cost of obtaining an alternate water supply;
- (b) The cost of any one of the following:
  1. Equipment used for treating the water;
  2. Reconstructing the private water supply;
  3. Constructing a new private water supply;
  4. Providing a connection to a public water supply; or
  5. Providing a connection to an existing private water supply;

(c) 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;

(d) 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;

(e) Purchasing and installing a pump, if a larger pump is necessary due to the greater depth of a new or reconstructed private water supply; and

(f) 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 aggregate claims received from January 1, 1985, to June 30, 1985, and pay the claims within 30 days after the claimant submits receipts showing that eligible costs under sub. (7) were incurred, or within 30 days after the department determines the eligibility of all claims submitted from January 1, 1985, to June 30, 1985, whichever is later.

(d) The sum of the aggregated unpaid claims for the time period under par. (c) shall be compared to the funds available to pay claims for that time period. If the funds are insufficient to pay the full amount due on all claims, the department shall prorate the available funds among the unpaid claims by adjusting the percentage of the payment under sub. (7). Payment of a lesser prorated amount on a claim shall constitute a complete payment of that claim.

(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 benefitted 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 ground-water 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.

(b) *Limits on awards; purposes.* 1. An award may be issued for purchasing and installing a pump only if a larger pump is necessary because the new or reconstructed private water supply is deeper than the contaminated 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 replacement of a sand point well with a drilled well unless the well is to serve a principal residence. This restriction does not prohibit the replacement of a sand point well with another sand point well.

(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 the well is constructed by a well driller licensed under ch. 162.

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

(14) **NEW CLAIMS.** A 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. Only one additional claim may be submitted under this subsection 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.

(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 the effective date of this subsection (1983), and continues at the time a claim is submitted under this section.

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

(18) SUSPENSION OR REVOCATION OF LICENSES. The department may suspend or revoke a license issued under ch. 162 if the department finds that the licensee falsified information submitted under this section. The department of industry, labor and human relations may suspend or revoke the license of a plumber licensed under ch. 145 if the department of industry, labor and human relations finds that the plumber falsified information submitted under this section.

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

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

(b) Submits a fraudulent claim under this section.

SECTION 40. 144.08 of the statutes is created to read:

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

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

(b) "Licensed disposer" means a person holding a license under s. 146.20 (3) (a).

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

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

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



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

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

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

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

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

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

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

(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.

SECTION 41. 144.435 (1) of the statutes is amended to read:

144.435 (1) The department shall promulgate rules establishing minimum standards for the location, design, construction, sanitation, operation, monitoring and maintenance of solid waste facilities. Following a public hearing, the department shall promulgate rules relating to the operation and maintenance of solid waste facilities as it deems necessary to ensure compliance and consistency with the purposes of and standards established under the resource conservation and recovery act, except that the rules relating to open burning shall be consistent with s. 144.436. The rules promulgated under this subsection shall conform to the rules promulgated under sub. (2).

SECTION 42. 144.44 (1m) (c) of the statutes is amended to read:

144.44 (1m) (c) *Attempts to obtain local approvals required.* Following applications for local approvals under par. (b) and prior to submitting a feasibility report, ~~the~~ any applicant subject to s. 144.445 shall undertake all reasonable procedural steps necessary to obtain each local approval required to construct the waste handling portion of the facility except that the applicant is not required to seek judicial review of decisions of the local unit of government.

SECTION 43. 144.44 (2) (b) (intro.) of the statutes is amended to read:

144.44 (2) (b) *Local approval application prerequisite.* (intro.) Except as provided under par. (c), no person subject to s. 144.445 may submit a feasibility report until the latest of the following periods:

SECTION 44. 144.44 (2) (nm) 3. b of the statutes, as created by 1983 Wisconsin Act 93, is amended to read:

144.44 (2) (nm) 3. b. ~~Facilities other than approved~~ Nonapproved facilities, as defined under s. 144.441 (2) (a) ~~1 144.442 (1) (c)~~, which are environmentally sound. It is presumed that a nonapproved facility is not environmentally sound unless evidence to the contrary is produced.

SECTION 45. 144.44 (4) (f) and (g) of the statutes are created to read:

144.44 (4) (f) *Monitoring requirements.* 1. Upon the renewal of an operating license for a nonapproved waste facility, as defined under s. 144.442 (1) (c), the department may impose requirements for monitoring at the facility as a condition of the license.

2. The owner or operator of a nonapproved facility, as defined under s. 144.442 (1) (c), which is in operation is responsible for conducting any monitoring requirements imposed under subd. 1.

**Vetoed  
in Part**

3. The department may require by special order the monitoring of a ~~nonapproved~~ facility, as defined under s. 144.442 (1) (c), which is no longer in operation.

4. If the owner or operator of a ~~nonapproved~~ facility, as defined under s. 144.442 (1) (c), is not a municipality, the owner or operator is responsible for conducting any monitoring requirements ordered under subd. 3.

5. If the owner or operator of a nonapproved facility, as defined under s. 144.442 (1) (c), is a municipality, the municipality is responsible for paying up to \$3 per person residing in the municipality toward the cost of any monitoring requirement ordered under subd. 3. The remainder of the cost of any monitoring requirement ordered under subd. 3 shall be paid from the environmental repair fund appropriation under s. 20.370 (2) (dr).

(g) *Closure agreement.* Any person operating a solid or hazardous waste facility which is a nonapproved facility as defined under s. 144.442 (1) (c) may enter into a written closure agreement at any time with the department to close the facility on or before July 1, 1999. The department shall incorporate any closure agreement into the operating license. The operating license shall terminate and is not renewable if the operator fails to comply with the closure agreement. Upon termination of an operating license under this paragraph as the result of failure to comply with the closure agreement,

the department shall collect additional surcharges and base fees as provided under s. 144.442 (2) and (3) and enforce the closure under ss. 144.98 and 144.99.

SECTION 46. 144.44 (7) of the statutes is amended to read:

144.44 (7) (title) **WAIVERS; EXEMPTIONS.** (a) (title) *Waiver; emergency condition.* The department may waive compliance with any requirement of this section or shorten the time periods under this section provided to the extent necessary to prevent an emergency condition threatening public health, safety or welfare.

(c) (title) *Exemption from licensing; development of improved methods.* The department may, ~~by rule,~~ exempt ~~by rule~~ specified solid wastes or specified facilities from licensing as solid waste facilities if it finds that regulation under this section would discourage the development of improved methods of solid waste disposal, including the landspreading of sludges, or would not be warranted, in light of the potential hazard to public health or the environment.

(d) (title) *Exemption from regulation; single-family waste disposal.* The department ~~shall~~ may not regulate under this chapter any solid waste from a single family or household disposed of on the property where it is generated. ~~Ne~~

(e) (title) *Exemption from licensing; agricultural landspreading of sludge.* The department may not require a license pursuant to under s. 144.44 shall be required for agricultural land on which nonhazardous sludges from a treatment work, as defined under s. 147.015 (12), are land spread for purpose of a soil conditioner or nutrient.

SECTION 47. 144.44 (7) (b) of the statutes is created to read:

144.44 (7) (b) *Waiver; research projects.* The intent of this paragraph is to encourage research projects designed to demonstrate the feasibility of recycling and reusing certain solid wastes while providing adequate and reasonable safeguards for the environment. The department may waive compliance with the requirements of this section and ss. 144.441 and 144.445 for a project developed for research purposes to evaluate the potential for the recycling and beneficial use of high volume industrial waste limited to coal combustion residues, foundry sands and pulp and paper mill sludge if the following conditions are met:

1. The project is designed to demonstrate the feasibility of recycling or reusing solid waste or the feasibility of improved solid waste disposal methods.
2. The department determines that the project is unlikely to violate any law relating to surface water or groundwater quality including this chapter or ch. 147 or 160.
3. The department reviews and approves the project prior to its initiation.
4. The owner or operator of the project agrees to provide all data, reports and research publications relating to the project to the department.
5. The owner or operator of the project agrees to take necessary action to maintain compliance with surface water and groundwater laws, including this chapter and chs. 147 and 160 and to take necessary action to regain compliance with these laws if a violation occurs because of the functioning or malfunctioning of the project.

SECTION 48. 144.441 (1) of the statutes is renumbered 144.441 (1m).

SECTION 49. 144.441 (1) (c) of the statutes is created to read:

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

SECTION 50. 144.441 (2) (a) of the statutes is renumbered 144.441 (1) and amended to read:

144.441 (1) **DEFINITIONS.** In this ~~subsection~~ section:

(a) "Approved facility" means ~~only~~ a solid or hazardous waste disposal facility with an approved plan of operation under s. 144.44 (3) or a solid waste disposal facility initially licensed within 3 years prior to May 21, 1978, whose owner successfully applies, within 2 years after May 21, 1978, for a determination by the department that the facility's design and plan of operation comply substantially with the requirements necessary for plan approval under s. 144.44 (3).

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

SECTION 51. 144.441 (3) (d) and (e) of the statutes are amended to read:

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

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

SECTION 52. 144.441 (3) (f) of the statutes is renumbered 144.441 (3) (g).

SECTION 53. 144.441 (3) (f) of the statutes is created to read:

144.441 (3) (f) *Nonapproved facilities; reduction of or exemption from tonnage fees.* The total annual tonnage fees for all solid waste received by a nonapproved facility shall be reduced by the amount of the base fee under s. 144.442 (2) for that facility. If the base fee for a nonapproved facility under s. 144.442 (2) is greater than the annual tonnage fee imposed under par. (a) for that facility, the solid or hazardous waste received by the facility is exempt from the tonnage fee for that year. The department shall apply the methods for estimating total annual tonnages under par. (d) to calculations under this paragraph.

SECTION 54. 144.441 (5) (a) of the statutes is amended to read:

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

SECTION 55. 144.441 (6) (a) of the statutes is repealed.

SECTION 56. 144.441 (6) (b) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

144.441 (6) (b) *Payments from the waste management fund.* The department may expend moneys in the waste management fund only for the purposes specified under pars. (d), ~~(e) and (g) to (i)~~. The department may expend moneys appropriated under s. 20.370 (2) (cq) for the purposes specified under pars. (d), and (e) and (g). The department may expend moneys appropriated under s. 20.370 (2) (ct) for the purposes specified under par. ~~(h) (f)~~. The department may expend moneys appropriated under s. 20.370 (2) (cs) for the purposes specified under par. ~~(i) (g)~~.

- 1783 -

83 WisACT 410

SECTION 57. 144.441 (6) (c) of the statutes, as affected by 1983 Wisconsin Act 27, is amended to read:

144.441 (6) (c) *Payments from the investment and local impact fund.* The department may expend moneys received from the investment and local impact fund only for the purposes specified under pars. (d), and (e) and (g), only for approved mining waste facilities; and only if moneys in the waste management fund are insufficient to make complete payments and only if the. The amount expended does by the department under this paragraph may not exceed the balance in the waste management fund at the beginning of that fiscal year or 50% of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

SECTION 58. 144.441 (6) (e) of the statutes is repealed.

SECTION 59. 144.441 (6) (f) of the statutes, as affected by 1983 Wisconsin Act 27, is repealed.

SECTION 60. 144.441 (6) (g) to (i) of the statutes, as affected by 1983 Wisconsin Act 27, are renumbered 144.441 (6) (e) to (g).

SECTION 61. 144.441 (7) of the statutes is created to read:

144.441 (7) **GROUNDWATER FEE.** (a) *Imposition of groundwater fee on generators.* Except as provided under par. (f), a generator of solid or hazardous waste shall pay a groundwater fee for each ton or equivalent volume of solid or hazardous waste which is disposed of at a licensed solid or hazardous waste disposal facility. If a person arranges for collection or disposal services on behalf of one or more generators, that person shall pay the groundwater fee to the licensed solid or hazardous waste disposal facility or to any intermediate hauler used to transfer wastes from collection points to a licensed facility. An intermediate hauler who receives groundwater fees under this paragraph shall pay the fees to the licensed solid or hazardous waste disposal facility. Tonnage or equivalent volume shall be calculated in the same manner as the calculation made for tonnage fees under sub. (3).

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

(c) *Amount of groundwater fee.* Except as provided under par. (d), the groundwater fee imposed under par. (a) is 10 cents per ton for solid or hazardous waste.

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

(e) *In addition to other fees.* The groundwater fee collected and paid under par. (b) is in addition to the tonnage fee imposed under sub. (3), the waste management base fee imposed under sub. (5), the environmental repair base fee imposed under s. 144.442 (2) and the environmental repair surcharge imposed under s. 144.442 (3).

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

(g) *Reporting period.* The reporting period under this subsection is the same as the reporting period under sub. (3). The owner or operator of any licensed solid or hazardous waste disposal facility shall pay groundwater fees required to be collected under par. (b) at the same time as any tonnage fees under sub. (3) and the waste management base fee under sub. (5) are paid.

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

SECTION 62. 144.442 of the statutes is renumbered 144.444.

SECTION 63. 144.442 of the statutes is created to read:

**144.442 Environmental repair.** (1) DEFINITIONS. In this section:

(a) "Approved facility" has the meaning specified under s. 144.441 (1) (a).

(b) "Approved mining facility" has the meaning specified under s. 144.441 (1) (b).

(c) "Nonapproved facility" has the meaning specified under s. 144.441 (1) (c).

(cm) "Private water supply" means a well which is used as a source of water for humans, livestock or poultry. As used in this paragraph "livestock" has the meaning specified under s. 95.80 (1) (b).

(d) "Site or facility" means an approved facility, an approved mining facility, a non-approved facility or a waste site.

(e) "Waste site" means any site, other than an approved facility, an approved mining facility or a nonapproved facility, where waste is disposed of regardless of when disposal occurred.

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

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

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

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

(d) *Reduction of base fee; monitoring.* This paragraph applies to a nonapproved facility which is subject to the \$1,000 base fee under par. (b) 2 and which is required by the department to conduct monitoring under s. 144.44 (4) (f). The base fee under par. (b) 2 shall be reduced by the cost of monitoring for the calendar year to which the base fee applies, or \$900, whichever is less.

(3) ENVIRONMENTAL REPAIR SURCHARGE. (a) *Imposition of environmental repair surcharge.* If the owner or operator of a nonapproved facility is required to pay a tonnage fee under s. 144.441 (3), the owner or operator shall pay to the department an environmental repair surcharge for each calendar year.

(b) *Amount of environmental repair surcharge.* 1. With respect to solid or hazardous waste disposed of at a nonapproved facility for which the owner or operator enters into an agreement with the department to close the facility on or before July 1, 1999, the owner or operator shall pay to the department an environmental repair surcharge equal to 25% of the tonnage fees imposed under s. 144.441 (3). The 25% surcharge first applies for the calendar year in which the owner or operator enters into a closure agreement. If the owner or operator fails to comply with the closure agreement, the department shall collect the additional tonnage fees which would have been paid by the owner or operator under subd. 2 in the absence of the closure agreement.

2. With respect to solid or hazardous waste disposed of at a nonapproved facility for which the owner or operator has not entered into an agreement with the department to close the facility on or before July 1, 1999, the owner or operator shall pay to the department an environmental repair surcharge equal to 50% of the tonnage fees imposed under s. 144.441 (3).

