

wise adjusting the amount of the reclamation bond which the department requires to be submitted pursuant to s. 144.86, Stats., and s. NR 132.09 (2) (a) so as to reflect the projected costs of closure. Release of the amount bonded to ensure closure according to the reclamation plan shall be processed pursuant to the provisions of s. 144.90, Stats., and s. NR 132.12 relating to the release of reclamation bonds.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

NR 182.17 Financial responsibility for long-term care. (1) DEFINITIONS.
(a) "Actual dollar inpayments" means equal annual payments made by the facility owner into a long-term care account.

(b) "Approved mining waste facility" means an approved waste facility which is part of a mining site, as defined under s. 144.81 (8), Stats., used for the disposal of waste resulting from mining as defined under s. 144.81 (5), Stats., or prospecting, as defined under s. 144.81 (12), Stats.

(c) "Certificate of deposit" means a certificate issued by a bank or financial institution acknowledging receipt of a specified sum of money in a special kind of time deposit, drawing interest and requiring written notice for withdrawal.

(d) "Closure period" means the 90-day period after the facility ceases to accept waste, unless otherwise specified in the approved plan of operation.

(e) "Equal annual outpayments" means estimated payments for long-term care which are the same amount in each year of the period of owner responsibility for the long-term care of the facility.

(f) "Interest bearing accounts" means escrow accounts, trust accounts or cash deposits with the department.

(g) "Non-interest bearing accounts" means letters of credit, performance bonds or forfeiture bonds.

(h) "Real dollar inpayments" means payments made by the facility owner, which increase each year at the rate of inflation, into a long-term care account.

(i) "Unequal annual outpayments" means estimated payments for long-term care which are higher in the early years of the period of owner responsibility for long-term care than they are later in the long-term care period after the facility has stabilized.

(j) "U.S. government securities" includes treasury bills, treasury bonds, treasury certificates, treasury notes, and treasury stocks guaranteed by the federal government.

(2) **APPLICABILITY.** (a) *Purpose.* The intent of this section is to coordinate the financial responsibility requirements of ch. NR 182 and this chapter as they affect the long-term care of an approved mining waste facility as defined in s. 144.441 (2), Stats. The long-term care requirements of this chapter are to be incorporated in and made part of the mine reclamation plan. Financial responsibility for long-term care and release of the same, however, shall be made according to the provisions of this section. A demonstration of financial responsibility by whatever means shall not be required twice for the same obligation regardless of whether the same is set forth in more than one chapter of the administrative code.

No plan of operation for a mining waste disposal facility may be approved unless the applicant submits, as part of the initial operating license application and annually thereafter for the period of active facility life, proof of financial responsibility ensuring that the applicant and any successor in interest will comply with the long-term care requirements referenced in the plan and incorporated in and made part of the reclamation plan.

(b) An owner of an approved mining waste facility shall be responsible for the long-term care of the facility for 30 years after closure. The long-term care requirements of this chapter shall be incorporated in and made part of the reclamation plan submitted under s. 144.85 (3) (b), Stats., and s. NR 182.08 but shall be referenced in the plan of operation submitted under s. NR 182.09. The financial responsibility requirements of par. (a) for such long-term care, however, shall be fulfilled by compliance with the provisions of any of sub. (3) (a) to (h).

(c) *Successors in interest.* Any person acquiring rights of ownership, possession or operation of a licensed facility shall be subject to all requirements of the license for the facility and shall provide any required proof of financial responsibility to the department in accordance with this section. The previous owner is responsible for long-term care, and shall maintain any required proof of financial responsibility, until the person acquiring ownership, possession or operation of the facility establishes any required proof of financial responsibility.

(3) **METHODS OF PROVIDING PROOF OF FINANCIAL RESPONSIBILITY.** The owner shall specify, as part of the plan of operation submittal, which method of providing proof of financial responsibility will be used for long-term care. To provide proof of financial responsibility, the applicant shall use one of the following methods:

(a) *Performance or forfeiture bond.* 1. If the owner chooses to submit a bond, it shall be in the amount determined according to sub. (5) (b) conditioned upon faithful performance by the owner and any successor in interest, of all long-term care requirements of the approved plan of operation. The bond shall be delivered to the department as part of the initial operating license application. Bond forms shall be supplied by the department.

