

1977 Assembly Bill 1024

Date published: May 20, 1978  
Vetoed overruled published: June 26, 1978

**CHAPTER 377, Laws of 1977**  
(Vetoed in Part)

Vetoed  
in Part

AN ACT to repeal 15.347 (9) and 144.815; to renumber 144.44 (2) and 144.76; to renumber and amend 144.43 and 144.437; to amend 20.935 (1) (ud), 144.30 (4) and (8), 144.35 (1) (a), 144.435 (2), 144.44 (title), 144.445 (1) and (2) (a) and 144.54 (1) and (2) (a) 1; to repeal and recreate 60.72 (1), 144.30 (10) and 144.44 (1); and to create 13.565 (3), 15.347 (12), 20.370 (2) (fz), (g), (h), (n) and (q), 25.17 (1) (ym), 25.45, 59.51 (17), 70.995 (2) (y), ~~84.205~~ 144.30 (13) to (15), 144.44 (2) to (8), 144.441, 144.442, 144.43 (1m), 144.60 to 144.74, 144.76 and 499.15 (3) of the statutes, relating to establishing a hazardous waste management program under the department of natural resources, abolishing the mine reclamation council, creating a metallic mining council, establishing a waste management fund, creating a manufacturing machinery and equipment tax exemption, revising the department's regulation of the planning, establishment and operation of solid waste disposal sites and facilities, granting rule-making authority subject to legislative review, making an appropriation and providing a penalty.

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

**SECTION 1.** 13.565 (3) of the statutes is created to read:

13.565 (3) (a) Prior to the establishment of any rules relating to the hazardous waste management program under ch. 144, this subsection shall be complied with.

(b) *Role of legislative council.* Prior to any public hearing on a proposed rule, or if no public hearing is required, prior to notification of the standing committees, the department shall submit the proposed rule to the legislative council for review. The legislative council shall act as a clearing house for rule drafting and cooperate with the department and the revisor to:

1. Review the statutory authority under which the department intends to adopt the rule. The legislative council shall notify the department, the joint committee for the review of administrative rules and the appropriate standing committee when the statutory authority is eliminated or significantly changed by repeal, amendment, court decision or for any other reason.

2. Ensure that the procedures for the promulgation of a rule required by this subsection and ch. 227 are followed.

3. Review proposed rules for form, style and placement in the administrative code.

4. Review proposed rules to avoid conflict with or duplication of existing rules.

5. Review proposed rules to provide adequate references to relevant statutes, related rules and forms.

6. Streamline and simplify the rule-making process.

7. Review proposed rules for clarity, grammar and punctuation and to ensure plain language.

8. Review proposed rules to determine potential conflicts and to make comparisons with federal regulations.

(c) *Legislative council to assist standing committees.* The legislative council shall work with and assist the appropriate standing committees throughout the rule-making process. The legislative council may issue recommendations concerning any proposed rule which the department submits.

(d) *Notification of standing committees.* The department shall notify appropriate standing committees when proposed rules are in final draft form by submitting a notice to the presiding officer in each house. Each presiding officer shall refer the notice to one standing committee. The department may withdraw a proposed rule by notifying the presiding officer in each house of the legislature of its intention not to promulgate the rule.

(e) *Form of notice.* The notice shall include the proposed rule in a form complying with s. 227.024 (1).

(f) *Standing committee review.* 1. A committee may be convened upon the call of its chairperson or a majority of its members to review a proposed rule. A committee may meet separately or jointly with the other committee to which the notice is referred, direct the department to attend the meeting and hold public hearings to review the proposed rule.

2. The standing committee review period lasts for 30 days after the notice is submitted and if within the 30-day period a standing committee directs the department to meet with it to review the proposed rule, the standing committee review period is extended for 30 days from the date of that request.

3. The department may not promulgate a proposed rule during the standing committee review period unless both committees approve the rule prior to the expiration of that period.

4. Either standing committee may disapprove the proposed rule or part of a proposed rule by taking action in executive session to disapprove the rule within the standing committee review period. If both committees fail to take this action, the proposed rule is not disapproved and the department may promulgate the rule.

(g) *Joint committee for the review of administrative rules.* 1. If either standing committee disapproves a proposed rule or part of a proposed rule, the proposed rule or its part shall be referred to the joint committee for the review of administrative rules.

2. The joint committee review period lasts for 30 days after the proposed rule is referred and the joint committee shall meet and take action in executive session during that period.

3. The department may not promulgate a proposed rule or its part which is disapproved by a standing committee unless the proposed rule is approved by the joint committee for the review of administrative rules or until the bill in subd. 5 fails of enactment. The department may promulgate portions of the rule which were not suspended, if the committee disapproved only parts of the rules.

4. The joint committee for the review of administrative rules may reverse the standing committee disapproval by taking action to approve the rule within the joint committee review period. The joint committee may uphold the standing committee disapproval by taking action to disapprove the rule within the joint committee review period. The joint committee may remand the proposed rule to the department for further consideration or public hearings or both. If the joint committee disapproves a proposed rule, the department may not promulgate the proposed rule until the bill in subd. 5 fails of enactment.

5. When the joint committee for the review of administrative rules disapproves a proposed rule or portion of the proposed rule, the committee shall as soon as possible place before the legislature, a bill to support the disapproval. If such bill is defeated, or fails of enactment in any other manner, the proposed rule or portion of the proposed rule may be promulgated. If the bill becomes law, the proposed rule or portion of the proposed rule, may not be promulgated unless a properly enacted law specifically authorizes the adoption of that rule.

(h) *Emergency rules.* This subsection does not apply to emergency rules adopted under s. 227.027.

SECTION 1a. 15.347 (9) of the statutes is repealed.

SECTION 1b. 15.347 (12) of the statutes is created to read:

15.347 (12) METALLIC MINING COUNCIL. There is created in the department of natural resources a metallic mining council consisting of 9 persons representing a variety and balance of economic, scientific and environmental viewpoints. Members shall be appointed by the secretary of the department for staggered 3-year terms. The council shall advise the department on the implementation of ss. 144.43, 144.44, 144.441, 144.442, 144.445, 144.60 to 144.74 and 144.80 to 144.94 as those statutory sections relate to metallic mining in this state. The council shall serve as an advisory, problem-solving body to work with and advise the department on matters relating to the reclamation of mined land in this state and on methods of and criteria for the location, design, construction and operation and maintenance of sites and facilities for the disposal of metallic mine-related wastes. All rules proposed by the department relating to the subjects specified in this subsection shall be submitted to the council for review and comment prior to the time the rules are proposed in final draft form by the department. The department shall transmit the written comments of all members of the council submitting written comments with the summary of the proposed rules to the appropriate standing committees of the legislature under s. 227.018 (2). Written minutes of all meetings of the council shall be prepared by the department and made available to all interested parties upon request.