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

(4) INVENTORY; ANALYSIS; HAZARD RANKING. (a) *Inventory.* 1. The department shall compile and maintain an inventory of sites or facilities which may cause or threaten to cause environmental pollution. In compiling the inventory, the department shall collect all relevant information about a site or facility which is or may become available.

2. The department shall publish the inventory and any amendments to the inventory as a class 1 notice under ch. 985 in the official state newspaper under s. 985.04 or, if none exists, in a major newspaper with statewide circulation. The notice shall include a statement that the list is not subject to judicial review.

3. The decision of the department to include a site or facility on the inventory or exclude a site or facility from the inventory is not subject to judicial review.

4. Notwithstanding s. 227.01 (9) or 227.011, the list of sites or facilities which results from the inventory is not a rule.

(b) *Investigation; analysis.* 1. The department may take direct action under subd. 2 or 3 or may enter into a contract with any person to take the action. The department may take action under subd. 2 or 3 regardless of whether a site or facility is included on the inventory under par. (a) or the hazard ranking list under par. (c).

2. The department may conduct an investigation, analysis and monitoring of a site or facility and areas surrounding the site or facility to determine the existence and extent of actual or potential environmental pollution from the site or facility including, but not limited to, monitoring by means of installing test wells or by testing water supplies.

3. The department may determine whether a site or facility presents a substantial danger to public health or welfare or the environment and evaluate the magnitude of the danger.

(c) *Hazard ranking.* 1. The department shall promulgate by rule criteria for determining the ranking of sites and facilities which are included in the inventory under par. (a), based on the degree to which sites or facilities present a substantial danger to public health or welfare or the environment and the potential urgency of taking remedial action. To the extent applicable, the criteria shall be based on the population at risk, the potential for contamination of drinking water supplies, the potential for other direct human contact, the potential for destruction of sensitive ecosystems, the hazard potential of the hazardous substances which may be released and other appropriate factors. The department is not required to use hazard ranking criteria promulgated by the federal environmental protection agency under 42 USC 9601, et seq.

2. From time to time, the department shall issue documents, consistent with the criteria in subd. 1, which list the hazard ranking of sites and facilities which are included in the inventory under par. (a). The department may include subcategories in the hazard ranking list which group together, without assigning a specific degree of risk and without establishing an individual hazard ranking, sites or facilities which do not present a substantial danger to public health or welfare or the environment. Notwithstanding s. 227.01 (9) or 227.011, documents issued under this subdivision are not rules.

3. The department shall publish the hazard ranking list and any amendments to the hazard ranking list as a class 1 notice under ch. 985 in the official state newspaper under s. 985.04 or, if none exists, in a major newspaper with statewide circulation. The notice shall invite the submission of written comments within the 30-day period after the notice

is published. The notice shall include a description of the procedure for requesting a public hearing and a statement that the list is not subject to judicial review.

4. Within 30 days after the hazard ranking list or any amendments to the hazard ranking list are published, any person may submit to the department a request for a public hearing. If a hearing is requested within the 30-day period, the department shall publish a notice of the hearing, at least 10 days prior to the hearing, as a class 1 notice under ch. 985 in the official state newspaper under s. 985.04 or, if none exists, in a major newspaper with statewide circulation. The department shall conduct the public hearing within 90 days after the hearing is requested. The department may publish a notice and conduct a public hearing if a request is received after the 30-day period. Notwithstanding s. 227.064, the hearing under this paragraph shall not be conducted as a contested case.

5. The decision of the department concerning the hazard ranking assigned to a site or facility is not subject to judicial review.

(5) ENVIRONMENTAL RESPONSE PLAN. The department shall promulgate by rule a waste facility environmental response plan. The department shall promulgate rules under this subsection within 2 years after the effective date of this subsection (1983). The plan shall contain the following provisions:

- (a) Methods for preparing the inventory and conducting the analysis under sub. (4).
- (b) Methods for remedial action under sub. (6).
- (c) Methods and criteria for determining the appropriate extent of remedial action under sub. (6).
- (d) Means of ensuring that the costs of remedial action are appropriate in relation to the associated benefits over the period of potential human exposure to substances released by the site or facility.

(e) Appropriate roles and responsibilities under this section for federal, state and local governments and for interstate and nongovernmental entities.

(6) ENVIRONMENTAL REPAIR. (a) *Applicability*. This subsection applies only to a site or facility which presents a substantial danger to public health or welfare or the environment.

(b) *Department authority*. 1. The department may take direct action under subds. 2 to 9 or may enter into a contract with any person to take the action.

2. The department may take action to avert potential environmental pollution from the site or facility.

3. The department may repair the site or facility or isolate the waste.

4. The department may abate, terminate, remove and remedy the effect of environmental pollution from the site or facility.

5. The department may restore the environment to the extent practicable.

6. The department may establish a program of long-term care, as necessary, for a site or facility which is repaired or isolated.

7. The department may provide temporary or permanent replacements for private water supplies damaged by a site or facility.

8. The department may assess the potential health effects of the occurrence, not to exceed \$10,000 per occurrence.

9. The department may take any other action not specified under subds. 2 to 8 consistent with this subsection in order to protect public health, safety or welfare or the environment.



(c) *Sequence of remedial action.* In determining the sequence for taking remedial action under this subsection, the department shall consider the hazard ranking of each site or facility, the amount of funds available, the information available about each site or facility, the willingness and ability of an owner, operator or other responsible person to undertake or assist in remedial action, the availability of federal funds under 42 USC 9601, et seq., and other relevant factors.

(d) *Emergency responses.* Notwithstanding rules promulgated under this section, the hazard ranking list or the considerations for taking action under par. (c), the department may take emergency action under this section at a site or facility if delay will result in imminent risk to public health or safety or the environment. The department is not required to hold a hearing under par. (f) if emergency action is taken under this paragraph. The decision of the department to take emergency action is a final decision of the agency subject to judicial review under ch. 227.

(e) *Access to property.* The department, any authorized officer, employe or agent of the department or any person under contract with the department may enter onto any property or premises at reasonable times and upon notice to the owner or occupant to take action under this subsection. Notice to the owner or occupant is not required if the delay required to provide this notice is likely to result in an imminent risk to public health or welfare or the environment.

(f) *Notice; hearing.* The department shall publish a class 1 notice, under ch. 985, prior to taking remedial action under this section which describes the proposed remedial action and the amount and purpose of any proposed expenditure. Except as provided under par. (d), the department shall provide a hearing to any person who demands a hearing within 30 days after the notice is published for the purpose of determining whether the proposed remedial action and any expenditure is within the scope of this section and is reasonable in relation to the cost of obtaining similar materials and services. The department is not required to conduct more than one hearing for the remedial action proposed at a single site or facility. Notwithstanding s. 227.064, the hearing shall not be conducted as a contested case. The decision of the department to take remedial action under this section is a final decision of the agency subject to judicial review under ch. 227.

(6m) **MONITORING COSTS AT NONAPPROVED FACILITIES OWNED OR OPERATED BY MUNICIPALITIES.** Notwithstanding the inventory, analysis and hazard ranking under sub. (4), the environmental response plan prepared under sub. (5) or the environmental repair authority, remedial action sequence and emergency response requirements under sub. (6), the department shall pay that portion of the cost of any monitoring requirement which is to be paid from the appropriation under s. 20.370 (2) (dr) prior to making other payments from that appropriation.

(7) **PAYMENTS FROM THE INVESTMENT AND LOCAL IMPACT FUND.** The department may expend moneys received from the investment and local impact fund for the purposes specified under sub. (6) only for approved mining facilities and only if moneys in the environmental repair fund are insufficient to make complete payments. The amount expended by the department under this subsection may not exceed the balance in the environmental repair fund at the beginning of that fiscal year or 50% of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

(8) **IMPLEMENTING THE FEDERAL SUPERFUND ACT.** (a) The department may advise, consult, assist and contract with other interested persons to take action to implement the federal comprehensive environmental response, compensation and liability act of 1980, 42 USC 9601, et seq., in cooperation with the federal environmental protection agency. These actions include all of the actions under subs. (4) to (6). The department may enter into agreements with the federal environmental protection agency.

(b) The department may expend moneys from the appropriation under s. 20.370 (2) (dw) as required under 42 USC 9601, et seq. The department shall promulgate by rule criteria for the expenditure of moneys from the appropriation under s. 20.370 (2) (dw). The criteria shall include consideration of the amount of moneys available in the appropriation under s. 20.370 (2) (dw), the moneys available from other sources for the required sharing of costs, the differences between public and private sites or facilities, the potential for cost recovery from responsible parties and any other appropriate factors.

(9) RECOVERY OF EXPENDITURES. (a) *Definitions.* In this subsection:

1. "Operator" means any person who operates a site or facility or who permits the disposal of waste at a site or facility under his or her management or control for consideration, regardless of whether the site or facility remains in operation and regardless of whether the person operates or permits disposal of waste at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation.

2. "Owner" means any person who owns or who receives direct or indirect consideration from the operation of a site or facility regardless of whether the site or facility remains in operation and regardless of whether the person owns or receives consideration at the time any environmental pollution occurs. This term includes a subsidiary or parent corporation.

3. "Subsidiary or parent corporation" means any business entity, including a subsidiary, parent corporation or other business arrangement which has elements of common ownership or control or uses a long-term contractual arrangement with any person to avoid direct responsibility for conditions at a site or facility.

(b) *Applicability.* 1. This subsection does not apply to the release or discharge of a substance which is in compliance with a permit, license, approval, special order, waiver or variance issued under ch. 30, 31, 144 or 147, or under corresponding federal statutes or regulations.

2. This subsection applies to an owner who purchases the land where a site or facility is located only if the owner knew or should have known of the existence of the site or facility at the time of purchase.

(c) *Persons responsible.* 1. An owner or operator is responsible for conditions at a site or facility which presents a substantial danger to public health or welfare or the environment if the person knew or should have known at the time the disposal occurred that the disposal was likely to result in or cause the release of a substance into the environment in a manner which would cause a substantial danger to public health or welfare or to the environment.

2. Any person, including an owner or operator and including a subsidiary or parent corporation which is related to the person, is responsible for conditions at a site or facility which present a substantial danger to public health or welfare or the environment if:

a. The person violated any applicable statute, rule, plan approval or special order in effect at the time the disposal occurred and the violation caused or contributed to the condition at the site or facility; or

b. The person's action related to the disposal caused or contributed to the condition at the site or facility and would result in liability under common law in effect at the time the disposal occurred, based on standards of conduct for that person at the time the disposal occurred.

(d) *Right of action.* A right of action shall accrue to the state against any person responsible under par. (c) if an expenditure is made for environmental repair at the site or facility or if an expenditure is made under sub. (8).

(f) *Action to recover costs.* The attorney general shall take action as is appropriate to recover expenditures to which the state is entitled.

(g) *Disposition of funds.* If the original expenditure was made from the environmental repair fund, the net proceeds of the recovery shall be paid into the environmental repair fund. If the original expenditure was made from the investment and local impact fund, the net proceeds of the recovery shall be paid into the investment and local impact fund.

(h) *Cleanup agreements; waiver of cost recovery.* The department and any person who is responsible under par. (c) may enter into an agreement regarding actions which the department is authorized to take under sub. (6). In the agreement, the department may specify those actions under sub. (6) which the responsible person may take. As part of the agreement, the department may agree to reduce the amount which the state is entitled to recover under this subsection or to waive part or all of the liability which the responsible person may have under this subsection.

(10) **RELATION TO OTHER LAWS.** The department shall coordinate its efforts under this section with the federal environmental protection agency acting under the comprehensive environmental response, compensation and liability act, 42 USC 9601, et seq. The department may not duplicate activities or efforts of the federal environmental protection agency if such duplication is prohibited under 42 USC 9601, et seq. ~~The department may not expend funds for environmental repair, other than the state cost share, at sites or facilities which will receive funds under 42 USC 9601, et seq.~~

**Vetoed  
in Part**

(11) **LIABILITY.** (a) No common law liability, and no statutory liability which is provided in other statutes, for damages resulting from a site or facility is affected in any manner by this section. The authority, power and remedies provided in this section are in addition to any authority, power or remedy provided in any other statutes or provided at common law.

(b) If a person takes any remedial action at a site or facility, whether or not an agreement is entered into with the department under sub. (9) (h), any agreement and the action taken are not evidence of liability or an admission of liability for any potential or actual environmental pollution.

SECTION 64. 144.62 (13) of the statutes is created to read:

144.62 (13) The department may waive compliance with any requirement under ss. 144.60 to 144.74 or shorten the time periods under ss. 144.60 to 144.74 to the extent necessary to prevent an emergency condition threatening public health, safety or welfare or the environment.

SECTION 64g. 144.64 (3) (a) of the statutes is renumbered 144.64 (3), and 144.64 (3) (title), as renumbered, is amended to read:

144.64 (3) (title) **VARIANCE.**

SECTION 64r. 144.64 (3) (b) of the statutes is repealed.

SECTION 65. 144.715 of the statutes, as created by 1983 Wisconsin Act 27, is repealed.

SECTION 66. 144.76 (6) of the statutes, as affected by 1983 Wisconsin Act 27, is repealed and recreated to read:

144.76 (6) **HAZARDOUS SUBSTANCES SPILLS; APPROPRIATIONS AND RELATED PROVISIONS.** (a) *Contingency plan; activities resulting from discharges.* The department may utilize moneys appropriated under s. 20.370 (2) (cm) and (du) in implementing and carrying out the contingency plan developed under sub. (5) and to provide for the procurement, maintenance and storage of necessary equipment and supplies, personnel training and expenses incurred in identifying, locating, monitoring, containing, removing and disposing of discharged substances.

(b) *Limitation on equipment expenses.* No more than 25% of the moneys available under the appropriation under s. 20.370 (2) (cm) or (du) during any fiscal year may be used for the procurement and maintenance of necessary equipment during that fiscal year.

(c) *Reimbursements.* 1. Reimbursements to the department under sub. (7) (b) shall be credited to the environmental repair fund.

2. Reimbursements to the department under section 311, federal water pollution control act amendments of 1972, P.L. 92-500, shall be credited to the appropriation under s. 20.370 (2) (cm).

SECTION 67. 144.76 (7) (c) of the statutes is amended to read:

144.76 (7) (c) The department, for the protection of public health, safety or welfare, may issue an emergency order or a special order to the person possessing, controlling or responsible for the discharge of hazardous substances to fulfill the duty imposed by sub. (3).

SECTION 68. 144.76 (10) of the statutes is renumbered 144.76 (11).

SECTION 69. 144.76 (10) of the statutes is created to read:

144.76 (10) **WAIVER.** The department may waive compliance with any requirement of this section to the extent necessary to prevent an emergency condition threatening public health, safety or welfare.

SECTION 70. 144.76 (12) of the statutes is created to read:

144.76 (12) **APPLICABILITY.** Action by the department under this section is not subject to s. 144.442 (4) to (9).

