

1983 Senate Bill 410

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1983 Wisconsin Act 93

AN ACT *to repeal and recreate* 144.44 (2) (f); and *to create* 144.44 (2) (n) 4, 144.44 (2) (nm), (nr) and (om), 144.44 (2r) (e) and 144.792 (10) and (11) of the statutes, *relating to* including the need for a solid waste disposal facility or a hazardous waste treatment, storage or disposal facility as one of the decision-making factors in the siting process and making an appropriation.

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

SECTION 1. 144.44 (2) (f) of the statutes is repealed and recreated to read:

144.44 (2) (f) *Contents of feasibility reports; preparation.* The department shall specify by rule the minimum contents of a feasibility report and no report is complete unless the specified information is provided by the applicant. The rules may specify special require-

ments for a feasibility report relating to a hazardous waste facility. The department may require a feasibility report to be prepared by a registered professional engineer. A feasibility report shall include:

1. A general summary of the site characteristics as well as any specific data the department requires by rule regarding the site's topography, soils, geology, groundwaters and surface waters and other features of the site and surrounding area.
2. Preliminary engineering design concepts including the proposed design capacity of the facility and an indication of the quantities and characteristics of the wastes to be treated, stored or disposed.
3. A description of how the proposed facility relates to any applicable county solid waste management plan approved under s. 144.437.
4. A description of the advisory process undertaken by the applicant prior to submittal of the feasibility report to provide information to the public and affected municipalities and to solicit public opinion on the proposed facility.
5. The proposed date of closure for the facility.
6. Sufficient information to make the determination of need for the facility under this subsection unless the facility is exempt under par. (nr).

SECTION 2. 144.44 (2) (n) 4 of the statutes is created to read:

144.44 (2) (n) 4. The department may not approve a feasibility report for a solid or hazardous waste disposal facility unless the design capacity of that facility does not exceed the expected waste to be disposed of at that facility within 15 years after that facility begins operation. The department may not approve a feasibility report for a solid or hazardous waste disposal facility unless the design capacity of that facility exceeds the expected waste to be disposed of at that facility within 10 years after that facility begins operation except that this condition does not apply to the expansion of an existing facility.

SECTION 3. 144.44 (2) (nm), (nr) and (om) of the statutes are created to read:

144.44 (2) (nm) *Determination of need; issues considered.* A feasibility report shall contain an evaluation to justify the need for the proposed facility unless the facility is exempt under par. (nr). The department shall consider the following issues in evaluating the need for the proposed facility:

1. An approximate service area for the proposed facility which takes into account the economics of waste collection, transportation and disposal.
2. The quantity of waste suitable for disposal at the proposed facility generated within the anticipated service area.
3. The design capacity of the following facilities located within the anticipated service area of the proposed facility:
 - a. Approved facilities, as defined under s. 144.441 (2) (a) 1, including the potential for expansion of those facilities on contiguous property already owned or controlled by the applicant.
 - b. Facilities other than approved facilities, as defined under s. 144.441 (2) (a) 1, which are environmentally sound. It is presumed that a facility is not environmentally sound unless evidence to the contrary is produced.
 - c. Other proposed facilities for which feasibility reports are submitted and determined to be complete by the department.
 - d. Facilities for the recycling of solid waste or for the recovery of resources from solid waste which are licensed by the department.
 - e. Proposed facilities for the recycling of solid waste or for the recovery of resources from solid waste which have plans of operation which are approved by the department.

- f. Solid waste incinerators licensed by the department.
- g. Proposed solid waste incinerators which have plans of operation which are approved by the department.

4. If the need for a proposed municipal facility cannot be established under subds. 1 to 3, the extent to which the proposed facility is needed to replace other facilities of that municipality at the time those facilities are projected to be closed in the plans of operation.

(nr) *Determination of need; exempt facilities.* Paragraphs (f) 6, (nm) and (om) do not apply to:

1. Any facility which is part of a prospecting or mining operation with a permit under s. 144.84 or 144.85.
2. Any solid waste disposal facility designed for the disposal of waste generated by a pulp or paper mill.