SECTION 1m. At the appropriate place in the schedule of section 20.005 of the statutes, insert the following amounts for the purposes indicated:

	1977-78	1978-79
<b>20.370 Natural resources, department of</b>		
(2 ) ENVIRONMENTAL STANDARDS		
(fz) Initial funding - hazardous substances spill fund	GPR C 50,000	50,000

SECTION 2. 20.370 (2) (fz), (g), (h), (n) and (q) of the statutes are created to read:

20.370 (2) (fz) *Initial funding - hazardous substances spill fund.* As a continuing appropriation, the amounts in the schedule for initial administration of the hazardous substances spill fund under s. 144.76 (6).

(g) *Solid and hazardous waste disposal.* All moneys received from fees under ss. 144.44 (5) and 144.64 (5), for the purpose of administering ss. 144.44 and 144.64.

(h) *Hazardous substances spill fund.* All moneys received from reimbursements under s. 144.76 (6) (c) for the administration of the hazardous substances spill fund under s. 144.76 (6).

(n) *Hazardous substances spill fund - federal funds.* All moneys received from reimbursements under s. 144.76 (6) (d) for the administration of the hazardous substances spill fund under s. 144.76 (6).

(q) *Waste management fund - solid and hazardous waste disposal site program.* As a continuing appropriation, all moneys received in the waste management fund for the purpose of administering a program of long-term care of and environmental repairs to solid and hazardous waste disposal sites under s. 144.441.

SECTION 2m. 20.395 (1) (ud) of the statutes, as affected by chapter 29, laws of 1977, is amended to read:

20.395 (1) (ud) *Miscellaneous highway aids, state funds.* The amounts in the schedule to make payments under ss. ~~84.205~~, 86.315 and 86.34, and to pay an amount equal to \$25 of each fee under s. 218.22 (1) and (2) to the city, village or town in which the motor vehicle salvage dealer is located.

Vetoed  
in Part

SECTION 3. 25.17 (1) (ym) of the statutes is created to read:

25.17 (1) (ym) Waste management fund (s. 25.45);

SECTION 4. 25.45 of the statutes is created to read:

**25.45 Waste management fund.** There is established a separate nonlapsible trust fund designated as the waste management fund, to consist of all fees collected under s. 144.441 (2) (c) and (3). Moneys in the waste management fund shall be used for the purposes enumerated in s. 144.441 (3) (d).

SECTION 5. 59.51 (17) of the statutes is created to read:

59.51 (17) Record and index writings submitted according to s. 144.44 (4) (b), evidencing that a site for the land disposal of solid waste or a hazardous waste disposal facility will be established on the particular parcel described in the writings.

SECTION 6. 60.72 (1) of the statutes is repealed and recreated to read:

60.72 (1) The town board may by order, ordinance or resolution designate any town highway which provides reasonable access to a solid waste disposal site or facility licensed under s. 144.44 as appropriate for the transportation of solid waste into, within or through the town for the purpose of disposing of the same at such site or facility, and may in such order, ordinance or resolution prohibit the use of other town highways for that purpose.

SECTION 7. 70.995 (2) (y) of the statutes is created to read:

70.995 (2) (y) Hazardous waste treatment facility, as defined in s. 144.61 (11), unless exempt under s. 70.11 (21).

SECTION 7m. ~~84.205 of the statutes is created to read:~~

~~84.205 Repair of highways and streets damaged by solid waste transporters. Any county, city, village or town may file a claim with the department for reimbursement of the actual and necessary expenses incurred by the local government in repairing damage to its highways or streets caused by persons gaining access to a site or facility for the disposal of solid waste and for collecting litter deposited along such highways or streets by persons gaining access to a site or facility for the disposal of solid waste. The department shall pay all such expenses from funds appropriated under s. 20.395 (1) (ud). Any person aggrieved by the department's determination of liability under this section for the damage caused or litter deposited may appeal the determination to the transportation commission. The decision of the transportation commission shall be subject to judicial review under ch. 227.~~

Vetoed  
in Part

SECTION 8. 144.30 (4) and (8) of the statutes are amended to read:

144.30 (4) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable solid materials, including solid-waste solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from domestic use and public service community activities, but does not include solids or dissolved material in waste water effluents or other common water pollutants domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 147, or source, special nuclear or by-product material as defined under s. 140.52.

(8) "Solid waste disposal sites and facilities" include commercial and municipal establishments or operations such as, without limitation because of enumeration, sanitary landfills, dumps, incinerator sites land disposal sites, incinerators, auto junk yards and, scrap metal salvage yards, transfer stations, storage facilities, collection and transportation services and other establishments or operations for the storage, collection, transportation, transfer, processing, treatment, recovery or disposal of solid

waste. “Solid waste disposal sites and facilities” does not include a site or facility for the processing of scrap iron, steel or nonferrous metal using large machines to produce a principal product of scrap metal for sale or use for remelting purposes; nor does the term include a site or facility which uses large machines to sort, grade, compact or bale clean wastepaper, fibers or plastics, not mixed with other solid waste, for sale or use for recycling purposes.

SECTION 9. 144.30 (10) of the statutes is repealed and recreated to read:

144.30 (10) “Hazardous substance” means any substance or combination of substances, including wastes, of a solid, liquid, gaseous or semisolid form which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment. Such substances may include, but are not limited to, those which are, to the degree determined by the department, toxic, corrosive, flammable, irritants, strong sensitizers or explosive.

SECTION 10. 144.30 (13) to (15) of the statutes are created to read:

144.30 (13) “Closing” means the time at which a solid waste or hazardous waste treatment, storage or disposal facility ceases to accept wastes, and includes those actions taken by the owner or operator of the facility to prepare the site for long-term care and to make it suitable for other uses.

(14) “Long-term care” means the routine care, maintenance and monitoring of a solid waste or hazardous waste treatment, storage or disposal facility following closing of the facility.

(15) “Termination” means the final actions taken by an owner or operator of a solid waste or hazardous waste treatment, storage or disposal facility when formal responsibilities for long-term care cease.

SECTION 10m. 144.35 (1) (a) of the statutes is amended to read:

144.35 (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~~ promulgated under ss. 144.30 to 144.46 and 144.54 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, except as provided in s. 144.44 (8), may include an order that necessary corrective action be taken within a reasonable time. Any such order shall become effective unless, no later than ~~40~~ 30 days after the date the notice and order are served, the person named ~~therein in the notice and order~~ 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, and except as provided in s. 144.44 (8), 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.