SECTION 71. 144.77 of the statutes is created to read:

**144.77 Abandoned containers.** (1) **DEFINITION.** In this section, "abandoned container" means any container which contains a hazardous substance and is not being monitored and maintained.

(2) **APPLICABILITY.** (a) This section does not apply to abandoned containers which are located in an approved facility or a nonapproved facility, as defined under s. 144.442 (1).

(b) Action by the department under this section is not subject to s. 144.442 (4) to (9).

(3) **CONTINGENCY PLAN.** (a) After consultation with other affected federal, state and local agencies and private organizations, the department shall establish by rule criteria and procedures for the development, establishment and amendment of a contingency plan for the taking of emergency actions in relation to abandoned containers.

(b) The contingency plan shall establish procedures and techniques for locating, identifying, removing and disposing of abandoned containers.

(4) **REMOVAL OR OTHER EMERGENCY ACTION.** The department or its agent may contain, remove or dispose of abandoned containers or take any other emergency action which it deems appropriate under the circumstances.

(5) **ACCESS TO PROPERTY.** Any duly authorized officer, employe or agent of the department, upon notice to the owner or occupant, may enter unto any property, premises or place at any time for the purposes of sub. (3) if the entry is necessary to prevent increased damage to the air, land or waters of the state. Notice to the owner or occupant is not required if the delay in providing the notice is likely to result in imminent risk to public health or welfare or the environment.

(6) **ABANDONED CONTAINERS; APPROPRIATIONS.** (a) The department may utilize moneys appropriated under s. 20.370 (2) (dv) in taking action under sub. (3). The department shall utilize these moneys to provide for the procurement, maintenance and storage of necessary equipment and supplies, personnel training and expenses incurred in locating, identifying, removing and disposing of abandoned containers.

(b) No more than 25% of the total of all moneys available under the appropriation under s. 20.370 (2) (dv) may be used annually for the procurement and maintenance of necessary equipment during that fiscal year.

SECTION 71m. 144.795 of the statutes is created to read:

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

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

SECTION 72. Subchapter VI of chapter 144 of the statutes, as affected by 1983 Wisconsin Act 27, is renumbered subchapter VII of chapter 144.

SECTION 73. Subchapter VI of chapter 144 of the statutes is created to read:

CHAPTER 144  
SUBCHAPTER VI

GENERAL ENVIRONMENTAL PROVISIONS

**144.95 Laboratory certification program.** (1) DEFINITIONS. As used in this section:

(a) “Accuracy” means the closeness of a measured value to its generally accepted value or its value based upon an accepted reference standard.

(b) “Certified laboratory” means a laboratory which performs tests for hire in connection with a covered program and which receives certification under sub. (7) or receives reciprocal recognition under sub. (5).

(c) “Council” means the certification standards review council created under s. 15.107 (11).

(d) “Covered program” means test results submitted in connection with any of the following:

1. A feasibility report, plan of operation or the condition of any license issued for a solid waste facility under s. 144.44 (2), (3) and (4), or hazardous waste facility under s. 144.64 (2) (am) and (b).

2. An application for a mining permit under s. 144.85 (3).

3. Monitoring required by terms and conditions of a permit issued under ch. 147.

4. The replacement of a well or provision of alternative water supplies under s. 144.027 or 144.265.

5. Groundwater monitoring under ch. 160.

6. The management or enforcement of the safe drinking water program under s. 144.025 (2) (t) or 162.03 (1) (b) and (d).

7. The terms of department contracts when specifically required in the contracts.

8. An investigation of a discharge of a hazardous substance under s. 144.76.

9. A regulatory program specified by the department by rule if, after consultation with the council, the department finds that existing quality control programs do not provide consistent and reliable results and the best available remedy is to require that all laboratories performing the tests for that regulatory program be certified or registered.

(e) “Laboratory” means a facility which performs tests in connection with a covered program.

(f) “Precision” means the closeness of repeated measurements of the same parameter within a sample.

(g) “Registered laboratory” means a laboratory which is registered under sub. (8) or receives reciprocal recognition under sub. (5).

(h) “Results” includes measurements, determinations and information obtained or derived from tests.

(i) "Test" means any chemical, bacteriological, biological, physical, radiation or microscopic test, examination or analysis conducted by a laboratory on water, wastewater, waste material, soil or hazardous substance.

(j) "Test category" means one type of test or group of tests specified by rule under sub. (4) for similar materials or classes of materials or which utilize similar methods or related methods.

(2) COORDINATION WITH DEPARTMENT OF HEALTH AND SOCIAL SERVICES. (a) The department shall submit to the department of health and social services any rules proposed under this section which affect the laboratory certification program under s. 143.15 (5) and to the state laboratory of hygiene for review and comment. These rules may not take effect unless they are approved by the department of health and social services within 6 months after submission.

(b) The department shall enter into a memorandum of understanding with the department of health and social services setting forth the responsibilities of each department in administering the laboratory certification programs under s. 143.15 (5) and this section. The memorandum of understanding shall include measures to be taken by each department to avoid duplication of application and compliance procedures for laboratory certification.

(3) CERTIFICATION STANDARDS REVIEW COUNCIL. The council shall review the laboratory certification and registration program and shall make recommendations to the department concerning the specification of test categories, reference sample testing and standards for certification, registration, suspension and revocation and other aspects of the program.

(4) DEPARTMENT MAY REQUIRE CERTIFICATION OR REGISTRATION. (a) *Applicability.* Except as provided in subs. (5) and (6), if results from a test in a specified test category in a covered program are required to be submitted to the department, the department may require by rule that the test be conducted by a laboratory which is certified or registered to conduct tests in that specified category. The department may require that tests be conducted by a certified laboratory if the requirements for registration do not meet the requirements of an applicable federal law.

(b) *Specification of test categories.* After considering any recommendations by the council, the department may identify by rule specified test categories.

(c) *Delayed effective date.* A rule identifying specified test categories for which tests are required to be conducted by a certified or registered laboratory may not take effect until at least 120 days after publication. The department may not require a person to resubmit results of tests which were not required to be conducted by a certified or registered laboratory at the time of the original submission merely because of that fact.

(5) RECIPROCAL CERTIFICATION OR REGISTRATION. (a) *Laboratories certified by the department of health and social services.* The department shall recognize the certification of a laboratory by the department of health and social services under s. 143.15 and shall accept the results of any test conducted by a laboratory certified to conduct that category of test under that section.

(b) *Reciprocity with laboratories certified or registered by others.* The department may recognize the certification, registration, licensure or approval of a laboratory by a private organization, another state or an agency of the federal government if the standards for certification, registration, licensure or approval are substantially equivalent to those established under this section. The department may accept the results of any tests conducted by a laboratory which it recognizes as qualified to conduct that category of tests. The department shall publish periodically a list of those agencies whose certifications, approvals or registrations it accepts. Any laboratory which is registered, certified or approved by any such agency may apply to the department to have the same recognized under this section.

(c) *Reciprocity agreements.* The department shall negotiate with and attempt to enter into acceptable agreements with federal agencies, agencies of other states and private agencies for the purpose of reciprocal recognition of laboratory certification and registration under this section. The department may not recognize the certification, registration, licensure or approval of a laboratory by a private organization, another state or an agency of the federal government unless that private organization, state or federal agency recognizes laboratories certified under this section.

(d) *Discretionary acceptance.* The department may accept the results of a test in a specified test category even though the test was not conducted by a certified or registered laboratory. The department may charge an extra fee if it is necessary to verify the results of a test submitted under this paragraph.

(6) NOT APPLICABLE TO OTHER PROGRAMS. No laboratory is required to be registered or certified under this section for any purpose other than the submission of results under a covered program.

(7) CERTIFICATION PROCEDURES. (a) *Criteria.* After considering recommendations by the council, the department shall promulgate by rule uniform minimum criteria, as provided in this subsection, to be used to evaluate laboratories for certification. Criteria shall be consistent with nationally recognized criteria to the maximum extent possible and shall be designed to facilitate reciprocal agreements under sub. (5).

(b) *Methodology.* 1. 'Accepted methodology.' The department shall prescribe by rule the accepted methodology to be followed in conducting tests in each test category. The department may prescribe by rule accepted sampling protocols and documentation procedures for a specified test category to be followed by the person collecting the samples. The department may prescribe this methodology by reference to standards established by technical societies and organizations as authorized under s. 227.025. The department shall attempt to prescribe this methodology so that it is consistent with any methodology requirements under the resource conservation and recovery act, as defined under s. 144.43 (4g), the federal water pollution control act, as amended, 33 USC 1251 to 1376, the safe drinking water act, 42 USC 300f to 300j-10, or the toxic substance control act, 15 USC 2601 to 2629.

2. 'Revised methodology.' The department may permit the use of a revised methodology consistent with new or revised editions or standards established by technical societies and organizations on a case-by-case basis.

3. 'Alternative methodology; confidentiality.' a. The department may permit the use of an alternative methodology on a case-by-case basis if the laboratory seeking to use that methodology submits data establishing the accuracy and precision of the alternative methodology and if the accuracy and precision obtained through the use of the alternative methodology equals or exceeds that obtained through use of the accepted methodology. The department shall establish by rule the data which is required to be submitted and the criteria for evaluating accuracy and precision of alternative methods.

b. A laboratory seeking to use an alternative methodology may request confidential treatment of any data or information submitted to the department under this paragraph. The department shall grant confidential status for any data or information relating to unique methods or processes if the disclosure of those methods or processes would tend to adversely affect the competitive position of the laboratory.

4. 'Waiver of the procedure.' The department may waive any procedure prescribed in the accepted methodology on a case-by-case basis if the laboratory seeking this waiver establishes sufficient reasons for the waiver and that the waiver does not adversely affect the purpose for which the test is conducted.

(c) *Reference sample testing.* The department may prescribe by rule criteria for determining the accuracy of tests by certified laboratories on reference samples. The department shall provide, to the extent reasonably possible, reference samples prepared by an

independent source for a representative cross section of test categories which are to be regularly and routinely performed by certified laboratories. The department may require a certified laboratory to analyze not more than 3 reference samples per year for each test category.

(d) *Quality control.* The department shall establish by rule minimum requirements for a quality control program which ensures that a laboratory complies with criteria for the accuracy and precision of tests in each test category and which specifies procedures to be followed if these criteria are not met. The department may accept a quality control program based upon state or federal requirements for similar test categories.

(e) *Records.* Where a particular time period is not otherwise specified by law, the department may prescribe by rule for each test category the length of time laboratory analysis records and quality control data specified in the laboratory's quality control program are to be retained by the laboratory.

(f) *Application for certification.* The department shall specify by rule the criteria and standards to be met by applicants for certification. A laboratory desiring to be certified for a specified test category shall make application on forms provided by the department.

(g) *Initial certification.* The department shall issue an initial certification to a laboratory for a specified test category if all of the following conditions are met:

1. 'Application.' The laboratory submits an application requesting certification in a specified test category.
2. 'Methodology.' The laboratory specifies a methodology prescribed or permitted under par. (b) which it intends to utilize in conducting tests in the specified test category.
3. 'Accuracy.' If the department provides a reference sample, the laboratory conducts a test on the sample and obtains results which comply with the minimum criteria for accuracy for that specified test category.
4. 'Quality control.' The laboratory has or agrees to implement a quality control program which meets minimum requirements under par. (d) for the specified test category and which is to commence no later than the date of certification.

(h) *Certification period.* Certification of laboratories shall be renewed annually. A certification is valid from the date of issuance until it expires, is revoked or suspended.

(i) *Suspension and revocation.* After considering recommendations from the council, the department shall establish by rule criteria and procedures for the review and evaluation of the certification of laboratories and the suspension or revocation of certifications. If, after opportunity for a contested case hearing, the department finds that a certified laboratory materially and consistently failed to comply with the criteria and procedures established by rule, it may suspend or revoke the certification of the laboratory. A person whose certification is suspended or revoked may reapply for certification upon a showing that the person meets the applicable criteria for certification and has corrected the deficiencies that led to the suspension or revocation.

(8) REGISTRATION PROCEDURE. (a) *Criteria.* Upon application, the department shall register a laboratory if the laboratory complies with the requirements of this subsection, if the laboratory does not perform tests commercially for hire and if:

1. The laboratory performs tests solely on its own behalf or on behalf of a subsidiary or other corporation under common ownership or control; or
2. The laboratory is owned or controlled by a municipality or 2 or more municipalities and performs tests solely on behalf of the municipality or municipalities.

(b) *Methodology.* Testing by a registered laboratory conducted in connection with a covered program shall be carried out in accordance with sub. (7) (b).



(c) *Reference sample testing.* The department may require by rule reference sample tests upon application and annually thereafter. If results from these tests do not meet minimum criteria established by rule, the department may require additional reference sample testing. If the laboratory participates in a joint or split sampling program with the federal environmental protection agency, or otherwise obtains independent reference samples, the department may accept those results instead of its own reference samples.

(d) *Quality control.* The laboratory shall conduct self-audits and a quality control program consistent with criteria specified by rule by the department and based on methods and standards prescribed by rule and considering criteria used by the federal environmental protection agency, the American society for testing materials, the national council on air and stream improvement, the national academy of sciences or other equivalent agency recognized by the department.

(e) *Records.* Where a particular time period is not otherwise specified by law, the department may prescribe by rule for each test category the length of time laboratory analysis records and quality control data specified in the laboratory's quality control program are to be retained by the laboratory.

(f) *Registration.* Registration of laboratories shall be renewed annually. A registration is valid from the date of issuance until it expires, is revoked or suspended.

(g) *Suspension or revocation of registration.* If, after opportunity for a contested case hearing, the department finds that a registered laboratory has materially and consistently failed to comply with the self-audit procedures and quality control programs provided in par. (d), it may suspend or revoke the registration of the laboratory. A person whose registration is suspended or revoked may reapply for registration upon a showing that the person meets the applicable criteria for registration and has corrected the deficiencies that led to the suspension or revocation.

(h) *Certification option.* A laboratory which is otherwise eligible to seek registration may elect to apply for certification under sub. (7).

(9) **FEEs.** The department shall promulgate by rule a graduated schedule of fees for certified and registered laboratories which are designed to recover the costs of administering this section.

**144.951 Groundwater protection.** The department shall comply with the requirements of ch. 160 in the administration of any program, responsibility or activity assigned or delegated to it by law.

SECTION 74. 144.952 of the statutes is renumbered 144.97.

SECTION 75g. 144.965 (title) of the statutes is renumbered 144.265 (title).

SECTION 75j. 144.965 (1) of the statutes is renumbered 144.265 (1) and amended to read:

144.265 (1) In this section, ~~“regulated:~~

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

(b) “Regulated activity” means an activity for which the department may issue an order under s. 144.025 (2) (d), (k) or (r), 144.431 (2) (b), 144.44 (8), 144.47, 144.73 (1), 144.76 (7) (e), 144.83 (4) (e) or 144.91 this chapter, if the activity is conducted in violation of this chapter, or in violation of licenses, permits or special orders issued or rules promulgated under this chapter.

