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CHAPTER 144

WATER, ICE, SEWAGE AND REFUSE

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144.01 Definitions. The following terms as used in this chapter mean:

(1) "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface or ground water, natural or artificial, public or private, within the state or its jurisdiction.

(2) "Sewage," the water carried wastes created in and to be conducted away from residences, industrial establishments, and public buildings as defined in s. 101.01 (2), with such surface or ground water as may be present.

(3) "Waterworks," or "water system," all structures, conduits and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings served, and service pipes from building to street main.

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

(5) "Sewerage system," all structures, conduits and pipe lines by which sewage is collected and disposed of, except plumbing inside and in connection with buildings served, and service pipes from building to street main.

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

(7) "Refuse," all matters produced from industrial or community life, subject to decomposition, not defined as sewage.

(8) "Owner," the state, county, town, town sanitary district, city, village, metropolitan sewerage district, corporation, firm, company, institution or individual owning or operating any water supply, sewerage or water system or sewage and refuse disposal plant.

(9) "Industrial wastes" include liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.

(10) "Other wastes" include all other substances, except industrial wastes and sewage, as the latter term is defined in s. 144.01, which

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pollute any of the surface waters of the state. The term also includes "unnecessary siltation" resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.

(11) "Pollution" includes contaminating or rendering unclean or impure the waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

(12) "Municipality", any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district.

(13) "Nonprofit-sharing corporation", a nonstock corporation organized under ch. 181 or corresponding prior general corporation laws.

(14) "Department", the department of natural resources.

(15) "Secretary", the secretary of natural resources.

History: 1971 c. 185 s. 7; 1975 c. 197.

144.02 Sanitary survey. (1) The department is authorized to act with the U.S. geological survey in determining the sanitary and other conditions and nature of the natural water supplies of the state of Wisconsin, such water survey to have for its objects:

(a) To determine the nature and condition of the unpolluted natural water supplies of the state.

(b) To determine to what extent the natural waters are being contaminated by sewage from cities.

(c) To determine to what extent the natural waters are being polluted by industrial wastes, and in what way these wastes might be utilized for beneficial purposes.

(e) To assist in determining the best source of water supplies.

(2) The department is hereby empowered and instructed to make the necessary rules and regulations, in conjunction with the U.S. geological department, to carry this section into effect.

History: 1971 c. 164.

144.023 Financial interest prohibited. The secretary and any other person in a position of administrative responsibility in the department may not have a financial interest in any enterprise which might profit by weak or preferential administration or enforcement of the powers and duties of the department.

144.025 Department of natural resources—water resources. (1) STATEMENT OF POLICY AND PURPOSE. The department of natural resources shall serve as the central unit of state government to protect, maintain and improve the quality and management of the waters of the state, ground and surface, public and private. Continued pollution of the waters of the state has aroused widespread public concern. It endangers public health and threatens the general welfare. A comprehensive action program directed at all present and potential sources of water pollution whether home, farm, recreational, municipal, industrial or commercial is needed to protect human life and health, fish and aquatic life, scenic and ecological values and domestic, municipal, recreational, industrial, agricultural and other uses of water. The purpose of this act is to grant necessary powers and to organize a comprehensive program under a single state agency for the enhancement of the quality management and protection of all waters of the state, ground and surface, public and private. To the end that these vital purposes may be accomplished, this act and all rules and orders promulgated pursuant thereto shall be liberally construed in favor of the policy objectives set forth in this act. In order to achieve the policy objectives of this act, it is the express policy of the state to mobilize governmental effort and resources at all levels, state, federal and local, allocating such effort and resources to accomplish the greatest result for the people of the state as a whole. Because of the importance of Lakes Superior and Michigan and Green Bay as vast water resource reservoirs, water quality standards for those rivers emptying into Lakes Superior and Michigan and Green Bay shall be as high as is practicable.

(2) POWERS AND DUTIES. (a) The department shall have general supervision and control over the waters of the state. It shall formulate no later than July 1, 1968, a long-range, comprehensive state water resources plan for each region, as fixed by the department under sub. (4), to guide the development, management and protection of water resources. Such plan shall thereafter be carried out by the department. Such plan shall be reviewed and projected by the department every 2 years and a report thereon submitted to the governor by September 1 of each odd-numbered year. The department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

(b) The department shall adopt rules setting standards of water quality to be applicable to the waters of the state, recognizing that different standards may be required for different waters

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or portions thereof. Such standards of quality shall be such as to protect the public interest, which include the protection of the public health and welfare and the present and prospective future use of such waters for public and private water supplies, propagation of fish and aquatic life and wildlife, domestic and recreational purposes and agricultural, commercial, industrial and other legitimate uses. In all cases where the potential uses of water are in conflict, water quality standards shall be interpreted to protect the general public interest.

(c) The department may issue general orders, and adopt rules applicable throughout the state for the construction, installation, use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the state. Such general orders and rules shall be issued only after an opportunity to be heard thereon has been afforded to interested parties.

(d) 1. The department may issue special orders directing particular owners to secure such operating results toward the control of pollution of the waters of the state as the department prescribes, within a specified time. Pending efforts to comply with any order, the department may permit continuance of operations on such conditions as it prescribes. If any owner cannot comply with an order within the time specified, he may, before the date set in the order, petition the department to modify the order. The department may modify the order, specifying in writing the reasons therefor. If any order is not complied with within the time period specified, the department shall immediately notify the attorney general of this fact. Within 30 days thereafter, the attorney general shall forthwith commence an action under s. 144.536.

2. The department may issue temporary emergency orders without prior hearing when the department determines that the protection of the public health necessitates such immediate action. Such emergency orders shall take effect at such time as the department determines. As soon as is practicable, the department shall hold a public hearing after which it may modify or rescind the temporary emergency order or issue a special order under subd. 1.

(e) No wells shall be constructed, installed or operated to withdraw water from underground sources for any purpose where the capacity and rate of withdrawal of all wells on one property is in excess of 100,000 gallons a day without first obtaining the approval of the department. If the department finds that the proposed withdrawal will adversely affect or reduce the availability of water to any public utility in furnishing water to or for the public it shall either withhold its approval or grant a limited approval under which it imposes such conditions as to location, depth, pumping capacity, rate of flow and ultimate use so that the water supply of any public utility engaged in furnishing water to or for the public will not be impaired. The department may issue such general or special orders as it deems necessary to insure prompt and effective administration of this paragraph.

(f) The department shall make investigations and inspections to insure compliance with any general or special order or rule which it issues. In the exercise of this power the department may require the submission and approval of plans for the installation of systems and devices for handling, treating or disposing of any wastes.

(g) The department may conduct scientific experiments, investigations, waste treatment demonstrations and research on any matter under its jurisdiction. It may establish pilot plants, prototypes and facilities in connection therewith and lease or purchase land or equipment.

(h) The department, upon request, and without charge for service or expense, shall consult with and advise owners having installed or about to install systems or plants, as to the most appropriate water supply and the best method of providing for its purity, or as to the best method of disposing of sewage or refuse, with reference to the existing and future needs of all communities or persons which may be affected thereby. The department shall not be required to prepare plans.

(i) The department shall supervise chemical treatment of waters for the suppression of algae, aquatic weeds, swimmers' itch and other nuisance-producing plants and organisms. It may purchase equipment and may make a charge for the use of the same and for materials furnished, together with a per diem charge for any services performed in such work. The charge shall be sufficient to reimburse the department for the use of the equipment, the actual cost of materials furnished, and the actual cost of the services rendered.

(j) The department may enter into agreements with the responsible authorities of other states, subject to approval by the governor, relative to methods, means and measures to be employed to control pollution of any interstate streams and other waters and to carry out such agreement by appropriate general and special orders. This power shall not be deemed to extend to the modification of any agreement with any other state concluded by direct legislative act, but, unless otherwise expressly provided, the department shall be the agency for the enforcement of any such legislative agreement.

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(k) The department may order or cause the abatement of any nuisance affecting the waters of the state under ss. 146.13 and 146.14.

(l) The department shall by rule establish an examining program for the certification of waterworks and sewage treatment plant operators, setting such standards as the department finds necessary to accomplish the purposes of this chapter, and may charge applicants for such certificates for the cost of examination. After January 1, 1969, no person shall operate a waterworks or sewage treatment plant unless he holds a valid certificate issued under this paragraph.

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

(n) The department may accept gifts and grants from any private or public source for any purpose under its jurisdiction and may expend or use such gifts and grants for the purposes for which received.

(p) Beginning January 1, 1967, any provision of the state plumbing code which sets specifications for septic tanks and their installation shall be void unless it has been approved by the department.

(q) The department may prohibit the installation or use of septic tanks in any area of the state where the department finds that the use of septic tanks would impair water quality. The department shall prescribe alternate methods for waste treatment and disposal in such prohibited areas.

(r) If the department finds that a system or plant tends to create a nuisance or menace to health or comfort, it shall order the owner or the person in charge to secure such operating results as the department prescribes, within a specified time. If the order is not complied with, the department may order designated changes in operation, and if necessary, alterations or extension to the system or plant, or a new system or plant. If the department finds that the absence of a municipal system or plant tends to create a nuisance or menace to health or comfort, it may order the city, village, town or town sanitary district embracing the area where such conditions exist to prepare and file complete plans of a corrective system as provided by s. 144.04, and to construct such system within a specified time.

(s) In cases of noncompliance with any order issued under par. (d) or (r), the department may take the action directed by the order, and collect the costs thereof from the owner to whom the order was directed. The department shall have all the necessary powers needed to carry out this paragraph including powers granted municipalities under ss. 66.076 and 66.20 to 66.26. It shall also be eligible for financial assistance under s. 144.21.

(3) WATER RESOURCES COUNCIL. The water resources council shall advise the department on the setting of water quality standards and other state water problems.

(4) REGIONS. By January 1, 1967, the department shall divide the state into not more than 12 regions on the basis of criteria established by the department, taking into consideration such factors as river basins, watersheds, population density, economic factors, regional planning commissions and geographic, geologic and topographic features, and designate for each region a departmental employe as the regional director to administer the local work of the department in that region.

(5) REGIONAL BOARDS. (a) There shall be a regional water resources board for each region composed of the regional director, who shall serve as executive secretary; an employe of the department of health and social services serving in the region, appointed by and serving at the pleasure of the secretary of health and social services; an employe of the department of natural resources serving in the region, appointed by and serving at the pleasure of the secretary of natural resources; and 5 citizen members appointed by and serving at the pleasure of the governor. The executive director of the Minnesota-Wisconsin boundary area commission shall serve as a member for regions contiguous to the Minnesota boundary. The officers of the regional boards shall be selected from the citizen members.

(b) Each regional advisory board shall advise the department on regional water quality standards and other water problems of the region, act as liaison to the public, foster educational programs and aid in fostering the development of sanitary districts.

(c) Each regional advisory board shall meet at least semiannually and at the call of the chairman or a majority of its members.

(d) Regional advisory board members shall be reimbursed for their actual and necessary expenses by the department, but such reimbursement in the case of members who are not citizen members shall be by the employing agency.

(6) Personnel of all state agencies shall report any evidence of water pollution found by them to the department.