2. Bonds shall be issued by a surety company authorized to do surety business in this state. At the option of the owner a performance bond or a forfeiture bond may be filed. The department shall be the obligee of the bond. Surety companies may have the opportunity to complete the long-term care of the facility in lieu of cash payment to the department if the owner or any successor in interest fails to carry out the long-term care requirements of the approved plan of operation. The department shall mail notification of its intent to use the funds for that purpose to the last known address of the owner. If the owner submits a written request for a hearing to the secretary of the department within 20 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing for the purpose of determining whether or not the long-term care requirements of the approved plan of operation have been carried out.

3. Each bond shall provide that, as long as any obligation of the owner for long-term care remains, the bond may not be cancelled by the surety, unless a replacement bond or other proof of financial responsibility under

this section is provided to the department by the owner. If the surety proposes to cancel a bond, the surety shall provide notice to the department in writing by registered or certified mail not less than 90 days prior to the proposed cancellation date. Not less than 30 days prior to the expiration of the 90-day notice period, the owner shall deliver to the department a replacement bond or other proof of financial responsibility under this section, in the absence of which all disposal operation shall immediately cease and the bond shall remain in effect as long as any obligation of the owner remains for long-term care.

4. If the surety company becomes bankrupt or insolvent or if its authorization to do business is revoked or suspended, the owner shall, within 30 days after receiving written notice, deliver to the department a replacement bond or other proof of financial responsibility under this section in the absence of which all disposal operations shall immediately cease and the bond shall remain in effect as long as any obligation of the owner remains for long-term care.

(b) *Deposit with the department.* An owner may deposit cash, certificates of deposit, or U.S. government securities with the department, the amount of the deposit shall be determined according to sub. (5) (a) and shall be submitted as part of the initial license application. Cash deposits placed with the department shall be segregated and invested in an interest bearing account. All interest payments shall be accumulated in the account. The department shall have the right to use part or all of the funds to carry out the long-term care requirements of the approved plan of operation if the owner fails to do so. The department shall mail notification of its intent to use funds for that purpose to the last known address of the owner. If the owner submits a written request for a hearing to the secretary of the department within 20 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing for the purpose of determining whether or not the long-term care requirements of the approved plan of operation have been carried out.

(c) *Escrow account.* If the owner establishes an escrow account, it shall be with a bank or a financial institution located within the state of Wisconsin which is examined and regulated by the state or a federal agency in the amount determined according to sub. (5) (a). The assets in the escrow account shall consist of cash, certificates of deposit, or U.S. government securities. All interest payments shall be accumulated in the account. A duplicate original of the escrow agreement with original signatures shall be submitted to the department as part of the initial operating license application. Escrow account forms shall be supplied by the department. The department shall be a party to the escrow agreement, which shall provide that there shall be no withdrawals from the escrow account except as authorized in writing by the department. The escrow agreement shall further provide that the department shall have the right to withdraw and use part or all of the funds in the escrow account to carry out the long-term care requirements of the approved plan of operation if the owner fails to do so. The department shall mail notification of its intent to use funds for that purpose to the last known address of the owner. If the owner submits a written request for a hearing to the secretary of the department within 20 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing for the purpose of determining whether or not the long-term care requirements of the approved plan of operation have been carried out.

(d) *Irrevocable trust.* If the owner creates an irrevocable trust, it shall be exclusively for the purpose of ensuring that the owner or any successor in interest will comply with the long-term care requirements of the approved plan of operation. The trust agreement shall designate the department as sole beneficiary. The trustee shall be a bank or other financial institution located within the state of Wisconsin which has the authority to act as a trustee and whose trust operations are regulated and examined by the state or a federal agency. The trust corpus shall consist of cash, certificates of deposit or U.S. government securities in the amount determined according to sub. (5) (a). All interest payments shall be accumulated in the account. A duplicate original of the trust agreement with original signatures shall be submitted to the department for approval as part of the initial operating license application. Trust forms shall be supplied by the department. The trust agreement shall provide that there shall be no withdrawal from the trust fund except as authorized in writing by the department. The trust agreement shall further provide that sufficient monies shall be paid from the trust fund to the beneficiary in the event that the owner or any successor in interest fails to complete the long-term care requirements of the approved plan of operation. The department shall mail notification of its intent to use funds for that purpose to the last known address of the owner. If the owner submits a written request for a hearing to the secretary of the department within 20 days after the mailing of the notification, the department shall, prior to using the funds, hold a hearing for the purpose of determining whether or not the long-term care requirements of the approved plan of operation have been carried out.

