

1989 Senate Bill 241

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1989 WISCONSIN ACT 211

AN ACT to repeal and recreate 144.44 (8) of the statutes, relating to: procedures for enforcing solid waste standards against certain solid waste facilities and providing for a study.

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

SECTION 1. 144.44 (8) of the statutes is repealed and recreated to read:

144.44 (8) ENFORCEMENT PROCEDURES FOR OLDER FACILITIES. (a) Notwithstanding s. 144.47, for solid waste facilities licensed on or before January 1, 1977, that the department believes do not meet minimum standards promulgated under s. 144.435, the department may do any of the following:

1. Initiate action under s. 144.72.
2. Refer the matter to the department of justice for enforcement under s. 144.98.
3. Issue an order relating to the solid waste facility or refuse to relicense the solid waste facility using the procedure under par. (b).

(b) 1. Before issuing an order relating to a solid waste facility or a decision refusing to relicense a solid waste facility under par. (a) 3., the department shall notify the licensee of its intended action. The licensee, within 30 days after receipt of the notice, may request a hearing under subd. 2. If the licensee requests a hearing under subd. 2, it may not withdraw that request and proceed under subd. 3.

2. If the licensee requests a hearing, the department may not issue the order or decision until a hearing, conducted as a class 2 proceeding under ch. 227, is held unless the licensee has withdrawn the hearing request. The hearing shall be held in the county where the facility is located. At the hearing the department must establish by a preponderance of all the available evidence that the

facility does not adhere to the minimum standards promulgated under s. 144.435. If the hearing examiner's decision is in favor of the department, or if the licensee has withdrawn the hearing request, the department may issue the order or decision. The order or decision is subject to judicial review under ch. 227.

3. If the licensee does not request a hearing under subd. 2, the department shall issue the order or decision. The licensee may challenge the order or decision by commencing an action in circuit court for the county in which the solid waste facility is located within 15 days after the issuance of the order or decision. The complaint shall allege that the facility adheres to the minimum standards promulgated under s. 144.435. The licensee shall receive a new trial on all issues relating to the facility and relicensing of the facility. The trial shall be conducted by the court without a jury.

SECTION 2. Nonstatutory provisions. The legislative council is requested to conduct a study analyzing the procedures, other than rule making, used by the department of natural resources and the department of justice to regulate approved licensed landfills, to regulate landfills that are not approved or not licensed and to regulate closed landfills. The legislative council is requested to review the procedures available to those departments and other interested parties regarding the issuance of orders and notices of violation, modifications of plans of operation, refusals to relicense, enforcement proceedings and decisions by the department of natural resources to refer matters to the department of justice. If the legislative council conducts the study, it is requested to submit a report analyzing the differences in the procedures avail-

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able and the frequency of use of the various procedures and including a proposal for making the procedures uniform on or before January 1, 1991, to the chief clerk of

each house of the legislature for distribution in the manner provided under section 13.172 (2) of the statutes.