History: 1971 c. 307; 1973 c. 243; 1975 c. 349.

The supreme court overrules its decision in Huber (117 W (2d) 355) and adopts the so-called American rule for liability on use of underground waters. State v. Michels Pipeline Construction, Inc. 63 W (2d) 278, 217 NW (2d) 339, 219 NW (2d) 308.

Supplying of water to its inhabitants by a municipality is not a proprietary function immune from the provisions of ch. 144, because the protection of public health is a matter of statewide concern over which the legislature may exercise its police powers to insure a healthful water supply. See note to 66.065. Village of Sussex v. Dept. of Natural Resources, 68 W (2d) 187, 228 NW (2d) 173.

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The department of natural resources has the authority to order a municipality to construct a public water supply under (2) (r), upon a finding that the absence of a public water supply constitutes a nuisance or menace to health or comfort, even though the electors of the municipality voted against construction in a referendum. 60 Atty. Gen. 523.

A municipality has no jurisdiction over chemical treatment of waters to suppress aquatic nuisances. The department is granted statewide supervision over aquatic nuisance control under (2) (i). Applications for permits to chemically treat aquatic nuisances under (2) (i) may be denied even though statutory and regulatory requirements have been met if such chemical treatment would be counter-productive in achieving the goals set out in (1). 63 Atty. Gen. 260.

Theories of water pollution litigation. Davis, 1971 WLR 738.

Carrying capacity controls for recreation water uses. Kusler, 1973 WLR 1.

144.03 Septic tank permits. (1) Before any septic tank may be purchased or installed, the owner of the property on which the septic tank is to be installed shall obtain a permit for such installation from the county clerk, the county zoning administrator or other persons designated by the county board. The permit application shall state the owner's name and address, the location of the property on which the septic tank is to be installed, the name of the installer and any state license held by him, the specifications of the septic tank and any other information required by the department of health and social services. Upon receipt of an application together with a fee of $1, the county clerk or such other person shall issue a permit and shall forward the application and fee to the department of health and social services. If the department of health and social services receives the application within 10 days after the application is filed, it shall reimburse the county clerk or such other person 50 cents for issuing the permit. The department of health and social services shall prescribe and furnish application and permit forms, and may designate any person to issue permits, including sellers of septic tanks.

(2) No retailer may sell a septic tank for installation in this state unless the purchaser first displays a permit obtained under this section for that installation.

History: 1971 c. 164 s. 86.

144.04 Approval of plans. Every owner within the time prescribed by the department, shall file with the department a certified copy of complete plans of a proposed system or plant or extension thereof, in scope and detail satisfactory to the department, and, if required, of existing systems or plants, and such other information concerning maintenance, operation and other details as the department requires. Material changes with a statement of the reasons shall be likewise submitted. Before plans are drawn a statement concerning the improvement may be made to the department and the department shall, if requested, outline generally what it will require. Upon receipt of such plans for approval, the department or its duly authorized representative shall by return mail notify the owner of their acceptance. The notice shall include the date of receipt. Within 90 days from the time of their acceptance the department or its authorized representative shall examine and take action to approve, approve conditionally or reject the plans and shall state in writing any conditions of approval or reasons for rejection. Approval or disapproval of such plans and specifications shall not be contingent upon eligibility of such project for federal aid. The 90-day time period may be extended by agreement with the owner if the plans and specifications cannot be reviewed within the 90-day time limitation due to circumstances beyond the control of the department or in the case of extensive installation involving expenditures of $350,000 or more. The extension shall not exceed 6 months. Failure of the department or its authorized representative to act within 90 days or during an extension of such time period shall constitute an approval of the plans, and upon demand a written certificate of approval shall be issued. Approval may be subject to modification by the department upon due notice. Construction or material change shall be according to approved plans only.

144.045 Garbage and refuse disposal. No person shall dispose of garbage or refuse in any area that is subject to inundation by periodic flooding and from which such garbage or refuse is likely to be washed by flood waters into any surface waters of the state. The department shall order immediate discontinuance of disposal of refuse in a manner or at a site not in compliance with this section.

144.05 Sewage drains; sewage discharge into certain lakes. (1) (a) When any city or village or owner has constructed or constructs a sewage system complying with s. 144.04, the outflow or effluent from such system may be discharged into any stream or drain constructed pursuant to law, but no such outflow of untreated sewage or effluent from a primary or secondary treatment plant from a city, village, town, town sanitary district or metropolitan sewage district in a county having a population of 240,000 or more, according to the latest U.S. bureau of census figures available including any special census of municipalities within the county, any part of which is located within a drainage basin which drains into a lake of more than 2 square miles and less than 16 square miles in area, shall be discharged directly into, or through any stream, or through any drain, into such a lake located within 18 miles of the system or plant of such city, village, town, town sanitary district or

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metropolitan sewage district. All necessary construction of plant, system or drains for full compliance with this subsection in the discharge of untreated sewage or sewage effluent from all existing primary or secondary plants shall be completed by September 1, 1970, and the plans for any new system or plant shall include provisions for compliance with this subsection. The department may at any time order and require any owner of an existing plant to prepare and file with it, within a prescribed time, preliminary or final plans or both, for proposed construction to comply with this subsection.

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

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

(d) Any person violating this subsection or any order issued in furtherance of compliance therewith shall forfeit to the state not less than $100 nor more than $500 for each violation, failure or refusal. Each day of continued violation is deemed a separate offense. No such penalty shall be invoked during the time that any petition for review of an order is pending under s. 144.56 until final disposition thereof by the courts, if judicial review is sought under ch. 227.

(2) The city or village or the owner of land through which the drain is constructed may apply to the circuit court of the county in which the land is located to determine the damages, if any. No injunction against the use shall be granted until the damages are finally determined and payment refused. Unless within six months after the system is completed the owner of the land shall institute such proceedings he shall be barred. The proceedings shall be according to chapter 32 of the statutes, so far as applicable.

History: 1971 c. 164, 276.

The original opinion of the supreme court in 63 W (2d) 175, finding (1), Stats. 1969, an unconstitutional delegation of legislative power to county courts is withdrawn. Madison Metropolitan Sewerage Dist. v. DNR, 66 W (2d) 634, 226 NW (2d) 184.

144.06 House connections. To assure preservation of public health, comfort and safety, any city or village or any town having a population of more than 7,500 having a system of waterworks or sewerage, or both, may by ordinance require buildings used for human habitation and located adjacent to a sewer or water main, or in a block through which one or both of such systems extend, to be connected with either or both in the manner prescribed. If any person fails to comply for more than 10 days after notice in writing the municipality may impose a penalty or may cause connection to be made, and the expense thereof shall be assessed as a special tax against the property. Except in cities of the 1st class, the owner may, within 30 days after the completion of the work, file a written option with the city or village clerk stating that he cannot pay such amount in one sum and asking that it be levied in not to exceed 5 equal annual instalments, and the amount shall be so collected with interest at the rate of 6% per annum from the completion of the work, the unpaid balance to be a special tax lien.

144.07 Joint sewerage systems. (1) The department of natural resources may require the sewerage system, or sewage or refuse disposal plant of any governmental unit including any town, village or city, to be so planned and constructed that it may be connected with that of any other town, village or city, and may, after hearing, upon due notice to the governmental units order the proper connections to be made or a group of governmental units including cities, villages, town sanitary districts or town utility districts may construct and operate a joint sewerage system under this statute without being so required by order of the department of natural resources but following hearing and approval of the department.

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(1m) An order by the department for the connection of unincorporated territory to a city or village system or plant under this section shall not become effective for 30 days following issuance. Within 30 days following issuance of the order, the governing body of a city or village subject to an order under this section may commence an annexation proceeding under s. 66.024 to annex the unincorporated territory subject to the order. If the result of the referendum under s. 66.024 (4) is in favor of annexation, the territory shall be annexed to the city or village for all purposes, and sewerage service shall be extended to the territory subject to the order. If an application for an annexation referendum is denied under s. 66.024 (2) or the referendum under s. 66.024 (4) is against the annexation, the order shall be void. If an annexation proceeding is not commenced within the 30-day period, the order shall become effective.

(2) When one governmental unit renders service to another under this section, reasonable compensation shall be paid. The officials in charge of the system, of the governmental unit furnishing the service shall determine the reasonable compensation and report to its clerk who shall, on or before August 1 of each year, certify a statement thereof to the clerk of the governmental unit receiving the service. This clerk shall extend the amount shown in such statement as a charge on the tax roll, in the manner following: a) where the service rendered is available to substantially all improved real estate in the member governmental unit receiving the same, the charges shall be placed upon the tax roll of such member governmental unit as a general tax; b) where the service rendered is for the benefit of public highways in, or real estate owned or operated by, the member governmental unit receiving the same, the charges therefor shall be placed upon the tax roll of such member governmental unit as a general tax; c) where the service rendered does not come under the provisions of a) or b), the charges therefor shall be placed upon the tax roll of such member governmental unit as a special tax upon each parcel of real estate benefited; and when collected it shall be paid to the treasurer of the member governmental unit rendering the service. Where the charges are to be extended on such tax roll under the provisions of c), the clerk of the member governmental unit furnishing such service shall itemize his statement showing separately the amount charged to each parcel of real estate benefited; if, due to delay in determination, such charge cannot be extended on the tax roll of any particular year, it shall be extended as soon as possible.

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

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

(b) Institute a proceeding for judicial review in the manner provided in ch. 227, except that the place of appeal shall be the circuit court of the county of the governmental unit furnishing the service.

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

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

2. Where such sewerage commission shall consist of 5 members, the member chosen by the 4 members first appointed shall serve for one year, while the members appointed by the governing bodies of the 2 governmental units shall serve for terms of 2, 3, 4 and 5 years

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respectively, the length of terms of each to be determined by lot. All subsequent appointments, except for unexpired terms, shall be for 6 years. All such members shall serve until their successors shall have been appointed and shall have qualified.

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

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

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

(e) Each such governmental unit shall pay for its proportionate share of such sewerage system, including additions thereto, and also its proportionate share of all operation and maintenance costs as may be determined by the sewerage commission. Each governmental unit may borrow money and issue revenue or general obligation bonds therefor, for the acquisition, construction, erection, enlargement and extension of a joint sewage disposal plant or refuse or rubbish or solid waste disposal plant or system or any combination of plants provided under this section, and to purchase a site or sites for the same. Each governmental unit may, if it so desires, proceed under s. 66.076 in financing its portion of the cost of the construction, operation and maintenance of the joint sewage disposal plant or plants provided for in this section, or system.

(f) Any such governmental unit being aggrieved by the determination of the sewerage commission on matters within its jurisdiction may appeal to the circuit court of the county in which such aggrieved governmental unit is located as provided in sub. (3) (b).

History: 1971 c. 89, 276.

144.09 Enforcement. Records required by the department shall be kept by the owners and the department supplied with certified copies and such other information as it may require. Agents of the department may enter buildings, structures and premises of owners supplying the public or industrial plants with water, ice, sewerage systems, sewage or refuse disposal service and private properties to collect samples, records and information, and to ascertain if the rules and orders of the department are complied with. The department of justice shall assist in the enforcement of this chapter.