SECTION 11. 144.43 of the statutes is renumbered 144.43 (1) and amended to read:

144.43 (1) 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 to ensure compliance and consistency with the purposes of and standards established under the resource conservation and recovery act of 1976, P.L. 94-580, except that such rules relating to open burning shall be consistent with s. 144.431. The standards and rules adopted under this subsection shall conform to the rules adopted under sub. (1m).

SECTION 11m. 144.43 (1m) of the statutes is created to read:

144.43 (1m) No later than 24 months after the effective date of this act (1977), the department shall adopt, with the advice and comment of the metallic mining council, rules for the identification and regulation of metallic mining wastes. The rules adopted to identify metallic mining wastes and to regulate the location, design, construction and operation and maintenance of the sites and facilities for the disposal of metallic mining wastes shall be adopted in accordance with any or all of the following: chs. 30, 144 and 147 and s. 107.05. The rules shall take into consideration the special requirements of metallic mining operations in the location, design, construction and operation and maintenance of sites and facilities for the disposal of metallic mining wastes as well as any special environmental concerns that will arise as a result of the disposal of metallic mining wastes. In adopting the rules, consideration shall also be given to research, studies, data and recommendations of the U.S. environmental protection agency on the subject of metallic mining wastes arising from the agency's efforts to implement the resource conservation and recovery act of 1976, P.L. 94-580.

Part  
Veto  
Overrule

SECTION 12. 144.435 (2) of the statutes is amended to read:

144.435 (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~~ shall consult with the appropriate regional planning commission or other planning agency to determine whether any site use and operation is ~~not~~ in conflict with any plans adopted by ~~the commission~~ such agency.

SECTION 13. 144.437 of the statutes is renumbered 144.435 (3) and amended to read:

144.435 (3) 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~~ this section.

SECTION 14. 144.44 (title) of the statutes is amended to read:

**144.44 (title) Site approval process; annual operating license.**

SECTION 15. 144.44 (1) of the statutes is repealed and recreated to read:

144.44 (1) No person may establish or construct a site for the land disposal of solid waste unless the person has complied with subs. (2) and (3). No person may operate any solid waste disposal site or facility without having obtained an operating license as provided in sub. (4).

SECTION 16. 144.44 (2) of the statutes is renumbered 144.43 (2).

SECTION 17. [144.44 (2) to (8) of the statutes are created to read:]

144.44 (3) (a) Prior to constructing or establishing a site for the land disposal of solid waste or a site for the treatment, storage or disposal of hazardous waste, the applicant shall submit to the department a feasibility report describing the physical conditions of the proposed site. The purpose of the report and review of the report under this subsection is to determine whether the site has potential for use in solid waste disposal or hazardous waste treatment, storage or disposal and to establish any conditions which the applicant must include in the plan of operation submitted under sub. (3). Favorable feasibility determination under this subsection does not guarantee plan approval under sub. (3) or licensure under sub. (4).

(b) The feasibility report shall be submitted by a registered professional engineer, when deemed necessary by the department, and shall include a general summary of the site characteristics as well as any specific data the department by rule requires regarding the site's topography, soils, geology, ground and surface waters and other features of the site and surrounding area. The report shall also include preliminary engineering design concepts including the proposed design capacity of the site and an

indication of the quantities and characteristics of the wastes to be disposed of. The department shall, by rule, specify the minimum contents of feasibility reports and no report shall be deemed complete unless the specified information is provided by the applicant. The rules may specify special requirements for feasibility reports relating to sites for the treatment, storage or disposal of hazardous waste. Within 30 days after a feasibility report is submitted, the department shall either publish notice under par. (d) or notify the applicant in writing that the report is not complete, specifying the information which must be submitted before the report is deemed complete.

(c) In the event that a local ordinance or resolution precludes or inhibits the ability of the applicant to obtain data required to be submitted in a feasibility report, the applicant may petition the department to waive application of the ordinance or resolution to the applicant. The department shall promptly schedule a hearing on the matter of waiver and notify the local government of the scheduled hearing. If, after hearing, the department finds the ordinance or resolution to be unreasonable, the department shall waive application of the ordinance or resolution to the applicant.

(d) Within 30 days after a complete feasibility report is filed, the department shall publish a class 1 notice under ch. 985, in the official newspaper designated under s. 985.04 or 985.05, or, if none exists, in a newspaper likely to give notice in the area of the proposed site or facility. The notice shall invite the submission of written comments by any person within 30 days from the time the notice is published, and shall describe the method by which a hearing may be demanded under par. (e). The department shall also send a copy of the notice and of the general summary of the report to the clerk of any county, city, village or town with zoning jurisdiction over the proposed site, to the clerk of any county, city, village or town within whose boundaries any portion of the proposed site will be located, or which could be substantially affected by the operation of the proposed site, and to the main public library of each county or municipality with zoning jurisdiction over the proposed site, within whose boundaries any portion of the proposed site will be located, or which could be substantially affected by the operation of the proposed site.

(e) Within 30 days after the notice required under par. (d) is published, a written demand for a hearing on the matter may be filed by any county, city, village or town, or by any 6 persons. The demand shall indicate the interests of the municipality or persons who file it and state the reasons why the hearing is demanded. A hearing demanded under this paragraph shall be held within 60 days after the deadline for demanding a hearing and shall be conducted as provided in s. 227.022. The hearing shall be held in an appropriate place designated by the department in one of the counties, cities, villages or towns which could be substantially affected by the operation of the proposed site.

(f) Within 120 days after the submission of a complete feasibility report under par. (a), or within 60 days after any hearing demanded under par. (e) is adjourned, whichever is later, the department shall issue a written determination of site feasibility, stating the findings of fact and conclusions of law upon which the determination is based. If the feasibility report indicates the probability that plan approval for the site under sub. (3) cannot be given until an environmental impact statement has been prepared, or if the department intends to require submission of an environmental impact report under s. 23.11 (5), the department shall notify the applicant of that fact and commence the process required under s. 1.11. Any determination made under this subsection may be conditioned upon the design, operational or other requirements deemed necessary to be included in the plan submitted under sub. (3). A favorable determination issued under this subsection shall specify the design capacity of the proposed site and entitle the applicant to submit a plan of operation under sub. (3). A determination under this subsection does not constitute a major state action under s. 1.11 (2).

(3) (a) Any person who has obtained a favorable determination of site feasibility may submit to the department a proposed plan of operation for the site. The owner or operator of a licensed facility for the land disposal of solid waste in existence on the effective date of this act (1977) may, but shall not be required to, seek approval of the

site's plan of operation under this subsection. Any operator engaged in mining as defined under s. 144.81 (5) on the effective date of this act (1977) may, but shall not be required to, seek approval of any feasibility report or plan of operation for any site for the disposal of solid waste resulting from such mining operations in existence on the effective date of this act (1977).