SECTION 75m. 144.965 (2) (a) of the statutes is renumbered 144.265 (2) (a) and amended to read:

144.265 (2) (a) Except as provided under par. (b), if the department finds that a regulated activity has caused a ~~well-or private~~ water supply to become contaminated, polluted or unfit for ~~human~~ 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 ~~drinkable fit for consumption by humans, livestock and poultry~~, repair the ~~well-or private~~ water supply or replace the ~~well-or private~~ water supply and to reimburse the town, village or city for the cost of providing water under sub. (4).~~

SECTION 76g. 144.965 (2) (b) of the statutes, as affected by 1983 Wisconsin Act 27, is renumbered 144.265 (2) (b) and amended to read:

144.265 (2) (b) If the department finds that a regulated activity has caused a ~~residential well-or private~~ water supply to become contaminated, polluted or unfit for ~~human~~ consumption by humans, livestock or poultry, and if the regulated activity is an approved facility, as defined in s. ~~144.441 (2) (a) + 144.442 (1) (a)~~, the department may conduct a hearing under s. ~~144.441 (6) (f) 144.442 (6) (f)~~. If the damage to the ~~residential well-or 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 ~~waste management environmental repair~~ fund to treat the water to render it drinkable, or to repair or replace the ~~well-or 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 ~~residential well-or private~~ water supply is not caused by an occurrence not anticipated in the plan of operation ~~or~~, if the damage does not pose a substantial hazard to public health or welfare, or if insufficient moneys are available in the environmental repair fund, the department may order the owner or operator of the regulated activity to treat the water to render it ~~drinkable fit for consumption by humans, livestock and poultry~~, or to repair or replace the ~~well-or private~~ water supply, and to reimburse the town, village or city for the cost of providing water under sub. (4).

SECTION 76m. 144.965 (3) of the statutes is renumbered 144.265 (3) and amended to read:

144.965 (3) In any action brought by the department of justice under s. 144.98, if the court finds that a regulated activity owned or operated by the defendant has caused a ~~well-or private~~ water supply to become contaminated, polluted or unfit for ~~human~~ consumption by humans, livestock or poultry, the court may order the defendant to treat the water to render it ~~drinkable fit for consumption by humans, livestock and poultry~~, repair the ~~well-or private~~ water supply or replace the ~~well-or private~~ water supply and to reimburse the town, village or city for the cost of providing water under sub. (4).

SECTION 77g. 144.965 (4) of the statutes is renumbered 144.265 (4), and 144.265 (4) (a) (intro.) and 1, (b) and (c), as renumbered, are amended to read:

144.265 (4) (a) The owner of land where the ~~well-or private~~ water supply is located may submit the following information to the town, village or city where the ~~well-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 ~~well-or private~~ water supply.

- (b) A person who submits information under par. (a) may file a claim with the town, village or city where the ~~well-or 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 ~~well-or private~~ water supply. Responsibility to supply water commences at the time the claim is filed. Responsibility to supply water ends upon notification to the

- 1797 -

83 WisACT 410

town, village or city that an order under sub. (2) or (3) has been complied with or upon a finding that the regulated activity is not the cause of the damage.

(c) If the department or the court does not find that the regulated activity is the cause of the damage to a well or 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 well or private water supply is located for the costs of supplying water under this subsection by a special assessment under s. 66.60.

SECTION 79. 145.01 (16) and (17) of the statutes are created to read:

145.01 (16) FAILING PRIVATE SEWAGE SYSTEM. In this chapter, "failing private sewage system" has the meaning specified under s. 144.245 (4).

(17) WATERS OF THE STATE. In this chapter, "waters of the state" has the meaning specified under s. 144.01 (19).

SECTION 80. 145.02 (1) of the statutes is amended to read:

145.02 (1) The construction, installation and maintenance of plumbing in connection with all buildings in this state, including buildings owned by the state or any political subdivision thereof, shall be safe, sanitary and such as to safeguard the public health and the waters of the state.

SECTION 81. 145.02 (3) (f) of the statutes is amended to read:

145.02 (3) (f) Issue special orders directing and requiring compliance with the rules and standards of the department promulgated under this chapter whenever, in the judgment of the department, the rules or standards are threatened with violation, are being violated or have been violated. The circuit court for any county where violation of such an order occurs has jurisdiction to enforce the order and shall enforce any order brought before it by injunctive and other appropriate relief. The attorney general or the district attorney of the county where the violation of the order occurs shall bring action for its enforcement. The department may issue an order under this paragraph to abate a violation of s. 146.13 or 146.14.

SECTION 82. 145.12 (4) of the statutes is created to read:

145.12 (4) Any person who violates any order under s. 145.02 (3) (f) or 145.20 (2) (f) or any rule or standard adopted under s. 145.13 shall forfeit not less than \$10 nor more than \$1,000 for each violation. Each violation of an order under s. 145.02 (3) (f) or 145.20 (2) (f) or a rule or standard under s. 145.13 constitutes a separate offense and each day of continued violation is a separate offense.

SECTION 83. 145.13 of the statutes is amended to read:

**145.13 (title) Adoption of plumbing code.** The state plumbing code and amendments ~~thereto to that code~~ as adopted by the department have the effect of law in the form of standards state-wide in application and shall apply to all types of buildings, private or public, rural or urban, including buildings owned by the state or any political subdivision thereof. The state plumbing code shall comply with ch. 160. All plumbing installations shall so far as practicable be made to conform with such code.

SECTION 84. 145.19 (6) of the statutes is created to read:

145.19 (6) GROUNDWATER FEE. In addition to the fee under sub. (2), the governmental unit responsible for the regulation of private sewage systems shall collect a groundwater fee of \$25 for each sanitary permit. The governmental unit shall forward this fee to the department together with the copy of the sanitary permit and the fee under sub. (3). The moneys collected under this subsection shall be credited to the groundwater fund.

SECTION 85. 145.20 (2) (f) of the statutes is amended to read:

145.20 (2) (f) Investigate violations of the private sewage system ordinance and s. 146.13 or 146.14 (2), issue orders to abate the violations and submit orders to the district attorney, corporation counsel or attorney general for enforcement.

SECTION 86. 145.20 (2) (h) of the statutes is created to read:

145.20 (2) (h) Inspect existing private sewage systems to determine compliance with s. 66.036 if a building or structure is being constructed which requires connection to an existing private sewage system. The county is not required to conduct an on-site inspection if a building or structure is being constructed which does not require connection to an existing private sewage system.

SECTION 87. 145.24 of the statutes is created to read:

**145.24 Variances.** (1) If an existing private sewage system either is not located in soil meeting the siting standards or is not constructed in accordance with design standards promulgated under s. 145.02 or 145.13 or trial regulatory procedures promulgated under s. 145.022, the owner of the private sewage system may petition the department for a variance to the siting or design standards.

(2) The department shall establish procedures for the review and evaluation of existing private sewage systems which do not comply with siting or design standards.

(3) Upon receipt of a petition for a variance, the department shall require the owner of the private sewage system to submit information necessary to evaluate the request for a variance. If the department determines that the existing private sewage system is not a failing private sewage system, and continued use of the existing private sewage system will not pose a threat of contamination of waters of the state, then the department may issue a variance to allow continued use of the existing private sewage system. The department shall rescind the variance if the existing private sewage system becomes a failing private sewage system or contaminates waters of the state.

SECTION 88. 145.24 (1) of the statutes, as created by 1983 Wisconsin Act .... (this act), is amended to read:

145.24 (1) If an existing private sewage system either is not located in soil meeting the siting standards or is not constructed in accordance with design standards promulgated under s. 145.02 or 145.13 ~~or trial regulatory procedures promulgated under s. 145.022~~, the owner of the private sewage system may petition the department for a variance to the siting or design standards.

SECTION 89. 146.20 (title) of the statutes is amended to read:

**146.20 (title) Servicing septic tanks, soil absorption fields, holding tanks, grease traps and privies.**

SECTION 90. 146.20 (1) of the statutes is repealed.

SECTION 91. 146.20 (2) (c) of the statutes is repealed and recreated to read:

146.20 (2) (c) "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.

SECTION 92. 146.20 (2) (e) and (f) of the statutes are amended to read:

146.20 (2) (e) "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 ~~storage~~ stored for decomposition and periodic removal.

(f) "Servicing" means ~~cleaning, removing and disposal of scum, liquid, sludge or other wastes~~ seepage from a septic tank, ~~seepage pit~~ soil absorption field, holding tank, grease trap or privy and disposing of the seepage.

SECTION 93. 146.20 (2) (g) and (2m) of the statutes are created to read:

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

(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.

SECTION 94. 146.20 (3) (title) and (a) of the statutes are amended to read:

146.20 (3) (title) VEHICLE LICENSE; REGISTRATION. (a) (title) *License; application*. Every person before engaging in the business of servicing septic tanks, ~~seepage pits soil absorption fields, holding tanks,~~ grease traps or privies in this state shall make application on forms prepared by the department for licensing of each vehicle used by ~~him~~ the person in such business. ~~The annual license fee is \$25 for each vehicle for a state resident licensee and \$50 for a nonresident licensee.~~ If the department, after investigation, is satisfied that the applicant has the qualifications, experience, and equipment to perform the services in a manner not detrimental to public health it shall issue the license, provided a surety bond has been executed. The license fee shall accompany all applications.

SECTION 95. 146.20 (3) (d) of the statutes is repealed and recreated to read:

146.20 (3) (d) *Licensing exceptions; registration*. A licensed plumber or a person who services a septic tank, soil absorption field, holding tank, grease trap or privy on real estate owned or leased by the person and who disposes of the septage on the same parcel is not required to obtain a vehicle license under this subsection. A person who is exempt from licensing under this paragraph shall register with the department before servicing a septic tank, soil absorption field, holding tank, grease trap or privy.

SECTION 96. 146.20 (4g), (4m), (4s) and (5m) of the statutes are created to read:

146.20 (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 vehicle license under sub. (3) (a) for a state resident licensee, \$25.

2. For a vehicle license under sub. (3) (a) for a nonresident licensee, \$50.
3. For registration under sub. (3) (d), \$15.
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 a groundwater fee of \$50 per licensee. The moneys collected under this paragraph shall be credited to the groundwater fund.

(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 sub. (6).

(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.

SECTION 97. 146.20 (6) of the statutes is repealed and recreated to read:

146.20 (6) PENALTIES. Any person who violates any provision of subs. (2) to (5) or any rule adopted under those subsections shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day such violation continues constitutes a separate offense.

SECTION 98. 147.018 of the statutes is created to read:

- 1801 -

83 WisACT 410

**147.018 Waiver.** The department may waive compliance with any requirement of this chapter or shorten the time periods under this chapter to the extent necessary to prevent an emergency condition threatening public health, safety or welfare.

SECTION 99. 147.02 (3) (f) of the statutes is created to read:

147.02 (3) (f) Groundwater protection standards established under ch. 160.

SECTION 100. 147.033 of the statutes is created to read:

**147.033 Groundwater fee.** The holder of a permit under s. 147.02 shall pay \$100 to the department as a groundwater fee on January 1 if the permittee discharges effluent on land or if the permittee produces sludge from a treatment work which is disposed of on land. If the permittee discharges effluent on land and disposes of sludge from a treatment work on land, the permittee shall pay \$200 to the department as a groundwater fee on January 1. The moneys collected under this section shall be credited to the groundwater fund.

~~SECTION 100m. 147.31 of the statutes is created to read:~~

~~**147.31 Animal waste management.** The department may not promulgate rules under this chapter regulating management of animal waste. The department shall cooperate with the department of agriculture, trade and consumer protection in the development and the implementation of the animal waste management program created under ss. 92.28 to 92.30. The department may petition the department of agriculture, trade and consumer protection to promulgate rules to ensure that the purposes of the animal waste management program are being achieved. This section does not affect the authority of the department to act under other statutes and rules or its authority to issue and enforce orders relating to abatement of animal waste pollution under other statutes and rules.~~

**Vetoed  
in Part**

SECTION 101. Chapter 160 of the statutes is created to read:

#### CHAPTER 160

#### GROUNDWATER PROTECTION STANDARDS

**160.001 Legislative intent.** The legislature recognizes that prior to the effective date of this section (1983), most groundwater regulatory programs were not based on numerical standards. The legislature intends, by the creation of this chapter, to minimize the concentration of polluting substances in groundwater through the use of numerical standards in all groundwater regulatory programs. The numerical standards, upon adoption, will become criteria for the protection of public health and welfare, to be achieved in groundwater regulatory programs concerning the substances for which standards are adopted. To this end, the legislature intends that:

(1) This chapter will establish an administrative process which will produce numerical standards, comprised of enforcement standards and preventive action limits, for substances in groundwater. As more specifically provided in this chapter, administrative procedures also provide for minimizing the concentration of substances in groundwater.

(2) The enforcement standards and preventive action limits will be adopted under the authority of this chapter, independent of any regulatory programs concerning the substances for which enforcement standards and preventive action limits are adopted.

(3) This chapter supplements the regulatory authority elsewhere in the statutes, whether the regulatory programs exist under current statutes on the effective date of this subsection (1983), or are created after that date. Regulatory agencies will continue to exercise the powers and duties in those regulatory programs, consistent with the enforcement standards and preventive action limits for substances in groundwater under this chapter. This chapter provides guidelines and procedures for the exercise of regulatory authority which is established elsewhere in the statutes, and does not create independent regulatory authority.

(4) In order to comply with this chapter, a regulatory agency is not required to adopt a particular type of regulation; regulatory agencies are free to establish any type of regulation which assures that regulated facilities and activities will not cause the concentration of a substance in groundwater affected by the facilities or activities to exceed the enforcement standards and preventive action limits under this chapter at a point of standards application. A regulatory agency may adopt regulations which establish specific design and management criteria for regulated facilities and activities, if the regulations will ensure that the regulated facilities and activities will not cause the concentration of a substance in groundwater affected by the facilities or activities to exceed the enforcement standards and preventive action limits under this chapter at a point of standards application.

(5) The enforcement standards and preventive action limits adopted under this chapter provide adequate safeguards for public health and welfare. However, this chapter does not prevent regulatory agencies from adopting regulations under regulatory authority elsewhere in the statutes based on the best currently available technology for regulated activities and practices which ensure a greater degree of groundwater protection.

(6) Where necessary to comply with federal statutes or regulations, the department of natural resources may adopt rules in regulatory programs administered by it which are more stringent than the enforcement standards and preventive action limits adopted under this chapter.

(7) A regulatory agency may take any actions within the context of regulatory programs established in statutes outside of this chapter, if those actions are necessary to protect public health and welfare or prevent a significant damaging effect on groundwater or surface water quality for present or future consumptive or nonconsumptive uses, whether or not an enforcement standard and preventive action limit for a substance has been adopted under this chapter. Nothing in this chapter requires the department of health and social services or the department of natural resources to establish an enforcement standard for a substance if a federal number or state drinking water standard has not been adopted for the substance and if there is not sufficient scientific information to establish the standard.