(om) *Issuance of determination of need.* Except for a facility which is exempt under par. (nr), the department shall issue a determination of need for the proposed facility at the same time the final determination of feasibility is issued. If the department determines that there is insufficient need for the facility, the applicant may not construct or operate the facility.

SECTION 4. 144.44 (2r) (e) of the statutes is created to read:

144.44 (2r) (e) *Determination of need; decision by hearing examiner.* If a contested case hearing is conducted under this subsection, the secretary shall issue any decision concerning determination of need, notwithstanding s. 227.09 (2) to (4). The secretary shall direct the hearing examiner to certify the record of the contested case hearing to him or her without an intervening proposed decision. The secretary may assign responsibility for reviewing this record and making recommendations concerning the decision to any employe of the department.

SECTION 5. 144.792 (10) and (11) of the statutes are created to read:

144.792 (10) That recycling and resource recovery systems and operations are preferable to land disposal.

(11) That developers and users of land disposal facilities should not become overly committed to land disposal because of the excessively long useful life of a facility or the excessive aggregate capacity of land disposal facilities so that recycling and resource recovery systems and operations may be implemented rapidly without excessive disruption.

SECTION 5m. **Appropriation changes; natural resources.** The appropriation to the department of natural resources under section 20.370 (2) (ma) of the statutes, as affected by the acts of 1983, is increased by \$30,000 for fiscal year 1984-85 for the purpose of funding 1.0 FTE GPR position related to the solid and hazardous waste facility siting process.

SECTION 6. **Initial applicability.** (1) The treatment of section 144.44 (2) (f), (n) 4, (nm), (nr) and (om) and (2r) (e) of the statutes by this act applies to any new or expanded solid waste disposal facility or hazardous waste treatment, storage or disposal facility for which a feasibility report is submitted to the department of natural resources on or after October 27, 1983.

(2) (a) Except as provided under paragraph (b), the treatment of section 144.44 (2) (f), (n) 4, (nm), (nr) and (om) and (2r) (e) of the statutes by this act applies to a new or expanded solid waste disposal facility or hazardous waste treatment, storage or disposal facility for which the department has not issued a favorable determination of feasibility prior to October 27, 1983.

(b) The treatment of section 144.44 (2) (f), (n) 4, (nm), (nr) and (om) and (2r) (e) of the statutes by this act does not apply to a new or expanded solid waste disposal facility or hazardous waste treatment, storage or disposal facility for which the applicant is a municipality, as defined under section 144.01 (6) of the statutes, if a feasibility report for the facility was submitted to the department of natural resources prior to October 27, 1983.

(3) Unless exempted under subsection (2) (b), if a feasibility report is submitted prior to October 27, 1983, but the department of natural resources has not issued a final determination of feasibility under section 144.44 (2) (o) of the statutes and a hearing has not been conducted under section 144.44 (2g) or (2r) of the statutes prior to that date, the applicant shall amend the feasibility report to comply with section 144.44 (2) (f) and (2) (nm) (intro.) of the statutes, as affected and created by this act.

(4) Unless exempted under subsection (2) (b), if a hearing has been conducted under section 144.44 (2g) or (2r) of the statutes but a final decision of feasibility has not been issued prior to October 27, 1983, the applicant shall submit the information required under section 144.44 (2) (f) 6 and (nm) (intro.) of the statutes, as affected by this act. The department of natural resources shall publish a notice of the opportunity for a hearing on the question of need for the facility under section 144.44 (2) (k) of the statutes. An informational hearing or a contested case on the question of need may be requested under section 144.44 (2) (L) or (m) of the statutes. If a hearing is requested, the subject matter of the hearing shall be limited to the question of need for the facility and the issue specified under section 144.44 (2) (n) 4 of the statutes, as created by this act. The determination of need shall be issued under section 144.44 (2) (om) or (2r) (e) of the statutes, as affected by this act, except that the determination of need will not be issued at the same time as the final determination of feasibility. The department of natural resources may not issue a determination of feasibility for a facility until the determination of need, as required by this subsection, is issued.

SECTION 7. Effective dates. (1) Except as provided under subsection (2), this act takes effect on the day following publication.

(2) The creation of section 144.792 (10) and (11) of the statutes takes effect on January 1, 1984.