(e) *Letter of credit.* 1. If the owner chooses to submit a letter of credit, it shall be in the amount determined according to sub. (5) (b) conditioned upon faithful performance by the owner and any successor in interest, of all long-term care requirements of the approved plan of operation. The original letter of credit shall be delivered to the department as part of the initial operating license application. Letter of credit forms shall be supplied by the department.

2. Letters of credit shall be issued by a bank or financial institution which is examined and regulated by a federal agency, or in the case of a bank or financial institution located within the state of Wisconsin, which is examined and regulated by the state or a federal agency. The department shall be the beneficiary of the letter of credit.

3. Each letter of credit shall provide that as long as any obligation of the owner for long-term care remains, the letter of credit may not be cancelled by the bank or financial institution, unless a replacement letter of credit or other proof of financial responsibility under this section is provided to the department by the owner. If the bank or financial institution proposes to cancel a letter of credit, the bank or financial institution shall provide notice to the department in writing by registered or certified mail not less than 90 days prior to the proposed cancellation date. Not less than 30 days prior to the expiration date of the 90-day notice period, the owner shall deliver to the department a replacement letter of credit or other proof of financial responsibility under this section, in the absence of which all disposal operations shall immediately cease and the letter of credit shall remain in effect as long as any obligation of the owner remains for closure or long-term care.

4. If the bank or financial institution becomes bankrupt or insolvent or if its authorization to do business is revoked or suspended, the owner shall, within 30 days after receiving written notice, deliver to the department a replacement letter of credit or other proof of financial responsibility under this section, in the absence of which all disposal operations shall immediately cease and the letter of credit shall remain in effect as long as any obligation of the owner remains for closure or long-term care.

5. The letter of credit shall further provide that the department shall have the right to withdraw and use part or all of the funds to carry out the long-term care requirements of the plan of operation if the owner fails to do so. The department shall mail notification of its intent to use the funds for that purpose to the last known address of the owner. If the owner submits a written request for a hearing to the secretary of the department within 10 days after mailing of the notification, the department shall, prior to using the funds, hold a hearing for the purpose of determining whether or not the long-term care requirements of the approved plan of operation have been carried out.

(f) *Net worth test.* 1. Only a company that meets the definition in s. 144.443 (1) (b), Stats., may use the net worth method of providing proof of financial responsibility.

2. The owner shall comply with the net worth test requirements of s. 144.443 (4) and (6), Stats., and the minimum security requirements of s. 144.443 (8), Stats., whichever is applicable.

3. Companies using the net worth test to provide proof of financial responsibility for more than one facility shall use the total cost of compliance for all facilities in determining the net worth to closure and long-term care cost ratio.

4. The department determinations under the net worth test shall be done in accordance with s. 144.443 (5), Stats.

(g) *Insurance.* 1. If the owner chooses to submit an insurance policy for long-term care, it shall be issued for the maximum risk limit determined according to sub. (5) (c). A certificate of insurance shall be delivered to the department as part of the initial operating license application. Certificate of insurance forms shall be supplied by the department.

2. At a minimum, the agent or broker shall be licensed as a surplus lines insurance agent or broker. The department shall determine the acceptability of a surplus lines insurance company to provide coverage for proof of financial responsibility. The department shall base this determination on any evaluations prepared in accordance with s. 618.41 (6) (d), Stats., by the office of the commissioner of insurance. The department shall be the beneficiary of the insurance policy.