(b) The proposed plan of operation shall be submitted by a registered professional engineer and shall include at a minimum a description of the manner of solid waste disposal or hazardous waste treatment, storage or disposal and a statement setting forth the proposed development, daily operation, closing and long-term care of the site. The proposed plan of operation shall specify whether the owner's responsibility for long-term care of the site will terminate 30 years after closing as provided in s. 144.441 (2) (b) or 20 years after closing as provided in s. 144.441 (2) (c). The department shall, by rule, specify the minimum contents of a plan of operation submitted for approval under this subsection and no plan may be deemed complete unless the information is supplied. The rules may specify special standards for plans of operation relating to sites or facilities for the treatment, storage or disposal of hazardous waste. Within 30 days after a plan is submitted, the department shall notify the applicant in writing if the plan is not complete, specifying the information which must be submitted before the report is deemed complete. If no notice is given, the report shall be deemed complete on the date of its submission.

(c) Within 90 days after a complete plan of operation is submitted or within 90 days after the department has issued any environmental impact statement required under s. 1.11, whichever is later, the department shall either approve or disapprove the plan in writing. The determination of the department shall be based upon compliance with the standards established under s. 144.43 or, in the case of hazardous waste treatment, storage or disposal sites, with the rules and standards established under s. 144.62. No plan for a site or facility for the disposal of solid or hazardous waste may be approved unless the applicant submits a bond, deposit, proof of an established escrow account or other proof of financial responsibility satisfactory to the department ensuring that the applicant and any successor in interest will comply with the closure and long-term care requirements of the plan. An approval may be conditioned upon any requirements necessary to comply with the standards. Any approval may be modified by the department upon application of the licensee if newly discovered information indicates that the modification would not inhibit compliance with the standards adopted under s. 144.43 or, if applicable, s. 144.62. If the plan approval has been listed as required for the construction of an electric generating facility under s. 196.491 (2m), the time limits provided in s. 196.491 (3) (f) and (ff) shall take precedence over those provided in this paragraph.

(d) Approval under par. (c) shall entitle the applicant to construct and operate the site in accordance with the approved plan for not less than the design capacity specified in the determination of site feasibility, unless the department establishes by a clear preponderance of the credible evidence that:

1. The site is not constructed in accordance with the approved plan;
2. The site poses a substantial hazard to public health or welfare; or
3. In-field conditions, not disclosed in the feasibility report or plan of operation, necessitate modifications of the plan to comply with standards in effect at the time of plan approval under s. 144.43 or, if applicable, s. 144.62.

(e) Failure to operate in accordance with the approved plan shall subject the operator to enforcement under s. 144.35, or, if the department establishes that any failure to operate in accordance with the approved plan is grievous and continuous, to suspension, revocation or denial of the annual operating license under sub. (4).

Partial  
Veto  
Overruled

(4) (a) No person may maintain or operate a site or facility for the disposal of solid waste or the treatment, storage or disposal of hazardous waste, unless the person has obtained an operating license from the department. The license shall be issued no more frequently than annually and may be denied, suspended or revoked for failure to



pay the fees required under s. 144.441 (2) (c) or (3) or for grievous and continuous failure to comply with the approved plan of operation under sub. (3) or, if no plan of operation exists with regard to the site or facility, for grievous and continuous failure to comply with the standards adopted under s. 144.43. If the license application is for a site for the disposal of solid waste resulting from mining operations in existence on the effective date of this act (1977), the department shall make any determination with respect to whether disposal is being undertaken in an environmentally sound manner and shall administer compliance with the licensing requirement of this subsection in a manner which, with respect to nonhazardous solid waste, does not require substantial structural modification of the existing site, expenditure which is not appropriate for the nonhazardous nature of the waste or interruption of the mining operation.

(b) The initial operating license for a site for the land disposal of solid waste or the treatment, storage or disposal of hazardous waste shall not be issued unless the site has been constructed in substantial compliance with the operating plan approved under sub. (3). The department may require that compliance be certified in writing by a registered professional engineer. The department may by rule require, as a condition precedent to the issuance of the operating license for a solid waste land disposal site, that the applicant submit evidence that a notation of the existence of the site has been recorded in the office of the register of deeds in each county in which a portion of the site is located.

(5) The department shall, by rule, adopt a graduated schedule of reasonable fees to be charged for administering this section.

(6) At least 120 days prior to the closing of a site for the land disposal of solid waste, or the treatment, storage or disposal of hazardous waste, the owner or operator shall notify the department in writing of the intent to close the site.

(7) The department may waive compliance with any requirement of this section or shorten the time periods under this section provided to the extent necessary to prevent an emergency condition threatening public health, safety or welfare. The department may, by rule, exempt specified solid wastes or specified facilities and sites from licensing as solid waste disposal sites or facilities if it finds that regulation under this section would discourage the development of improved methods of solid waste disposal, including the landspreading of sludges, or would not be warranted, in light of the potential hazard to public health or the environment. The department shall not regulate under this chapter any solid waste from a single family or household disposed on the property where it is generated. No license pursuant to s. 144.44 shall be required for agricultural land on which nonhazardous sludges from a treatment work, as defined under s. 147.015 (12), are land spread for purpose of a soil conditioner or nutrient.

(8) Notwithstanding s. 144.35, for solid waste disposal sites or facilities licensed on or before January 1, 1977, which the department believes do not meet minimum standards promulgated under s. 144.43, the following enforcement procedure shall apply:

(a) The department may issue an order relating to the site or facility or may refuse to relicense the site or facility.

(b) The department shall notify the licensee of its intended action under par. (a), and the licensee, within 30 days of receipt of such notice, shall notify the department whether it desires a hearing under par. (c).

(c) If the licensee desires a hearing, the department may not issue the order or decision under par. (a) until a hearing, conducted as a class 2 proceeding under ch. 227, is held. The hearing shall be held in the county where the site or facility is located. At the hearing the department must establish by a preponderance of all the available evidence that the site or facility does not adhere to the minimum standards promulgated under s. 144.43. If the hearing examiner's decision is in favor of the department, the order or decision may be issued. The order or decision shall be subject to judicial review under ch. 227.

(d) If the licensee does not request a hearing under par. (b), the department shall issue the order or decision under par. (a). The licensee may challenge the order or decision by commencing an action in the circuit court for the county in which the site or facility is located within 60 days after issuance of the order or decision. The complaint shall allege that the site or facility adheres to the minimum standards promulgated under s. 144.43. The trial shall be conducted by the court without a jury, and shall be conducted as a de novo proceeding.

