

(2) The closure requirements of this chapter shall be incorporated in and made part of the reclamation plan submitted pursuant to s. 144.85 (3) (b), Stats. and s. NR 132.08 but shall be referenced in the plan of operation submitted pursuant to s. NR 182.09. The financial responsibility requirements of sub. (1) shall be fulfilled by increasing or otherwise adjusting the amount of the reclamation bond which the department requires to be submitted pursuant to s. 144.86, Stats., and s. NR 132.09 (2) (a) so as to reflect the projected costs of closure. Release of the amount bonded to ensure closure according to the reclamation plan shall be processed pursuant to the provisions of s. 144.90, Stats., and s. NR 132.12 relating to the release of reclamation bonds.

**History:** Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**NR 182.17 Financial responsibility for long-term care.** (1) The intent of this section is to coordinate the financial responsibility requirements of ch. NR 132 and this chapter as they affect the long-term care of a mining site as defined in s. 144.441 (2), Stats. The long-term care requirements of this chapter are to be incorporated in and made part of the mine reclamation plan. Financial responsibility for long-term care and release of the same, however, shall be made according to the provisions of this section. A demonstration of financial responsibility by whatever means shall not be required twice for the same obligation regardless of whether the same is set forth in more than one chapter of the administrative code. No plan of operation for a mining waste disposal site may be approved unless the applicant submits, as hereinafter provided, a bond, deposit, proof of an established escrow account or trust account ensuring that the applicant and any successor in interest will comply with the long-term care requirements referenced in the plan and incorporated in and made part of the reclamation plan.

(2) An owner of a mine waste facility shall be responsible for the long-term care of the facility for 30 years after closure. The long-term care requirements of this chapter shall be incorporated in and made part of the reclamation plan submitted pursuant to s. 144.85 (3) (b), Stats., and s. NR 132.08 but shall be referenced in the plan of operation submitted pursuant to s. NR 182.09. The financial responsibility requirements of sub. (1) for such long-term care, however, shall be fulfilled by compliance with the provisions of any of sub. (3) (a) to (d) during the active site life. After closure, financial responsibility for long-term care shall be fulfilled by compliance with the provisions of any of sub. (3) (b) to (d).

(3) To provide proof of financial responsibility, the applicant shall use one of the following methods:

(a) *Performance or forfeiture bond.* 1. If the owner chooses to submit a bond, it shall be in the amount determined according to sub. (5) (b) conditioned upon faithful performance by the owner and any successor in interest, of all long-term care requirements of the approved plan of operation. The bond shall be delivered to the department as part of the initial operating license application. Bond forms shall be supplied by the department.

2. Bonds shall be issued by a surety company authorized to do surety business in this state. At the option of the owner a performance bond or a forfeiture bond may be filed. The department shall be the obligee of the bond. Surety companies may have the opportunity to complete the long-term care of the site in lieu of cash payment to the department if

the owner or any successor in interest fails to carry out the long-term care requirements of the approved plan of operation.

3. Each bond shall provide that as long as any obligation of the owner for long-term care remains the bond shall not be cancelled by the surety, unless a replacement bond or other proof of financial responsibility under this section is provided to the department. If the surety proposes to cancel such a bond, notice shall be provided to the department in writing by registered or certified mail not less than 90 days prior to the proposed cancellation date. Not less than 30 days prior to the expiration of the 90-day notice period, the owner shall deliver to the department a replacement bond or other proof of financial responsibility under this section in the absence of which all disposal operation shall immediately cease. If the surety company becomes bankrupt or insolvent or if its authorization to do business is revoked or suspended, the owner shall, within 30 days after receiving written notice thereof, deliver to the department a replacement bond or other proof of financial responsibility under this section in the absence of which all disposal operations shall immediately cease.