3. The insurance policy shall provide that, as long as any obligation of the owner for long-term care remains, the insurance policy may not be cancelled by the insurer unless a replacement insurance policy or other proof of financial responsibility under this section is provided to the department by the owner. If the insurer proposes to cancel an insurance policy, the insurer shall provide notice to the department in writing by registered or certified mail not less than 90 days prior to the proposed cancellation date. Not less than 30 days prior to the expiration of the 90-day notice period, the owner shall deliver to the department a replacement insurance policy or other proof of financial responsibility under this

section, in the absence of which all disposal operations shall immediately cease and the policy shall remain in effect as long as any obligation of the owner remains for long-term care.

4. If the insurance company becomes bankrupt or insolvent or if the company receives an unfavorable evaluation under s. 618.41 (6) (d), Stats., the owner shall, within 30 days after receiving written notice, deliver to the department a replacement insurance policy or other proof of financial responsibility under this section in the absence of which all disposal operations shall immediately cease and the policy shall remain in effect as long as any obligation of the owner remains for long-term care.

5. The insurance policy shall further provide that funds, up to an amount equal to the maximum risk limit of the policy, will be available to the department to carry out the long-term care requirements of the approved plan of operation if the owner fails to do so. The department shall mail notification of its intent to use the funds for that purpose to the last known address of the owner. If the insurer or owner submits a written request for a hearing to the secretary of the department within 20 days after the mailing of the notification, the department shall, prior to using funds, hold a hearing for the purpose of determining whether or not the long-term care requirements of the approved plan of operation have been carried out.

6. Each insurance policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditioned upon the consent of the insurer, provided such consent is not unreasonably refused.

Note: These forms may be obtained from the Department of Natural Resources, Bureau of Solid Waste Management, P. O. Box 7921, Madison, Wisconsin 53707 or any District Office.

h. *Other methods.* The department shall consider other financial commitments made payable to or established for the benefit of the department to ensure the owner or operator will comply with the long-term care requirements of the approved plan of operation. The department shall review the request of any owner or operator to establish proof of financial responsibility to determine whether the proposed method provides a degree of assurance that is comparable to that provided by the methods listed in this section. The owner shall submit the request and all supporting information as part of the plan of operation.

(4) **COST ESTIMATES.** (a) For the purpose of determining the amount of proof of financial responsibility that is required in sub. (3), the owner shall estimate the annual cost of long-term care of the facility for the period of owner responsibility and submit the estimated long-term care costs together with all necessary justification to the department for approval as part of the plan of operation submittal. The costs shall be based on a third party performing the work and reported on a per unit basis. The source of estimates shall be indicated.

(b) At a minimum, long-term care costs shall include land surface care, gas monitoring; leachate pumping, transportation, monitoring and treatment; and groundwater monitoring, collection and analysis.

(c) The estimated rate of inflation shall be the latest percent change in the annual gross national product implicit price deflator published in the Register, May, 1984, No. 341

survey of current business by the bureau of economic analysis, U.S. department of commerce.

(d) The estimated annual rate of interest shall be the rate specified by the financial institution managing the fund or deposit.

(5) **FORMULAS FOR CALCULATING THE AMOUNT OF THE PROOF OF FINANCIAL RESPONSIBILITY.** The owner shall, as part of the plan of operation submittal perform the calculation of the formula for the chosen method of providing proof of financial responsibility for long-term care. (a) *Deposits in escrow, trust or department accounts.*

1. Interest bearing accounts for long-term care. a. The following information used in calculating the amounts deposited to the long-term care account shall be specified in the plan of operation submittal: the rate of outpayment during the period of long-term care, expressed in equal annual outpayments or unequal annual outpayments, and the equal annual rate of inpayment, expressed as either real dollar inpayments or actual dollar inpayments.