(8) Preventive action limits shall serve as a means to inform regulatory agencies of potential groundwater contamination problems, to establish the level of groundwater contamination at which regulatory agencies are required to commence efforts to control the contamination and to provide a basis for design and management practice criteria in administrative rules. A preventive action limit is not intended to be an absolute standard at which remedial action is always required.

**160.01 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Department", when used without qualification, means the department of natural resources.

(2) "Enforcement standard" means a numerical value expressing the concentration of a substance in groundwater which is adopted under ss. 160.07 and 160.09.

(3) "Federal number" means a numerical expression of the concentration of a substance in water, established as:

(a) A drinking water standard or maximum contaminant level, by the federal environmental protection agency;

(b) A suggested no-adverse-response level, by the federal environmental protection agency; or

(c) For oncogenic substances, a concentration based on a risk level determination by the federal environmental protection agency or a concentration based on a probability of risk model determined by the national academy of sciences.



(4) "Groundwater" means any of the waters of the state, as defined in s. 144.01 (19), occurring in a saturated subsurface geological formation of rock or soil.

(5) "Point of standards application" means the specific location, depth or distance from a facility, activity or practice at which the concentration of a substance in groundwater is measured for purposes of determining whether a preventive action limit or an enforcement standard has been attained or exceeded.

(6) "Preventive action limit" means a numerical value expressing the concentration of a substance in groundwater which is adopted under s. 160.15.

(6m) "Property boundary" means the boundary of the total contiguous parcel of land owned by a common owner, regardless of whether public or private roads run through the parcel.

(7) "Regulatory agency" means the department of agriculture, trade and consumer protection, the department of industry, labor and human relations, the department of transportation, the department of natural resources and other state agencies which regulate activities, facilities or practices which are related to substances which have been detected in or have a reasonable probability of entering the groundwater resources of the state.

(8) "Substance" means any solid, liquid, semisolid, dissolved solid or gaseous material, naturally occurring or man-made chemical, parameter for measurement of water quality or biological organism which, in its original form, or as a metabolite or a degradation or waste product, may decrease the quality of groundwater.

**160.03 Duties of department.** The department shall exercise both the responsibilities assigned specifically to it under this chapter as well as those assigned generally to the department as a regulatory agency.

**160.05 Identification of groundwater contamination; categories.** (1) IDENTIFICATION. Each regulatory agency shall submit to the department a list of those substances which are related to facilities, activities and practices within its authority to regulate and which are detected in or have a reasonable probability of entering the groundwater resources of the state.

(2) PETITION. (a) Any person may petition a regulatory agency to add a substance to or delete a substance from the list submitted to the department under sub. (1). The petition shall clearly and concisely state all of the following:

1. The name of the substance which is proposed to be added or removed from the list.
2. The regulatory authority of the regulatory agency over the facility, activity or practice which is the source of the substance.
3. The reasons for believing the substance exists in or has a reasonable probability of entering the groundwater or the reasons for believing the substance should be removed from the list.

(b) Within a reasonable period of time after the receipt of a petition a regulatory agency shall either deny the petition in writing or submit the name of the substance to the department under sub. (1). If the regulatory agency denies the petition, it shall give notice of the denial promptly to the person who filed the petition, including a statement of its reasons for the denial.

(3) ESTABLISH CATEGORIES. Within 60 days following receipt of a name of a substance under sub. (1), the department shall place the substance into one of the following categories:

(a) Category 1, if the substance is detected in groundwater in concentrations in excess of a federal number for that substance.

(b) Category 2, if the substance is detected in groundwater and is of public health or welfare concern but:

1. Is not detected in concentrations in excess of a federal number; or
2. For which there is no federal number.

(c) Category 3, if the substance has a reasonable probability of being detected in groundwater and is of public health or welfare concern.

(4) **RANKING WITHIN CATEGORIES.** The department shall rank each substance within its category. The department shall give highest rankings to those substances which pose the greatest risks to the health or welfare of persons in the state, taking into consideration, among other things, the following characteristics:

- (a) Carcinogenicity.
- (b) Teratogenicity.
- (c) Mutagenicity.
- (d) Interactive effects.

(5) **REVISION OF SUBSTANCE LISTS.** The department shall revise, as necessary, the ranking of substances within categories to include additional substances as they are reported, to reflect a change in the status of a substance which requires that it be placed in a different category or to remove from the list substances which are not shown to involve public health or welfare concerns or which do not have a reasonable probability of entering the groundwater.

(6) **PUBLIC HEALTH CONCERNS.** (a) The department shall designate which of the substances in each category are of public health concern and which are of public welfare concern.

(b) In determining whether a substance is of public health concern, the department shall take into account the degree to which the substance may:

1. Cause or contribute to an increase in mortality;
2. Cause or contribute to an increase in illness or incapacity, whether chronic or acute;
3. Pose a substantial present or potential hazard to human health because of its physical, chemical or infectious characteristics; or
4. Cause or contribute to other adverse human health effects or changes of a chronic or subchronic nature even if not associated with illness or incapacity.

(c) In determining whether a substance is of public health concern, the department may consider other effects not specified under par. (b) if those effects are reasonably related to public health.

(d) In determining whether a substance is of public welfare concern, the department shall take into account whether the substance may:

1. Influence the aesthetic suitability of water for human use;
2. Influence the suitability of water for uses other than human drinking water; or
3. Have a substantial adverse effect on plant life or animal life.

(e) In determining whether a substance is of public welfare concern, the department may consider additional characteristics not specified under par. (d) if those characteristics are reasonably related to public welfare.

**160.07 Establishment of enforcement standards; substances of public health concern.** (1) The department of health and social services and the department shall enter into a memorandum of understanding setting forth the procedures and responsibilities of each agency in establishing enforcement standards under this section. The memorandum shall include those standards to be used by the department in making the designation required under s. 160.05 (6).

(2) Within 10 days after placing the name of a new substance within a category or changing the category of a substance under s. 160.05, the department shall submit the current list of categories and rankings of substances to the department of health and social services.

(3) The department of health and social services shall recommend to the department an enforcement standard for each substance submitted to it under sub. (2) which is designated as of public health concern, in the order of rankings within each category under s. 160.05 (4).

(4) The department of health and social services shall develop recommendations for enforcement standards for substances of public health concern as follows:

(a) If a single federal number exists for a substance, the federal number shall be the enforcement standard.

(b) If more than one federal number exists for a substance, the most recently established federal number representing the most current data shall be the enforcement standard.

(c) If no federal number exists for a substance, but there is a state drinking water standard, the state drinking water standard shall be the enforcement standard.

(d) If neither a federal number nor a state drinking water standard exists for a substance, the department of health and social services shall develop a recommended enforcement standard using the methodology under s. 160.13.

(e) Notwithstanding pars. (a) and (b), the department of health and social services may recommend an enforcement standard different than the federal number if there is significant technical information which is scientifically valid and which was not considered when the federal number was established, upon which the department of health and social services concludes, utilizing the methodology under s. 160.13 and with a reasonable scientific certainty, that such a standard is justified. The department of health and social services may recommend a change in an enforcement standard previously adopted by utilization of a federal number. In evaluating the evidence for establishing an enforcement standard different than a federal number, the department of health and social services shall consider the extent to which the evidence was developed in accordance with scientifically valid analytical protocols and may consider whether the evidence was subjected to peer review, resulted from more than one study and is consistent with other credible medical or toxicological evidence.

(5) Within 9 months after transmitting the name of a substance to the department of health and social services under sub. (2), the department of natural resources shall propose rules establishing the recommendation of the department of health and social services as the enforcement standard for that substance and publish the notice required under s. 227.02 (1) (e), 227.021 or 227.027 (2).

(6) If a federal number is established or changed for a substance after an enforcement standard is recommended by the department of health and social services and if any person or regulatory agency submits a request, the department or natural resources shall determine whether the enforcement standard needs revision based on recommendations under sub. (4).

**160.09 Establishment of enforcement standards; substances of public welfare concern.**

(1) Notwithstanding the authority of the department under chs. 144 and 162 to establish standards for pure drinking water, the department shall establish enforcement standards for substances of public welfare concern as follows:

(a) If a single federal number exists for a substance, the federal number shall be the enforcement standard.

(b) If more than one federal number exists for a substance, the most recently established federal number representing the most current data shall be the enforcement standard.

(c) If no federal number exists for a substance, but there is a state drinking water standard, the state drinking water standard shall be the enforcement standard.

(d) If neither a federal number nor a state drinking water standard exists for a substance, the department shall establish an enforcement standard using all relevant and scientifically valid information available in technical literature concerning the substance and, if necessary, by comparison to similar compounds or classes of compounds.

(e) Notwithstanding pars. (a) and (b), the department may establish an enforcement standard different than the federal number if there is significant technical information which is scientifically valid and which was not considered when the federal number was established, upon which the department concludes, with a reasonable scientific certainty, that such a standard is justified. The department may change an enforcement standard previously adopted by utilization of a federal number. In evaluating the evidence for establishing an enforcement standard different than a federal number, the department shall consider the extent to which the evidence was developed in accordance with scientifically valid analytical protocols and may consider whether the evidence was subjected to peer review, resulted from more than one study and is consistent with other credible medical or toxicological evidence.

(2) The department shall establish an enforcement standard for each substance of public welfare concern in the order of rankings within each category under s. 140.05 (4).

(3) The department shall establish enforcement standards by rule. The department shall prepare proposed rules establishing enforcement standards and shall provide the notice under s. 227.02 (1) (e), 227.021 or 227.027 (2) within 9 months after the name of a substance is received under s. 160.05.

(4) If a federal number is changed or newly established for a given substance after an enforcement standard is established by the department and if a request is submitted to the department by any person or regulatory agency, the department shall determine whether the enforcement standard needs to be revised based on sub. (1).

**160.11 Public information.** In promulgating any enforcement standards as rules under ss. 160.07 and 160.09, the department, with the assistance of the department of health and social services, shall prepare a document describing the information and methodology used and the conclusions reached in establishing each proposed enforcement standard. The department shall make the document available when the notice is provided under s. 227.02 (1) (e), 227.021 or 227.027 (2). Any person may submit written questions on the document to the department at any time after the notice is provided under s. 227.02 (1) (e), 227.021 or 227.027 (2) and before any public hearing on the proposed rule is held. The department, with the assistance of the department of health and social services, shall respond at the public hearing to all questions previously submitted in writing.

**160.13 Methodology to establish enforcement standard.** (1) **DEFINITIONS.** In this section:

(a) "Acceptable daily intake" means the dose of a substance which, if ingested daily over an entire human lifetime, appears to be without appreciable risk on the basis of all known facts at the time it is established. Acceptable daily intake is expressed in units of milligrams of the substance per kilogram of body weight.

(b) "Department" means the department of health and social services.

(c) "No-observable-effect level" means that level of intake of a substance which, when administered to a group of humans or experimental animals, does not produce any of the effects observed or measured at any higher level of intake and produces no significant

difference between the test group and an unexposed control group of humans or animals maintained under identical conditions.

(2) **METHODOLOGY.** (a) The department shall establish a recommended enforcement standard for a substance by first determining the acceptable daily intake for the substance under par. (b) and then basing the recommended enforcement standard on that acceptable daily intake under par. (c). In complying with pars. (b) and (c), the department shall utilize, where available, relevant and scientifically valid information from the office of pesticide programs and the office of drinking water in the federal environmental protection agency.

(b) The department shall determine the acceptable daily intake for the substance as follows:

1. If an acceptable daily intake for the substance is established by the office of pesticide programs or office of drinking water in the federal environmental protection agency, that federal value shall be the acceptable daily intake.

2. Notwithstanding subd. 1, the department may determine an acceptable daily intake value different than the federal value established by the office of pesticide programs or office of drinking water in the federal environmental protection agency, if there is significant technical information which is scientifically valid and which was not considered when the federal value was established, upon which the department concludes, with a reasonable scientific certainty, that such a value is justified. In evaluating the evidence for establishing an acceptable daily intake value different than a federal value, the department shall consider the extent to which the evidence was developed in accordance with scientifically valid analytical protocols and may consider whether the evidence was subjected to peer review, resulted from more than one study and is consistent with other credible medical or toxicological evidence.

3. If no acceptable daily intake for the substance is established by the office of pesticide programs or office of drinking water in the federal environmental protection agency, the department shall determine the acceptable daily intake for the substance by dividing the substance's no-observable-effect level by a suitable uncertainty factor. In establishing a suitable uncertainty factor, the department shall consider all of the following, utilizing, where available, information from the office of pesticide programs and the office of drinking water in the federal environmental protection agency:

- a. The quality and quantity of data relevant to establishing an acceptable daily intake.
- b. The relative importance to full health of the most sensitive target organs or body systems affected by the substance.
- c. The amount of interspecies and intraspecies variations in the effects of the substance.
- d. The dose-response curve and the time-concentration relationships for the substance.
- e. The nature and degree of severity of injury incurred at the intake level at which the effect of exposure to the substance ceases to be reversible.
- f. The potential interactions of the substance within the body with other environmental chemicals or therapeutic drugs.
- g. The known potential cumulative effects of repeated exposure to the substance.
- h. The known chronic or subchronic effects of exposure to similar or related compounds.
- i. The identification of physiologic or pathologic states and functional abnormalities among the potentially exposed population which would constitute a health hazard in the event of exposure to the substance.

j. The possibility of chronic health effects from repeated, acute short-term exposure to the substance.

4. If no acceptable daily intake or equivalent value for an oncogen is established by the federal environmental protection agency or if an acceptable daily intake is established but oncogenic potential at the established acceptable daily intake presents an unacceptable probability of risk, the department shall provide the department of natural resources with an evaluation of the oncogenic potential of the substance. This evaluation of oncogenic potential shall indicate an acceptable daily intake for the substance which, if ingested daily over an entire human lifetime, appears to present an acceptable probability of risk which is presumed to be a risk level equal to a ratio of one to 1,000,000. A risk level equal to a ratio of one to 1,000,000 is the expectation that no more than one excess death will occur in a population of 1,000,000 over a 70-year period. The department shall base the evaluation of oncogenic potential on a review of the most recent and scientifically valid information available.

(c) The department shall base the recommended enforcement standard for the substance on the intake of one liter of water per day by a person weighing 10 kilograms, where that water is the only source of the substance for the person. The department shall establish the recommended enforcement standard so that the acceptable daily intake of the substance is not exceeded for this type of person under these conditions.

**160.15 Establishment of preventive action limits.** (1) The department shall establish by rule a preventive action limit for each substance for which an enforcement standard is established, as follows:

(a) For any substance of public welfare concern, the preventive action limit shall be 50% of the concentration established as the enforcement standard.

(b) For any substance of public health concern, the preventive action limit shall be 20% of the concentration established as the enforcement standard.

(c) Notwithstanding par. (b), for any substance that has carcinogenic, mutagenic or teratogenic properties or interactive effects, the preventive action limit shall be 10% of the concentration established as the enforcement standard.

