CHAPTER 291

HAZARDOUS WASTE MANAGEMENT

SUBCHAPTER I

DECLARATION OF POLICY

291.001 Declaration of policy.

SUBCHAPTER II

DEFINITIONS

291.01 Definitions.

SUBCHAPTER III

ADMINISTRATION

291.05 Required rules.
291.07 Authorized rules.
291.09 Department duties.
291.11 Department powers.
291.13 Capacity assurance plan revision and review.
291.15 Confidentiality of records.

SUBCHAPTER IV

HAZARDOUS WASTE; GENERAL REGULATION

291.21 Generation.
291.23 Licenses; transportation.
291.25 Licenses; treatment, storage or disposal.
291.27 Environmental impact statement.
291.29 Closure and long-term care plan for unlicensed facilities.
291.31 Variance.
291.33 Tonnage fees.
291.35 Rules on metallic mining wastes.
291.37 Corrective action.

SUBCHAPTER V

ENFORCEMENT; PENALTIES

291.85 Imminent danger.
291.87 License actions; hearing; public comment.
291.89 Review of alleged violations.
291.91 Inspections and right of entry.
291.93 Orders.
291.95 Enforcement.
291.97 Violations and penalties.

Cross-reference: See also chs. NR 660, 661, 662, 663, 664, 665, 666, 667, 668, 670, 673 and 679, Wis. adm. code.

SUBCHAPTER I

DECLARATION OF POLICY

291.001 Declaration of policy. The legislature finds that hazardous wastes, when mismanaged, pose a substantial danger to the environment and public health and safety. To ensure that hazardous wastes are properly managed within this state, the legislature declares that a state-administered regulatory program is needed which:

(1) Relies upon private industry or local units of government to provide hazardous waste management services.

(2) Requires the transportation, storage, treatment and disposal of hazardous wastes to be performed only by licensed operators.

(3) Requires generators of hazardous waste to utilize operators licensed to transport, treat, store or dispose of hazardous wastes.

(4) Does not interfere with, control or regulate the manufacturing processes which generate hazardous wastes.

(5) Ensures the maintenance of adequate records on, and the reporting of, the disposition of all hazardous wastes either generated in or entering this state.

(6) Encourages to the extent feasible, the reuse, recycling or reduction of hazardous wastes.

(7) Provides adequate care and protection of disposal facilities after the facilities cease to accept hazardous wastes.

(8) Provides members of the public and units of local government an opportunity to review and comment upon the construction, operation and long-term care of hazardous waste management facilities.

(9) Meets the minimum requirements of the resource conservation and recovery act.

History: 1995 a. 227 s. 647.

The right to a decent burial: Hazardous waste and its regulation in Wisconsin. Harrington, 66 MLR 223 (1983).

Changes in the ownership of hazardous waste disposal sites: Original and successor liability. Kelly. 67 MLR 691. (1984).

SUBCHAPTER II

DEFINITIONS

291.01 Definitions. In this chapter:

(1) "Closing" has the meaning designated under s. 289.01 (5).

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

(3) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water in a manner which may permit the hazardous waste or any hazardous constituent to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment. "Disposal" does not include the generation, transportation, storage or treatment of hazardous waste.

(4) "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.

(5) "Generation" means the act or process of producing hazardous waste but does not include any manufacturing process.

(7) "Hazardous waste" or "waste" means any solid waste identified by the department as hazardous under s. 291.05 (1), (2) or (4).

(8) "Hazardous waste facility" means a site or structure for the treatment, storage or disposal of hazardous waste and includes all of the contiguous property under common ownership or control surrounding the site or structure.

(9) "Hazardous waste management" means the systematic source reduction, collection, source separation, storage, transportation, exchange, processing, treatment, recovery and disposal of hazardous wastes.

(10) "Long-term care" has the meaning designated under s. 289.01 (21).

(11) "Manifest" means a form used for identifying the quantity, composition and the origin, routing and destination of hazardous waste during its transport.

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

(14) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency, department or instrumentality.

(16) "Solid waste" has the meaning given under s. 289.01 (33).

(17) "Resource conservation and recovery act" means the federal resource conservation and recovery act, 42 USC 6901 to 6991i, as amended on November 8, 1984.

(18) "Storage" means the containment of hazardous waste for a temporary period in a manner that does not constitute disposal.

(19) "Termination" has the meaning designated under s. 289.01 (40).

(20) "Transport" means the movement of hazardous wastes by air, rail, highway, water or other means, except for the movement of hazardous waste within the site at which the hazardous waste is generated or within a facility that is licensed under this subchapter.