(b) *Deposit with the department.* If the owner deposits cash, certificates of deposit, or U.S. government securities with the department, the amount of the deposit shall be determined according to sub. (5) (a) and shall be submitted as part of the initial license application. Deposits placed with the department shall be segregated and, if applicable, invested in an interest bearing account. All interest payments shall be accumulated in the account. The department shall have the right to use part or all of the funds to carry out the long-term care requirements of the approved plan of operation if the owner fails to do so. The department shall mail notification of its intent to use funds for that purpose to the last known address of the owner. If the owner requests a hearing in writing within 60 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing under s. 227.064, Stats., for the purpose of determining whether or not the long-term care requirements of the approved plan of operation have been carried out.

(c) *Escrow account.* If the owner established an escrow account, it shall be with a bank or a financial institution located within the state of Wisconsin which is examined and regulated by the state or a federal agency in the amount determined according to sub. (5) (a). The assets in the escrow account shall consist of cash, certificates of deposit, or U.S. government securities. All interest payments shall be accumulated in the account. An originally signed duplicate of the escrow agreement shall be submitted to the department as part of the initial operating license application. Escrow account forms shall be supplied by the department. The department shall be a party to the escrow agreement, which shall provide that there shall be no withdrawals from the escrow account except as authorized in writing by the department. The escrow agreement shall further provide that the department shall have the right to withdraw and use part or all of the funds in the escrow account to carry out the long-term care requirements of the approved plan of operation if the owner fails to do so. The department shall mail notification of its intent to use funds for that purpose to the last known address of the owner. If the owner requests a hearing in writing within 60 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing under s. 227.064, Stats., for the purpose of deter-

mining whether or not the long-term care requirements of the approved plan of operation have been carried out.

(d) *Irrevocable trust.* If the owner creates an irrevocable trust, it shall be exclusively for the purpose of ensuring that the owner or any successor in interest will comply with the long-term care requirements of the approved plan of operation. The trust agreement shall designate the department as sole beneficiary. The trustee shall be a bank or other financial institution located within the state of Wisconsin which has the authority to act as a trustee and whose trust operations are regulated and examined by the state or a federal agency. The trust corpus shall consist of cash, certificates of deposit or U.S. government securities in the amount determined according to sub. (5) (a). All interest payments shall be accumulated in the account. An originally signed duplicate of the trust agreement shall be submitted to the department for approval as part of the initial operating license application. Trust forms may be supplied by the department. The trust agreement shall provide that there shall be no withdrawal from the trust fund except as authorized in writing by the department. The trust agreement shall further provide that sufficient monies shall be paid from the trust fund to the beneficiary in the event that the owner or any successor in interest fails to complete the long-term care requirements of the approved plan of operation. The department shall mail notification of its intent to use funds for that purpose to the last known address of the owner. If the owner requests a hearing in writing within 60 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing under s. 227.064, Stats., for the purpose of determining whether or not the long-term care requirements of the approved plan of operation have been carried out.

**Note:** These forms may be obtained from the Department of Natural Resources, Bureau of Solid Waste Management, P. O. Box 7921, Madison, Wisconsin 53707.

(4) (a) For the purpose of determining the amount of proof of financial responsibility that is required in sub. (1), the owner shall estimate the annual cost of long-term care of the site for the period of owner responsibility and submit the estimated long-term costs together with all necessary justification to the department for approval as part of the plan of operation submittal. The costs shall be reported on a per unit basis. The source of estimates shall be indicated.

(b) At a minimum, long-term care costs shall include land surface care, gas monitoring; leachate pumping, transportation, monitoring and treatment; and groundwater monitoring, collection and analysis.

(c) The estimated annual rate of inflation shall be calculated by dividing the latest published gross national product implicit price deflator by the deflator published for the previous year in the survey of current business of the bureau of economic analysis, U.S. department of commerce. The result is the estimated annual rate of inflation.

(d) The estimated annual rate of interest shall be the rate specified by the financial institution managing the fund or deposit.

(5) (a) Deposits in escrow, trust or department accounts.

1. The following statistics used in calculating the amounts deposited to the long-term care account shall be specified in the plan of operation: the rate of outpayment during the period of long-term care, expressed in

equal or unequal annual amounts, and the equal annual rate of inpayment, expressed as either "real" or "actual" dollars.