(2) The department may establish a preventive action limit for a substance which is lower than the level specified under sub. (1) if the department concludes, to a reasonable degree of scientific certainty, based on significant technical information which is scientifically valid, that a more stringent level is necessary to protect public health or welfare from the interactive effects of the substance. In evaluating whether the evidence provides a sufficient basis for a more stringent level, the department shall consider the extent to which the evidence was developed in accordance with generally accepted analytical protocols and may consider whether the evidence was subjected to peer review, resulted from more than one study and is consistent with other credible medical or toxicological evidence.

(3) Notwithstanding sub. (1), the department may establish by rule preventive action limits for indicator parameters used in monitoring waste storage, treatment or disposal facilities regulated by the department such as biochemical or chemical oxygen demand, alkalinity, hardness, conductivity and pH, if enforcement standards are not established under s. 160.07 or 160.09 for the indicator parameters. In establishing preventive action limits for indicator parameters, the department shall consider the background water quality and the potential for the indicator parameters to show that preventive action limits under sub. (1) may be exceeded.

**160.17 Collection of information.** Concurrently with the identification of substances under s. 160.05 (1), the regulatory agency shall conduct a literature search and shall request, where appropriate, the manufacturer of each substance and other knowledgeable sources to provide relevant data, information on the environmental fate of the sub-

stance and recommendations on measures which may be implemented to minimize the concentration of the substance in the groundwater.

**160.19 Regulatory agency; review of existing regulations; design and management criteria.** (1) When an enforcement standard or a preventive action limit is established by rule for a substance, each regulatory agency shall review its rules and commence promulgation of any rules or amendments of its rules necessary to ensure that the activities, practices and facilities regulated by the regulatory agency will comply with this chapter.

(2) (a) Each regulatory agency shall promulgate rules which define design and management practice criteria for facilities, activities and practices affecting groundwater which are designed, to the extent technically and economically feasible, to minimize the level of substances in groundwater and to maintain compliance by these facilities, activities and practices with preventive action limits, unless compliance with the preventive action limits is not technically and economically feasible.

(b) If a regulatory agency proposes a rule under par. (a) which is not designed to maintain compliance with preventive action limits, the proposed rule and the notice required under s. 227.02 (1) (e), 227.021 or 227.027 (2) shall include a statement to that effect, and a summary of the rationale for the proposed rule. If a regulatory agency determines not to amend the substance of an existing rule which contains design or management practice criteria that do not maintain compliance with preventive action limits, it shall nonetheless amend the rule to include a notice that the rule does not maintain preventive action limits. A summary of the rationale for not amending the substance of the rule shall be included in the notice required under s. 227.02 (1) (e), 227.021 or 227.027 (2).

(3) A regulatory agency may not promulgate rules defining design and management practice criteria which permit an enforcement standard to be attained or exceeded at the point of standards application.

(4) Notwithstanding previous regulatory agency action to review and amend existing rules or to promulgate new rules:

(a) If a rule is designed to maintain compliance with a preventive action limit under sub. (2) (a) and if a preventive action limit is attained or exceeded at a point of standards application, the regulatory agency shall review its rules and, if necessary, revise the rules to maintain or achieve the objectives of subs. (2) and (3).

(b) If an enforcement standard is attained or exceeded at a point of standards application, the regulatory agency shall review its rules and, if necessary, revise the rules to ensure that the enforcement standard is not attained or exceeded at a point of standards application at other locations in the future.

(5) In conducting any review under sub. (4), the regulatory agency's analysis shall include an examination of the performance of other comparable activities in the state to determine if the noncompliance at a single site suggests an isolated problem or a problem which is likely to recur.

(6) The department shall promulgate by rule a scientifically valid procedure for determining if a preventive action limit or enforcement standard is, in fact, attained or exceeded or if a change in concentration of a substance has, in fact, occurred. This procedure shall be used for all regulatory and enforcement purposes under this chapter.

(7) Notwithstanding subs. (2) and (4) (a), modifications to rules and changes in the manner of their administration are not required under this section solely because the background concentration of nitrate or a substance of public welfare concern at individual locations is equal to or greater than the preventive action limit.

(8) Notwithstanding subs. (2) to (4), the department may allow a facility which is regulated under subch. IV of ch. 144 or ch. 147 to be constructed, after the effective date of this subsection (1983), in an area where the background concentration of nitrate or a

substance of public welfare concern attains or exceeds the preventive action limit or the enforcement standard if the facility is designed to achieve the lowest possible concentration for that substance which is technically and economically feasible and the anticipated increase in the concentration of the substance does not present a threat to public health or welfare.

(9) Notwithstanding subs. (2) to (4), the department may allow a facility which is regulated under subch. IV of ch. 144 or ch. 147 to be constructed, after the effective date of this subsection (1983), in an area where the background concentration of a substance of public health concern, other than nitrate, attains or exceeds a preventive action limit for that substance:

(a) If the facility will not cause the further release of that substance into the environment;

(b) If the background concentration of the substance does not exceed the enforcement standard for that substance, the facility will not cause the concentration of the substance to exceed the enforcement standard for that substance and the facility is designed to achieve the lowest possible concentration of that substance which is technically and economically feasible; or

(c) If the background concentration of the substance equals or exceeds the enforcement standard for that substance, the facility is designed to achieve the lowest possible concentration of that substance which is technically and economically feasible, the anticipated increase in the concentration of the substance will not cause an increased threat to public health or welfare and the anticipated incremental increase in the concentration of the substance, by itself, will not exceed the preventive action limit. The department shall take action under s. 160.25 if it determines that the increase in the substance causes an increased threat to public health or welfare or it determines that the incremental increase in the concentration of the substance, by itself, exceeds the preventive action limit.

(10) If the department allows a facility to be constructed under sub. (9) (b) or (c), the department shall specify in the initial approval of or the initial or modified permit for the facility the terms and conditions under which the department may seek remedial action for the specific site under ss. 160.23 and 160.25, relating to the substance.

(11) Regulatory agencies shall enforce rules promulgated under this section with respect to specific sites in accordance with ss. 160.23 and 160.25.

(12) The requirements in this section shall not apply to rules governing an activity regulated under ss. 144.80 to 144.94, or to a solid waste facility regulated under s. 144.44 which is part of an activity regulated under ss. 144.80 to 144.94, except that the department may promulgate new rules or amend rules governing this type of activity, practice or facility if the department determines that the amendment or promulgation of rules is necessary to protect public health, safety or welfare.

**160.21 Adoption of rules for regulatory responses for groundwater contamination.** (1) For each substance for which an enforcement standard or a preventive action limit is adopted by the department, each regulatory agency shall promulgate rules which set forth the range of responses which the regulatory agency may take or which it may require the person controlling a facility, activity or practice which is a source of the substance to take if:

(a) The preventive action limit is attained or exceeded at the point of standards application; or

(b) The enforcement standard is attained or exceeded at the point of standards application.

(2) Each regulatory agency shall determine by rule the point of standards application for each facility, activity or practice which is the source of a substance for which an enforcement standard or a preventive action limit is established, as follows:



(a) If monitoring is required under existing rules for a facility, activity or practice:

1. The regulatory agency shall establish a point of standards application at any location where groundwater is monitored for the purpose of determining whether the preventive action limit for a substance has been attained or exceeded.

2. The regulatory agency shall establish a point of standards application at the following locations for the purpose of determining compliance with enforcement standards, or determining whether design and management practice criteria established under s. 160.19 (2) (a) successfully maintain compliance with preventive action limits:

a. Any point of present groundwater use;

b. Any point beyond the property boundaries of the premises where the facility, activity or practice is located or undertaken; and

c. Any point beyond the design management zone but within the property boundaries of the premises where the facility, activity or practice is located or undertaken.

(b) If monitoring is not required under existing rules for a facility, activity or practice:

1. The regulatory agency shall establish a point of standards application at the following locations for the purposes of determining whether the preventive action limit or the enforcement standard is attained or exceeded:

a. Any point of present groundwater use, except the regulatory agency may exempt points of nonpotable groundwater uses if the regulatory agency determines that the substance will not affect the nonpotable groundwater use; and

b. Any point beyond the property boundary of the property where the facility, activity or practice is located or undertaken.

2. The regulatory agency may establish by rule additional points of standards application which the regulatory agency determines are necessary to protect future groundwater uses and the public interest in the waters of the state.

(c) If facilities are subject to regulation under subch. IV of ch. 144 or ch. 147, the department shall develop by rule and utilize points of standards application for purposes of facility design, the review of facility performance and enforcement as follows:

1. Rules promulgated by the department under s. 144.435 (1) relating to facility design shall establish design criteria which ensure compliance with s. 160.19 (2) at any point of present groundwater use, at property boundaries and at any point beyond a 3-dimensional design management zone within property boundaries established under general criteria specified by rule and applied to individual facilities.

2. The department shall consider any point at which groundwater is monitored and at which a preventive action limit is exceeded a point of standards application for purposes of facility performance review, including investigations and evaluation of specific sites. If the point is within the design management zone, the department shall evaluate the location of the point, specific characteristics of the site, the nature of the substance involved and the likelihood of substance migration in assessing the need for response activities.

3. The department shall establish the point of standards application for enforcement standards at any point of present groundwater use, at property boundaries and at any point beyond a 3-dimensional design management zone within property boundaries established under general criteria specified by rule and applied to individual facilities.

(d) The department shall establish criteria for design management zones by rule for the facilities specified under par. (c). The rule shall take into account different types of facility designs. The design management zone which is applied to a facility utilizing the criteria in the rule may be adjusted based on the following factors:

1. Soil type, depth and permeability;

2. Type, depth and permeability of bedrock;

3. Volume and characteristics of the waste involved;
4. Mobility of contaminants;
5. Distance to property boundaries and surface waters;
6. Present and anticipated future uses of land and groundwater;
7. Expected useful life of the facility;
8. Depth, direction and velocity of groundwater and other hydrogeologic factors; or
9. Likely methods for abatement if an enforcement standard is exceeded.

(e) The department and each regulatory agency shall enter into a memorandum of understanding setting forth the criteria for acceptable monitoring wells and sample handling for the point of standards application.

(3) Responses may include remedial actions, revisions of rules or criteria on facility design, location and management practices, prohibition of an activity or practice or closure of a facility. Remedial actions for a specific site may include, but are not limited to, investigations, relocation, prohibition of activities or practices which use or produce the substance, closure of a facility, revisions of operational procedures, monitoring or, if only a preventive action limit is attained or exceeded, no remedial action. Responses may vary depending on the type and age of the facility, the hydrogeological conditions of the site and the cost effectiveness of alternative responses that will achieve the same objectives under the conditions of the site. Responses shall take into account the background water quality at the site, the uses of the aquifer, the degree of risk, the validity of the data and the probability of whether, if a preventive action limit is exceeded, the enforcement standard will be exceeded at the point of standards application. In requiring a remedial action for a specific site, the regulatory agency shall use the authority and existing protections, including, but not limited to, due process provisions in other applicable statutes.

(4) In setting forth the range of responses and providing for implementation of appropriate responses under the rules promulgated under subs. (1) and (3), the regulatory agency shall consider, where applicable, the following:

- (a) Risk-benefit considerations including, but not limited to:
  1. Uses and substances alternative to the present use of the particular substance.
  2. Risks and benefits of the alternative uses or substances.
  3. Reliability and comprehensiveness of the information available for assessing such risks and benefits.
- (b) Hydrogeological considerations including, but not limited to:
  1. The depth to groundwater.
  2. The soil characteristics.
  3. Groundwater gradients and flow direction.
- (c) Management and practice considerations including, but not limited to:
  1. Reliability of sampling data.
  2. The geographic extent of the substance if detected in groundwater and the size of the population affected.
  3. The efficacy of label restrictions and other practical measures to minimize the concentration of the substance in the groundwater.
  4. The existing effects and potential risks of the substance on potable water supplies.
  5. The risks considered when the standard at issue was established or adopted.
  6. The known depth of the substance in the groundwater.

7. Data and information provided by the manufacturer on the environmental fate of the substance.

**160.23 Implementation of responses for specific sites; preventive action limits.** (1) If the concentration of a substance in groundwater attains or exceeds a preventive action limit at a point of standards application, the regulatory agency shall assess the cause of the increased concentration, taking into account background concentrations, if known, and other known or suspected contributors in the area and shall evaluate the significance of the concentration of the substance and shall implement responses for a specific site designed to:

(a) Minimize the concentration of the substance in the groundwater at the point of standards application where technically and economically feasible;

(b) Regain and maintain compliance with the preventive action limit, unless, in the determination of the regulatory agency, the preventive action limit is either not technically or economically feasible, in which case, it shall achieve compliance with the lowest possible concentration which is technically and economically feasible; and

(c) Ensure that the enforcement standard is not attained or exceeded at the point of standards application.

(2) A regulatory agency shall take responses with respect to a specific site in accordance with rules promulgated under s. 160.21.

(4) The regulatory agency may not impose a prohibition on the substance or the activity or practice which uses or produces the substance unless the regulatory agency:

(a) Bases its decision upon reliable test data;

(b) Determines, to a reasonable certainty, by the greater weight of the credible evidence, that no other remedial action would prevent the violation of the enforcement standard at the point of standards application;

(c) Establishes the basis for the boundary and duration of the prohibition; and

(d) Ensures that any prohibition imposed shall be reasonably related in time and scope to maintaining compliance with the enforcement standard at the point of standards application.

(6) (a) A regulatory agency shall consider the existence of the background concentration of a naturally occurring substance in evaluating response options to the noncompliance with a preventive action limit for that substance. Before a regulatory agency may order a remedial action under sub. (2) or issue a prohibition under sub. (3) for a specific site where the background concentration of a substance is determined to be equal to or greater than the preventive action limit, the regulatory agency shall determine that the proposed remedial action will result in the protection of or substantial improvement in groundwater quality notwithstanding the background concentrations of naturally occurring substances.

(b) Paragraph (a) does not apply to a substance which may be carcinogenic, teratogenic or mutagenic in humans.

(7) If the concentration of a substance in groundwater attains or exceeds a preventive action limit at a point of standards application and if a waste facility subject to the waste management fund incurs costs for repairing environmental damage which arises from these occurrences which are not anticipated in the plan of operation and which poses a substantial hazard to public health or welfare, those costs may be paid as provided under s. 144.441 (6).

(8) An action under this section with respect to a specific site does not constitute a major state action under s. 1.11 (2).

**160.25 Implementation of responses for specific sites; enforcement standards.** (1) (a) If an activity or practice is not subject to regulation under subch. IV of ch. 144 or ch. 147 and if the concentration of a substance in groundwater attains or exceeds an enforcement standard at a point of standards application, the regulatory agency shall take the following responses unless it can be shown to the regulatory agency that, to a reasonable certainty, by the greater weight of the credible evidence, an alternative response will achieve compliance with the enforcement standard at the point of standards application:

1. Prohibit the activity or practice which uses or produces the substance; and
2. Implement remedial actions with respect to the specific site in accordance with rules promulgated under s. 160.21.

(b) A regulatory agency shall impose a remedial action for a specific site which is reasonably related in time and scope to the substance, activity or practice which caused the enforcement standard to be attained or exceeded at the point of standards application.