b. When equal annual outpayments, actual dollar inpayments and a closure period are used, the formula shall be expressed as:

$$A = \left[R (1 + f)^{SL} \left(\frac{1 + f}{1 + i} \right)^c \left[\frac{1 - \left(\frac{1 + f}{1 + i} \right)^{LTC}}{\left(\frac{1 + i}{1 + f} \right) - 1} \right] \right] \div \left[(1 + i) \left[\frac{(1 + i)^{SL} - 1}{i} \right] \right]$$

c. When equal annual outpayments, actual dollar inpayments and no closure period are used, the formula shall be expressed as:

$$A = \left[R (1 + f)^{SL} \left[\frac{1 - \left(\frac{1 + f}{1 + i} \right)^{LTC}}{\left(\frac{1 + i}{1 + f} \right) - 1} \right] \right] \div \left[(1 + i) \left[\frac{(1 + i)^{SL} - 1}{i} \right] \right]$$

d. When unequal annual outpayments, actual dollar inpayments and a closure period are used, the formula shall be expressed as:

$$A = \left[\sum_x \left[R_x (1 + f)^{SL} \left(\frac{1 + f}{1 + i} \right)^{x + c} \right] \right] \div \left[(1 + i) \left[\frac{(1 + i)^{SL} - 1}{i} \right] \right]$$

e. When unequal annual outpayments, actual dollar inpayments and no closure period are used, the formula shall be expressed as:

$$A = \left[\sum_x \left[R_x (1+f)^{SL} \left(\frac{1+f}{1+i} \right)^x \right] \right] \div \left[(1+i) \left[\frac{(1+i)^{SL} - 1}{i} \right] \right]$$

f. When equal annual outpayments, real dollar inpayments and a closure period are used, the formula shall be expressed as:

$$A = \left[R (1+f)^{SL} \left(\frac{1+f}{1+i} \right)^c \left[\frac{1 - \left(\frac{1+f}{1+i} \right)^{LTC}}{\left(\frac{1+i}{1+f} \right) - 1} \right] \right] \div \left[(1+i)^{SL+1} \left[\frac{1 - \left(\frac{1+f}{1+i} \right)^{SL}}{1-f} \right] \right]$$

g. When equal annual outpayments, real dollar inpayments and no closure period are used, the formula shall be expressed as:

$$A = \left[R (1+f)^{SL} \left[\frac{1 - \left(\frac{1+f}{1+i} \right)^{LTC}}{\left(\frac{1+i}{1+f} \right) - 1} \right] \right] \div \left[(1+i)^{SL+1} \left[\frac{1 - \left(\frac{1+f}{1+i} \right)^{SL}}{1-f} \right] \right]$$

h. When unequal annual outpayments, real dollar inpayments and a closure period are used, the formula shall be expressed as:

$$A = \left[\sum_x \left[R_x (1+f)^{SL} \left(\frac{1+f}{1+i} \right)^{x+c} \right] \right] \div \left[(1+i)^{SL+1} \left[\frac{1 - \left(\frac{1+f}{1+i} \right)^{SL}}{1-f} \right] \right]$$

i. When unequal annual outpayments, real dollar inpayments and no closure period are used, the formula shall be expressed as:

$$A = \left[\sum_x \left[R_x (1+f)^{SL} \left(\frac{1+f}{1+i} \right)^x \right] \right] \div \left[(1+i)^{SL+1} \left[\frac{1 - \left(\frac{1+f}{1+i} \right)^{SL}}{1-f} \right] \right]$$

in which:

A = the unknown inpayment for long-term care per year of active facility life

i = the estimated annual rate of interest

f = the estimated annual rate of inflation

SL = the estimated active life of the facility in years

R = the estimated annual costs

R_x = the estimated unequal annual costs

x = the year of long-term care

LTC = the period of long-term care

c = the closure period as a fraction of one year

Σ = the sum from year 1 through the last year of LTC

(b) *Bonds and letters of credit.* 1. Non-interest bearing accounts for long-term care. The rate of outpayment shall be as specified in sub. (5) (a), and the rate of inpayment shall be in equal actual dollar inpayments.