(21) "Treatment" means any method, technique or process, including neutralization, which follows generation and which is designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize the hazardous waste or so as to render the waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. "Treatment" includes incineration.

(22) "Treatment facility" means a facility at which hazardous waste is subjected to treatment and may include a facility where hazardous waste is generated. This term does not include a waste water treatment facility whose discharges are regulated under ch. 283 unless the facility is required to be permitted as a hazardous waste treatment facility under the resource conservation and recovery act.

(23) "Wastewater" means all sewage.

History: 1995 a. 227 ss. 649, 992.

The deterioration of useful materials into waste is a process that results in the generation of waste under s. 144.61 (4) [now s. 291.01 (5)]; the yard at which waste is stored and a hole dug to bury waste are facilities under s. 144.61 (5m) [now s. 291.01 (8)]. State v. Edward Kraemer & Sons. Inc. 170 Wis. 2d 646, 489 N.W.2d 708 (Ct. App. 1992).

The language of s. 144.61 (5m) [now s. 291.01 (8)] suggests that the coverage of s. 144.62 [now ss. 291.05 to 291.11, 291.91 and 291.93] is restricted to facilities intended to be used for disposal, treatment, or storage of waste. Acme Printing Ink Co. v. Menard, Inc. 870 F. Supp. 1477 (1994).

SUBCHAPTER III

ADMINISTRATION

291.05 Required rules. (1) The department shall promulgate by rule criteria identical to those promulgated by the U.S. environmental protection agency under section 6921 (a) of the Resource Conservation and Recovery Act for identifying the characteristics of hazardous waste. The rules shall require that any person generating or transporting, or owning or operating a facility for treatment, storage or disposal of, any hazardous waste or any substance which meets the criteria shall notify the department of that fact within 90 days after the promulgation of the rule.

(2) (a) The department shall promulgate by rule a list of hazardous wastes.

(b) Except as provided under par. (c), the list of hazardous wastes shall be identical to the list promulgated by the U.S. environmental protection agency under section 6921 (b) of the Resource Conservation and Recovery Act.

(c) The department may include or retain on the list of hazardous wastes any additional solid waste not included on the list promulgated by the U.S. environmental protection agency if the department determines that the additional solid waste has characteristics which identify it as a hazardous waste based on the criteria promulgated under sub. (1) and if the department determines that the inclusion or retention is necessary to protect public health, safety or welfare. The department shall issue specific findings and conclusions on which its determinations are based and shall include or retain the additional solid waste on the list of hazardous wastes by rule.

(3) (a) The department shall promulgate rules under subs. (1) and (2) which establish not less than 2 nor more than 4 classes of hazardous waste and shall assign wastes to a particular class. The classes shall be based upon the relative degrees of hazard posed by the waste. Standards established under this chapter for hazardous waste facilities or for equipment which transports hazardous waste shall recognize and differentiate between the classes of waste which the facility or equipment is intended to transport, treat, store or dispose.

(b) In determining the relative degrees of hazard of classes of wastes under par. (a), the department shall consider the following:

1. The amounts of wastes and the concentrations of the harmful or potentially harmful components of the wastes;

2. The likelihood of exposure to humans or the environment of the harmful or potentially harmful components of the wastes based upon the mobility and stability of harmful components, and the biological or chemical conversion of the components to other harmful chemicals; and

3. The harm to humans or the environment resulting from the exposure identified under subd. 2. from the harmful components.

(4) The department shall promulgate by rule a list of hazardous constituents which shall include, but need not be limited to, the hazardous constituents specified in 40 CFR 261, appendix VIII. The department may not list a hazardous constituent which is not specified in 40 CFR 261, appendix VIII unless it determines that the listing of the constituent is necessary to protect public health, safety or welfare. The department shall issue specific findings and conclusions on which such a determination to list a hazardous constituent is based.

(5) (a) The department shall promulgate rules regarding hazardous waste transportation that establish standards for the following:

1. Record keeping concerning hazardous waste transported, and its source and delivery points.

2. Labeling procedures.

3. Use of a manifest system.

4. Containers used to transport waste.

5. Equipment operator qualifications.

(b) In developing requirements for licenses to transport hazardous waste under par. (a), the department shall maintain consistency with rules promulgated by the department of transportation.

(6) The department shall adopt rules which prescribe requirements for:

(a) The establishment and maintenance of records.

(b) The making of reports, including the manifest to be used during the transport of hazardous waste.

(c) Sampling and analysis.

(d) Installation, calibration, use and maintenance of monitoring equipment.

(e) The design, construction, operation, closing and long-term care of hazardous waste facilities.

(f) Corrective action under s. 291.37.