144.10 Review of orders. Any owner or other person in interest may secure a review by the department of natural resources of the necessity for and reasonableness of any order of the department in the manner provided by s. 144.56 and the determination of the department shall be subject to judicial review as provided by ch. 227.

144.12 Limitation. Nothing in this chapter shall be construed to affect the provisions of sections 196.01 to 196.79 or of chapter 31 of the statutes.

144.14 Nondegradable detergents, sale prohibited. On and after December 31, 1965, the sale and use of nondegradable detergents

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containing alkyl benzene sulfonate is prohibited in this state.

History: 1971 c. 40.

144.21 Financial assistance program. (1) The legislature finds that state financial assistance for the construction and financing of pollution prevention and abatement facilities is a public purpose and a proper state government function in that the state is trustee of the waters of the state and that such financial assistance is necessary to protect the purity of state waters.

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

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

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

(c) All municipalities and school districts are eligible for agreements under sub. (6) (a) and (b) based on the criteria in this paragraph. The criteria shall consider the health hazards of existing conditions, the extent and nature of pollution, per capita costs of the project, property valuation of the municipalities or school districts as equalized by the state, income of the residents in the municipalities or school districts, the availability of federal funds for the project, soil conditions, the feasibility and practicality of the project, the borrowing capacity of the municipality or school district and any other factors which the department considers important. Municipalities or school districts commencing projects but not completed prior to January 18, 1970, shall be deemed eligible for agreements under sub. (6) (a) and (b). School district projects are not eligible if the project is located within the corporate limits of a city or of a village with an operating municipal sewage system.

(4) Municipalities or school districts which desire to participate in the state program shall submit application for participation to the department. The application shall be in such form and include such information as the department prescribes.

(5) The department shall review applications for participation in the state program. It shall determine those applications which meet the criteria it established under sub. (3), and shall arrange the applications in appropriate priority order.

(6) The department may enter into agreement with municipalities and school districts to provide state assistance for the financing of those pollution prevention and abatement facilities projects it approves under sub. (5).

(a) The department may enter into agreements with municipalities and school districts to make payments to them from the appropriation made by s. 20.370 (2) (c) to pay not less than 25% and not more than 30% of the estimated reasonable costs of the approved project. These payments shall be in even annual amounts and shall extend for a period of not less than 5 years and not more than 30 years. The department shall not enter into such additional agreements after July 1, 1969, but shall continue to make payments on existing agreements until the terms of the agreement are fully satisfied.

(b) The department may enter into agreements with municipalities and school districts to make payments to them from the appropriation made by s. 20.866 (2) (tm).

1. These payments shall not exceed 50% of the approved project in conjunction with the state program of advancement in anticipation of federal reimbursement under sub. (2). To provide for the financing of pollution prevention and abatement facilities, the natural resources board, with the approval of the governor, subject to the limits of s. 20.866 (2) (tm) may direct that state debt be contracted as set forth in subd. 2 and subject to the limits set therein. Said debts shall be contracted for in the manner and form as the legislature hereafter prescribes.

2. It is the intent of the legislature that state debt not to exceed $144 million in the 10-year period from 1969 to 1979 may be incurred for state water pollution and abatement assistance.

(c) In addition to any agreements entered into under pars. (a) and (b), the department may enter into agreements with municipalities

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and school districts to make payments to them from the appropriation made by s. 20.370 (2) (fm) to provide direct financial assistance for smaller facilities, including but not limited to chlorination treatment and phosphate removal.

(e) The department shall review and approve the plans and specifications of all facilities designed and constructed by agreement under this section.

(11) This section shall be construed liberally in aid of the purposes declared in sub. (1).

History: 1971 c. 95; 1975 c. 39 s. 734.

144.22 Financial assistance program; water systems. (1) There is established a state program of financial assistance to municipalities for financing the construction of potable water systems to assure the availability of water safe for human consumption and use. The program shall be administered by the department which shall make such rules as are necessary for the proper execution of the program.

(2) (a) The department shall establish criteria to determine those municipalities and projects which are eligible for the state program and shall determine appropriate priorities among the projects. Eligible projects are those for the construction of additions to or modifications of and extensions of existing water systems as well as the construction of new systems used and useful primarily for the production, transmission, purification, storage, delivery or furnishing of water to or for the public for any purpose, or to a city, village, town, county or other governmental unit of this state, except piping and fixtures inside buildings served and service pipes from the building to the water main in the street. A project is eligible under this section if it is municipally owned or is constructed under a franchise or contract entered into by a municipality to provide potable water for human consumption and use within the municipality. For those eligible projects which are not municipally owned, the "estimated reasonable costs" shall include only those costs incurred by or assessed to the municipality.

(b) The department shall give highest priority to the projects for which there is an urgent and vital need on the basis of present health hazards posed by existing facilities which serve residences and buildings presently in existence.

(c) The department shall then give other projects priority on the basis of criteria which shall include but not necessarily be limited to the present or potential health hazard, water quality not meeting state standards and low quality of the current water supply and water system, soil conditions, geology, the feasibility and practicality of the project, per capita costs of the project, per capita income of the residents in the municipality, the borrowing capacity of the municipality and the impact of the project on the orderly development of land in areas and municipalities in the vicinity of the project and the availability of federal funds for the project or the municipality. Eligible projects for which construction started in previously developed areas subsequent to July 1, 1973, are eligible for agreements under sub. (5).

(3) Municipalities which desire to participate in the state program shall submit application for participation to the department. The application shall be in such form and include such information as the department prescribes.

(4) The department shall review an application for participation in the state program within 90 days of the receipt of the application. It shall determine those applications which meet the criteria under sub. (2), shall arrange the applications in appropriate priority order and shall notify the relevant municipalities of their respective priority status. If an application is rejected, the department shall notify the municipality and shall state in writing the reasons for rejection.

(5) (a) Upon approval of an application, the department may enter into an agreement with the municipality to pay from the appropriation under s. 20.370 (2) (d) an amount not to exceed 25% of the estimated reasonable costs of the approved project except as provided in par. (c). The agreement shall be for such duration and subject to such terms as the department may prescribe. The department shall not grant a municipality more than 10% of the funds available under s. 20.370 (2) (d) for a given year.

(b) In this subsection "estimated reasonable costs" may include the costs of preliminary planning to determine the economic and engineering feasibility of a proposed project, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary to the construction of the project and the erection, building, acquisition, modification, improvement or extension of water system facilities and the inspection and supervision of the construction of such facilities but shall exclude any costs for which the municipality receives federal financial assistance, other than federal loans which must be repaid by the municipality.

(c) The department may grant to a municipality an additional sum not to exceed 25% of the estimated reasonable cost of the approved project if the project is accorded the highest priority under sub. (2) (b) and if the fiscal capacity of the municipality is inadequate to

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secure financial credit on reasonable terms and conditions. Criteria for the adequacy of municipal fiscal capacity shall include the project cost per capita, median income and the relationship between current indebtedness and the equalized property valuation of the municipality.

(6) The department shall review and approve under s. 144.04 the plans and specifications of all facilities designed and constructed by agreement under this section prior to making payments under this section.

(7) Municipally owned facilities whose construction is assisted under this section shall not be sold or leased to a privately owned public utility within 20 years after construction is completed without the consent of the legislature. The consent may be conditioned upon such terms as the legislature prescribes to protect the public interest, including the possibility of repayment to the state general fund by the municipality of all or part of the state financial assistance extended under this section.

(8) In this section "municipality" means "municipality" as defined in s. 144.01 (12) plus municipal public utilities created under ch. 66 or acquired under ch. 197 and municipal water districts created under ch. 198.

History: 1973 c. 296; 1975 c. 39 ss. 633m, 734.

144.23 Financial assistance program; sewerage systems. (1) The financial assistance program established under this section is to be used only if the applicant is unable to receive assistance in a timely manner from the federal government and supplementary funding program established under s. 144.21. Receipt of aid under this section makes the applicant ineligible for aid under s. 144.21.

(2) There is established a state program of assistance to municipalities and unincorporated areas for the purpose of financing the construction of water pollution abatement and sewage collection systems. The program shall be administered by the department which shall make such rules as are necessary for the proper execution of the program.

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

(b) All municipalities having a population of less than 10,000 are eligible for agreements under sub. (6) based on the criteria in this paragraph. The criteria shall consider the health hazards of existing conditions, the adequacy of the existing water pollution abatement system, per capita costs of the project, property valuation of the municipalities as equalized by the state, income of the residents in the municipalities, the availability of federal funds for the project and the borrowing capacity of the municipality. Highest priority shall initially be given to projects which have completed all necessary planning and engineering and any other factors which the department considers important. Municipalities commencing projects not completed prior to June 29, 1974 are eligible for agreements under sub. (6).

(4) Municipalities which desire to participate in the state program shall submit application for participation to the department. The application shall be in such form and include such information as the department prescribes.

(5) The department shall review applications for participation in the state program. It shall determine those applications which meet the criteria it established under sub. (3) and shall arrange the applications in appropriate priority order.

(6) (a) Upon approval of an application, the department may enter into an agreement with the municipality to pay from the appropriation under s. 20.866 (2) (tm) an amount not to exceed 50% of the estimated reasonable costs of the approved project. The agreement shall be for such duration and subject to such terms as the department may prescribe. The department shall not grant any municipality more than 10% of the funds available under s. 20.866 (2) (tm) for a given year.

(b) In this subsection "estimated reasonable costs" include the costs of preliminary planning to determine the economic and engineering feasibility of a proposed sewerage system, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary to the construction of the project and the erection, building, acquisition, alteration, remodeling, improvement or extension of system facilities and the inspection and supervision of the construction of such facilities.

(7) The department shall review and approve the plans and specifications of all facilities designed and constructed by agreement under this section.

History: 1973 c. 333.

144.26 Navigable waters protection law. (1) To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans and authorize municipal shoreland zoning regulations for the efficient use, conservation, development and protection of this state's water resources. The regulations shall relate to lands

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under, abutting or lying close to navigable waters. The purposes of the regulations shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.

(2) In this section, unless the context clearly requires otherwise:

(a) "Subcommittee" means the water subcommittee of the natural resources council of state agencies.

(c) "Municipality" or "municipal" means a county, village or city.

(d) "Navigable water" or "navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Notwithstanding any other provision of law or administrative rule promulgated thereunder, a shoreland zoning ordinance required under s. 59.971 and this section does not apply to lands adjacent to farm drainage ditches if:

1. Such lands are not adjacent to a natural navigable stream or river;

2. Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

3. Such lands are maintained in nonstructural agricultural use.

(e) "Regulation" refers to ordinances enacted under ss. 59.971 and 62.23 (7) and means shoreland subdivision and zoning regulations which include control of uses of lands under, abutting or lying close to navigable waters for the purposes specified in sub. (1), pursuant to any of the zoning and subdivision control powers delegated by law to cities, villages and counties.

(f) "Water resources," where the term is used in reference to studies, plans, collection of publications on water and inquiries about water, means all water whether in the air, on the earth's surface or under the earth's surface. "Water resources" as used in connection with the regulatory functions under this section means navigable waters.

(g) "Shorelands" means the lands specified under par. (e) and s. 59.971 (1).