SECTION 18. [144.441 and 144.442 of the statutes are created to read:]

144.441 **Long-term care.** (1) **STANDARDS.** The department shall prescribe by rule minimal standards for closing, long-term care and termination of sites for the disposal of hazardous waste or the land disposal of solid waste. The standards, and any additional site-specific requirements designated by the department, shall be incorporated into the plan of operation prepared under s. 144.44 (3). The long-term care provisions in an approved plan of operation may be modified under s. 144.44 (3) (d) 3.

(2) **OWNER RESPONSIBILITY; TERMINATION.** (a) In this subsection, "site" refers only to a site for the disposal of hazardous waste or the land disposal of solid waste with an approved plan of operation under s. 144.44 (3), or a site for the land disposal of solid waste initially licensed within 3 years prior to the effective date of this act (1977) whose owner successfully applies, within 2 years after the effective date of this act (1977), for a determination by the department that the site's design and plan of operation comply substantially with the requirements necessary for plan approval under s. 144.44 (3).

(b) The owner of a site shall be responsible for the long-term care of the site for 30 years after closing of the site unless the responsibility is terminated earlier under par. (c) or (d).

(c) If the approved plan of operation for a site so indicates, or if the owner of a site so requests and the department approves ~~or~~ the owner's responsibility for long-term care of the site shall terminate 20 years after closing of the site unless the owner's responsibility is terminated sooner under par. (d). With respect to such sites, the fees imposed under sub. (3) (b) shall be 3.5 cents per ton and the fees imposed under sub. (3) (c) shall be 35 cents per ton.

Vetoed  
in Part

(d) The owner of a site may apply to the department for termination of the owner's responsibility for long-term care at any time after the site has been closed for at least 10 years. Upon receipt of such application the department shall, using the procedure applicable to feasibility reports under s. 144.44 (2) (d), provide notice to the public and to the owner or operator and an opportunity for a hearing on the termination of the site. In this proceeding the burden shall be on the applicant to prove by a preponderance of the evidence that additional long-term care is not necessary for adequate protection of public health or the environment. Within 120 days after posting notice of the pending termination or within 60 days after any hearing is adjourned, whichever is later, the department shall determine either that long-term care of the site is no longer required, in which case the applicant shall be relieved of such responsibility; or that additional long-term care of the site as specified in the plan of operation is still required, in which case further application under this subsection shall not be permitted until at least 5 years have elapsed since the previous application.

(3) **WASTE MANAGEMENT FUND.** (a) Each owner or operator of a licensed site for the land disposal of solid waste or the disposal of hazardous waste shall periodically pay to the department a fee for each ton, or equivalent volume as determined by rule of the department, of solid waste received and disposed of at the site during the preceding reporting period. Solid waste materials approved by the department as suitable for lining or capping a dike, berm or road construction within a site for the land disposal of solid waste shall not be subject to the fee imposed under this paragraph. The department shall reduce or waive such fees for solid waste resulting from mining if it determines that the reclamation bonding and other requirements of ss. 144.81 to 144.94 are sufficient to

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accomplish the purposes of this subsection. Such fees shall be paid into the waste management fund to be used for the purposes specified in par. (d). Whenever the investment board certifies to the department that the balance in the waste management fund exceeds \$15,000,000, this paragraph shall not apply to any site which is operating under its 6th or subsequent annual license until the investment board certifies to the department that the balance in the waste management fund is less than \$12,000,000.

(b) Except as provided in sub. (2) (c), the fee imposed by par. (a) shall be 1.5 cents per ton for solid waste and for any hazardous wastes which are excepted from the fee specified in par. (c).

(c) Except as provided in sub. (2) (c), the fee imposed by par. (a) shall be 15 cents per ton for hazardous wastes other than ashes and sludges from electric and process steam generating facilities, sludges produced by waste treatment or manufacturing processes at pulp or paper mills, manufacturing process solid wastes from foundries, or sludges produced by municipal wastewater treatment facilities.

(d) In this paragraph, "site" has the meaning given in sub. (2) (a). The moneys in the waste management fund shall be expended by the department exclusively for the following purposes:

1. Payment for all costs of long-term care of a site accruing after the responsibility of the owner has been terminated under sub. (2). The department shall by rule provide for the method of payment.

2. Payment of the costs of repairing a site, and the costs of repairing environmental damage caused by a site, as a result of occurrence not anticipated in the plan of operation which poses a substantial hazard to public health or welfare. Prior to making any expenditure under this subdivision, the department shall publish a class I notice, under ch. 985, of its intent to do so, specifying the amount and purpose of the proposed expenditure and shall afford a hearing to any person who so demands within 30 days for the purpose of determining whether the proposed expenditure meets the requirements of this subdivision. If an expenditure made under this subdivision would not have been necessary had the person responsible for the operation or long-term care of the site substantially complied with the requirements of the plan of operation, a right of action in favor of the fund shall accrue to the state against such person, and the attorney general shall take such action as is appropriate to enforce this right of action by recovering any amounts so expended. The net proceeds of any such recovery shall be paid into the waste management fund.

**144.442 Transference of responsibility.** Any person acquiring rights of ownership, possession or operation in a licensed site or facility for the disposal of solid waste or the treatment, storage or disposal of hazardous waste at any time after the site or facility has begun to accept waste shall be subject to all requirements of the license approved for the site or the facility, including the requirements relating to long-term care of the site or facility. Upon acquisition of the rights, the department shall issue a new operating license if the previous licensee is no longer connected with the operation of the site or facility, if the new licensee meets all requirements specified in the previous license, the approved plan of operation, if any, and the rules promulgated under s. 144.62, if applicable.

SECTION 19. 144.445 (1) and (2) (a) of the statutes are amended to read:

144.445 (1) Any solid waste site or facility 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 under s. 144.435 (2) shall not be required to obtain any local permits or authorization.

(2) (a) Notwithstanding s. ~~144.44~~ 144.43 (2), if a solid waste disposal site ~~designed to serve a county or 2 or more municipalities or facility~~ is otherwise eligible for construction and licensing except for failure to obtain a local permit, the department may, if it finds 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 so require the waiver of, waive such local approvals as a condition precedent to issuance of a license.~~

SECTION 20. 144.54 (1) and (2) (a) 1 of the statutes, as affected by chapter 29, laws of 1977, are amended to read:

144.54 (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. The required report shall include industrial wastes and ~~toxic and~~ hazardous substances discharged into any sewerage system operated by a municipality. The department may verify reports received by field monitoring of industrial waste and other waste outfalls and air contaminant sources.

(2) (a) 1. ~~Toxic and hazardous~~ Hazardous substances:

SECTION 21. 144.60 to 144.74 of the statutes are created to read:

**144.60 Hazardous waste management act.** (1) TITLE. Sections 144.60 to 144.74 shall be known and may be cited as the "Hazardous Waste Management Act".

(2) 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:

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

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

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

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

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

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

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

(h) 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.