(7) (a) The department shall promulgate by rule a graduated

schedule of reasonable license, plan approval and review fees to be charged for hazardous waste activities under ss. 291.23, 291.25, 291.29, 291.31 and 291.87, except that the department may not impose a fee on an individual who applies for a license under s. 291.23 and who is eligible for the veterans fee waiver program under s. 45.44.

(b) Hazardous waste activities under ss. 291.23, 291.25, 291.29, 291.31 and 291.87 consist of reviewing feasibility reports, plans of operation, closure plans and license applications, issuing determinations of feasibility, plan of operation approvals, operating licenses, interim licenses and variances, inspecting construction projects, approving closure plans and taking other actions in administering this ss. 291.23, 291.25, 291.29, 291.31 and 291.87.

(c) The department shall establish hazardous waste review fees at a level anticipated to recover the hazardous waste program staff review costs of conducting hazardous waste review activities.

History: 1995 a. 227 ss. 657, 658, 659, 663, 664, 667, 677, 686, 992; 2011 a. 209; 2017 a. 365 s. 111.

Cross-reference: See also ch. NR 182, Wis. adm. code.

291.07 Authorized rules. (1) The department may, by rule, prohibit particular methods of treatment or disposal of particular hazardous wastes, upon a finding that restrictions on treatment or disposal methods are necessary to protect public health and safety or the environment.

(2) The department may exempt by rule any person who generates, transports, treats, stores or disposes of hazardous wastes from any provision under this chapter or from any rule promulgated under this chapter if the generation, transportation, treatment, storage or disposal does not present a significant hazard to public health and safety or the environment.

(3) The department may promulgate rules which specify the duration of licenses issued under s. 291.25.

History: 1995 a. 227 ss. 660, 662, 665, 992.

Cross-reference: See also chs. NR 660, 661, 662, 663, 664, 665, 666, 667, 668, 670, 673 and 679, Wis. adm. code.

291.09 Department duties. (1) The department, in cooperation with the University of Wisconsin-Extension and other interested parties, shall develop educational programs and offer technical assistance to persons interested in hazardous waste management.

(2) If facilities or equipment subject to this chapter are also subject to regulation by the department under other statutes or rules, the department shall integrate its regulatory processes to avoid duplicative or contradictory actions or requirements.

(3) The department shall study whether the list of hazardous wastes under s. 291.05 (2) should be revised as it relates to commercial chemical products.

History: 1995 a. 227 ss. 666, 668, 992; 1999 a. 9; 2001 a. 103.

291.11 Department powers. (1) The department may hold hearings relating to any aspect of the administration of this chapter and, in connection with those hearings, compel the attendance of witnesses and the production of evidence.

(2) The department may waive compliance with any requirement under this chapter or shorten the time periods under this chapter to the extent necessary to prevent an emergency condition threatening public health, safety or welfare or the environment.

(3) The department may secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(4) The department may advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, the federal government and other interested persons or groups.

(5) The department may enter into a compact with agencies in other states for the purposes of mutual assistance in the management and regulation of hazardous wastes.

History: 1995 a. 227 ss. 661, 669, 671, 673, 992.

291.13 Capacity assurance plan revision and review. (1) In this section, "capacity assurance plan" means the plan submitted under 42 USC 9604 (c) (9) for the management of hazardous waste generated in this state.

(2) The department shall do all of the following:

(a) Monitor changes in the generation of hazardous waste in this state and the progress toward meeting the goals in the capacity assurance plan.

(b) Notify the governor of any significant problems that occur or may occur in the ability to manage a type of hazardous waste in this state and of the need to change the goals in the capacity assurance plan.

(c) Each year in which submission of a revised capacity assurance plan is required by the federal environmental protection agency, at least 75 days before the federal environmental protection agency deadline for submittal, complete a draft of a revised capacity assurance plan and provide the draft to the governor and the legislature under s. 13.172 (2).

(d) Hold a public informational hearing, that is not a contested case hearing under ch. 227, to solicit comments on the draft of the revised capacity assurance plan no later than 45 days after providing the draft under par. (c).

(e) Each year in which submission of a revised capacity assurance plan is required by the federal environmental protection agency, provide its proposed version of the revised capacity assurance plan, no later than 14 days prior to the federal environmental protection agency deadline for submittal, to the governor and the legislature under s. 13.172 (2).

History: 1989 a. 325; 1991 a. 41; 1995 a. 27; 1995 a. 227 s. 697; Stats. 1995 s. 291.13.

291.15 Confidentiality of records. (1) RECORDS. Except as provided under sub. (2), any records or other information furnished to or obtained by the department in the administration of this chapter are public records subject to s. 19.21.