2. The following general formula shall be used in the calculation.

$$A = R$$

When equal annual outpayments are used, R shall be expressed as:

$$R(1+f)^{SL} \left( \frac{1+f}{1+i} \right)^c \left[ \frac{1 - \left( \frac{1+f}{1+i} \right)^{LTC}}{\left( \frac{1+i}{1+f} \right)^{-1}} \right]$$

When unequal annual outpayments are used, R shall be expressed as:

$$R_x(1+f) \left( \frac{1+f}{1+i} \right)^{x+c}$$

When equal "actual" dollar inpayments are used, A shall be expressed as:

$$A(1+i) \left[ \frac{(1+i)^{SL} - 1}{i} \right]$$

When equal "real" dollar inpayments are used, A shall be expressed as:

$$A(1+i)^{SL+1} \left[ \frac{1 - \left( \frac{1+f}{1+i} \right)^{SL}}{(i-f)} \right]$$

in which:

A = the unknown annual inpayment for long-term care

i = the estimated annual rate of interest

f = the estimated annual rate of inflation

SL = the estimated active life of the site in years

R = the estimated annual costs

x = the year of long-term care

LTC = the period of long-term care

c = the period of closure

(b) Performance or forfeiture bonds. 1. The rate of outpayment shall be as specified in sub. (5) (a), the rate of inpayment shall be in equal "actual" dollars as specified in the plan of operation.

2. When equal annual outpayments are used, the formula shall be:

$$PB(SL) = R(1+f)^{SL+1+c} \left[ \frac{(1+f)^{LTC} - 1}{f} \right]$$

When unequal annual outpayments are used, the formula shall be:

$$PB(SL) = R_x (1 + f)^{SL+x+c}$$

in which:

PB = the unknown annual performance bond amount for long-term care

f = the estimated annual rate of inflation

SL = the estimated active life of the site in years

R = the estimated annual costs

LTC = the long-term care period

x = the year of long-term care

c = the period of closure

(6) The owner of a site for the land disposal of solid waste shall prepare a new long-term care cost estimate whenever a substantial change in the long-term care requirements of the plan of operation affects the cost of long-term care. Proof of the increase in value of all bonds, escrow accounts and trust accounts established under this section shall be submitted annually to the department. The department may adjust the amount of the required proof of financial responsibility for long-term care based upon prevailing or projected interest and inflation rates and the latest cost estimates, and may annually require the owner to increase or decrease the amount of proof of financial responsibility accordingly.

(7) Whenever on the basis of any reliable information and after opportunity for a hearing, the department determines that an owner or operator of a solid waste site is in violation of any of the requirements for long-term care specified in the approved plan of operation, the department shall have the right to enter upon the facility and carry out the long-term care requirements. The department may use part or all of the money deposited with it, or the money deposited in the escrow or trust accounts, or the performance or forfeiture bonds to carry out these requirements.

(8) One year after closure, and annually thereafter for the period of owner responsibility, the owner, who has carried out all necessary long-term care during the preceding year, may make application to the department for reimbursement from an escrow account, trust account, or deposit with the department, or for reduction in a bond equal to the estimated costs for long-term care for that year. Such application shall be accompanied by an itemized list of costs incurred. Upon determination that the expenditures incurred are in accordance with the long-term care requirements anticipated in the approved plan of operation, the department may authorize release of funds or approve a reduction in a bond. Prior to authorizing a release of funds or bond reduction, the department shall determine that adequate funds exist to complete required long-term care work for the remaining period of owner responsibility. Such determinations shall be concluded within 90 days of the application. Any funds remaining in an escrow account, trust account, or on deposit with the department at the termination of owner responsibility shall be released to the owner.

(9) Any person acquiring rights of ownership, possession or operation of a licensed facility shall be responsible for the closure and long-term care of the facility and shall provide such evidence as the department shall require.