(i) Meets the minimum requirements of the resource conservation and recovery act of 1976, P.L. 94-580.

(3) RULES ON METALLIC MINING WASTES. The requirements of ss. 144.60 to 144.74 shall be subject to s. 144.43 (1m).

**144.61 Definitions.** In ss. 144.60 to 144.74:

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

(2) "Disposal" means the discharge, deposit, injection, dumping or placing of any hazardous waste into or on any land or water so that the hazardous waste or any constituent of the hazardous waste may enter the environment or be emitted into the air or discharged into any waters, including ground waters, or the storage of any hazardous waste for a period longer than 18 months.

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

(4) "Hazardous waste" or "waste" means any solid waste identified by the department as hazardous under s. 144.62 (2) (a).

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

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

(7) "Person" means an individual, owner or operator, corporation, partnership, association, municipality, interstate agency or state agency.

(8) "Storage" means the containment of hazardous waste, for that period of time established by rule by the department not exceeding 18 months, in such a manner as not to constitute disposal of the hazardous waste. Containment of less than 10,000 gallons for less than one month shall not constitute storage.

(9) "Transport" means the movement of wastes between sites which are subject to or require a license under this subchapter or under the resource conservation and recovery act of 1976, P.L. 94-580.

(10) "Treatment" means any method, technique or process, including neutralization, which follows generation and 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.

(11) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility where waste has been generated. Such facilities shall not include waste water treatment facilities regulated under ch. 147.

**144.62 Powers and duties of the department.** (1) Within one year after the effective date of this act (1977), the department shall conduct and publish a study, using existing data to the extent possible, of hazardous waste management in this state. The study shall include, but is not limited to:

(a) A description of the sources of hazardous waste generation within the state, including the types and quantities of hazardous wastes.

(b) A description of current hazardous wastes management practices, including treatment and disposal, within the state.

(c) Establishment of physical criteria for acceptable hazardous waste treatment, storage and disposal sites.

(2) Within 12 months after publication of final regulations required under s. 3001 (b) of the resource conservation and recovery act of 1976, P.L. 94-580, or by July 1, 1979, whichever is earlier, the department shall:

(a) Promulgate, by rule, criteria identical to those promulgated by the U.S. environmental protection agency under s. 3001 (b) of the resource conservation and recovery act of 1976, P.L. 94-580, for identifying the characteristics of hazardous waste and based on use of these criteria, maintain and update a list of wastes identified as hazardous wastes which shall be subject to ss. 144.60 to 144.74. The rules shall require that any person generating or transporting, or owning or operating a facility for treatment, storage or disposal, of any substance which either meets the criteria or is identified as a hazardous waste shall, within 90 days of promulgation of the rule, so notify the department.

(b) Publish a report identifying general areas of the state, based on criteria reported under sub. (1) (c), which may, or may not, be suitable for the establishment of hazardous waste treatment, storage or disposal facilities. This designation shall not operate to preclude specific sites from receiving a license.

(3) 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.

(4) 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.

(5) The department may, by rule, exempt from any of the provisions of ss. 144.60 to 144.74 any person who generates wastes which do not present a significant hazard to public health and safety or the environment.

(6) Commencing 5 years after the effective date of this act (1977), the department shall study whether existing hazardous waste management facilities and operations are adequately handling all hazardous wastes within the state, and shall report its findings to the legislature within one year.

(7) In developing requirements for licenses to transport hazardous waste under s. 144.64 (2), the department shall maintain consistency with rules promulgated by the department of transportation.

(8) 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 and closing of sites and facilities for the treatment, storage and disposal of hazardous wastes.

(9) 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.

(10) (a) Rules under sub. (2) (a) shall also 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. Storage periods defined under s. 144.61 (8) and standards established under ss. 144.60 to 144.74 for facilities which treat, store or dispose of hazardous waste, or equipment which transports hazardous waste, shall recognize and differentiate between the classes of waste 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 constituents of the wastes;

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

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

(11) The department, in cooperation with the solid waste recycling authority, shall report by January 1, 1980, to the legislature on the feasibility of establishing a waste exchange in this state, for the purpose of encouraging the utilization of hazardous wastes for useful purposes. The report shall include at least the following:

(a) A determination of whether there is a need for a waste exchange in this state, including the types of wastes that could be so exchanged;

(b) A discussion of which organizations, if any, should be involved in establishing or operating such an exchange; and

(c) An estimate of the costs of establishing and operating such an exchange.

(12) If facilities or equipment subject to ss. 144.60 to 144.74 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.

**144.63 Generation.** 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 ss. 144.60 to 144.74.
- (2) Keep records that accurately identify:
  - (a) The quantities of hazardous waste generated;
  - (b) The 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 required reports.
- (8) Comply with rules relating to notification under s. 144.62 (2) (a).
- (9) Arrange that all wastes generated by them are transported, treated, stored or disposed of at facilities, or by operations, holding a license issued under ss. 144.60 to 144.74 or issued under the resource conservation and recovery act of 1976, P.L. 94-580.

**144.64 Licenses.** (1) LICENSE REQUIRED. (a) Commencing 18 months after the effective date of this act (1977), or 6 months after publication of applicable final regulations required under ss. 3003 to 3005 of the resource conservation and recovery act of 1976, P.L. 94-580, whichever is earlier, no person may store, transport, treat or dispose of any hazardous waste without a license from the department.

(b) Where the application for or compliance with any license required under this section would, in the judgment of the department, cause undue or unreasonable hardship to any person, the department may issue a variance from the requirements of this section, if the variance does not result in undue harm to public health or the environment. In no case may the duration of any variance exceed one year. Renewals or extensions of variances may be given only after opportunity for a public hearing on each variance renewal or extension.

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

(2) TRANSPORTATION. (a) Licenses issued under this section to transport hazardous waste shall require compliance with rules of the department. The rules shall establish standards for the following:

1. Recordkeeping concerning hazardous waste transported, and their source and delivery points.
2. Labeling procedures.
3. Use of a manifest system.
4. Containers used to transport waste.
5. Equipment operator qualifications.

(b) Licenses issued under this section may be denied, suspended or revoked for grievous and continuous failure to comply with the standards adopted under par. (a).

(3) FACILITIES. No person may establish or construct a facility to treat, store or dispose of hazardous waste unless the person has complied with s. 144.44. No person may operate any hazardous waste treatment, storage or disposal facility without

having first obtained an operating license as provided in s. 144.44 (4). Any person who operates a hazardous waste disposal site shall pay the fees specified under s. 144.441 (2) (b) or (3) (c).

(4) **LOCAL PERMITS NOT REQUIRED.** No hazardous waste treatment, storage or disposal facility which has been issued a license under this section may be required to obtain local permits or authorizations to operate the facility.