(2) CONFIDENTIAL RECORDS. (a) *Application.* An owner or operator of a hazardous waste facility may seek confidential treatment of any records or other information furnished to or obtained by the department in the administration of this chapter.

(b) *Standards for granting confidential status.* Except as provided under par. (c), the department shall grant confidential status for any records or information received by the department and certified by the owner or operator of the solid waste facility as relating to production or sales figures or to processes or production unique to the owner or operator of the solid waste facility or which would tend to adversely affect the competitive position of the owner or operator if made public.

(c) *Emission data; analyses and summaries.* The department may not grant confidential status for emission data. Nothing in this subsection prevents the department from using records and other information in compiling or publishing analyses or summaries relating to the general condition of the environment if the analyses or summaries do not identify a specific owner or operator or the analyses or summaries do not reveal records or other information granted confidential status.

(d) *Use of confidential records.* Except as provided under par. (c) and this paragraph the department or the department of justice may use records and other information granted confidential status under this subsection only in the administration and enforce-

ment of this chapter. The department or the department of justice may release for general distribution records and other information granted confidential status under this subsection if the owner or operator expressly agrees to the release. The department or the department of justice may release on a limited basis records and other information granted confidential status under this subsection if the department or the department of justice is directed to take this action by a judge or hearing examiner under an order which protects the confidentiality of the records or other information. The department or the department of justice may release to the U.S. environmental protection agency or its authorized representative records and other information granted confidential status under this subsection if the department or the department of justice includes in each release of records or other information a request to the U.S. environmental protection agency or its authorized representative to protect the confidentiality of the records or other information. The department or the department of justice shall provide to the department of children and families or a county child support agency under s. 59.53 (5) the name and address of an individual, the name and address of the individual's employer and financial information related to the individual that is contained in records or other information granted confidential status under this subsection if requested under s. 49.22 (2m) by the department of children and families or a county child support agency under s. 59.53 (5).

History: 1981 c. 374; 1987 a. 384; 1995 a. 227 s. 692; Stats. 1995 s. 291.15; 1997 a. 191; 2007 a. 20.

SUBCHAPTER IV

HAZARDOUS WASTE; GENERAL REGULATION

291.21 Generation. Any person generating solid waste shall determine if the solid waste is a hazardous waste. Any person generating hazardous waste shall:

(1) Be responsible for testing programs needed to determine whether any material generated by them is a hazardous waste for purposes of this chapter.

(2) Keep records that accurately identify:

(a) The quantities of hazardous waste generated;

(b) The hazardous constituents of hazardous wastes which are significant because of quantity or potential harmfulness to human health or the environment; and

(c) The disposition of hazardous wastes.

(3) Label any container used for the storage, transport or disposal of hazardous waste to accurately identify its contents and associated hazards.

(4) Use appropriate containers for hazardous waste.

(5) Furnish information on the general chemical composition of hazardous waste to persons transporting, treating, storing or disposing of hazardous wastes, and on any precautions recommended to ensure safe handling of hazardous waste.

(6) Comply with rules relating to use of a manifest system.

(7) Submit all reports required under this chapter and rules promulgated under this chapter.

(8) Comply with rules relating to notification under s. 291.05 (1), (2) and (4).

(9) Arrange that all wastes generated by them are transported, treated, stored or disposed of at facilities holding a license issued under this chapter or issued under the resource conservation and recovery act.

History: 1977 c. 377; 1981 c. 374 ss. 96, 150; 1987 a. 384; 1995 a. 227 s. 674; Stats. 1995 s. 291.21.

Corporate officers responsible for the overall operation of a facility are personally liable for violations. State v. Rollfink, 162 Wis. 2d 121, 469 N.W.2d 398 (1991).

The deterioration of useful materials into waste is a process that results in the generation of waste under s. 144.61 (4) [now s. 291.01 (5)]; the yard at which waste is stored and a hole dug to bury waste are facilities under s. 144.61 (5m) [now s. 291.01 (8)]. State v. Edward Kraemer & Sons. Inc. 170 Wis. 2d 646, 489 N.W.2d 708 (Ct. App. 1992).

291.23 Licenses; transportation. **(1)** No person may transport hazardous waste without a license issued under this section.

(2) Licenses issued under this section shall require compliance with rules of the department promulgated under s. 291.05 (5) (a).

(3) Licenses issued under this section may be denied, suspended or revoked for grievous and continuous failure to comply with the rules adopted under s. 291.05 (5) (a).

History: 1995 a. 227 ss. 676, 678; 1997 a. 35; 2015 a. 297 s. 51.