2. When equal annual outpayments are used, the formula shall be:

$$PB = \left[R (1 + f)^{SL + 1 + c} \left[\frac{(1 + f)^{LTC} - 1}{f} \right] \right] \div SL$$

When unequal annual outpayments are used, the formula shall be:

$$PB = \left[\sum \left[R_x (1 + f)^{SL + x + c} \right] \right] \div SL$$

in which:

PB = the unknown bond or letter of credit amount for long-term care to increase per year of active facility life.

f = the estimated annual rate of inflation

SL = the estimated active life of the facility in years

R = the estimated annual costs

R_x = the estimated unequal annual costs

LTC = the long-term care period

x = the year of long-term care

c = the closure period as a fraction of one year

Σ = the sum from year 1 through the last year of LTC

(c) *Insurance. 1. Long-term care. a.* The rate of outpayment shall be as specified in sub. (5) (a) 1.

When equal annual outpayments are used, the formula shall be:

$$INS = \left[R (1 + f)^{SL+1+c} \left[\frac{(1 + f)^{LTC-1}}{f} \right] \right]$$

When unequal annual outpayments are used, the formula shall be:

$$INS = \left[\Sigma \left[R_x (1 + f)^{SL+x+c} \right] \right]$$

in which:

INS = the unknown amount of the long-term care insurance

f = the estimated annual rate of inflation

SL = the estimated active life of the facility in years

R = the estimated annual costs

R_x = the estimated unequal annual costs

LTC = the long-term care period

x = the year of long-term care

c = the closure period as a fraction of a year

Σ = the sum of year 1 through the last year of LTC

(6) **CHANGING METHODS OF PROOF OF FINANCIAL RESPONSIBILITY.** The owner of an approved mining waste facility may change from one method of providing proof of financial responsibility under sub. (3) to another, but not more than once per year. A change may only be made on the anniversary of the submittal of the original method of providing proof of financial responsibility.

(7) **ADJUSTMENT OF FINANCIAL RESPONSIBILITY.** The owner of a facility for the land disposal of mining waste shall prepare a new long-term care cost estimate whenever a substantial change in the long-term care requirements in the approved plan of operation affects the cost of long-term care. Proof of the increase in the amount of all bonds, letters of credit, escrow accounts and trust accounts, or other approved methods established under this section shall be submitted annually to the department. The department may adjust the amount of the required proof of financial responsibility for long-term care based upon prevailing or projected interest and inflation rates and the latest cost estimates, and may annually require the owner to adjust the amount of proof of financial responsibility accordingly.

(8) **ACCESS AND DEFAULT.** Whenever on the basis of any reliable information, and after opportunity for a hearing, the department determines that an owner or operator of an approved mining waste facility is in violation of any of the requirements for long-term care specified in the approved plan of operation, the department and its designees shall have the right to enter upon the facility and carry out the long-term care requirements. The department may use part or all of the money deposited with it, or the money deposited in escrow or trust accounts, or performance or forfeiture bonds, or letters of credit, or funds accumulated under other approved methods to carry out the long-term care requirements.

(9) **AUTHORIZATION TO RELEASE FUNDS.** One year after closure, and annually thereafter for the period of owner responsibility, the owner, who has carried out all necessary long-term care during the preceding year, may make application to the department for reimbursement from an escrow account, trust account, or deposit with the department, or other approved methods, or for reduction of the bond, insurance or letter of credit equal to the estimated costs for long-term care for that year. The application shall be accompanied by an itemized list of costs incurred. Upon determination that the expenditures incurred are in accordance with the long-term care requirements anticipated in the approved plan of operation, the department may authorize in writing the release of funds or approve a reduction in the bond or letter of credit. Prior to authorizing a release of the funds or a reduction of the bond or letter of credit, the department shall determine that adequate funds exist to complete required long-term care work for the remaining period of owner responsibility. Determinations shall be made within 90 days of the application. Any funds remaining in an escrow account, trust account, or on deposit with the department at the termination of the period of owner responsibility shall be released to the owner.

(10) **EARLY TERMINATION.** (a) The owner of an approved mining waste facility may apply to the department for termination of its responsibility for long-term care at any time after the facility has been closed for at least 10 years. Within 30 days of the receipt of such application in writing, the department shall, using the procedures set forth in par. (b), provide notice to the public and to the owner and an opportunity for a hearing on the termination of its responsibility. 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.

(b) The department shall publish a class 1 notice under ch. 985, Stats., in the official newspaper designated under s. 985.04 or 985.05, Stats., or, if none exists, in a newspaper likely to give notice in the area of the 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. (c). Notice shall also be given under s. 144.836 (3) (b) 1 and 2., Stats.

