

CHAPTER 144.

WATER, ICE, SEWAGE AND REFUSE.

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144.01 **Definitions.** The following terms as used in sections 144.01 to 144.12 mean:

"Waters of the state" includes those portions of Lake Michigan and Lake Superior bordering upon Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells and bodies of surface or ground water, natural or artificial within the state or its jurisdiction.

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

"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.

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

"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.

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

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

"Owner," the state, county, township, city, village, corporation, firm, company, institution, or individual owning or operating any water supply, sewerage or water system or sewage and refuse disposal plant.

Note: In an action to compel a city to comply with orders of the state board of health and the state committee on water pollution, requiring the city to provide for a sewage treatment system so as to prevent objectionable water pollution conditions, the city, having failed to avail itself of the remedies provided by 144.10 and 144.56 for a review of such orders, was foreclosed from raising any questions except as to the validity of ch. 144, and as to whether the board and the committee acted within the powers conferred on them by statute. State ex rel. Martin v. Juneau, 238 W 564, 300 NW 187.

144.02 **Sanitary survey.** (1) The state board of health is authorized to act with the United States 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.

(d) To investigate water-borne diseases.

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

(2) The state board of health is hereby empowered and instructed to make the necessary rules and regulations, in conjunction with the United States geological department, to carry this section into effect.

144.03 **Power of state board of health.** (1) The state board of health shall have general supervision and control over the waters of the state, drainage, water supply, water systems, sewage and refuse disposal, and the sanitary condition of streets, alleys, out-houses, and cesspools, insofar as their sanitary and physical condition affects health or comfort.

(2) It shall investigate all water or ice supply and all systems or plants and keep complete records of such investigations.

(3) If the board finds that a system or plant is tending to create a nuisance or menace to health or comfort, it shall order the owner or the person in charge to secure such oper-

ating results as the board shall prescribe, within a specified time. If the order is not complied with, the board may order designated changes in operation, and if necessary, alterations or extension to the system or plant, or a new system or plant.

(4) If the board find that the water supply for any public or private ice supply is, or is likely to become, dangerous to health or comfort it shall order said water supply for ice closed, or that such devices be installed or measures instituted as will remedy the condition.

(5) It may conduct investigations and experiments in the purification of water and the treatment of sewage or refuse, hold public meetings, and attend or be represented at such meetings inside or outside the state. The board, 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 board shall not be required to prepare plans.

(6) It is declared that the public health, comfort, welfare and safety requires the regulation by the state of the use of subterranean waters of the state in the manner provided in this section.

(7) In order to promote the conservation of underground water supplies, it is provided that no new, additional or reconstructed old wells shall be constructed, installed or operated to withdraw water from underground sources for any purpose or purposes whatsoever where the capacity and rate of withdrawal of any such well or wells singly or in the aggregate, or the total capacity or rate of withdrawal of old, new and reconstructed wells on or for use on one property is in excess of 100,000 gallons a day without first obtaining the approval of the state board of health.

(8) If the board finds that the proposed withdrawal at a rate of more than 100,000 gallons of water from any such well or wells 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 shall impose 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 board is empowered to issue such general or special orders as it deems necessary to insure prompt and effective administration of this section.
[1945 c. 303]

Note: While plans and specifications approved by the state board of health included the location of the sewage disposal plant of the defendant village, and the matter of location may have been within the scope of the board's approval, it was not within the competency of the board to foreclose a judicial determination of whether by reason of location the plant would be a nuisance per se. *Hasslinger v. Hartland*, 234 W 201, 290 NW 647.
American Brass Co. v. State Board of Health, 245 W 440, 15 NW (2d) 27, held that the state board of health and the water pollution committee were not authorized to act jointly and issue joint orders. 144.565, created by ch. 94, laws of 1945, was enacted to authorize such joint action.

144.04 Approval of plans. Every owner within the time prescribed by the board, shall file with the board a certified copy of complete plans of a proposed system or plant or extension thereof, in scope and detail satisfactory to the board, and, if required, of existing systems or plants, and such other information concerning maintenance, operation and other details as the board 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 board and the board shall, if requested, outline generally what it will require. The board shall examine plans and conditions without delay, and, as soon as possible approve or disapprove or state what it will require. Approval may be subject to modification by the board upon due notice. Construction or material change shall be according to approved plans only.

144.05 Sewage drains. (1) When any city or village shall construct a sewerage system complying with section 144.04 the outflow from such system may be discharged into any drain constructed pursuant to law.