291.25 Licenses; treatment, storage or disposal. **(1)** The storage of hazardous waste at the generation site by the generator of that waste for a period of less than 90 days is not subject to this section. The storage of hazardous waste for a period of less than 10 days is exempt from this section if the storage is in connection with the transporting or movement of the hazardous waste. Notwithstanding the exemptions granted under this subsection, no person may store or cause the storage of hazardous waste in a manner which causes environmental pollution.

(2) No person may:

(a) Construct a hazardous waste facility unless the person complies with ss. 289.23 to 289.30.

(b) Operate a hazardous waste facility without an interim or operating license issued under this section.

(3) Licenses issued under this section shall require compliance with s. 289.31 and rules promulgated under this chapter.

(4) The department may issue an interim license to a person who operates a hazardous waste facility if the person applies for a license under this section and complies with conditions and restrictions prescribed by rule or special order by the department pending the decision on the issuance of an operating license under this section. This subsection applies only if the facility was in existence on November 19, 1980, or on a subsequent date which is the effective date of the statute or rule requiring the facility to obtain an operating license under this section. An interim license issued under this subsection constitutes an operating license under this section.

(5) An existing hazardous waste facility which was never licensed under this section, whether or not it was previously authorized to receive hazardous waste under s. 289.31, shall be treated as an unlicensed proposed facility which has not been constructed for the purpose of complying with sub. (2) (a), for the purpose of obtaining an operating license under this section and for the purpose of administrative procedure and review under ch. 227.

(6) A treatment facility which is required to be permitted as a hazardous waste treatment facility under the resource conservation and recovery act and the discharges of which are regulated under ch. 283 shall comply with construction and operating standards promulgated by rule by the department. The department shall promulgate rules under this subsection which are substantially equivalent to and not more stringent than the standards promulgated under the resource conservation and recovery act.

(7) Notwithstanding subs. (2) (a), (3) and (5), the owner or operator of a hazardous waste facility who holds a permit for the treatment, storage or disposal of hazardous waste issued before January 31, 1986, by the U.S. environmental protection agency under 42 USC 6925 (c) and who is in compliance with the permit may obtain an operating license under sub. (2) (b) for the federally permitted activities by doing all of the following:

(a) Submitting to the department, on a form provided by the department, an application showing that the facility meets the standards established under ss. 289.21 to 289.31 and this chapter and rules promulgated under those sections and this chapter.

(b) Complying with any condition that the department prescribes as necessary to meet any standard or requirement established under ss. 289.21 to 289.31 and this chapter.

(c) Paying any fee required under ss. 291.05 (7) and 291.33.

History: 1995 a. 227 ss. 680, 682, 992.

291.27 Environmental impact statement. (1) An environmental impact statement is required under s. 1.11 (2) for a new hazardous waste disposal facility if one or both of the following conditions exist:

(a) The total area committed to solid and hazardous waste disposal exceeds 80 acres.

(b) The total volume of solid and hazardous waste intended for disposal under the plan of operation exceeds one million cubic yards.

(2) This section does not apply to hazardous waste disposal facilities granted an interim license under s. 291.25 (4) or a variance under s. 291.31 or a facility subject to s. 291.29.

History: 1981 c. 374; 1983 a. 410 s. 2202 (38); 1987 a. 384; 1995 a. 227 s. 689; Stats. 1995 s. 291.27.

291.29 Closure and long-term care plan for unlicensed facilities. Any person required to be licensed or eligible to obtain a license under s. 291.25 who does not obtain a license under that section shall submit to the department a closure plan and, if the facility is a disposal facility, a long-term care plan for the facility which complies with the requirements promulgated by the department by rule under s. 291.05 (6) (e) and shall comply with the plan as approved by the department. There is no statutory right to a hearing before the department concerning a plan submitted under this section but the department may grant a hearing on a plan.

History: 1995 a. 227 s. 683.

Cross-reference: See also ch. NR 720, Wis. adm. code.

291.31 Variance. If the department determines that the application for or compliance with any license required under s. 291.23 or 291.25 would cause undue or unreasonable hardship to any person, the department may issue a variance from the requirements of s. 291.23, 291.25, 291.29 or 291.87 but the variance may not result in undue harm to public health or the environment and the duration of the variance may not exceed 5 years. The department may renew or extend a variance only after opportunity for a public hearing.

History: 1995 a. 227 s. 684.

291.33 Tonnage fees. A person who operates a licensed hazardous waste disposal facility shall pay the fees imposed and specified under s. 289.62.

History: 1995 a. 227 s. 687.

291.35 Rules on metallic mining wastes. The requirements of this chapter shall be subject to s. 289.05 (2).

History: 1995 a. 227 s. 648.