(3) (a) The subcommittee shall serve in an ex officio advisory capacity to the department and provide a liaison function whereby the several state agencies may better co-ordinate their activities in managing and regulating water resources.

(b) The department shall make studies, establish policies and make plans for the efficient use, conservation, development and protection of the state's water resources and:

1. On the basis of these studies and plans make recommendations, through the subcommittee, to existing state agencies relative to their water resource activities.

2. Locate and maintain information relating to the state's water resources. The department shall collect pertinent data available from state, regional and federal agencies, the university of Wisconsin, local units of government and other sources.

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

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

1. Domestic uses shall be generally preferred.

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

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

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

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

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

(6) Within the purposes of sub. (1) the department shall prepare and provide to municipalities general recommended standards and criteria for navigable water protection studies and planning and for navigable water protection regulations and their administration. Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the

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capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations.

(7) The department, the municipalities and all state agencies shall mutually co-operate to accomplish the objective of this section. To that end, the department shall consult with the governing bodies of municipalities to secure voluntary uniformity of regulations, so far as practicable, and shall extend all possible assistance therefor.

(8) This section and s. 59.971 shall be construed together to accomplish the purposes and objective of this section.

(9) Sections 30.50 to 30.80 are not affected or superseded by this section.

(10) A person aggrieved by an order or decision of the department under this section may cause its review under ch. 227.

History: 1975 c. 232.

See note to art. I, sec. 13, citing Just v. Marinette County, 56 W (2d) 7, 201 NW (2d) 761.

The concept that an owner of real property can, in all cases, do as he pleases with his property is no longer in harmony with the realities of society. The supreme court herein adopts the "reasonable use" rule codified in the second Restatement of the Law of Torts. State v. Deetz, 66 W (2d) 1, 224 NW (2d) 407.

See note to 88.21, citing 63 Atty. Gen. 355.

The necessity of zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. Whipple, 57 MLR 25.

Water quality protection for inland lakes in Wisconsin; a comprehensive approach to water pollution. Kusler, 1970 WLR 35.

Land as property; changing concepts. Large, 1973 WLR 1039.

144.30 Definitions. As used in this chapter:

(1) "Air contaminant" means dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

(2) "Air pollution" means the presence in the atmosphere of one or more air contaminants in such quantities and of such duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.

(3) "Emission" means a release of air contaminants into the atmosphere.

(4) "Solid waste" means garbage, refuse and other discarded or salvageable solid materials, including solid-waste materials resulting from industrial, commercial and agricultural operations, and from domestic use and public service activities, but does not include solids or dissolved material in waste water effluents or other common water pollutants.

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

(6) "Refuse" means combustible and noncombustible rubbish, including, but not limited to, paper, wood, metal, glass, cloth and products thereof; litter and street rubbish, ashes; and lumber, concrete and other debris resulting from the construction or demolition of structures.

(7) "Solid waste disposal" means the collection, storage treatment, utilization, processing or final disposal of solid waste.

(8) "Solid waste disposal sites and facilities" include commercial and municipal establishments such as, without limitation because of enumeration, dumps, incinerator sites, auto junkyards and scrap metal salvage yards.

(9) "Environmental pollution" means the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

(10) "Toxic and hazardous substances" means waste materials such as pesticides, acids, caustics, pathological wastes, radioactive materials, flammable or explosive materials and similar chemicals and harmful wastes which require special handling and disposal to protect and conserve the environment.

(11) "Solid waste management" means planning, organizing, financing, and implementing programs to effect the storage, collection, transporting, processing, recycling or final disposal of solid wastes in a sanitary, nuisance-free manner.

(12) "Solid waste management plan" means a plan prepared to provide for solid waste management.

History: 1971 c. 125, 130, 211.

The social and economic roots of judge-made air pollution policy in Wisconsin. Laitos, 58 MLR 465.

144.31 General powers and duties. (1) The department shall:

(a) Promulgate rules implementing and consistent with ss. 144.30 to 144.46 and 144.54.

(b) Encourage voluntary co-operation by persons and affected groups to achieve the purposes of ss. 144.30 to 144.46 and 144.54.

(c) Encourage local units of government to handle air pollution and solid waste disposal problems within their respective jurisdictions and on a regional basis, and provide technical and consultative assistance therefor.

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(d) Collect and disseminate information and conduct educational and training programs relating to the purposes of ss. 144.30 to 144.46 and 144.54.

(e) Organize a comprehensive and integrated program to enhance the quality, management and protection of the state's air, land and water resources.

(2) The department may:

(a) Hold hearings relating to any aspect of the administration of ss. 144.30 to 144.46 and 144.54 and, in connection therewith, compel the attendance of witnesses and the production of evidence.

(b) Issue orders to effectuate the purposes of ss. 144.30 to 144.46 and 144.54 and enforce the same by all appropriate administrative and judicial proceedings.

(c) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(d) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere and make recommendations to appropriate public and private bodies with respect thereto.

(e) Advise, consult, contract and co-operate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.

History: 1971 c. 125 s. 522 (2).

144.32 Federal aid. Subdivisions of this state and interlocal agencies may make application for, receive, administer and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control and solid waste disposal sites and facilities if first submitted to and approved by the department. The department shall approve any such application if it is consistent with the purposes of ss. 144.30 to 144.46 and any other applicable requirements of law.

144.33 Confidentiality of records. Any records or other information furnished to or obtained by the department in the administration of ss. 144.30 to 144.46 and 144.54, which records or information, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the department in the administration of ss. 144.30 to 144.46 and 144.54, unless such owner or operator expressly agrees to their publication or availability to the general public. Nothing herein shall prevent the use of such records or information by the department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, if such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this section.

History: 1971 c. 125 s. 522 (2).

144.34 Inspections. Any duly authorized officer, employe or representative of the department may enter and inspect any property, premise or place on or at which an air contaminant source or solid waste disposal site or facility is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with ss. 144.30 to 144.46 and 144.54 and rules in force pursuant thereto. No person shall refuse entry or access to any such authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. The department, if requested, shall furnish to the owner or operator of the premises a report setting forth all facts found which relate to compliance status.

History: 1971 c. 125 s. 522 (2).

144.35 Violations: enforcement. (1) (a) Whenever the department has reason to believe that a violation of ss. 144.30 to 144.46 and 144.54 or any rule pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator. The notice shall specify the law or rule alleged to be violated, and contain the findings of fact on which the charge of violation is based, and may include an order that necessary corrective action be taken within a reasonable time. Any such order shall become effective unless, no later than 10 days after the date the notice and order are served, the person named therein requests in writing a hearing before the department. Upon such request, the department shall after due notice hold a hearing. In lieu of an order, the department may require that the alleged violator appear before the department for a hearing at a time and place specified in the notice and answer the charges complained of, or the department may initiate action under s. 144.57.

(b) If after such hearing the department finds that a violation has occurred, it shall affirm or modify its order previously issued, or issue an appropriate order for the prevention, abatement or control of the problems involved or for the taking of such other corrective action as may be appropriate. If the department finds that no

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violation has occurred, it shall rescind its order. Any order issued as part of a notice or after hearing may prescribe one or more dates by which necessary action shall be taken in preventing, abating or controlling the violation.

History: 1971 c. 125 s. 522 (2).

144.36 Air pollution control powers and duties. (1) The department shall:

(a) Prepare and develop one or more comprehensive plans for the prevention, abatement and control of air pollution in this state. The department thereafter shall be responsible for the revision and implementation of such plans.

(b) Conduct or direct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control and, by means of field studies and sampling, determine the degree of air contamination and air pollution throughout the state.

(c) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source, device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall relieve any person from compliance with ss. 144.30 to 144.46 or rules pursuant thereto, or any other provision of law.

(2) The department may examine any records relating to emissions which cause or contribute to air contamination.

144.37 Air pollution control council. The air pollution control council shall advise the natural resources board on proposed and existing rules and any matters pertaining to air pollution.

144.38 Classification and reporting. (1) (a) The department, by rule, shall classify air contaminant sources which may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class. Classifications made pursuant to this section may be for application to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(b) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the department require reporting shall make reports containing such information as the department requires concerning location, size and heights of contaminant outlets, processes employed, fuels used and the nature and time periods of duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

144.39 Notice required for construction. (1) The department shall require that notice be given to it prior to the construction, installation or establishment of particular types or classes of air contaminant sources specified in its rules. Within 15 days after receipt of such notice, the department shall require, as a condition precedent to the construction, installation or establishment of the air contaminant source covered thereby, the submission of plans, specifications and such other information as it deems necessary in order to determine whether the proposed construction, installation or establishment will be in accordance with applicable rules in force pursuant to ss. 144.30 to 144.46, 144.54 and 144.57. Within 30 days after the receipt of such plans, specifications or other information the department shall issue an analysis to the effect of the proposal on ambient air quality, and for 30 days thereafter shall receive written comments on the proposal and analysis from interested persons, which shall be retained and considered in its determination. Within 90 days after the receipt of such plans, specifications or other information, the department shall either determine that the proposed construction, installation or establishment will not be in accordance with the requirements of ss. 144.30 to 144.46, 144.54 and 144.57 or applicable rules, in which case it shall issue either an order prohibiting the construction, installation or establishment of the air contaminant source or an order approving such construction, installation or establishment upon such conditions as are necessary to assure compliance with such requirements; or it shall determine that the proposed construction, installation or establishment will be in accordance with such requirements, in which case it shall issue an order approving such construction, installation or establishment. Construction, installation or establishment may proceed in accordance with an order of approval only after it is received from the department.

(2) In lieu of state view of plans and specifications, the department may authorize counties which are administering approved air pollution control programs to review and approve plans and specifications of air contaminant sources being constructed within the jurisdiction of said counties.

(3) In addition to any other remedies available on account of the issuance of an order

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prohibiting construction, installation or establishment of such source, and prior to invoking any such remedies, any person aggrieved thereby shall, upon request in accordance with rules of the department, be entitled to a hearing on the order. Following such hearing, the order may be affirmed, modified or withdrawn.

(4) Any addition to or enlargement or replacement of an air contaminant source, or any major alteration therein, shall be construed as construction, installation or establishment of a new air contaminant source.

(5) Any features, machines and devices constituting parts of or called for by plans, specifications or other information submitted pursuant to sub. (1) shall be maintained in good working order.

(6) Nothing in this section authorizes the department to require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices or equipment otherwise available.

(7) The absence of or failure to issue a rule, or order pursuant to this section does not relieve any person from compliance with any emission control requirements or with any other provision of law.

(8) The department may by rule prescribe and provide for the payment and collection of reasonable fees for the review of plans and specifications required to be submitted pursuant to this section.

History: 1975 c. 217

144.40 Emergency procedure. (1) If the secretary finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, he shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants, and such order shall fix a place and time, not later than 24 hours thereafter, for a hearing to be held before the department. Not more than 24 hours after the commencement of such hearing, and without adjournment thereof, the natural resources board shall affirm, modify or set aside the order of the secretary.

(2) In the absence of a generalized condition of air pollution of the type referred to in sub. (1), if the secretary finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the persons responsible for the operations in question to reduce or discontinue emissions immediately, without regard to s. 144.35. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in sub. (1) shall apply.