Revisor's Note, 1943: Effective one year after the termination of World War II, as proclaimed by the President or Congress, the above subsection (1) is repealed by chapter 69, laws of 1943, and the following (1) created:

(1) When any city or village or owner shall have constructed or shall in the future construct a sewage system complying with section 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 or effluent or raw or treated sewage from a city or metropolitan sewage district comprised of 45,000 persons or more, shall be discharged directly into, or through any stream, or through any drain, into a lake of more than 2 square miles and less than 6 square miles in area located within 10 miles of the system or plant of such city, or metropolitan sewage district.

(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. [1943 c. 69]

144.06 House connections. Any city or incorporated village having systems of waterworks and sewerage may by ordinance require buildings used for human habitation and located adjacent to a sewer and water main, or in a block through which the systems extend, to be connected therewith in manner prescribed by the board of health or by the board of public works where such board exists. If any person fails to comply for more than ten days after notice in writing the municipality 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 first class, the owner may, within thirty 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 five equal annual instalments, and the amount shall be so collected with interest at the rate of six per cent per annum from the completion of the work. The unpaid balance to be a special tax lien.

Note: Words "building used for human habitation" in this section include buildings where human beings are in need of sewerage and waterworks. 22 Atty. Gen. 923. such as stores and other places of business

144.07 Joint sewerage systems. (1) The state board of health may require the sewerage system, or sewage or refuse disposal plant of 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 municipalities order the proper connections to be made.

(2) When one municipality renders service to another under this section, reasonable compensation shall be paid. The officials in charge of the system, of the municipality 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 municipality 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 city, town or village receiving the same, the charges shall be placed upon the tax roll of such city, town or village 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 city, town or village receiving the same, the charges therefor shall be placed upon the tax roll of such city, town or village as a general tax; (c) where the service rendered does not come under the provisions of (a) or (b) above, the charges therefor shall be placed upon the tax roll of such city, town or village as a special tax upon each parcel of real estate benefited; and when collected it shall be paid to the treasurer of the city, town or village rendering the service. Where the charges are to be extended on such tax roll under the provisions of (c) above, the clerk of the city, town or village 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 municipality deem the charge unreasonable, it may by resolution within twenty days after the filing of the report with its clerk,

(a) Submit to arbitration by three reputable and experienced engineers, one chosen by each municipality, and the third by the other two. If the engineers are unable to agree, the vote of two shall be the decision. They may affirm or modify the report, and shall submit their decision in writing to each municipality within thirty days of their appointment unless the time be extended by agreement of the municipalities. 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 municipality requesting it, and the balance by the other.

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

(4) (a) Any two adjoining municipalities not wishing to proceed under subsection (2) may jointly construct, operate and maintain a joint sewerage system, inclusive of the necessary intercepting sewers and sewerage treatment works. Such joint action shall be carried out by a sewerage commission consisting of one member appointed by each of the governing bodies of such municipalities and a third member to be selected by the two members so appointed, or in lieu thereof said commission may consist of two members appointed by the governing body of each municipality and a fifth member to be selected by the four members so appointed.

(b) 1. Where such commission shall consist of three members, the members chosen by the two members first appointed shall serve for two years, while the members appointed by the governing bodies of the two municipalities shall serve for terms of four and six years, respectively, the length of term of each to be determined by lot. All subsequent appointments, except for unexpired terms, shall be for six years. All such members shall serve until their successors shall have been appointed and shall have qualified.

2. Where such commission shall consist of five members, the member chosen by the four members first appointed shall serve for one year, while the members appointed by the governing bodies of the two municipalities shall serve for terms of two, three, four and five years respectively, the length of terms of each to be determined by lot. All subsequent appointments, except for unexpired terms, shall be for six years. All such members shall serve until their successors shall have been appointed and shall have qualified.

(c) The commissioners shall project, plan, construct and maintain in the district comprising the two municipalities 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 commissioners, to care for such sewage of the territory included in such district. The 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 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 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.

(d) Such commission shall constitute a body corporate by the name of "(Insert name of municipalities) Sewerage Commission," by which in all proceedings it shall thereafter be known. Except as provided in this subsection the commissioners shall have the power and proceed as a common council and board of public works in cities in carrying out the provisions of paragraph (c) of this subsection. All bond issues and appropriations made by said commission shall be subject to the approval of the governing bodies of the respective municipalities.

(e) Each such municipality 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 commission. Each municipality may borrow money and issue municipal obligations therefor, for the construction, erection, enlargement and extension of a joint sewage disposal plant or system, and to purchase a site or sites for the same. Each municipality may, if it so desires, proceed under section 66.076 in financing its portion of the cost of the construction, operation, and maintenance of the joint sewage disposal plant or system.

(f) Either of such municipalities being aggrieved by the determination of the commission on matters within its jurisdiction may appeal to the circuit court of the county in which such aggrieved municipality is located as provided in paragraph (b) of subsection (3).