291.37 Corrective action. (1) DEFINITIONS. In this section:

(a) "Corrective action" means any method for protecting human health or the environment from a release.

(b) "Release" means any spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, dumping or disposal of a hazardous waste or hazardous constituent.

(c) "Solid waste management unit" means any unit designed or used for the storage, treatment or disposal of solid waste or hazardous waste or both, which is located in a hazardous waste facility required to have a license under s. 291.25 or a permit under 42 USC 6925 or required to comply with s. 291.29. "Solid waste management unit" includes but is not limited to a container, tank, surface impoundment, disposal facility, incinerator, wastepile, landfill, underground injection well, land treatment unit or wastewater treatment facility.

(d) "Surface impoundment" means all or any part of a hazardous waste facility that is a natural topographic depression, constructed excavation or diked area, that is formed primarily of earthen materials and that holds or is designed to hold liquid waste or waste containing liquids that are readily separable from the solid waste portion of the waste. "Surface impoundment" includes a pond, lagoon or holding, storage, settling or aeration pit, but does not include an underground injection well or a topographic depression containing surface water, such as a drainage ditch containing runoff from a parking lot or a storm water retention basin, unless the surface water is contaminated by a hazardous waste.

(2) CORRECTIVE ACTION. (a) If the department determines that a release from a solid waste management unit has occurred the department may, except as provided under par. (b), require the owner or operator of the facility containing the solid waste management unit to take corrective action, including corrective action beyond the facility, if necessary. The department may require an owner or operator to take corrective action regardless of when the hazardous waste or hazardous constituent released was placed in the solid waste management unit. The department may require corrective action by means of a special order under this paragraph or as a condition of licensing or plan approval under s. 291.25 or 291.29. An order or condition under this paragraph shall state, with reasonable specificity, the nature of the corrective action required, shall include a description of the property on which the corrective action is to be taken and shall specify a period for achieving compliance and a period for the owner or operator to establish proof of financial responsibility for the cost of corrective action.

(b) If an owner or operator who is required under par. (a) to take corrective action on property that is beyond a facility shows that despite making a good faith effort the owner or operator was unable to obtain permission from the owner or occupant to enter that property, the owner or operator need not comply with the requirement with respect to that property.

History: 1987 a. 384; 1993 a. 16; 1995 a. 227 s. 696; Stats. 1995 s. 291.37.

Cross-reference: See also ch. NR 720, Wis. adm. code.

SUBCHAPTER V

ENFORCEMENT; PENALTIES

291.85 Imminent danger. (1) NOTICE REQUIRED. If the department receives evidence that the past or present handling, storage, treatment, transportation or disposal of any hazardous waste may present an imminent and substantial danger to health or the environment, the department shall do all of the following:

(a) Provide immediate notice of the danger to each affected municipality.

(b) Promptly post notice of the danger at the site at which the danger exists, or order a person responsible for the danger to post such notice.

(2) OTHER ACTIONS. In addition to the action under sub. (1), the department may do one or more of the following:

(a) Issue any special order necessary to protect public health or the environment.

(b) Take any other action necessary to protect public health or the environment.

(c) Request the department of justice to commence legal proceedings to restrain or enjoin any person from handling, storage, treatment, transportation or disposal which presents or may present an imminent and substantial danger to health or the environment or take any other action as may be necessary to protect public health and the environment.

History: 1977 c. 377; 1987 a. 384; 1995 a. 227 s. 693; Stats. 1995 s. 291.85.

291.87 License actions; hearing; public comment. (1) If the department proposes to deny, suspend or revoke a license for the reasons stated under sub. (1m) (b) to (f), the department shall comply with the procedures specified under this section.

(1m) A license issued under s. 291.25 may be denied, suspended or revoked if the applicant or licensee does any of the following:

(a) Fails to pay any fee required under ss. 291.05 (7) and 291.33.

(b) Fails to comply with this chapter or any rule promulgated under this chapter.

(c) Fails to comply with the approved plan of operation under s. 289.30.

(d) Fails to disclose fully all relevant facts in a feasibility report, plan of operation or license application or in a review of a feasibility report, plan of operation or license.

(e) Misrepresents any relevant fact at any time.

(f) Operates the facility in a way that endangers human health or the environment to the extent that denial, suspension or revocation of the license is the only way to provide an acceptable level of protection.

(2) If the department determines that a person licensed under s. 291.25 failed to comply with the rules promulgated under this chapter or failed to comply with the approved plan of operation under s. 289.30, the department shall give written notice to the person. The notice shall state that the department proposes to deny, suspend or revoke the license and shall inform the person that a hearing may be requested within 45 days after the notice is issued.