144.41 Local air pollution control programs. (1) After consultation with incorporated units of local government, any county may establish and thereafter administer within its jurisdiction, including incorporated areas, an air pollution control program which:

(a) Provides by ordinance for requirements compatible with, or stricter or more extensive than those imposed by ss. 144.30 to 144.46 and rules issued thereunder. Such ordinances shall supersede any existing local ordinances;

(b) Provides for the countywide enforcement of such requirements by appropriate administrative and judicial process;

(c) Provides for administrative organization, staff and financial and other resources necessary to effectively and efficiently carry out its program;

(d) May authorize municipalities to participate in the administration and enforcement of air pollution programs; and

(e) Is approved by the department as adequate to meet the requirements of ss. 144.30 to 144.46 and any applicable rules pursuant thereto.

(2) Any county may consult with regional planning commissions and may administer all or part of its air pollution control program in co-operation with one or more other counties or municipalities. Performance by or on behalf of a county pursuant to such co-operative undertaking shall be considered to be performance by the county for purposes of this section.

(3) If the department finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the department may determine the boundaries within which such program is necessary and require it.

(4) (a) If the department has reason to believe that a program in force pursuant to this section is inadequate to prevent and control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of ss. 144.30 to 144.46, the department shall, on due notice, conduct a hearing on the matter.

(b) If, after such hearing, the department determines that a program is inadequate to prevent and control air pollution in the county to which such program relates, or that such

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program is not accomplishing the purposes of ss. 144.30 to 144.46, it shall require that necessary corrective measures be taken within a reasonable period of time, not to exceed 60 days.

(c) If the county fails to take such necessary corrective action within the time required, the department shall administer within such county all of the regulatory provisions of ss. 144.30 to 144.46. Such air pollution control program shall supersede all county air pollution regulations, ordinances and requirements in the affected jurisdiction.

(5) Any county in which the department administers its air pollution control program under sub. (4) may, with the approval of the department, resume a county air pollution control program which meets the requirements of sub. (1).

(6) Nothing in ss. 144.30 to 144.46 supersedes the jurisdiction of any county air pollution control program in operation on July 26, 1967, but any such program shall meet all requirements of ss. 144.30 to 144.46 for a county air pollution control program. Any approval required from the department shall be deemed granted unless the department takes specific action to the contrary.

History: 1973 c. 90.

144.42 Motor vehicle pollution. (1) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of ss. 144.30 to 144.46, the department may provide by rule for the control of emissions from motor vehicles. Such rules may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and vehicles. Any rules pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The department shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

(2) Except as permitted or authorized by law, no person shall fail to maintain in good working order or remove, dismantle or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle and required by rules of the department to be maintained in or on the vehicle. Any such failure to maintain in good working order or removal, dismantling or causing of inoperability shall subject the owner or operator to suspension or cancellation of the registration for the vehicle. The vehicle shall not thereafter be eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(3) The department shall consult with the division of motor vehicles and furnish it with technical information, including testing techniques, standards and instructions for emission control features and equipment.

(4) In this section "motor vehicle" has the meaning designated in s. 340.01 (35).

History: 1971 c. 164 s. 81.

144.421 Mercury users. Every owner of an establishment using 50 pounds or more of mercury compounds or metallic mercury in any one year shall furnish the department with a materials balance statement for the mercury compound or metallic mercury. Such statement shall itemize the type and amount of mercury compound or metallic mercury used, the processes used in and the means by and the place where it is disposed. The statement shall be on a form prescribed by the department and shall be filed on or before January 31 with respect to the use of mercury during the preceding calendar year.

History: 1971 c. 272; 1975 c. 349.

144.422 Air standards for mercury. The department shall, no later than 6 months after April 29, 1972, prepare and adopt minimum standards for the emission of mercury compounds or metallic mercury into the air.

History: 1971 c. 272.

144.423 Mercury discharge into water. Discharge of mercury compounds and metallic mercury into the waters of this state by any person shall be limited to fifteen-hundredths of a pound of mercury per day averaged over a 30-day period, and not more than one-half pound in any one day. The department may establish lower maximum discharge limits by rule.

History: 1971 c. 272.

144.43 Solid waste disposal standards. The department shall, no later than January 1, 1969, prepare and adopt minimum standards for the location, design, construction, sanitation, operation and maintenance of solid waste disposal sites and facilities and shall, following a public hearing, adopt such rules relating to the operation and maintenance of solid waste disposal sites and facilities as it deems necessary,

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except that such rules relating to open burning shall be consistent with s. 144.431.

History: 1975 c. 83.

144.431 Solid waste open burning standards. (1) As used in this section:

(a) "Air curtain destructor" means a solid waste disposal operation that combines a fixed wall open pit and a mechanical air supply which uses an excess of oxygen and turbulence to accomplish the smokeless combustion of clean wood wastes and similar combustible materials.

(b) "Open burning" means combustion in which the by-products thereof are emitted directly into the ambient air without passing through a stack or chimney. Open burning does not include the combustion occurring at a properly operated air curtain destructor.

(c) "Population equivalent" means the population equal to the sum of the population of the geographical area based on the most recent census data, or department of administration census data used for tax sharing purposes, plus the seasonal population not included in the census data, plus one person per 1,000 pounds per year of industrial, commercial and agricultural waste.

(2) The department shall grant licenses for the open burning of solid waste at the licensee's solid waste disposal sites if:

(a) The open burning operation serves a population equivalent of less than 2,500 or, if the operation is controlled by more than one municipality, a population equivalent of less than 2,500 for each such municipality. The department shall give consideration to seasonal variations in population in granting partial yearly burning exemptions.

(b) All portions of the licensed operation are greater than one-fourth mile from any residence or place of public gathering, or written consent is obtained from all residents and proprietors within one-fourth mile thereof.

(c) The open burning does not include the burning of wet combustible rubbish, garbage, oily substances, asphalt, plastic or rubber products.

(d) The open burning operation is supervised by an attendant.

(e) The open burning operation is accomplished in a nuisance-free manner and does not create hazards for adjacent properties.

(f) Adequate firebreaks are provided and provision is made to obtain the services of the local fire protection agency if needed.

(g) The open burning operation is not in violation of any federal air pollution control rules, or any state air pollution control rules required to be adopted under applicable federal laws or regulations.

History: 1975 c. 83.

144.435 Solid waste management. (1) Each county board individually or jointly with another county board may prepare and adopt a county solid waste management plan consistent with state criteria. No such plan containing the proposed construction, alteration or reconstruction of a recycling or processing plant in a recycling region established by the Wisconsin solid waste recycling authority shall be submitted under sub. (2) without prior consultation with the authority.

(2) All county plans shall be submitted to the department of local affairs and development for review. Within 90 days after submittal, the department of local affairs and development shall transmit the plans and its recommendations to the department of natural resources for approval. The department of natural resources shall approve or disapprove the plans within 90 days after their submittal by the department of local affairs and development. During its review, the department of local affairs and development may consult with the appropriate regional planning commission to determine whether any site use and operation is not in conflict with any plans adopted by the commission.

History: 1971 c. 130; 1973 c. 305; 1975 c. 20.

144.437 Solid waste management criteria. The department of local affairs and development shall by rule adopt county solid waste management criteria for the development of the plans permitted under s. 144.435.

History: 1971 c. 130.

144.44 License. (1) After the department has promulgated minimum standards for the location, design, construction, operation and maintenance of solid waste disposal sites and facilities, no person shall establish, maintain, conduct or operate a solid waste disposal site or facility which does not adhere to such minimum standards. Such sites or facilities shall be licensed annually by the department providing they comply with said standards. The department may charge a reasonable fee for the costs of administering this section.

(2) Nothing in ss. 144.30 to 144.46 shall limit the authority of any local governing body to issue licenses and permits for any state-licensed sites or facilities or to adopt, subject to department approval, standards for the location, design, construction, operation and maintenance of solid waste disposal sites and facilities more restrictive than those adopted by the state under this section.

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144.445 Local permits not required; departmental license. (1) Any site which meets all state standards and is to be operated either by a governmental jurisdiction or combination thereof engaged in solid waste management in accordance with an approved county plan shall not be required to obtain any local permits or authorization.

(2) (a) Notwithstanding s. 144.44 (2), if a solid waste disposal site designed to serve a county or 2 or more municipalities is otherwise eligible for licensing except for failure to obtain a local permit, the department may, after notice and hearing, issue a license under s. 144.44 for the operation of said site. In issuing said license the department must find that the requirements of public health, safety and welfare require the waiver of local approvals as a condition precedent to issuance of a license.

(b) Any license issued under this section shall supersede all local requirements. However, operations licensed under this section may be required to render payments in lieu of local license or permit fees to the municipality in whose jurisdiction they lie not to exceed $100 per site per year.

History: 1971 c. 130.

144.45 Research. The department may conduct or direct scientific experiments, investigations, demonstration grants and research on any matter relating to solid waste disposal, including, but not limited to, land fill, disposal and utilization of junked vehicles, and production of compost.

144.46 Shoreland and flood plain zoning. Solid waste disposal sites and facilities are prohibited within areas under the jurisdiction of shoreland and flood plain zoning regulations adopted pursuant to ss. 59.971 and 87.30, except that the department may issue permits authorizing sites and facilities in such areas.

144.50 Manufacture and purchase of polychlorinated biphenyls. (1) In this section:

(a) "PCBS" mean the class of organic compounds generally known as polychlorinated biphenyls and includes any of several compounds or mixtures of compounds produced by replacing 2 or more hydrogen atoms on the biphenyl molecule with chlorine atoms.

(b) "Ppm" means parts per million by weight.

(c) "Product containing PCBs" means any item, device or material to which PCBs are intentionally added during or after manufacture as plasticizers, heat transfer media, hydraulic fluids, dielectric fluids, solvents, surfactants, insulators or coating, adhesive, printing or encapsulating materials or for other uses related to the function of such item, device or material.

(2) No person may manufacture, or purchase for use within this state, PCBs or a product containing PCBs after July 1, 1977.

(3) Subsection (2) shall not apply to any product containing PCBs if:

(a) The product contains PCBs in a closed system as a dielectric fluid for an electric transformer, electromagnet or capacitor, unless the department by rule prohibits such manufacture or purchase of specific products for which the department has determined that adequate alternatives are available at the time of manufacture or purchase.

(b) The product is an electrical component containing less than 2 pounds of PCBs, unless the department by rule prohibits the manufacture or purchase of any such product manufactured after the effective date of such rule for which the department has determined that an adequate alternative is available.

(c) The product is wastepaper, pulp or other paper products or materials, in which case such product may be purchased for use within this state in the manufacture of recycled paper products.

(4) Subsection (2) shall not be construed to prohibit the manufacture or purchase of PCBs or products containing PCBs for use within this state in scientific research, analytical testing or experimentation.

(5) The department by rule may exempt other uses of PCBs from the provisions of sub. (2) for specific products when adequate alternatives are not available.