(g) Any joint sewerage system, by an affirmative vote of all commissioners, may elect to be included in, and be subject to, the provisions of the Wisconsin municipal retirement fund established by sections 66.90 to 66.919. [1935 c. 460; 1943 c. 375 s. 54; 1945 c. 156, 268, 511; 1947 c. 362]

Note: For power to issue municipal bonds under (4), see note to 62.04, citing Behnke v. Neenah, 221 W 411, 266 NW 781.

Joint sewerage commission created under (4) is required to obtain advance approval of operation and maintenance expenses from governing bodies of municipalities involved under (4) (d). Within its budget so approved it may hire and fix compensation of employes and purchase materials. It has authority to determine proportionate

amounts of expenses to be paid by respective municipalities. Its determination is final unless one of municipalities appeals to circuit court under (4) (f). 30 Atty. Gen. 1. Where either of two cities operating joint sewerage commission under this section fails to approve commission's annual budget, commission will be without funds and cannot operate sewerage system and disposal plant. 30 Atty. Gen. 468.

144.08 State health officer. Except in the adoption of rules and regulations, the state health officer may act for the state board of health under this chapter.

144.09 Enforcement. Records required by the board shall be kept by the owners and the board supplied with certified copies and such other information as it may require. Agents of the board 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 regulations and orders of the board are complied with. The attorney-general shall assist in the enforcement of this chapter.

144.10 Judicial review. An owner may elect to arbitrate or may institute a proceeding for judicial review in the manner provided in chapter 227 from any order of the board. The provisions of section 144.07 (3) shall apply including affirmation or modification, but excepting the 20-day limitation. Taxable costs shall be in the discretion of the court. [1943 c. 375 s. 55; 1945 c. 511]

144.11 Penalty. If an owner fail to comply with an order within the time specified or in case of appeal, within twenty days after final judgment, or to in good faith begin to obey, such owner is declared to be creating a public nuisance enjoined under section 280.02, and shall forfeit to the state not less than ten nor more than five thousand dollars for each day such failure continues, to be recovered by the state in civil action brought by the attorney-general, and paid into the general fund.

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.

144.51 Water pollution, definitions. As used in sections 144.51 to 144.57 the following terms mean:

- (1) "Surface waters" include all lakes, rivers and water courses within the state.
- (2) "Industrial wastes," liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.
- (3) "Other wastes" include decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, oil, tar, chemicals and all other substances, except industrial wastes and sewage, as this latter term is defined in section 144.01, which pollute any of the surface waters of the state.
- (4) "Pollution," the contamination or rendering unclean or impure, injurious to the public health, harmful for commercial or recreational use, deleterious to fish or animal or plant life of the waters of the state.

144.52 Water pollution. (1) **COMMITTEE.** The committee on water pollution shall consist of the state chief engineer, a member or other representative of the public service commission designated by the commission, a conservation commissioner or an employe designated by the conservation commission, the state health officer, or a member of the board of health, designated by the board, and the state sanitary engineer, or other engineer appointed by the state board of health.

(2) **EXECUTIVE OFFICER.** The state board of health shall designate one of its representatives to be the secretary and executive officer of the committee, and shall be the administrative agent for the committee on water pollution. It shall make such inspections, conduct such investigations and do such other acts as may be necessary to carry out the provision of this act; within the limits of the appropriation made for this purpose. The executive officer shall have all of the powers conferred by law upon the committee, except that of enacting the general orders and rules and the regulations provided for in subsection (4) of section 144.53, subject, however, to the general direction of the committee and rules and regulations which it may adopt.

(3) **COMMITTEE MEETINGS.** The committee on water pollution shall meet regularly in January and July of each year, and special meetings may be held at any time or place, as agreed upon by the committee, or upon call of the state board of health, the state health officer or of any three members of the committee, to take up any matter within its jurisdiction. [1931 c. 184; 1933 c. 159 s. 27]

144.53 Duties of committee on water pollution. It shall be the duty of the committee on water pollution and it shall have power, jurisdiction and authority:

- (1) To exercise general supervision over the administration and enforcement of all laws relating to the pollution of the surface waters of the state.
- (2) To study and investigate all problems connected with the pollution of the surface waters of the state and its control and to make reports and recommendations thereon.
- (3) To conduct scientific experiments, investigations and research to discover economical and practicable methods for the elimination, disposal or treatment of industrial wastes to control pollution of the surface waters of the state. To this end the committee may co-operate with any public or private agency, when requested by such agency, in the conduct of such experiments, investigations and research and may receive on behalf of the state any moneys which any such agency may contribute as its share of the cost under such co-operative arrangements. To supervise chemical treatment of waters for the suppression of algae, aquatic weeds, swimmer's itch and other nuisance-producing plants and organisms. To this end the committee may conduct experiments for the purpose of ascertaining the best methods for such control. 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 committee for the use of the equipment, the actual cost of

the materials furnished, and the actual cost of the services rendered plus 10 per cent for overhead and development work.