(2) If a facility is subject to regulation under subch. IV of ch. 144 or ch. 147 and if the concentration of a substance in groundwater attains or exceeds an enforcement standard at a point of standards application, the department shall require remedial actions for a specific site in accordance with rules promulgated under s. 160.21 as are necessary to achieve compliance with the enforcement standard at the point of standards application.

(3) If nitrates or any substance of aesthetic concern only attains or exceeds an enforcement standard, the regulatory agency is not required to impose a prohibition or close a facility if it determines that:

1. The enforcement standard was attained or exceeded, in whole or in part, because of high background concentrations of the substance; and
2. The additional concentration does not represent a public welfare concern.

(4) If compliance with the enforcement standard is achieved at the point of standards application, s. 160.23 applies.

(5) (a) A regulatory agency shall consider the existence of background concentrations of naturally occurring substances in evaluating response options to the noncompliance with an enforcement standard for that substance. A regulatory agency may not order remedial action under sub. (1) or (2) at a site where the background concentration of a substance is determined to be equal to or greater than the preventive action limit, unless the regulatory agency determines that the proposed remedial action will result in the protection of or substantial improvement in groundwater quality notwithstanding the background concentrations of naturally occurring substances.

(b) Paragraph (a) does not apply to a substance which is carcinogenic, teratogenic or mutagenic in humans.

(6) If the concentration of a substance in groundwater attains or exceeds an enforcement standard at a point of standards application and if a waste facility subject to the waste management fund incurs costs for repairing environmental damage which arises from those occurrences which are not anticipated in the plan of operation and which poses a substantial hazard to public health or welfare, those costs may be paid as provided under s. 144.441 (6).

(7) An action under this section with respect to a specific site does not constitute a major state action under s. 1.11 (2).

**160.26 Enforcement.** Regulatory agencies shall enforce the provisions of this chapter in accordance with enforcement procedures and subject to the penalties established by statute for activities and practices regulated by the regulatory agency.

**160.27 Substances in groundwater; monitoring.** (1) The department, with the advice and cooperation of other agencies and the groundwater coordinating council, shall develop and operate a system for monitoring and sampling groundwater to determine whether substances identified under s. 160.05 (1) are in the groundwater or whether preventive action limits or enforcement standards are attained or exceeded at points of standards application.

(2) At a minimum, the monitoring system shall include the following components:

(a) Problem assessment monitoring to detect substances in the groundwater, including substances identified under s. 160.05 (1), and to assess the significance of the concentrations of the detected substances;

(b) Regulatory monitoring to determine if preventive action limits or enforcement standards are attained or exceeded and to obtain information necessary for the implementation of responses with respect to specific sites under ss. 160.21, 160.23 and 160.25;

(c) At-risk monitoring to define and sample at-risk potable wells in areas where substances identified under s. 160.05 (1) are detected in the groundwater or where preventive action limits or enforcement standards are attained or exceeded;

(d) Management practice monitoring for establishing the management practices necessary to meet the requirements of ss. 160.19 and 160.21. The regulatory agency responsible for a particular management practice has primary responsibility for monitoring that practice and the department shall ensure that the monitoring specifications meet the needs of the regulatory agency; and

(e) A monitoring plan for collecting, managing and coordinating the monitoring components specified under pars. (a) to (d) with the monitoring information from other regulatory agencies.

(3) The department shall notify the regulatory agency and the department of health and social services when monitoring data indicate that:

(a) A substance is detected in groundwater;

(b) The concentration of a substance, by a reasonable degree of scientific certainty, is determined to be changing; or

(c) The concentration of a substance attains or exceeds a preventive action limit or an enforcement standard at a point of standards application.

(4) The department shall coordinate the collection of groundwater monitoring data and the exchange of these data among agencies for the purpose of this chapter and shall ensure, with the advice and cooperation of other agencies, the technical accuracy of the monitoring data used in the administration of this chapter.

(5) Notwithstanding subs. (1) to (3), a regulatory agency may develop and operate a system for monitoring and sampling groundwater to determine compliance with this chapter. This section does not affect the authority of the department to require groundwater monitoring by owners or operators of solid or hazardous waste facilities or water supply or wastewater systems under ch. 144, 147 or 162.

(6) The department shall notify the owner of any potable well and the occupant of any residence served by that well of the results of any monitoring data it obtains from samples of water from that well.

**160.29 Petitioning for rule making.** (1) Where the department finds that a preventive action limit or an enforcement standard for a substance is, or will be, attained or exceeded at points of standards application at numerous locations, and that adoption or revision of rules under s. 160.19 or 160.21 by the regulatory agency is an appropriate response, the department may submit a petition for rule making to the regulatory agency. The petition shall include all of the following:

(a) The reason for the request for rule making by the department.

(b) The research or monitoring data supporting the finding by the department that the preventive action limit or the enforcement standard for a substance is, or will be, attained or exceeded at the points of standards application.

(c) A recitation of the authority of the regulatory agency to regulate the substance.

(2) Within 120 days after receipt of a petition under this section, the regulatory agency either shall deny the petition in writing or shall submit to the department a proposed timetable for the revision or promulgation of the requested rules and proceed with rule making under ss. 227.02 to 227.024. Failure of the agency to respond to the petition within 120 days constitutes denial of the petition.

(3) Section 227.015 does not apply to petitions under this section.

**160.31 Legislative review.** Nothing in this chapter affects the legislative review of any proposed rule relating to animal waste treatment, under s. 13.565.

**160.32 Common law and liability.** (1) COMMON LAW UNAFFECTED. Nothing in this chapter restricts or abrogates any remedy which any person or class of persons may have under other statutory or common law.

(2) NO ADMISSION OF LIABILITY. A response at a specific site taken by any person under s. 160.23 or 160.25 is not evidence of liability or an admission of liability for any potential or actual environmental pollution, as defined under s. 144.01 (3).

**160.33 Public participation.** Each regulatory agency shall promulgate rules which provide for public participation in the issuance and administrative enforcement by the regulatory agency of any special order adopted pursuant to the requirements of this chapter.

**160.34 No mandatory well repair as a condition for testing.** No regulatory agency may require as a condition for the testing of a private water supply at the request of the owner that the owner agree to institute changes necessary to bring the construction or design of the water supply into compliance with administrative rules in effect at the time of testing but not in effect prior to 1954.

**160.36 Cooperation with American Indian tribes and bands.** (1) REQUIREMENT TO COOPERATE. The department shall cooperate with American Indian tribes and bands with the approval of the tribal governing body, for the purposes specified in this section.

(2) AGREEMENTS REGARDING MONITORING. The department may negotiate and enter into cooperative agreements with American Indian tribes and bands for the purposes of:

(a) Providing advice and assistance to American Indians who wish to establish a groundwater monitoring program on the lands of any American Indian tribe or band.

(b) Obtaining for state use any information on groundwater quality which results from a monitoring program conducted by American Indians.

(c) Using state resources to conduct groundwater monitoring on the lands of any American Indian tribe or band.

(d) Sharing with an American Indian tribe or band the results of groundwater monitoring conducted by the department, by a regulatory agency or by the geological and natural history survey which relate to the potential contamination of groundwater under the lands of an American Indian tribe or band.

(3) AGREEMENTS REGARDING ENFORCEMENT. The department may negotiate and enter into cooperative agreements with American Indian tribes and bands for the following purposes:

(a) Providing advice and assistance to American Indians who wish to establish groundwater regulatory programs on the lands of any American Indian tribe or band.

(b) Using state resources to conduct regulatory activities on the lands of an American Indian tribe or band.

**160.50 Groundwater coordinating council.** (1) **GENERAL FUNCTIONS.** The groundwater coordinating council shall serve as a means of increasing the efficiency and facilitating the effective functioning of state agencies in activities related to groundwater management. The groundwater coordinating council shall advise and assist state agencies in the coordination of nonregulatory programs and the exchange of information related to groundwater, including, but not limited to, agency budgets for groundwater programs, groundwater monitoring, data management, public information and education, laboratory analysis and facilities, research activities and the appropriation and allocation of state funds for research.

(2) **SUBCOMMITTEES.** The groundwater coordinating council may create subcommittees to assist in its work. The subcommittee members may include members of the council, employees of the agencies with members on the council, employees of other state agencies, representatives of counties and municipalities and public members. The council shall consider the need for subcommittees on the subjects within the scope of its general duties under sub. (1) and other subjects deemed appropriate by the council.

(3) **REPORT.** The groundwater coordinating council shall review the provisions of 1983 Wisconsin Act .... (this act) and report to the legislature concerning the implementation of the act by January 1, 1989.

SECTION 101m. 162.07 of the statutes is created to read:

**162.07 Local authority.** (1) **ORDINANCES.** The department may authorize counties to adopt ordinances under s. 59.067 (2) and (3), relating to the enforcement of this chapter and rules of the department under this chapter. The department shall establish by rule standards for approval of ordinances and enforcement programs. Among other things, the rules may:

- (a) Include personnel, training, reporting and other requirements;
- (b) Establish separate standards for different categories of wells and enforcement actions;
- (c) Require approval by the department before a variance may be granted; and
- (d) Establish exemptions from licensing or alternate licensing requirements for replacement of a pump in an emergency.

(2) **PRIVATE WELLS.** The department shall define by rule "private well" and "private wells" as used in this section and s. 59.067. The definition may not include wells for which plans and specifications must be submitted to the department for approval prior to construction or installation.

(3) **TRAINING.** The department shall provide training and technical assistance to local government employees and agents for implementation of this section and s. 59.067. The department may charge each county which receives training and technical assistance a fee for those services. Fees may not exceed the department's actual costs of providing the services.

(4) **REVIEW AND AUDIT.** The department shall review and audit periodically each ordinance and program adopted under s. 59.067 to ascertain compliance with this chapter and with rules of the department under this chapter. If an ordinance or related program is not in compliance, the department may revoke the authority of the county to enforce the ordinance. Revocation may be made only pursuant to written department findings made after a public hearing held in the county upon 30 days advance notice to the clerk of the local unit of government.

(5) **CONCURRENT ENFORCEMENT.** The department may enforce this chapter and rules of the department under this chapter that are covered by an ordinance adopted under s. 59.067, in the county with the ordinance, if the department is engaged in audit or review activities, if there is reasonable cause to believe that the ordinance or related enforcement program of the county is not in compliance under sub. (4) or if the department deter-

mines that there are special circumstances requiring concurrent enforcement. The department shall continue to enforce this chapter and rules of the department under this chapter that are not covered by an ordinance in counties with ordinances adopted under s. 59.067.

SECTION 102. 165.075 of the statutes is created to read:

**165.075 Assistant attorney general; public intervenor; authority.** In carrying out his or her duty to protect public rights in water and other natural resources, as defined by law under s. 165.07, the public intervenor has the authority to initiate actions and proceedings before any agency or court in order to raise issues, including issues concerning constitutionality, present evidence and testimony and make arguments.

SECTION 103. 165.076 of the statutes is created to read:

**165.076 Assistant attorney general; public intervenor; advisory committee.** The attorney general shall appoint a public intervenor advisory committee under s. 15.04 (1) (c). The public intervenor advisory committee shall consist of not less than 7 nor more than 9 members. The members shall have backgrounds in or demonstrated experience or records relating to environmental protection or natural resource conservation. At least one of the members shall have working knowledge in business. At least one of the members shall have working knowledge in agriculture. The public intervenor advisory committee shall advise the public intervenor consistent with his or her duty to protect public rights in water and other natural resources. The public intervenor advisory committee shall conduct meetings consistent with subch. IV of ch. 19 and shall permit public participation and public comment on public intervenor activities.

SECTION 104. 227.01 (11) (aa) of the statutes is created to read:

227.01 (11) (aa) Establishes a list of substances in groundwater and their categories under s. 160.05;

SECTION 105. 227.01 (11) (ac) of the statutes is created to read:

227.01 (11) (ac) Establishes an inventory or a hazard ranking under s. 144.442;

SECTION 2001. **Nonstatutory provisions; administration.**

(1) **CERTIFICATION STANDARDS REVIEW COUNCIL; INITIAL APPOINTMENTS.** (a) Notwithstanding section 15.107 (11) (c) of the statutes, as created by this act, of the members to the certification standards review council appointed by the secretary of administration, 3 of the initial members shall be appointed for terms of one year plus a period ending on July 1, 1985; 3 of the initial members shall be appointed for terms of 2 years plus a period ending on July 1, 1986; and 2 of the initial members shall be appointed for terms of 3 years plus a period ending on July 1, 1987. The secretary of administration shall specify which member is to serve what term. Notwithstanding section 15.107 (11) (c) of the statutes, as created by this act, the initial member of the certification standards review council appointed by the chancellor of the university of Wisconsin-Madison shall be appointed for a term of 3 years plus a period ending on July 1, 1987.

(b) Following initial appointments under paragraph (a), members appointed to the certification standards review council under section 15.107 (11) (c) of the statutes, as created by this act, shall serve for the terms prescribed under that section.

SECTION 2002. **Nonstatutory provisions; agriculture, trade and consumer protection.**

(1) **DEADLINES FOR ACTIONS RELATING TO GROUNDWATER STANDARDS.** Within 90 days after the effective date of this subsection, the department of agriculture, trade and consumer protection shall prepare and submit to the department of natural resources the initial list of substances under section 160.05 (1) of the statutes, as created by this act.



(2m) **DEADLINE FOR RULES.** Within 12 months after the effective date of this subsection, the department of agriculture, trade and consumer protection shall notify the legislature that all rules required to be promulgated by that department under sections 96.645 (3) and 160.21 of the statutes, as created by this act, are in final draft form.

(3) **POSITION AUTHORIZATION.** The authorized FTE positions for the department of agriculture, trade and consumer protection are increased by 4.0 SEG positions on October 1, 1984, to be funded from the appropriation under section 20.115 (1) (s) of the statutes, as created by this act, to develop groundwater standards and implement chapter 160 of the statutes, as created by this act.

**SECTION 2020. Nonstatutory provisions; health and social services.**

(1) **POSITION AUTHORIZATION.** The authorized FTE positions for the department of health and social services are increased by 2.5 SEG positions on October 1, 1984, to be funded from the appropriation under section 20.435 (1) (q) of the statutes, as created by this act, to develop groundwater standards and implement chapter 160 of the statutes, as created by this act.

**SECTION 2025. Nonstatutory provisions; industry, labor and human relations.**

(1) **DEADLINES FOR ACTIONS RELATING TO GROUNDWATER STANDARDS.** Within 90 days after the effective date of this subsection, the department of industry, labor and human relations shall prepare and submit to the department of natural resources the initial list of substances under section 160.05 (1) of the statutes, as created by this act.

(2m) **DEADLINE FOR RULES.** Within 12 months after the effective date of this subsection, the department of agriculture, trade and consumer protection shall notify the legislature that all rules required to be promulgated by that department under sections 101.09 (3) and 160.21 of the statutes, as created by this act, are in final draft form.