(c) Within 30 days after the notice required under par. (b) is published, a written demand for a hearing on the matter may be filed by any county, city, village, town, tribal government or by any 6 persons. The demand shall indicate the interest 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. 227.07, Stats. The hearing shall be held in an appropriate place designated by the department in one of the counties, cities, villages or towns which are substantially affected by the operation of the facility. Notice of the hearing shall be given under s. 144.836 (3) (b) 1. and 2., Stats., except the hearing may be scheduled upon 30 days notice.

(d) 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 facility is no longer required, in which case the applicant shall be relieved of such responsibility; or that additional long-term care of the facility as specified in the plan of operation is still required, in which case further application under this subsection may not be permitted until at least 5 years have elapsed since the previous application.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82; am. Register, May, 1984, No. 314, eff. 5-1-84.

NR 182.18 Waste management fund. (1) APPLICABILITY. (a) All owners or operators of licensed mining waste disposal facilities shall pay to the department a tonnage fee, for each ton of waste received and disposed of at the facility, or a minimum waste management fund base fee of \$100, whichever is greater, until the facility no longer receives waste and begins closure activities, except as otherwise provided in s. 144.441 (3) (b) or (c), Stats. The department shall deposit all tonnage and waste management base fees into the waste management fund provided for in s. 25.45, Stats.

(b) For all mining waste facilities with a plan of operation approved under s. 144.44 (3), Stats., after May 20, 1978, the owner shall be responsible for the long-term care of the facility for 30 years after facility closure. The fees to be paid by the owner or operator into the waste management fund shall be in accordance with sub. (3) (a) or (b), whichever fee is greater.

(c) For all mining waste facilities not approved as set forth in par. (b), the fees to be paid by the owner or operator into the waste management fund shall be those indicated in sub. (3) (a) or (b), whichever fee is greater. The owner or operator of a mining waste facility in existence on May 21, 1978 may, but will not be required to, seek approval of the facility's plan of operation under s. 144.44 (3) (ar), Stats.

(d) For those companies which have provided proof of financial responsibility by the net worth method under s. 144.443 (4) and (8), Stats., the fees to be paid by the owner or operator into the waste management fund shall be in accordance with sub. (3) (c), if applicable, or sub. (3) (b), whichever fee is greater.

(2) CERTIFICATION. The owner or operator of a licensed mining waste site facility shall certify, on a form provided by the department, the amount of waste received and disposed of during the preceding reporting period. The department shall specify the term of the reporting period on the certification form. The department shall mail the certification form to the owner or operator every January. The certification form shall be completed and returned to the department with the appropriate fee within 45 days after mailing of the form by the department to the owner or operator. An owner or operator failing to submit the waste manage-

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ment certification form and appropriate fees within 45 days after mailing of the form to the owner or operator shall pay a late processing fee of \$50.

(3) FEES. (a) The mining waste tonnage fees established in s. 144.441 (4), Stats., are summarized in table 2.

TABLE 2
WASTE MANAGEMENT FUND
TONNAGE FEES

Waste Type	Fee
1. Hazardous tailing solids	1.5¢/ton
2. Nonhazardous tailings solids or nonacid producing taconite tailings solids	0.2¢/ton
3. Hazardous sludge	1.0¢/ton
4. Nonhazardous sludge	0.5¢/ton
5. Hazardous waste rock	0.3¢/ton
6. Nonhazardous waste rock or nonacid producing taconite waste rock	0.1¢/ton
7. Any prospecting or mining waste not specified in categories 1 to 6 above	0.5¢/ton

(b) As provided in s. 144.441 (5), Stats., the owner or operator shall pay to the department a waste management fund base fee of \$100 for each calendar year.

(c) The facilities described in sub. (1) (d) shall increase the tonnage fees in par. (a) by 25%.

(4) USE OF FUND. Only an approved mining waste facility as defined in s. 144.441 (2) (a) 2., Stats., is eligible for use of the money accumulated in the waste management fund. The monies in the waste management fund shall be expended exclusively as set forth in s. 144.441 (6), Stats.