(10) (a) The owner of a mine waste facility may apply to the department for termination of its responsibility for long-term care at any time after the facility has been closed for at least 10 years. Within 30 days of the receipt of such application in writing, the department shall, using the procedures set forth in par. (b), provide notice to the public and to the owner and an opportunity for a hearing on the termination of its responsibility. In this proceeding the burden shall be on the applicant to prove by a preponderance of the evidence that additional long-term care is not necessary for adequate protection of public health or the environment.

(b) The department shall publish a class I notice under ch. 985, Stats., in the official newspaper designated under s. 985.04 or 985.05, Stats., or, if none exists, in a newspaper likely to give notice in the area of the proposed facility. The notice shall invite the submission of written comments by any person within 10 days from the time the notice is published, and shall describe the method by which a hearing may be demanded under par. (c). Notice shall also be given pursuant to the provisions of s. 144.836 (3) (b) 1. and 2., Stats.,

(c) Within 30 days after the notice required under par. (b) is published, a written demand for a hearing on the matter may be filed by any county, city, village, town, tribal government or by any 6 persons. The demand shall indicate the interest of the municipality or persons who file it and state the reasons why the hearing is demanded. A hearing demanded under this paragraph shall be held within 60 days after the deadline for demanding a hearing and shall be conducted as provided in s. 227.07, Stats. The hearing shall be held in an appropriate place designated by the department in one of the counties, cities, villages or towns which are substantially affected by the operation of the facility. Notice of the hearing shall be given pursuant to the provisions of s. 144.836 (3) (b) 1. and 2., Stats., except the hearing may be scheduled with 30 days notice.

(d) Within 120 days after posting notice of the pending termination or within 60 days after any hearing is adjourned, whichever is later, the department shall determine either that long-term care of the facility is no longer required, in which case the applicant shall be relieved of such responsibility; or that additional long-term care of the facility as specified in the plan of operation is still required, in which case further application under this subsection shall not be permitted until at least 5 years have elapsed since the previous application.

**History:** Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**NR 182.18 Waste management fund.** (1) All owners or operators of licensed mining waste disposal sites shall contribute to the waste management fund established by s. 25.45, Stats., for each ton of waste received and disposed of at the site.

(2) For purposes of this chapter, the monies in the waste management fund shall be expended by the department on its own motion or upon petition by any 6 persons after hearing, providing that the money authorized to be spent shall be limited to payment for all costs of long-term care of the mine waste facility after the responsibility of the owner has been terminated pursuant to s. 144.441 (2) (d), Stats., and s. NR 182.17 (9) (d), and payment of the costs of repairing a mine waste facility, as a result of an occurrence which poses a substantial hazard to public health

or welfare and which was not anticipated in an approved plan of operation submitted pursuant to s. NR 182.09. Prior to making any expenditure under this section, the department shall publish a class I notice, under ch. 985, Stats., of its intent to do so, specifying the amount and purpose of the proposed expenditure and shall afford a hearing to any persons who so demand within 30 days for the purpose of determining whether the proposed expenditure meets the requirements of this section. If requested, the department shall set the matter for a contested public hearing pursuant to s. 227.07, Stats. Notice of such hearing shall be given pursuant to the provisions of s. 144.836 (3) (b) 1. and 2., Stats., except the hearing may be scheduled with 30 days notice. If an expenditure would not have been necessary had the person responsible for the operation or long-term care of the facility substantially complied with the requirements of the plan of operation, a right of action in favor of the fund shall accrue to the state against such person, and the attorney general shall take such action as is appropriate to enforce this right of action by recovering any amounts so expended. The net proceeds of any such recovery shall be paid into the waste management fund. The 6-person petition shall indicate the interest of the petitioners and the reasons why a hearing is warranted. Within 90 days after the close of the hearing, the department shall make and file its determination.

(3) The owner or operator of a licensed waste site shall certify on a form provided by the department the amount of waste received and disposed of during the preceding reporting period. The department shall specify the term of the reporting period on the certification form. The certification form shall be completed and returned to the department with the appropriate fee within 30 days after mailing of the form by the department to the owner.