(5) **FEES.** The department shall, by rule, adopt a graduated schedule of reasonable fees to be charged for the direct administration of this section.

**144.67 Rules reviewed.** Every rule promulgated by the department relating to the hazardous waste management program under this chapter shall be reviewed in accordance with s. 13.565 (3).

**144.69 Inspections and right of entry.** Any person who generates, stores, treats, transports or disposes of hazardous wastes shall, upon request of any officer or employe of the department, permit the person, at reasonable times and with notice no later than upon arrival, access to premises and records relating to hazardous wastes. Departmental personnel may take samples of hazardous wastes as they deem necessary. Inspections shall be commenced and completed with reasonable promptness. If samples are taken, a receipt for each sample shall be given to the person in charge of the facility, and upon request, half of the sample taken. A copy of the results of any departmental analysis of the sample, if taken, and a copy of the inspection report, shall be promptly furnished to the person in charge of the facility.

**144.70 Confidentiality.** The department shall prescribe by rule which records, reports or information, if any, obtained from any person under ss. 144.60 to 144.64 and 144.69 to 144.74 shall be confidential. The department shall not divulge any information entitled to protection as a trade secret. This section shall not prevent the department from using records, reports or information in the compilation of summaries and reports, provided that the summaries and reports do not identify any person or reveal any information otherwise confidential under this section.

**144.72 Imminent hazard.** Upon notice that the handling, treatment, storage, transportation or disposal of any hazardous waste is presenting an imminent and substantial danger to health or the environment, the department may request the department of justice to commence legal proceedings to restrain or enjoin any person from handling, treatment, storage, transportation or disposal presenting an imminent and substantial danger to health or the environment or to take any other action as may be necessary.

**144.73 Enforcement.** (1) **COMPLIANCE ORDERS.** If the department determines that any person is in violation of any requirement of ss. 144.60 to 144.74, the department shall give written notice to the violator of his or her failure to comply with the requirement and if compliance is not obtained within 30 days after notice or within such reasonable time in which compliance may be accomplished, may issue an order requiring compliance within a specified time period or may refer the matter to the department of justice for enforcement.

(2) **ACTION; DISPOSITION.** The department of justice may initiate the legal action requested by the department under sub. (1) within 30 days of 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 shall 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. 144.74, 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.



**144.74 Penalties.** (1) The department of justice, upon a referral under s. 144.73, may initiate a civil action for a temporary or permanent injunction for any violation of ss. 144.60 to 144.74, or any rule promulgated under ss. 144.60 to 144.74, or of a term or condition of any license issued under ss. 144.60 to 144.74.

(2) Any person who violates ss. 144.60 to 144.74, or any rule promulgated under ss. 144.60 to 144.74, or any term or condition of a license issued under ss. 144.60 to 144.74, shall be subject to a forfeiture of not more than \$25,000 for each day of violation. The time elapsed prior to the expiration of a compliance order shall not constitute a violation.

(3) Any person who transports any hazardous waste subject to ss. 144.60 to 144.74 to a facility which the transporter knows does not have a license, intentionally disposes of any hazardous waste subject to ss. 144.60 to 144.74 without having obtained a license for disposal of hazardous wastes or intentionally makes any false statement or representation in any application, label, manifest, record, report, license or other document shall, upon conviction, be fined not more than \$25,000 for each day of violation or imprisoned not more than one year in the county jail or both. If the conviction is for a violation committed after a first conviction of the person, the person shall be fined not more than \$50,000 per day of violation or imprisoned not more than 2 years or both.

SECTION 22. 144.76 of the statutes, as affected by chapter 29, laws of 1977, is renumbered 144.58.

SECTION 23. 144.76 of the statutes is created to read:

**144.76 Hazardous substance spills.** (1) DEFINITIONS. As used in this section:

(a) "Discharge" means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(b) "Hazardous substance" has the meaning given under s. 144.30 (10).

(c) "Preventive measures" mean the installation or testing of equipment or devices, a designated way of performing a specified operation or the preparation of an emergency response plan.

(2) NOTICE OF DISCHARGE. (a) Persons possessing or controlling a hazardous substance shall immediately notify the department of any discharge not exempted under sub. (9).

(b) Notification received under this section or information obtained in a notification received under this section may not be used against the person making such a notification in any criminal proceedings.

(c) The department shall designate a 24-hour statewide toll-free or collect telephone number whereby notice of any hazardous discharge may be made.

(3) RESPONSIBILITY. Persons having possession of or control over a hazardous substance being discharged, or who cause a hazardous discharge, shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from any discharge to the air, lands or waters of this state.

(4) PREVENTION OF DISCHARGE. (a) The department may require that preventive measures be taken by any person possessing or having control over hazardous substances when it finds:

1. Preventive action would result in a significant reduction in discharge potential; and

2. Past discharges by this person indicate that the existing control measures are inadequate in preventing discharges.

(b) The department shall specify necessary preventive measures by order. The order shall be effective 10 days after issuance, unless the person named requests a hearing, in which case no order may become effective until the conclusion of the hearing.

(5) CONTINGENCY PLAN. (a) The department shall, after consultation with other affected federal, state and local agencies and private organizations, establish by rule a contingency plan for the undertaking of emergency actions in response to the discharge of hazardous substances.

(b) The contingency plan shall:

1. Provide for efficient, coordinated and effective action to minimize damage to the air, land and waters of the state caused by the discharge of hazardous substances;
2. Include containment, clean-up and disposal procedures;
3. Provide for restoration of the lands or waters affected to the satisfaction of the department;
4. Assign duties and responsibilities among state departments and agencies, in coordination with federal and local agencies;
5. Provide for the identification, procurement, maintenance and storage of necessary equipment and supplies;
6. Provide for designation of persons trained, prepared and available to provide the necessary services to carry out the plan; and
7. Establish procedures and techniques for identifying, containing, removing and disposing of discharged hazardous substances.

(6) HAZARDOUS SUBSTANCES SPILL FUND. (a) The appropriation under s. 20.370 (2) (fz) shall be used in implementing and carrying out the contingency plan developed under sub. (5). This fund shall provide for the procurement, maintenance and storage of necessary equipment and supplies, personnel training and expenses incurred during containment, clean-up and disposal of discharged substances.

(b) No more than 25% of the fund may be used annually for the procurement and maintenance of necessary equipment.

(c) Reimbursements to the department under sub. (7) shall be credited to the hazardous substances spill fund.

(d) Reimbursements to the department under s. 311, federal water pollution control act amendments of 1972, P.L. 92-500, shall be credited to the hazardous substances spill fund.

(7) REMOVAL OR OTHER EMERGENCY ACTION. (a) In every case where action required under sub. (3) is not being adequately taken or the identity of the person responsible for the discharge is unknown, the department or its agent may contain, remove or dispose of the hazardous substance or take any other emergency action which it deems appropriate under the circumstances.