(5) DETERMINATION OF WASTE TONNAGES. (a) *Determination by owner or operator.* The owner or operator shall, subject to department approval, use one of the following methods for determining the number of tons of waste received and disposed of at the mining waste facility.

1. The owner or operator may use actual weight or volume records as recorded under s. NR 182.14 (1) (b) 1.b.

2. The owner or operator may establish by field measurement the volume of waste disposed and convert to a weight using an assumed compaction density.

(b) *Department estimates.* The department may estimate by waste category the number of tons received at a mining waste facility. The department's estimate shall appear on the certification form and shall be based on the number of tons received and reported on for the previous reporting period.

(6) WASTE MANAGEMENT FUND EXPENDITURES. (a) *Payments for long-term care after termination of owner responsibility.* The department shall determine the necessary maintenance requirements for the long-term care of an approved mining waste facility after the termination of the owner's responsibility. The department shall comply with s. 16.75, Stats., when applicable, for contracting services for the required long-term care maintenance of mining waste facilities.

(b) *Payments of related costs.* The department shall comply with s. 144.441 (6) (f), Stats., prior to making any expenditures from the waste management fund under s. 144.441 (6) (e), Stats.

(c) *Other payments.* The department may expend monies from the waste management fund in accordance with s. 144.441 (6) (g) to (i), Stats.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82; am. Register, May, 1984, No. 341, eff. 5-1-84.

NR 182.19 Exemptions and modifications. (1) The department may grant exemptions from the requirements of this chapter and modifications to any license, plan of operation, or other authority issued under this chapter as provided in s. 144.44 (3) (c) and (7), Stats., if such exemptions or modifications are consistent with the purposes of this chapter and ch. NR 182 and will not violate any applicable federal or state law or regulation.

(2) All requests for exemptions by the applicant shall be made at least 90 days before the hearing under s. 144.836, Stats., unless the condition which is the basis for the requested exemption is unknown to the applicant prior to that time or for good cause shown. If an applicant applies for an exemption less than 90 days before the hearing under s. 144.836, Stats., the portion of the hearing concerning that exemption request shall be held no earlier than 90 days after receipt of the application for the exemption. Requests for exemptions may be made by any party to the s. 144.836, Stats., hearing other than the applicant up to 30 days before the hearing. Any request for exemption made prior to the hearing under s. 144.836, Stats., shall be determined as part of that proceeding.

(3) The burden of proof for seeking an exemption or modification is upon the person seeking it.

(4) Any party to the hearing under s. 144.836, Stats., may request modifications and exemptions to make more stringent any provision of this chapter.

(5) Any application for a modification made after the hearing under s. 144.836, Stats., shall be determined by the following procedure:

(a) The application shall be in writing and shall include documentation justifying the need for the exemption or modification describing the alternatives and explaining why the exemption or modification was not sought before the s. 144.836, Stats., hearing.

(b) If the application involves an exemption or a modification from a requirement of this chapter, within 10 days of the application, the department shall publish a class 1 notice under ch. 985, Stats., in the official newspaper designated under s. 985.04 or 985.05, Stats., or, if none exists, in a newspaper likely to give notice in the area of the proposed exemption or modification. The notice shall invite the submission of written comments by any person within 10 days from the time the notice is published, and shall describe the method by which a hearing may be demanded. Notice shall also be given by mail as provided in s. 144.836 (3) (b) 1., Stats. Within 30 days after the notice is published, a written demand for a hearing on the matter may be filed by any county, city, village, town, tribal government or by any 6 persons. The demand shall indicate the interest of the municipality or persons who file it and state

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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 a class 1 proceeding under s. 227.07, Stats. The hearing shall be held in an appropriate place designated by the department in one of the counties, cities, villages or towns which are substantially affected by the operation of the facility. Within 45 days after giving notice, or within 30 days after any hearing is adjourned, whichever is later, the department shall determine whether the modification or exemption as requested shall be granted.

(c) If the application does not involve an exemption or a modification from a requirement of this chapter, the department shall issue a decision on the application within 45 days of the receipt of the application.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.