(4) To issue general orders, and adopt rules and regulations applicable throughout the state for the installation, use and operation of practicable and available systems, methods and means for controlling the pollution of the surface waters of the state through industrial wastes, refuse and other wastes. Such general orders, rules and regulations shall be issued only after an opportunity to be heard thereon shall have been afforded to interested parties and shall take effect as directed therein, which shall be not less than thirty days after publication in the official state paper.

(5) To issue special orders directing particular owners to secure such operating results toward the control of pollution of the surface waters as the committee may prescribe, within a specified time. If such results are not secured in the specified time, the committee may direct the owner to use or adopt designated systems, devices and methods for handling industrial wastes, refuse and other wastes within a specified time.

(6) To make investigations and inspections to insure compliance with any general or special orders, rules and regulations which it may issue. In the exercise of this power the committee may require the submission and approval of plans for the installation of systems and devices for handling, treating or disposing of industrial and other wastes.

(7) To 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, this committee shall be the agency for the enforcement of any such legislative agreement. [1941 c. 307]

Note: Under ch. 144 the state board of health and the state committee on water pollution may order that the municipality prescribe its own plan for abating the water pollution evil complained of, but where there is an entire lack of co-operation and an active opposition on the part of the municipality the board and the committee are empowered to prescribe definitely what shall be done. State ex rel. Martin v. Juneau, 238 W 564, 300 NW 137. American Brass Co. v. State Board of Health, 245 W 440, 15 NW (2d) 27, held that the state board of health and the water pollution committee were not authorized to act jointly and issue joint orders. 144.565, created by ch. 94, laws of 1945, was enacted to authorize such joint action.

144.54 Limitations. Nothing in sections 144.51 to 144.57 shall be construed to limit or modify in any manner the powers and duties of the state board of health under sections 144.01 to 144.12, or to interfere with its power to select, employ and direct the sanitary engineer and all other employes of its bureau of sanitary engineering.

144.55 Visitorial powers of committee. Every owner of an industrial establishment shall furnish to the committee on water pollution all information required by it in the discharge of its duties under section 144.53. Any member of the committee and any employe of the bureau of sanitary engineering 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. Any member of the committee shall have power for all purposes falling within its jurisdiction to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of necessary or essential data.

144.56 Review of orders. Any owner or other person in interest may secure a review of the necessity for and reasonableness of any general or special order of the committee on water pollution in the following manner:

(1) They shall first file with the committee a verified petition setting forth specifically the modification or change desired in such order. Upon receipt of such a petition the committee shall order a public hearing thereon and make such further investigations as it shall deem advisable. Not more than thirty days after the filing of the petition the committee shall affirm, repeal or change the order in question.

(2) The determination of the committee shall be subject to review in the manner provided in chapter 227.

(3) In lieu of the remedy provided in subsection (2) any owner may agree in writing to submit the matter to the arbitration of three reputable and experienced sanitary engineers, one chosen by the owner, one by the committee on water pollution and the third by the other two. The decision of such arbitrators shall be rendered in writing within thirty days after their selection, unless the time be extended by agreement, but no decision shall be binding unless agreed to by all of the arbitrators. All expenses of arbitration shall be paid by the owner applying therefor. [1943 c. 375 s. 56]

144.565 Joint orders; joint review. The state board of health, or the state health officer acting for the state board of health under section 144.03 and the committee on water pollution, or its executive officer acting under section 144.52 (2), may act jointly

as to all matters under chapter 144 which in any way come within the jurisdiction of either or both of said agencies. Any joint order made pursuant hereto shall be subject to joint review by said agencies in the manner provided by section 144.56 and by the circuit court for Dane county in the manner provided in chapter 227. Any joint order heretofore issued by said agencies is hereby validated unless the same has been vacated or set aside on review or unless a proceeding to review the same is now pending. [1945 c. 94]

144.57 Penalties. Any person who shall violate any of the provisions of sections 144.51 to 144.57, or who shall fail, neglect or refuse to obey any general or special order of the committee on water pollution lawfully issued pursuant to section 144.53, or any joint order of the state board of health and committee on water pollution issued pursuant to section 144.565, shall forfeit and pay into the state treasury a sum of not less than \$10 nor more than \$100 for each violation, failure or refusal. Each day of continued violation shall be deemed a separate offense. [1945 c. 94]