(b) The person causing the discharge shall reimburse the department for actual and necessary expenses incurred in carrying out its duties under this subsection.

(c) The department may, for the protection of public health, safety or welfare, issue an emergency order to the person possessing, controlling or responsible for the discharge of hazardous substances to fulfill the duty imposed by sub. (3).

(8) ACCESS TO PROPERTY. Any duly authorized officer, employe or agent of the department may, upon notice to the owner or occupant, enter any property, premises or place at any time for the purposes of sub. (7) if such entry is necessary to prevent increased damage to the air, land or waters of the state. Notice to the owner or occupant shall not be required if the delay attendant upon providing it will result in imminent risk to public health or safety.

(9) EXEMPTIONS. (a) Any person holding a valid permit under ch. 147 is exempted from the reporting and penalty requirements of this section with respect to substances discharged within the limits authorized by the permit.

(b) Law enforcement officers or members of a fire department using hazardous substances in carrying out their responsibility to protect public health, safety and welfare are exempted from the penalty requirements of this section, but shall be encouraged to report to the department any discharges of a hazardous substance occurring within the performance of their duties.

(c) Any person discharging an air contaminant under a program approved under ch. 144 is exempted with respect to the air contaminant from the reporting and penalty requirements of this section.

(d) Any person applying a registered pesticide according to the label instructions is exempted with respect to the application from the reporting and penalty requirements of this section.

(10) ENFORCEMENT EXCLUSIONS. (a) Any person proceeded against for a violation of this section shall not be subject to penalties under s. 144.74 for the same act or omission.

(b) Any person who discharges a hazardous substance, where the responsibilities for such a discharge are prescribed by statute other than ss. 144.60 to 144.74, shall be subject to the penalty under either this section or the other section but not both.

SECTION 23m. 144.815 of the statutes is repealed.

SECTION 24. 499.15 (3) of the statutes is created to read:

499.15 (3) WASTE EXCHANGE. The authority shall cooperate with the department of natural resources in the preparation of reports dealing with hazardous waste exchanges.

SECTION 25. **Report to the legislature.** The department of natural resources shall report to the legislature within 18 months after the effective date of this act, or 6 months after publication of applicable final regulations required under ss. 3003 to 3005 of the resource conservation and recovery act of 1976, P.L. 94-580, whichever is earlier, regarding the estimated costs of administering the hazardous waste management program under sections 144.60 to 144.74 of the statutes, as created by this act, and a recommended schedule of fees to replace those adopted by rule under section 144.64 (5) of the statutes, as created by this act, if any.

SECTION 26. **Implementation.** (1) Not more than 9 months after the effective date of this act, the department of natural resources shall prepare the rules required under section 144.44 (2) (b), (3) (b) and (5) of the statutes, as affected by this act, and notify the appropriate standing committees of each house of the legislature as determined by the presiding officer of each house as required under section 227.018 (2) of the statutes. For a period of 9 months until rules are adopted, the department of natural resources shall determine the information required under section 144.44 (2) (b), (3) (b) and (5) of the statutes, as affected by this act, on a case-by-case basis and continue the license fees at the level in effect on the effective date of this act. All rules promulgated by the department of natural resources relating to the management of hazardous waste pursuant to chapter 144 of the statutes prior to the effective date of this act shall remain in force until modified or rescinded by the department of natural resources pursuant to the promulgation of rules relating to the management of hazardous waste under sections 144.60 to 144.74 of the statutes, as created by this act.

(2) The department of natural resources shall prepare and adopt, with the advice and comment of the metallic mining council established under section 15.347 (12) of the statutes, as created by this act, interim rules for the identification of metallic mining wastes to be regulated as either solid or hazardous wastes and for the location, design, construction and operation and maintenance of the sites and facilities for the disposal of metallic mining wastes and shall keep the rules in effect until such time as final rules are adopted as provided under section 144.43 (1m) of the statutes, as created by this act. The interim rules shall be adopted in accordance with any or all of the following: chapters 30, 144 and 147 and section 107.05 of the statutes.

SECTION 27. **Program responsibilities.** (1) In the list of program responsibilities specified for the department of justice under section 15.251 (intro.) of the statutes, insert reference to sections "144.441 (3) (d) 2", "144.73" and "144.74".

(2) In the list of program responsibilities specified for the department of natural resources under section 15.341 (intro.) of the statutes, insert reference to section "13.565 (3)".

(3) In the list of program responsibilities specified for the transportation commission under section 15.461 (1) of the statutes, insert reference to section "84.205".

**SECTION 28. Appropriation increase.** The appropriation to the department of natural resources under section 20.370 (2) (a) of the statutes, as affected by the laws of 1977, is increased by \$255,000 for fiscal year 1978-79 to authorize and fund 12 permanent positions and 2 project positions for fiscal year 1978-79 only for purposes of administering the hazardous and solid waste management program and to pay administrative expenses of the hazardous and solid waste management program as created by this act.

**SECTION 29. State and federal funding; positions authorized.** (1) From the moneys available under section 20.370 (2) (g) of the statutes, as created by this act, \$125,000 shall be used in fiscal year 1978-79 to fund and authorize 7 permanent positions in the department of natural resources for purposes of administering sections 144.44 and 144.64 of the statutes, as affected by this act, and to pay administrative expenses under sections 144.44 and 144.64 of the statutes.

(2) From the moneys available under section 20.370 (2) (m) of the statutes, as affected by the laws of 1977, \$225,000 shall be used in fiscal year 1978-79 to fund and authorize 9 permanent positions and 3 project positions for 1978-79 only in the department of natural resources for purposes of administering the hazardous and solid waste management program and to pay administrative expenses of the hazardous and solid waste management program as created by this act.

**SECTION 29m. Term change.** Wherever in the following sections of the statutes the term "mine reclamation council" appears, the term "metallic mining council" is substituted: 144.81 (1), 144.83 (1) (b) and (2) and 144.85 (5) (a).

**SECTION 29r. Initial appointments.** Of the members first appointed to the metallic mining council under section 15.347 (12) of the statutes, as created by this act, 3 shall be appointed for 3 years, 3 shall be appointed for 2 years, and 3 shall be appointed for one year.

**SECTION 30. Cross reference changes.** In the sections of the statutes listed in Column A, the cross references shown in Column B are changed to the cross references shown in Column C:

A Statute Sections	B Old Cross References	C New Cross References
20.505 (5)(cc)	144.76	144.58
84.31 (4)(a) 1 and (b)	144.43	144.43 (1)
144.445 (2)(a)	144.44 (2)	144.43 (2)
144.50 (7)	144.43	144.43 (1)

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