(3) If the licensee requests a hearing within 45 days after receiving the notice under sub. (2), the department shall schedule a hearing and give notice of the hearing by publishing a class 1 notice, under ch. 985, by publishing the notice on its Internet website, and, upon request, by providing the notice to interested members of the public, at least 45 days prior to the date scheduled for the hearing. The department's notice to interested members of the public may be given through an electronic notification system established by the department. For the purpose of determining the date on which notice is published under this subsection, the date on which the department first publishes the notice on its Internet website shall be considered the date of notice. If the licensee requests a contested case hearing and if the conditions specified under s. 227.42 (1) (a) to (d) are satisfied, the department shall conduct the hearing as a contested case; otherwise, the department shall conduct the hearing as an informational hearing. There is no statutory right to any hearing concerning the denial, suspension or revocation of a license for the reasons stated under sub. (1m) (b) to (f) except as provided under this subsection.

(4) After the conclusion of any hearing under sub. (3), the department shall issue a public notice containing a copy of the proposed decision and a statement describing the opportunity for public comment during the 45-day period after the notice is given.

(5) If the licensee does not request a hearing within 45 days after receiving the notice under sub. (2), the department shall issue a public notice containing a copy of the proposed decision and a statement describing the opportunity for public comment during the 45-day period after the notice is given.

(6) The department shall give the notice required under subs. (4) and (5) by all of the following means:

(a) Publishing a class 1 notice, under ch. 985, in a newspaper likely to give notice in the area where the facility is located, publishing the notice on its Internet website, and, upon request, providing the notice to interested members of the public. The department's notice to interested members of the public may be given through an electronic notification system established by the department.

(b) Broadcasting a notice by radio announcement in the area where the facility is located.

(c) Providing written notice to each affected municipality.

(6m) For the purpose of determining the date on which notice is provided under subs. (4) and (5), the date on which the department first publishes the notice on its Internet website as required under sub. (6) shall be considered the date of notice.

(7) At the conclusion of the 45-day period after the department gives notice under sub. (4) or (5), the department shall issue its final decision denying, suspending or revoking the license. There is no statutory right to a hearing concerning the final decision issued under this subsection.

History: 1983 a. 298; 1985 a. 182 s. 57; 1987 a. 384; 1995 a. 227 ss. 681, 688; Stats. 1995 s. 291.87; 2011 a. 167; 2017 a. 365 s. 112.

291.89 Review of alleged violations. Any 6 or more citizens or any municipality may petition for review of an alleged violation of this chapter or any rule promulgated or special order, plan approval, license or any term or condition of a license issued under this chapter in the following manner:

(1) They shall submit to the department a petition identifying the alleged violator and setting forth in detail the reasons for believing a violation occurred. The petition shall state the name and address of a person within the state authorized to receive service of answer and other papers in behalf of the petitioners and the name and address of a person authorized to appear at a hearing in behalf of the petitioners.

(2) Upon receipt of a petition under this section, the department may:

(a) Conduct a hearing in the matter within 60 days of receipt of the petition. A hearing under this paragraph shall be a contested case under ch. 227. Within 60 days after the close of the hearing, the department shall either:

1. Serve written notice specifying the law or rule alleged to be violated, containing findings of fact, conclusions of law and an order, which shall be subject to review under ch. 227; or

2. Dismiss the petition.

(b) Initiate action under s. 291.95.

(3) If the department determines that a petition has been filed maliciously or in bad faith it shall issue a finding to that effect and the person complained against is entitled to recover expenses on the hearing in a civil action.

History: 1981 c. 374; 1995 a. 227 s. 694; Stats. 1995 s. 291.89.

291.91 Inspections and right of entry. (1) The department may inspect hazardous waste facility construction projects to determine compliance with this chapter and rules promulgated and licenses issued under this chapter.

(2) Upon the request of any officer, employee or authorized representative of the department and with notice provided no later than upon the officer's, employee's or authorized representative's arrival, any person who generates, stores, treats, transports or disposes of hazardous wastes shall permit the officer,

employee or authorized representative access to vehicles, premises and records relating to hazardous wastes at reasonable times. An officer, employee or authorized representative of the department may take samples of any hazardous waste. The officer, employee or authorized representative shall commence and complete inspections with reasonable promptness. If samples are taken, the officer, employee or authorized representative shall give a receipt for each sample to the person in charge of the facility and, upon request, half of the sample taken. The department shall furnish promptly a copy of the results of any analysis of any sample which is taken and a copy of the inspection report to the person in charge of the facility.

History: 1977 c. 377; 1981 c. 374; 1987 a. 27, 384; 1995 a. 227 ss. 670, 690, 691.