(6) (a) In determining whether adequate alternatives are available under sub. (3) (a) and (b) or (5), the department shall take into account and make specific findings as to the following criteria:

1. The commercial availability and cost of alternative products;

2. The safety of alternative products to both human life and property;

3. The acceptance of alternative products by insurance underwriters;

4. The extent to which use of such alternative products is otherwise restricted by law;

5. The degree to which such alternative products satisfy the performance standards required for the particular use; and

6. Any adverse environmental effects associated with such alternative products.

(b) Such findings shall be submitted to the PCB advisory council under s. 15.347 (10) for review and comment and shall be transmitted with the summary of any proposed rule under s. 227.018 (2).

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(7) On or before July 1, 1977, the department shall adopt rules prescribing the methods and providing or designating sites and facilities for the disposal of PCBs and products containing PCBs. Such rules may require reporting by persons disposing of PCBs and products containing PCBs. Persons disposing of PCBs or products containing PCBs shall comply with such rules unless such products are exempted under sub. (3) (b) or (c). In this section, disposal does not include the disposal of PCBs in sludge produced by wastewater treatment systems under s. 144.43 and NR 151, Wis. Adm. Code, the discharge of effluents containing PCBs or the manufacture or sale of recycled paper products to which PCBs have not been intentionally added during or after manufacture for any of the uses set forth in sub. (1) (c). Nothing in this section shall exempt any person from applicable disposal or discharge limitations required or authorized under other sections of the statutes.

(8) On or before July 1, 1977, the department shall adopt rules setting forth the method and manner of sampling, preparing samples and analyzing PCBs which shall be used by the department in implementing this section.

(9) The department shall enforce this section as provided in ss. 147.21 and 147.29.

(10) No rule adopted under this section shall become effective until approved by majority votes of the senate committee on natural resources and the assembly committee on environmental quality.

History: 1975 c. 412.

144.536 Enforcement of orders; duty of department of justice; expenses. All orders of the department shall be enforced by the attorney general. The circuit court of Dane county or any other county where violation of such an order has occurred in whole or in part shall have jurisdiction to enforce the order by injunctional and other relief appropriate to the enforcement of the order. For purposes of such proceeding where the order prohibits in whole or in part any pollution, a violation thereof shall be deemed a public nuisance. The expenses incurred by the department of justice in assisting with the administration of ch. 144 shall be charged to the appropriation made by s. 20.370 (2).

History: 1975 c. 39 s. 734.

The provision that the violation of an order prohibiting pollution constitutes a public nuisance does not mean that there is no nuisance until an order is issued. State v. Dairyland Power Coop. 52 W (2d) 45, 187 NW (2d) 878.

144.537 Hearings; procedure, review. The department shall hold a public hearing relating to alleged or potential environmental pollution upon the verified complaint of 6 or more citizens filed with the department. The complaint shall state the name and address of a person within the state authorized to receive service of answer and other papers in behalf of complainants. The department may order the complainants to file security for costs in a sum deemed to be adequate but not to exceed $100 within 20 days after the service upon them of a copy of such order and all proceedings on the part of such complainants shall be stayed until security is filed. The department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to his last known post-office address at least 20 days prior to the time set for the hearing which shall be held not later than 90 days from the filing of the complaint. The respondent shall file his verified answer to the complaint with the department and serve a copy on the person so designated by the complainants not later than 5 days prior to the date set for the hearing, unless the time for answering is extended by the department for cause shown. For purposes of any hearing under this chapter, the secretary may issue subpoenas and administer oaths. Within 90 days after the closing of the hearing, the department shall make and file its findings of fact, conclusions of law and order, which shall be subject to review under ch. 227. If the department determines that any complaint has been filed maliciously or in bad faith it shall so find, and the person complained against shall be entitled to recover his expenses on the hearing in a civil action. Any situation, project or activity which upon continuance or implementation would cause, beyond reasonable doubt, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution.

144.54 Reports on substances used; monitoring fee. (1) The department shall require by rule that all persons, except municipalities, discharging industrial wastes, toxic and hazardous substances or air contaminants in this state report the manner used, amount used and amount discharged for each such waste, substance or contaminant. This shall include industrial wastes and toxic and hazardous substances discharged into any sewerage system operated by a municipality. The department may verify field monitoring of industrial waste and other waste outfalls and air contaminant sources.

(2) The department by rule shall prescribe method of analysis and form of the reports required by this section and shall establish parameters for the pollutants on which reports are required by this section. The pollutants for

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which parameters are to be established shall include, but are not limited to:

(a) Toxic and hazardous substances;

(b) Air contaminants; and

(c) Elemental discharges such as mercury or cadmium which may be toxic or hazardous when released to the environment.

(3) In order to provide for adequate departmental field monitoring and related efforts, there is established an annual operating plant discharge monitoring fee to be paid by each person required to report under sub. (1). Such fee shall be based on an administrative fee of $50 plus an additional operating plant discharge fee, to be set by the department by rule and to be based on the concentration and quantity of pollutants discharged at that plant in relation to the parameters established under sub. (2). The operating plant discharge fee under this subsection shall be paid for each plant at which pollutants are discharged. No annual operating plant discharge monitoring fee established under this subsection may exceed $10,000.

(4) Violators of the reporting requirements established under sub. (1) shall be fined not less than $200 nor more than $10,000 for each offense.

(5) Within 6 months after November 5, 1971, the department shall conduct hearings for the purpose of establishing parameters as required under sub. (2), except parameters for air pollutants. Within 12 months after November 5, 1971, the department shall conduct hearings for the purpose of establishing parameters for air pollutants.

History: 1971 c. 125; 1973 c. 90.

144.55 Visitorial powers of department. (1) Every owner of an industrial establishment shall furnish to the department all information required by it in the discharge of its duties under s. 144.025 (2). Any member of the natural resources board or any employe of the department may enter any industrial establishment for the purpose of collecting such information, and no owner of an industrial establishment shall refuse to admit such member or employe. The department shall make such inspections at frequent intervals. The secretary and all members of the board shall have power for all purposes falling within the department's jurisdiction to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of necessary or essential data.

(2) Any duly authorized officer, employe or representative of the department may enter and inspect any property, premises or place on or at which any prospecting or metallic mining operation or facility is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules adopted pursuant thereto. No person may refuse entry or access to any such authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials, nor may any person obstruct, hamper or interfere with any such inspection. The department shall furnish to the prospector or operator, as indicated in the prospecting or mining permit, a written report setting forth all observations, relevant information and data which relate to compliance status.

History: 1973 c. 318.

144.56 Review of orders. Any owner or other person in interest may secure a review of the necessity for and reasonableness of any order of the department of natural resources in the following manner:

(1) They shall first file with the department a verified petition setting forth specifically the modification or change desired in such order. Such petition must be filed within 60 days of the issuance of the orders sought to be reviewed. Upon receipt of such a petition the department shall order a public hearing thereon and make such further investigations as it shall deem advisable. Pending such review and hearing, the department may suspend such orders under terms and conditions to be fixed by the department on application of any such petitioner. The department shall affirm, repeal or change the order in question within 60 days after the close of the hearing on the petition.

(2) The determination of the department shall be subject to review as provided in ch. 227.

144.57 Penalties. Any person who violates this chapter, or who fails, neglects or refuses to obey any general or special order of the department, shall forfeit not less than $10 nor more than $5,000, for each violation, failure or refusal. Each day of continued violation is a separate offense. While the order is suspended, stayed or enjoined, such penalty shall not accrue.

144.76 Wisconsin citizens environmental council. (1) The Wisconsin citizens environmental council shall employ, under the classified service, such staff as is necessary to perform clerical duties.

(2) The overall objectives of the council shall be to plan, coordinate, educate and motivate both public and private agencies and persons to preserve and enhance Wisconsin's natural beauty. To this end the council shall:

(a) Serve as a general information center and catalytic agent on matters affecting the natural beauty of Wisconsin.

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(b) Advise the governor, legislature and state departments on such matters.

(c) Submit a report of its activities and recommendations to the governor and legislature in December of each even-numbered year.

(d) Coordinate and stimulate the natural beauty activities of county councils and other public and private organizations, and such activities of the federal government as apply to this state.

(e) Hold state and regional conferences.

(3) The council may accept gifts and grants for the execution of its functions.

History: 1975 c. 224.

144.80 Metallic mining reclamation act. (1) Sections 144.80 to 144.94 shall be known and may be cited as the "Metallic Mining Reclamation Act".

(2) The purpose of ss. 144.80 to 144.94 is to provide that the air, lands, waters, fish and wildlife affected by prospecting or mining in this state will receive the greatest practicable degree of protection and reclamation.

History: 1973 c. 318.

144.81 Definitions. In ss. 144.80 to 144.94:

(1) "Abandonment of mining" means the cessation of mining, not set forth in an operator's mining and reclamation plan or by any other sufficient written or constructive notice, extending for more than 6 consecutive months. Abandonment of mining does not include the cessation of mining due either to labor strikes or the cessation of mining due to such unforeseen developments as adverse market conditions for a period not to exceed 5 years as determined by the department after consulting with the mine reclamation council. Any site at which abandonment of mining has occurred is an abandoned project site.

(2) "Exploration area" means adjoining lands or lands not adjoining but lying within reasonably close proximity on which prospecting takes place.

(3) "Merchantable by-product" means all waste soil, rock, mineral, liquid, vegetation and other material directly resulting from or displaced by the mining, cleaning or preparation of minerals during mining operations which are determined by the department to be marketable upon a showing of same made by the operator, accompanied by a verified statement by the operator of his intent to sell such material within 3 years from the time it results from or is displaced by mining. If after 3 years from the time merchantable by-product results from or is displaced by mining such material has not been transported off the project site, it shall be considered and regulated as mining refuse unless removal is continuing at a rate of more than 30,000 tons per year.

(4) "Minerals" mean unbeneficiated metallic ore but does not include mineral aggregates such as stone, sand and gravel.

(5) "Mining" means all or part of the process involved in the mining of minerals, including extraction, agglomeration, beneficiation, construction of roads and the production of mining refuse.

(6) "Mining and reclamation plan" means the operator's proposal for the mining and reclamation of the project site which must be approved by the department under s. 144.85 prior to the issuance of the mining permit.

(7) "Mining permit" means the permit which is required of all operators as a condition precedent to commencing mining at a project site.

(8) "Mining refuse" means all waste soil, rock, mineral, liquid, vegetation and other material except merchantable by-products directly resulting from or displaced by the mining, cleaning or preparation of minerals during mining operations and shall include all waste materials deposited on or in the project site from other sources.

(9) "Operator" means any person engaged or who has applied for a permit to engage in mining operations, whether individually, jointly or through subsidiaries, agents, employes or contractors.

(10) "Principal shareholder" means any shareholder owning at least 10% of the shares outstanding of a corporation.

(11) "Project site" means the surface area disturbed by a mining operation, including the surface area from which the minerals or mining refuse or both have been removed, the surface area covered by mining refuse, all lands disturbed by the construction or improvement of haulageways, and any surface areas in which structures, equipment, materials and any other things used in the mining operation are situated.

(12) "Prospecting" means engaging in the examination or exploration of an area for the purpose of determining the location, quality and quantity of minerals by such physical means as excavating, trenching or other methods which disturbs 3 tons or more for each acre of surface area located within 300 feet of the ordinary high-water mark of a navigable stream or 1,000 feet from a lake or which disturbs 100 tons or more for each acre of surface area located beyond 300 feet of the ordinary high-water mark of a navigable stream or 1,000 feet from a lake.