(4) The fees to be paid into the fund shall be as follows for specific waste types:

(a) For hazardous tailings solids, 1.5¢ per ton.

(b) For nonhazardous tailings solids or for nonacid producing taconite tailings solids, 0.2¢ per ton.

(c) For hazardous sludge, 1.0¢ per ton.

(d) For nonhazardous sludge, 0.5¢ per ton.

(e) For hazardous waste rock, 0.3¢ per ton.

(f) For nonhazardous waste rock or for nonacid producing taconite waste rock, 0.1¢ per ton.

(g) For any prospecting or mining waste not specified in pars. (a) to (f), 0.5¢ per ton.

(5) The fees shall be paid for the first 6 years of operation of the licensed site or until the state of Wisconsin investment board certifies to the department that the balance in the waste management fund exceeds \$15 million, whichever is later. At such time as the balance in the fund should drop below \$12 million, payments shall resume until the fund again reaches \$15 million.

**History:** Cr. Register, August, 1982, No. 320, eff. 9-1-82.

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**NR 182.19 Exemptions and modifications.** (1) The department may grant exemptions from the requirements of this chapter and modifications to any license, plan of operation, or other authority issued under this chapter as provided in s. 144.44 (3) (c) and (7), Stats., if such exemptions or modifications are consistent with the purposes of this chapter and ch. NR 132 and will not violate any applicable federal or state law or regulation.

(2) All requests for exemptions by the applicant shall be made at least 90 days before the hearing under s. 144.836, Stats., unless the condition which is the basis for the requested exemption is unknown to the applicant prior to that time or for good cause shown. If an applicant applies for an exemption less than 90 days before the hearing under s. 144.836, Stats., the portion of the hearing concerning that exemption request shall be held no earlier than 90 days after receipt of the application for the exemption. Requests for exemptions may be made by any party to the s. 144.836, Stats., hearing other than the applicant up to 30 days before the hearing. Any request for exemption made prior to the hearing under s. 144.836, Stats., shall be determined as part of that proceeding.

(3) The burden of proof for seeking an exemption or modification is upon the person seeking it.

(4) Any party to the hearing under s. 144.836, Stats., may request modifications and exemptions to make more stringent any provision of this chapter.

(5) Any application for a modification made after the hearing under s. 144.836, Stats., shall be determined by the following procedure:

(a) The application shall be in writing and shall include documentation justifying the need for the exemption or modification describing the alternatives and explaining why the exemption or modification was not sought before the s. 144.836, Stats., hearing.

(b) If the application involves an exemption or a modification from a requirement of this chapter, within 10 days of the application, the department shall publish a class 1 notice under ch. 985, Stats., in the official newspaper designated under s. 985.04 or 985.05, Stats., or, if none exists, in a newspaper likely to give notice in the area of the proposed exemption or modification. The notice shall invite the submission of written comments by any person within 10 days from the time the notice is published, and shall describe the method by which a hearing may be demanded. Notice shall also be given by mail as provided in s. 144.836 (3) (b) 1., Stats. Within 30 days after the notice is published, a written demand for a hearing on the matter may be filed by any county, city, village, town, tribal government or by any 6 persons. The demand shall indicate the interest of the municipality or persons who file it and state the reasons why the hearing is demanded. A hearing demanded under this paragraph shall be held within 60 days after the deadline for demanding a hearing, and shall be conducted as a class 1 proceeding under s. 227.07, Stats. The hearing shall be held in an appropriate place designated by the department in one of the counties, cities, villages or towns which are substantially affected by the operation of the facility. Within 45 days after giving notice, or within 30 days after any hearing is adjourned, whichever is later, the department shall determine whether the modification or exemption as requested shall be granted.



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(c) If the application does not involve an exemption or a modification from a requirement of this chapter, the department shall issue a decision on the application within 45 days of the receipt of the application.

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