291.93 Orders. The department may issue orders to effectuate the purposes of this chapter and enforce those orders by all appropriate administrative and judicial proceedings.

History: 1995 a. 227 s. 672.

291.95 Enforcement. (1) DEPARTMENT ACTION. If the department determines that any person is in violation of any requirement of this chapter or any rule promulgated or special order, plan approval or term or condition of a license or variance issued under this chapter, the department may do one or more of the following:

(a) Give written notice to the violator of his or her failure to comply with the requirement.

(b) Issue a special order requiring compliance within a specified time period.

(c) Refer the matter to the department of justice for enforcement under s. 299.95.

(2) DEPARTMENT OF JUSTICE ACTION; DISPOSITION. The department of justice may initiate the legal action requested by the department under sub. (1) (c) after receipt of the written request. In any action commenced by it under this subsection, the department of justice shall, prior to stipulation, consent order, judgment or other final disposition of the case, consult with the department for the purpose of determining the department's views on final disposition. The department of justice may not enter into a final disposition different than that previously discussed without first informing the department.

(3) ASSISTANCE OF DISTRICT ATTORNEY. In any criminal action commenced under s. 291.97, the department of justice may request the assistance of the district attorney of any county in which the violation occurred, and the district attorney shall provide the requested assistance.

(4) VENUE. Any action on a violation shall be commenced in the circuit court for the county in which the violation occurred. If all parties stipulate and the circuit court for Dane County agrees, the proceedings may be transferred to the circuit court for Dane County.

History: 1977 c. 377; 1981 c. 374; 1987 a. 384; 1995 a. 227 s. 695; Stats. 1995 s. 291.95.

Enforcement of ch. 144 [now chs. 281 to 299] is not contingent on the issuance of a compliance order. State v. Edward Kraemer & Sons, Inc. 170 Wis. 2d 646, 489 N.W.2d 708 (Ct. App. 1992).

291.97 Violations and penalties. (1) CIVIL PENALTIES. Any person who violates any provision of this chapter or any rule promulgated or special order, plan approval or term or condition of a license or variance issued under this chapter shall forfeit not less than $100 nor more than $25,000 for each violation. Each day of a continuing violation is a separate offense.

(2) CRIMINAL PENALTIES. (a) Any person who willfully does any of the following shall be fined not less than $100 nor more than $25,000 or imprisoned for not more than one year in the county jail or both:

1. In connection with an application, label, manifest, record, report, license or other document relating to this chapter, makes an untrue statement of a material fact or fails to state a material fact with the result that the statements made in the document are misleading.

2. Destroys, alters, conceals or fails to submit a record required to be maintained or submitted under this chapter or a rule promulgated or special order, plan approval or term or condition of a license or variance issued under this chapter.

(b) Any person who willfully does any of the following is guilty of a Class H felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (h), the person may be fined not more than $100,000:

1. Transports any hazardous waste to a facility or site that does not have a license as required under s. 291.25.

2. Stores, treats, transports or disposes of any hazardous waste without a license required under s. 291.23 or 291.25 or in violation of a rule promulgated or special order, plan approval or term or condition of a license or variance issued under s. 291.23, 291.25, 291.29, 291.31 or 291.87.

(c) 1. For a 2nd or subsequent violation under par. (a), a person is guilty of a Class I felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (i), the person may be fined not more than $50,000.

2. For a 2nd or subsequent violation under par. (b), a person is guilty of a Class F felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (f), the person may be fined not more than $150,000.

(d) Each day of a continuing violation constitutes a separate offense.

(e) If a person commits a violation in connection with an enterprise, as defined under s. 946.82 (2), the maximum penalties specified in pars. (a), (b) and (c) shall be doubled.

(3) COST RECOVERY. In addition to the penalties provided under subs. (1) and (2), the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney fees and the costs of performing monitoring. The department of justice shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the department or the state under this subsection. The costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

History: 1977 c. 377; 1981 c. 374; 1987 a. 384; 1993 a. 16; 1995 a. 227 s. 698; Stats. 1995 s. 291.97; 1997 a. 283; 2001 a. 109; 2007 a. 20; 2013 a. 168.

Bankruptcy trustees acting within the scope of their official capacities may not be held personally liable under this section. State v. Better Brite Plating, 168 Wis. 2d 363, 483 N.W.2d 574 (1991).

To obtain a conviction under s. 144.74 (2) (b) [now s. 291.97 (2) (b)] the state need not prove that the defendant knew a license was required. State v. Fettig, 172 Wis. 2d 428, 493 N.W.2d 254 (Ct. App. 1992).