(13) "Prospecting permit" means the permit which is required of all persons as a condition precedent to commencing prospecting at a location.

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(14) "Prospector" means any person engaged in prospecting.

(15) "Reclamation" means the rehabilitation of the prospecting location or project site including, but not limited to, establishment of vegetative cover, stabilization of soil conditions, prevention of water pollution and where practicable, restoration of fish, plant and wildlife.

History: 1973 c. 318.

144.815 Mine reclamation council. The mine reclamation council shall serve as a problem solving body to work as a liaison between the department and the metallic mining industry. The council shall advise the department on matters relating to the reclamation of mined land in this state, and on whether certain rules and specific mining and reclamation plans will be reasonably certain to provide for reclamation of mining operations in this state consistent with the purposes of ss. 144.80 to 144.94.

History: 1973 c. 318.

144.82 Mine effect responsibility. The department shall serve as the central unit of state government to ensure that the air, lands, waters, plants, fish and wildlife affected by prospecting or mining in this state will receive the greatest practicable degree of protection and reclamation. The administration of occupational health and safety laws and rules that apply to mining shall remain exclusively the responsibility of the department of industry, labor and human relations. The powers and duties of the geological and natural history survey under s. 36.25 (6) shall remain exclusively the responsibility of the geological and natural history survey. Nothing in this section prevents the department of industry, labor and human relations and the geological and natural history survey from cooperating with the department in the exercise of their respective powers and duties.

History: 1973 c. 318; 1975 c. 41 s. 52.

144.83 Department powers and duties. (1) The department shall:

(a) Adopt rules, including rules for prehearing discovery, implementing and consistent with ss. 144.80 to 144.94.

(b) Establish by rule after consulting with the mine reclamation council minimum qualifications for applicants for prospecting and mining permits. Such minimum qualifications shall ensure that each operator in the state is competent to conduct mining and reclamation and each prospector in the state is competent to conduct prospecting in a fashion consistent with the purposes of ss. 144.80 to 144.94. The department shall also consider such other relevant factors bearing upon minimum qualifications, including but not limited to, any past forfeitures of bonds posted pursuant to mining activities in any state.

(2) On or before July 1, 1974, the department by rule after consulting with the mine reclamation council shall adopt minimum standards for prospecting, mining and reclamation to ensure that prospecting, mining and reclamation including ongoing reclamation in this state will be conducted in a manner consistent with the purposes and intent of ss. 144.80 to 144.94. The minimum standards may classify prospecting and mining activities according to type of minerals involved and stage of progression in the operation. The minimum standards shall include, but not be limited to, the following, where applicable and practicable:

(a) Grading and stabilization of excavation, sides and benches.

(b) Grading and stabilization of deposits of mine refuse.

(c) Stabilization of merchantable by-products.

(d) Adequate diversion and drainage of water from the project site.

(e) Backfilling.

(f) Adequate covering of all pollutant-bearing minerals or materials.

(g) Removal and stockpiling, or other measures to protect topsoils prior to mining.

(h) Adequate vegetative cover.

(i) Water impoundment.

(j) Adequate screening of the project site.

(k) Identification and prevention of pollution as defined in s. 144.01 (11) resulting from leaching of waste materials.

(l) Identification and prevention of significant environmental pollution as defined in s. 144.30 (9).

(3) On or before July 1, 1976, the department and the geological and natural history survey shall submit to the governor and the legislature a comprehensive state program of mineral resources zoning and financial incentives for the purpose of discouraging those uses of lands which tend to preclude the mining of minerals lying beneath. This program shall be consistent with the purposes and provisions of ss. 144.80 to 144.94.

(4) The department may:

(a) Hold hearings relating to any aspect of the administration of ss. 144.80 to 144.94 and, in connection therewith, compel the attendance of witnesses and production of evidence.

(b) Cooperate or contract with the geological and natural history survey to secure necessary

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scientific, technical, administrative and operations services, including research, projects and laboratory facilities.

(c) Issue orders directing particular prospectors or operators to comply with the provisions and purposes of ss. 144.80 to 144.94.

(d) Supervise and provide for such educational programs as appear necessary to carry out the purposes of ss. 144.80 to 144.94.

(e) Accept, receive and expend gifts and donations on behalf of the state.

(f) At its own expense, with the staff, equipment and material under its control, or by contract with others, take such actions as are necessary for the reclamation of abandoned project sites.

(g) Issue prospecting and mining permits.

(h) Cancel the prospecting permit for that exploration area that was the site of a violation of ss. 144.80 to 144.94 for which the prospector has been convicted in a court of record.

(i) Cancel the mining permit for a project site that was the site of a violation of ss. 144.80 to 144.94 for which the operator has been convicted in a court of record.

(5) The department may require all persons under its jurisdiction to submit such informational reports as the department deems necessary for performing its duties under ss. 144.80 to 144.94.

History: 1973 c. 318.

144.84 Prospecting permits. (1) No person may engage in prospecting without securing a prospecting permit issued under this section. Application for prospecting permits shall be made in writing to the department upon forms prepared and furnished by the department. An application must be made, and a prospecting permit obtained for each separate exploration area. As a part of each application for a prospecting permit, the applicant shall furnish a description of the proposed exploration area, the number of acres in the proposed exploration area, and such other relevant information as the department may require. An application shall be accompanied by a fee of 50 cents for each acre contained in the proposed exploration area, but the fee shall not be less than $25.

(2) The department shall issue a prospecting permit under this section to an applicant within 30 days of the application date if it finds that the operation will comply with the minimum standards adopted under s. 144.83 (2). The department may impose such reasonable conditions on the permit as it finds necessary to provide for reclamation of the prospecting location. Except as otherwise provided in ss. 144.80 to 144.94, prospecting permits shall be valid unless canceled or until the prospecting authorized by the prospecting permit is completed.

(3) The department shall deny a prospecting permit if it finds that the operation will not comply with the minimum standards adopted under s. 144.83 (2) or that the applicant is in violation of ss. 144.80 to 144.94 or any rules adopted thereunder. If the applicant is a corporation, partnership or association which has previously failed and continues to fail to comply with ss. 144.80 to 144.94, or if the applicant has within the previous 5 years forfeited any bond posted pursuant to mining activities in this state unless by mutual agreement with the state, the department shall not issue a prospecting permit. If the applicant is a corporation, partnership or association, the department shall not issue a prospecting permit if it finds that any officer, director, partner or principal owner of such corporation, partnership or association has within the previous 5 years forfeited any bond posted pursuant to mining activities in this state unless by mutual agreement with the state. In this paragraph, "forfeited any bond" means the forfeiture of any performance security occasioned by noncompliance with any mining laws or rules adopted thereunder. If an application for a prospecting permit is denied, the department, within 30 days from the date of application, shall furnish to the applicant in writing the reasons for the denial.

History: 1973 c. 318.

144.85 Mining permits. (1) No operator may engage in mining or reclamation at any project site that is not covered by a mining permit and by written authorization to mine under s. 144.86 (3). Applications for mining permits shall be made in writing to the department upon forms prepared and furnished by it. An application must be made, and a mining permit obtained for each separate project site. Where mining is commenced on or adjacent to an abandoned project site and the operator meets the requirements of sub. (5) (b) and (c), that portion which remains abandoned shall not be subject to this section.

(2) The application shall be accompanied by a fee of $5 for each acre of surface area in the proposed project site but the fee shall not be less than $50. Except as otherwise provided in ss. 144.87 and 144.91, mining permits shall be valid unless canceled or until the mining authorized by the mining permit is completed or abandoned.

(3) As a part of each application for a mining permit, the applicant shall furnish:

(a) A description and a detailed map of the proposed project site drawn to a scale approved by the department. Aerial photographs may be accepted if the photographs show the details to

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the satisfaction of the department. Such map, plan or photograph shall be prepared and certified by a competent engineer, surveyor or other person approved by the department, and shall show the boundaries of the area of land which will be affected, the drainage area above and below the area, the location and names of all streams, roads, railroads, pipelines and utility lines on or within 1,000 feet of the project site, the name of the owner or owners of the project site and the nearest city or village if within 3 miles of the project site. The map or photograph shall be accompanied by descriptive data as required by the department, including but not limited to the soil conservation service soil capabilities classifications of the affected area, the anticipated geometry of the excavation, the estimated total production of tailings produced, the nature and depth of the overburden, the elevation of the water table and such other information about the geology of the deposit as the department, after consultation with the geological and natural history survey, finds is necessary to evaluate the applicant's mining and reclamation plan.

(b) In addition to the information and maps otherwise required by this subsection, each mining permit application shall include a detailed mining and reclamation plan showing the manner, location and time for reclamation, including ongoing reclamation during mining, of the proposed project site. The mining and reclamation plan shall be accompanied by a map subject to the requirements in par. (a) which shall show the specific reclamation proposal for each area of the project site. The mining and reclamation plan shall conform to any applicable comprehensive plan created under sub. (4) (b), and to any applicable minimum standard created under s. 144.83 (2). No operator may be required to reclaim or restore a project site abandoned by another operator as a condition for securing a mining permit.

(c) The application shall include the name and address of each owner of land within the project site and each person known by the applicant to hold any option or lease thereon and shall list all prospecting and mining permits in this state held by the applicant.

(d) The application shall contain evidence satisfactory to the department that the mining and reclamation plan and the comprehensive plan under sub. (4) (b) conform with all applicable zoning ordinances and that the operator has applied for the necessary approval, licenses or permits required including but not limited to those under chs. 30, 31, 107 and 162 and this chapter.

(e) Such other pertinent information as the department requires.

(4) (a) The department may require an applicant for a mining permit, amended project site or change in mining and reclamation plan to furnish as part of the mining permit application information necessary to estimate the cost of reclamation of the site.

(b) Where the department finds that the anticipated life and total area of a mineral deposit are of sufficient magnitude that reclamation of the project site consistent with ss. 144.80 to 144.94 requires a comprehensive plan for the entire affected area, it may require an operator to submit with the application for a mining permit, amended project site or change in mining and reclamation plan, a comprehensive long-term plan showing, in detail satisfactory to the department, the manner, location and time for reclamation of the entire area of contiguous land which may be affected by mining and which is owned, leased or under option for purchase or lease by the operator at the time of application. Where a mineral deposit lies on or under the lands of more than one operator, the department may require the operators to submit mutually consistent comprehensive plans.

(c) The department may require an applicant to describe any land contiguous to the proposed project site which he owns, leases or has an option to purchase or lease.

(4m) The department, within 60 days of receipt of an application, shall hold a hearing which may cover all required approvals, licenses, permits, environmental impact statements and other matters under the jurisdiction of the department.

(5) (a) Within 60 days of the completion of the public hearing under sub. (4m), the department, after consultation with the mine reclamation council, shall find whether the applicant's mining and reclamation plan is reasonably certain to result in reclamation of the project site consistent with ss. 144.80 to 144.94 and any rules adopted pursuant thereto. If it finds in the affirmative, it shall approve issuance of the mining permit, and if it does not so find, it shall deny issuance of the permit. Each approval or denial shall be made in findings of fact, conclusions of law and an order setting forth reasons with clarity and in detail. The department may list such additional requirements that are necessary for its approval.