(3) **POSITION AUTHORIZATION.** The authorized FTE positions for the department of industry, labor and human relations are increased by 1.0 GPR project position beginning on July 1, 1984, and ending on July 1, 1985, to be funded from the appropriation under section 20.445 (1) (dm) of the statutes, as created by this act, to administer the unused underground petroleum product storage tank inventory program under section 101.142 of the statutes, as created by this act.

**SECTION 2033. Nonstatutory provisions; legislature.** (1) **LEGISLATIVE COUNCIL STUDY; COMPENSATION FOR WELL CONTAMINATION.** (a) The legislative council is requested to study the provision of compensation for private water supplies which are contaminated by examining:

1. The experience of the department of natural resources in implementing section 144.027 of the statutes, as created by this act; and
2. Any other appropriate means of providing compensation for well contamination.

(b) The legislative council is requested to prepare a well compensation proposal and submit a report on its findings to the legislature by July 1, 1986.

**SECTION 2038. Nonstatutory provisions; natural resources.**

(1) **JOINT PESTICIDE MONITORING PLAN.** The department of natural resources in cooperation with the department of agriculture, trade and consumer protection shall develop a plan for the joint monitoring of pesticides and the coordination of laboratory capabilities for pesticide testing. The plan shall be submitted to the presiding officers of each house of the legislature on or before February 1, 1985.

(3) **DEADLINES FOR ACTIONS RELATING TO GROUNDWATER STANDARDS.** (a) Within 90 days after the effective date of this paragraph, the department of natural resources shall prepare the initial list of substances under section 160.05 (1) of the statutes, as created by this act.

(b) Within 12 months after the effective date of this paragraph, the department of natural resources shall notify the legislature that the rules under section 160.21 of the statutes, as created by this act, are in final draft form.

(4) INITIAL LIST OF CATEGORY 1 SUBSTANCES. The department of natural resources shall place all of the following substances in category 1 under section 160.05 (3) of the statutes, as created by this act:

- (a) Aldicarb.
- (b) Arsenic.
- (c) Bacteria, as total coliform.
- (d) Barium.
- (e) Benzene.
- (f) Carbofuran.
- (g) Chloride.
- (h) Chromium.
- (i) Color.
- (j) Copper.
- (k) Cyanide.
- (L) Fluoride.
- (m) Foaming agents measured as methylene blue active substances (MBAS).
- (n) Hydrogen sulfide.
- (o) Iron.
- (p) Lead.
- (q) Manganese.
- (r) Methylene chloride.
- (s) Nitrate, nitrite, nitrogen.
- (t) Odor.
- (u) Radioactivity, specifically radium 226 and 228 and uranium.
- (v) Selenium.
- (w) Sulfate.
- (x) Tetrachloroethylene.
- (y) Total residue.
- (zc) Trichlorethylene.
- (zg) Zinc.

(5) POSITION AUTHORIZATION. (a) The authorized FTE positions for the department of natural resources are increased by 8.0 SEG positions on October 1, 1984, to be funded from the appropriation under section 20.370 (2) (eq) of the statutes, as created by this act, to develop groundwater standards and implement chapter 160 of the statutes, as created by this act.

(b) The authorized FTE positions for the department of natural resources are increased by 5.0 SEG positions on October 1, 1984; are increased by 5.0 SEG positions beginning on January 1, 1985; and are increased by 3.0 SEG project positions beginning on October 1, 1984, and ending on July 1, 1987; to be funded from the appropriation under section 20.370 (2) (es) of the statutes, as created by this act, to provide groundwater monitoring and related services.

(c) The authorized FTE positions for the department of natural resources are increased by 4.0 SEG positions on October 1, 1984, to be funded from the appropriation under section 20.370 (2) (dt) of the statutes, as created by this act, to administer the environmental repair program.

(d) The authorized positions for the department of natural resources are increased by 1.5 FTE GPR position and 4.0 project GPR positions on the effective date of this paragraph, to be funded from the appropriation under section 20.370 (2) (ec) of the statutes, as created by this act, to administer section 144.027 of the statutes, as created by this act.

(6) **OPTIONAL LOCAL REGULATION OF PRIVATE WELL WATER SUPPLY; RULE-MAKING AUTHORITY.** Notwithstanding SECTION 2204 (38) (b) of this act, the department of natural resources may promulgate rules under section 162.07 of the statutes, as created by this act, as if that section of the statutes were in effect on the day following publication of this act provided those rules do not take effect prior to July 1, 1985.

(7) **FOX RIVER MANAGEMENT COMMISSION; INITIAL APPOINTMENTS.** (a) Notwithstanding section 15.06 (1) (e) of the statutes, as created by this act, 2 of the initial members of the Fox river management commission shall be appointed for terms ending on March 1, 1985; 3 of the initial members of the Fox river management commission shall be appointed for terms ending on March 1, 1986; and 2 of the initial members of the Fox river management commission shall be appointed for terms ending on March 1, 1987. The governor shall specify which member is to serve what term.

(b) Following initial appointments under paragraph (a), members appointed to the Fox river management commission shall serve for the terms prescribed under section 15.06 (1) (e) of the statutes, as created by this act.

(8) **GROUNDWATER DATA MANAGEMENT.** Of the moneys appropriated under section 20.370 (2) (es) of the statutes, as created by this act, for fiscal year 1984-85, the department of natural resources shall utilize \$55,000 for groundwater monitoring evaluation and coordination activities. These activities may include the development of systems for data collection and utilization by regulatory agencies, as defined under section 160.01 (7) of the statutes, as created by this act.

(9) **GROUNDWATER COORDINATING COUNCIL; INITIAL APPOINTMENTS.** (a) Notwithstanding section 15.347 (13) (d) of the statutes, as created by this act, the initial member appointed to the groundwater coordinating council under section 15.347 (13) (b) 8 of the statutes, as created by this act, shall be appointed for a term ending on July 1, 1987, and the initial member appointed to the groundwater coordinating council under section 15.347 (13) (b) 9 of the statutes, as created by this act, shall be appointed for a term ending on July 1, 1985.

**Vetoed  
in Part**

(b) Following initial appointments under paragraph (a), members appointed to the groundwater coordinating council under section 15.347 (13) (b) 8 and 9 of the statutes, as created by this act, shall serve for the terms prescribed under section 15.347 (13) (d) of the statutes as created by this act.

**Vetoed  
in Part**

#### **SECTION 2051. Nonstatutory provisions; transportation.**

(1) **DEADLINES FOR ACTIONS RELATING TO GROUNDWATER STANDARDS.** Within 90 days after the effective date of this subsection, the department of transportation shall prepare and submit to the department of natural resources the initial list of substances under section 160.05 (1) of the statutes, as created by this act.

(1m) **DEADLINE FOR RULES.** Within 12 months after the effective date of this subsection, the department of transportation shall notify the legislature that all rules required to be promulgated by that department under sections 85.16 (3) and 160.21 of the statutes, as created by this act, are in final draft form.

**Vetoed  
in Part**

~~SECTION 2102. **Appropriation changes; agriculture, trade and consumer protection.** The appropriation to the department of agriculture, trade and consumer protection under section 20.115 (7) (a) of the statutes, as affected by the acts of 1983, is increased by \$85,000 for fiscal year 1984-85 to implement and administer the animal waste management program and to fund 6.5 FTE GPR positions associated with this law.~~

**SECTION 2138. Appropriation changes; natural resources.**

(1) **HAZARDOUS SUBSTANCES SPILLS; FUND TRANSFER.** There is transferred from the general fund to the environmental repair fund, as created by this act, an amount equal to the unencumbered balance, immediately prior to the effective date of this act, of the appropriations to the department of natural resources under section 20.370 (2) (cc) and (cj) of the statutes, as affected by the acts of 1983.

(2) **HAZARDOUS SUBSTANCES SPILLS, APPROPRIATION INCREASE.** The appropriation to the department of natural resources under section 20.370 (2) (du) of the statutes, as created by this act, is increased by the amount transferred to the environmental repair fund under subsection (1) for fiscal year 1983-84.

(3) **ABANDONED CONTAINERS; FUND TRANSFER.** There is transferred from the general fund to the environmental repair fund, as created by this act, an amount equal to the unencumbered portion, immediately prior to the effective date of this act, of the appropriation to the department of natural resources for the purpose of testing and disposal of abandoned containers containing potentially hazardous substances under section 20.370 (2) (cg) of the statutes, as affected by the acts of 1983.

(4) **ABANDONED CONTAINERS; APPROPRIATION INCREASE.** The appropriation to the department of natural resources under section 20.370 (2) (dv) of the statutes, as created by this act, is increased by the amount transferred to the environmental repair fund under subsection (3) for fiscal year 1983-84.

(5) **ENVIRONMENTAL REPAIR; FUND TRANSFER.** There is transferred from the groundwater fund to the environmental repair fund \$554,600 on July 1, 1984, for the purpose of providing initial funding for environmental repair administration.

**SECTION 2200. Terminology changes.**

(2) **AGRICULTURE, TRADE AND CONSUMER PROTECTION.**

(a) *Animal waste management.* Wherever the term "chapter" appears in the following sections of the statutes, the term "subchapter" is substituted: 92.01, 92.02 (3) (d), 92.03 (intro.), 92.04 (2) (a) and (3) (a), 92.05 (3) (c), 92.07 (8), (10) and (13), 92.12 and 92.13.

(38) **NATURAL RESOURCES.**

(a) *Approved mining facility.* Wherever the term "approved mining waste facility" appears in the following section of the statutes, the term "approved mining facility" is substituted: 144.441 (2) (b) and (d).

**SECTION 2201. Program responsibility changes.** In the sections of the statutes listed in Column A, the program responsibilities references shown in Column B are deleted and the program responsibilities references shown in Column C are inserted:

(2) **AGRICULTURE, TRADE AND CONSUMER PROTECTION.**

(a) *Groundwater standards.*

A	B	C
Statute Sections	References Deleted	References Inserted
15.131 (intro.)	none	ch. 160

(20) **HEALTH AND SOCIAL SERVICES.**

(a) *Laboratory certification.*

A	B	C
Statute Sections	References Deleted	References Inserted
15.191 (intro.)	none	144.95 (2) (a)

- 1823 -

83 WisACT 410

(b) *Groundwater standards.*

A	B	C
Statute Sections 15.191 (intro.)	References Deleted none	References Inserted ch. 160

(25) INDUSTRY, LABOR AND HUMAN RELATIONS.

(a) *Groundwater standards.*

A	B	C
Statute Sections 15.221 (intro.)	References Deleted none	References Inserted ch. 160

(b) *Compensation for groundwater contamination.*

A	B	C
Statute Sections 15.221 (intro.)	Old Cross-References none	New Cross-References 144.027 (18)

(32) JUSTICE.

(a) *Recovery of expenditures.*

A	B	C
Statute Sections 15.251 (intro.), as affected by 1983 Wis. Act 27	References Deleted 144.441 (6)(f)	References Inserted 144.442 (9)(f)

(38) NATURAL RESOURCES.

(a) *Laboratory certification.*

A	B	C
Statute Sections 15.341 (intro.)	References Deleted none	References Inserted 143.15 (5)

(b) *Groundwater standards.*

A	B	C
Statute Sections 15.341 (intro.)	References Deleted none	References Inserted ch. 160

(c) *Animal waste management.*

A	B	C
Statute Sections 15.341 (intro.), as affected by 1983 Wis. Act 27	References Deleted 92.15 (4)	References Inserted 92.32 (4)

(51) TRANSPORTATION.

(a) *Groundwater standards.*

A	B	C
Statute Sections 15.461 (intro.)	References Deleted none	References Inserted ch. 160

**SECTION 2202. Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

(2) AGRICULTURE, TRADE AND CONSUMER PROTECTION.

(a) *Animal waste management.*

A	B	C
Statute Sections 20.115 (7)(e), as as created by 1983 Wis. Act 27	Old Cross-References 92.15	New Cross-References 92.32
20.866 (2)(zp), as created by 1983 Wis. Act 27	92.15	92.32
92.32 (2)(b), as renumbered	92.16	92.34

(38) NATURAL RESOURCES.

(a) *Mining; waste facility siting.*

A	B	C
Statute Sections	Old Cross-References	New Cross-References
144.44 (2)(nr)(intro.), as created by 1983 Wis. Act 93	Paragraphs (f) 6, (nm) and (om)	Paragraphs (f) 6, (n) 4, (nm) and (om)

(b) *Environmental repair; spills; waste management.*

A	B	C
Statute Sections	Old Cross-References	New Cross-References
20.370 (2)(cm), as affected by 1983, Wis. Act 27	144.76 (6)(e)	144.76 (6)(c) 2
20.566 (7)(v)	20.370 (2)(cr)	20.370 (2)(cr) and (ds)
25.45, as affected by 1983 Wis. Act 27	144.441 (6)(d) to (f)	144.441 (6)(d) to (g)
70.395 (2)(j), as affected by 1983 Wis. Act 27	144.441 (6)(d), (e) and (g)	144.441 (6)(d) and (e)
144.441 (3)(a)	pars. (b) to (d)	pars. (b) to (d) and (e)
144.441 (3)(f) and (5)(d), as affected by 1983 Wis. Act 27	sub. (6)(d), (e) and (g)	sub. (6)(d) and (e)
144.441 (4)(h)	pars. (b) to (g)	pars. (a) to (g)
144.444 (2), as renumbered	144.441 (2)(a) 1	144.441 (1) (a)
144.448 (1)	144.442, 144.445	144.442, 144.444, 144.445

(c) *Hazardous waste; variance.*

A	B	C
Statute Sections	Old Cross-References	New Cross-References
144.68 (2)	144.64 (3)(a)	144.64 (3)

**SECTION 2203. Initial applicability.**

(25) **INDUSTRY, LABOR AND HUMAN RELATIONS.**

(a) *Private sewage systems; groundwater fee.* The groundwater fee for private sewage systems under section 145.19 (6) of the statutes, as created by this act, first applies to sanitary permits issued on or after July 1, 1984.

(38) **NATURAL RESOURCES.**

(a) *Environmental repair surcharge; environmental repair base fee; groundwater fee.* The environmental repair surcharge under section 144.442 (3) of the statutes, as created by this act, the environmental repair base fee under section 144.442 (2) of the statutes, as created by this act, and the groundwater fee under section 144.441 (7) of the statutes, as created by this act, first apply to solid and hazardous waste received and disposed of on or after January 1, 1984.

(45) **REVENUE.**

(a) *Compensation for well contamination.* The creation of section 71.03 (2) (g) of the statutes by this act first applies to taxable year 1985.

**SECTION 2204. Effective dates.** All sections of this act take effect on the day following publication, unless another date is provided:

(25) **INDUSTRY, LABOR AND HUMAN RELATIONS.**

(a) *Private sewage systems; trial regulatory procedures.* The amendment of section 145.24 (1) of the statutes takes effect on July 1, 1985.

(38) **NATURAL RESOURCES.**

(a) *Disposal of septage.* The creation of section 144.08 of the statutes takes effect on July 1, 1984.

- 1825 -

83 WisACT 410

(b) *Optional local regulation of private well water supply.* The creation or treatment of sections 59.067, 59.07 (51) and 162.07 of the statutes takes effect on July 1, 1985.

---