(b) The department shall deny a mining permit if it finds that the applicant is in violation of ss. 144.80 to 144.94 or any rules adopted thereunder. If the applicant is a corporation, partnership or association which has previously failed and continues to fail to comply with ss. 144.80 to 144.94, or if the operator has within the previous 5 years forfeited any bond posted pursuant to mining activities in this state, unless

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by mutual agreement with the state, the department shall not issue a mining permit. If the applicant is a corporation, partnership or association, the department shall not issue a mining permit if it finds that any officer, director, partner or principal shareholder of such corporation, partnership or association has within the previous 5 years forfeited any bond posted pursuant to mining activities in this state, unless by mutual agreement with the state. In this paragraph, "forfeited any bond" means the forfeiture of any performance security, occasioned by noncompliance with any mining laws or rules adopted thereunder.

(c) The department shall send its statement, together with a copy of its rules and finding as to whether the applicant has otherwise satisfied the requirements of ss. 144.80 to 144.94, to the applicant.

History: 1973 c. 318.

144.86 Bonds. (1) Upon notification that an application for a mining permit has been approved by the department but prior to commencing mining, the operator shall file with the department a bond conditioned on faithful performance of all of the requirements of ss. 144.80 to 144.94 and all rules adopted by the department thereunder. The bond shall be furnished by a surety company licensed to do business in this state. In lieu of a bond, the operator may deposit cash, certificates of deposit or government securities with the department. Interest received on certificates of deposit and government securities shall be paid to the operator. The amount of the bond or other security required shall be equal to that amount of the estimated cost of reclamation of the project site as is proportionate to the percentage of the project site that will be disturbed by the end of the following year. The estimated cost of reclamation of each project site shall be determined by the department on the basis of relevant factors including, but not limited to, expected changes in the price index, topography of the site, mining methods being employed, depth and composition of overburden and depth of mineral deposit being mined. As a site is reclaimed, reclaimed areas shall be released from bond coverage and the amount of the bond lowered proportionately.

(2) The applicant shall submit a certificate of insurance certifying that he has in force a liability insurance policy issued by an insurance company authorized to do business in this state, or in lieu of a certificate of insurance evidence that he has satisfied state or federal self-insurance requirements, covering all mining operations of the applicant in this state and affording personal injury and property damage protection in a total amount deemed adequate by the department but not less than $50,000.

(3) Upon approval of the operator's bond, application and certificate of insurance, the department shall issue written authorization to commence mining at the permitted project site in accordance with the approved mining and reclamation plans.

(4) Any operator who obtains a mining permit from the department for 2 or more project sites may elect, at the time the 2nd or any subsequent site is approved, to post a single bond in lieu of separate bonds on each site. Any single bond so posted shall be in an amount equal to the estimated cost of reclaiming all sites the operator has under mining permit. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds shall not be released until the new bond has been accepted by the department.

(5) The department may reevaluate and adjust accordingly the amount of any bond or security deposit no sooner than 3 years after its date of filing or previous reevaluation. Such reevaluation shall be made pursuant to sub. (1).

(6) Any person who is engaged in mining on July 3, 1974 need not file a bond or deposit cash, certificates of deposits or government securities with the department under this section to obtain the written authorization to commence mining under sub. (3).

History: 1973 c. 318.

144.87 Modifications. (1) An operator at any time may apply for amendment or cancellation of a mining permit or for a change in the mining and reclamation plan for any project site which he owns or leases. The application for the amendment, cancellation or change shall be submitted by the operator on a form provided by the department and shall identify the tract of land to be added to or removed from the permitted project site or to be affected by a change in the mining and reclamation plan. The application for an increase or decrease in the area of a project site, or for a change in the mining and reclamation plan shall be processed in the same manner as an original application for a mining permit. If the application is to cancel any or all of the unmined part of a project site, the department shall ascertain, by inspection, that no mining has occurred on the land. After so finding, the department shall order release of the bond or the security posted on the land being removed from the permitted project site and cancel or amend the operator's written authorization to conduct mining on the project site. No land where mining has occurred may be removed from a permitted project site or released from bond or security under this subsection, unless

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reclamation has been completed to the satisfaction of the department.

(2) When one operator succeeds to the interest of another in any uncompleted mining operation by sale, assignment, lease or otherwise, the department shall release the first operator from the duties imposed upon him by ss. 144.80 to 144.94 as to such operation if:

(a) Both operators have complied with the requirements of ss. 144.80 to 144.94; and

(b) The successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the department shall transfer the mining permit to the successor operator upon approval of the successor operator's bond.

(3) If the department finds that because of changing conditions, including but not limited to changes in reclamation costs, reclamation technology, minimum standards under s. 144.83 or governmental land use plans, the mining and reclamation plans for a project site are no longer sufficient to reasonably provide for reclamation of the project site consistent with ss. 144.80 to 144.94 and any rules adopted pursuant thereto, it shall require the applicant to submit an amended mining and reclamation plan which shall be processed in the same manner as an application for an original mining permit. The applicant shall be deemed to hold a temporary mining permit which shall be effective until the amended mining permit is issued or denied. The department may reevaluate the mining and reclamation plan no sooner than 15 years after the date of the mining permit issuance or previous reevaluation under this section.

History: 1973 c. 314.

144.88 Prospecting and mining without a permit. Any person who authorizes or engages in prospecting without a prospecting permit or any operator who authorizes or engages in mining on a project site not covered by a mining permit and written authorization to mine under s. 144.86 (3) may be fined not less than $5 nor more than $100 for each acre affected and the operator shall be liable to the department for the full cost of reclaiming the affected area of land. Each day's violation of this section shall be deemed a separate offense. If the prospector or operator is a corporation, partnership or association, any officer, director or partner who authorizes, supervises or contracts for prospecting or mining shall be subject to the penalties of this section.

History: 1973 c. 318.

144.89 Reports. (1) The operator shall furnish the department with a report for each project site every 12 months after issuance of the permit, within 30 days after completion of all mining at the project site and within 30 days after completion of the mining and reclamation plan. Such reports shall include, in addition to such other information as the department requires, such information and maps as the department deems necessary to evaluate the extent of mining and the reclamation accomplished during the previous calendar year.

(2) The department shall cancel the mining project permit held by any operator who fails and refuses to submit reports required under this section.

History: 1973 c. 318.

144.90 Bond release. The department shall release the operator's bond if it finds, after inspection of the project site, that the operator has carried out and completed reclamation of all or part of the project site in accordance with the mining and reclamation plan, and has otherwise complied with ss. 144.80 to 144.94 and rules adopted pursuant thereto. Such inspection shall be made not less than one year nor more than 4 years after completion of the mining and reclamation plan.

History: 1973 c. 318.

144.91 Mining and reclamation; orders. (1) Whenever the department finds a violation of law at a project site under a mining permit including unapproved deviation from the mining and reclamation plan, or any of the department's rules, it shall order the operator to comply within a specified time. Any such order shall become effective unless the person named therein requests in writing within 10 days after the date the order is served a hearing before the department. Upon such request and after due notice, the department shall hold a hearing. In lieu of an order, the department may require that the alleged violator appear before the department for a hearing and answer the charges complained of, or the department may request that the department of justice initiate action under s. 144.93. The department shall cancel the mining permit for a project site held by an operator who fails to comply with the order. The department shall within 14 days inform the department of justice of the cancellation. Within 30 days thereafter the department of justice shall commence an action under s. 144.93.

(2) If reclamation of mined land is not proceeding in accordance with the mining and reclamation plan and the operator has not commenced to rectify deficiencies within the time specified in the order, or if the reclamation is not properly completed in conformance with the mining and reclamation plan within one year after completion or abandonment of mining on

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any segment of the project site, excepting acts of God, such as adverse weather affecting grading, planting and growing conditions, the department, with the staff, equipment and material under its control, or by contract with others, shall take such actions as are necessary for the reclamation of mined areas. The operator shall be liable for the cost of reclamation conducted under this section, except that no operator who has filed a bond or deposited cash, certificates of deposits or government securities under s. 144.86 shall be liable for an amount greater than the bond, cash, certificates of deposit or government securities furnished under s. 144.86. Any operator who is exempted from filing a bond or depositing cash, certificates of deposits or government securities by s. 144.86 (6) shall not be liable for an amount greater than an amount specified by the department, such specified amount to be equal to and determined in the same manner as the amount of the bond or other security required under s. 144.86 (5) but assuming the operator had not been exempt from such filing or depositing.

History: 1973 c. 318.

144.92 Nonconforming project sites. (1) All prospectors and operators conducting mining operations in this state on July 3, 1974 shall submit to the department, within 90 days after that date, applications for prospecting permits or mining permits as provided in ss. 144.84 and 144.85. Sections 144.83 (1) (b) and 144.85 (5) (b) shall not apply to such operators.

(2) Modification of existing project sites and of operating procedures to conform with ss. 144.80 to 144.94 and rules adopted pursuant thereto shall be accomplished as promptly as possible, but the department shall give special consideration to a project site where it finds that the degree of necessary improvement is of such extent and expense that compliance cannot be accomplished.

History: 1973 c. 318.

144.925 Data. (1) All data submitted by an applicant for a prospecting permit under ss. 144.80 to 144.93 shall be considered confidential, unless the prospector expressly agrees to its publication.

(2) If the department finds beyond a reasonable doubt, on verified application by an operator, that any specific data submitted under ss. 144.80 to 144.93 relating to controls, tonnages or grades of ore production, if made public would divulge methods or processes entitled to protection as trade secrets of such operator, the department shall consider such data, or portion thereof, as limited for the confidential use of the department unless such operator expressly agrees to its publication or public availability. All data relating to prospecting permits held by the operator shall be considered confidential.

(3) The department shall forward copies of all reports received by it from prospectors and operators under ss. 144.80 to 144.93 to the geological and natural history survey. The survey may receive and store all reports, maps, drill records and other information determined to be confidential under sub. (1), subject to the provisions of confidentiality contained under sub. (1). Nothing in this section shall prevent the use of such data by the survey in publishing general analyses or summaries of mining information. The department shall not publish such analyses or summaries, except in cooperation with the geological and natural history survey.

History: 1973 c. 318.

144.93 Enforcement. (1) All orders issued, fines incurred, bond liabilities incurred or other violations committed under ss. 144.80 to 144.94 shall be enforced by the department of justice. The circuit court of Dane county or any other county where the violation occurred shall have jurisdiction to enforce ss. 144.80 to 144.93 or any orders issued or rules adopted thereunder, by injunctional or other appropriate relief.

(2) Any person who makes or causes to be made in an application or report required by ss. 144.80 to 144.94 a statement known to the person to be false or misleading in any material respect may be fined not less than $100 nor more than $1,000.

(3) Any person holding a prospecting or mining permit who violates ss. 144.80 to 144.93 or any order issued or rule adopted thereunder shall forfeit not less than $10 nor more than $5,000 for each violation. Each day of violation is a separate offense.

History: 1973 c. 318.

144.94 Review. Any person aggrieved by any decision of the department under ss. 144.80 to 144.93 may obtain its review under ch. 227.

History: 1973 c. 318.