

## CHAPTER 144

## WATER, ICE, SEWAGE AND REFUSE

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**144.01 Definitions.** The following terms as used in this chapter mean:

(1) "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface or ground water, natural or artificial, public or private, within the state or its jurisdiction.

(2) "Sewage," the water carried wastes created in and to be conducted away from residences, industrial establishments, and public buildings as defined in s. 101.01 (2), with such surface or ground water as may be present.

(3) "Waterworks," or "water system," all structures, conduits and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings served, and service pipes from building to street main.

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

(5) "Sewerage system," all structures, conduits and pipe lines by which sewage is collected and disposed of, except plumbing inside and in connection with buildings served, and service pipes from building to street main.

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

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

(8) "Owner," the state, county, town, town sanitary district, city, village, metropolitan sewerage district, corporation, firm, company, institution or individual owning or operating any water supply, sewerage or water system or sewage and refuse disposal plant.

(9) "Industrial wastes" include liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.

(10) "Other wastes" include all other substances, except industrial wastes and sewage, as the latter term is defined in s. 144.01, which pollute any of the surface waters of the state. The term also includes "unnecessary siltation" resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.

(11) "Pollution" includes contaminating or rendering unclean or impure the waters of the state, or making the same injurious to public health, harmful for commercial or recreational

use, or deleterious to fish, bird, animal or plant life.

(12) "Municipality", any city, town, village, county, county utility district, town sanitary district or metropolitan sewage district.

(13) "Nonprofit-sharing corporation", a non-stock corporation organized under ch. 181 or corresponding prior general corporation laws.

(14) "Department", the department of natural resources.

(15) "Secretary", the secretary of natural resources.

**History:** 1971 c. 185 s. 7.

**144.02 Sanitary survey.** (1) The department is authorized to act with the U.S. geological survey in determining the sanitary and other conditions and nature of the natural water supplies of the state of Wisconsin, such water survey to have for its objects:

(a) To determine the nature and condition of the unpolluted natural water supplies of the state.

(b) To determine to what extent the natural waters are being contaminated by sewage from cities.

(c) To determine to what extent the natural waters are being polluted by industrial wastes, and in what way these wastes might be utilized for beneficial purposes.

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

(2) The department is hereby empowered and instructed to make the necessary rules and regulations, in conjunction with the U.S. geological department, to carry this section into effect.

**History:** 1971 c. 164.

**144.023 Financial interest prohibited.**

The secretary and any other person in a position of administrative responsibility in the department may not have a financial interest in any enterprise which might profit by weak or preferential administration or enforcement of the powers and duties of the department.

**144.025 Department of natural resources—water resources.** (1) STATEMENT

OF POLICY AND PURPOSE The department of natural resources shall serve as the central unit of state government to protect, maintain and improve the quality and management of the waters of the state, ground and surface, public and private. Continued pollution of the waters of the state has aroused widespread public concern. It endangers public health and threatens the general welfare. A comprehensive action program directed at all present and potential sources of

water pollution whether home, farm, recreational, municipal, industrial or commercial is needed to protect human life and health, fish and aquatic life, scenic and ecological values and domestic, municipal, recreational, industrial, agricultural and other uses of water. The purpose of this act is to grant necessary powers and to organize a comprehensive program under a single state agency for the enhancement of the quality management and protection of all waters of the state, ground and surface, public and private. To the end that these vital purposes may be accomplished, this act and all rules and orders promulgated pursuant thereto shall be liberally construed in favor of the policy objectives set forth in this act. In order to achieve the policy objectives of this act, it is the express policy of the state to mobilize governmental effort and resources at all levels, state, federal and local, allocating such effort and resources to accomplish the greatest result for the people of the state as a whole. Because of the importance of Lakes Superior and Michigan and Green Bay as vast water resource reservoirs, water quality standards for those rivers emptying into Lakes Superior and Michigan and Green Bay shall be as high as is practicable.

(2) POWERS AND DUTIES. (a) The department shall have general supervision and control over the waters of the state. It shall formulate no later than July 1, 1968, a long-range, comprehensive state water resources plan for each region, as fixed by the department under sub. (4), to guide the development, management and protection of water resources. Such plan shall thereafter be carried out by the department. Such plan shall be reviewed and projected by the department every 2 years and a report thereon submitted to the governor by September 1 of each odd-numbered year. The department also shall formulate plans and programs for the prevention and abatement of water pollution and for the maintenance and improvement of water quality.

(b) The department shall adopt rules setting standards of water quality to be applicable to the waters of the state, recognizing that different standards may be required for different waters or portions thereof. Such standards of quality shall be such as to protect the public interest, which include the protection of the public health and welfare and the present and prospective future use of such waters for public and private water supplies, propagation of fish and aquatic life and wildlife, domestic and recreational purposes and agricultural, commercial, industrial and other legitimate uses. In all cases where the potential uses of water are in conflict, water

quality standards shall be interpreted to protect the general public interest.

(c) The department may issue general orders, and adopt rules applicable throughout the state for the construction, installation, use and operation of practicable and available systems, methods and means for preventing and abating pollution of the waters of the state. Such general orders and rules shall be issued only after an opportunity to be heard thereon has been afforded to interested parties.

(d) 1. The department may issue special orders directing particular owners to secure such operating results toward the control of pollution of the waters of the state as the department prescribes, within a specified time. Pending efforts to comply with any order, the department may permit continuance of operations on such conditions as it prescribes. If any owner cannot comply with an order within the time specified, he may, before the date set in the order, petition the department to modify the order. The department may modify the order, specifying in writing the reasons therefor. If any order is not complied with within the time period specified, the department shall immediately notify the attorney general of this fact. Within 30 days thereafter, the attorney general shall forthwith commence an action under s. 144.536.

2. The department may issue temporary emergency orders without prior hearing when the department determines that the protection of the public health necessitates such immediate action. Such emergency orders shall take effect at such time as the department determines. As soon as is practicable, the department shall hold a public hearing after which it may modify or rescind the temporary emergency order or issue a special order under subd. 1.

(e) No wells shall be constructed, installed or operated to withdraw water from underground sources for any purpose where the capacity and rate of withdrawal of all wells on one property is in excess of 100,000 gallons a day without first obtaining the approval of the department. If the department finds that the proposed withdrawal will adversely affect or reduce the availability of water to any public utility in furnishing water to or for the public it shall either withhold its approval or grant a limited approval under which it imposes such conditions as to location, depth, pumping capacity, rate of flow and ultimate use so that the water supply of any public utility engaged in furnishing water to or for the public will not be impaired. The department may issue such general or special orders as it deems necessary to insure prompt and effective administration of this paragraph.

(f) The department shall make investigations and inspections to insure compliance with any general or special order or rule which it issues. In the exercise of this power the department may require the submission and approval of plans for the installation of systems and devices for handling, treating or disposing of any wastes.

(g) The department may conduct scientific experiments, investigations, waste treatment demonstrations and research on any matter under its jurisdiction. It may establish pilot plants, prototypes and facilities in connection therewith and lease or purchase land or equipment.

(h) The department, upon request, and without charge for service or expense, shall consult with and advise owners having installed or about to install systems or plants, as to the most appropriate water supply and the best method of providing for its purity, or as to the best method of disposing of sewage or refuse, with reference to the existing and future needs of all communities or persons which may be affected thereby. The department shall not be required to prepare plans.

(i) The department shall supervise chemical treatment of waters for the suppression of algae, aquatic weeds, swimmers' itch and other nuisance-producing plants and organisms. It may purchase equipment and may make a charge for the use of the same and for materials furnished, together with a per diem charge for any services performed in such work. The charge shall be sufficient to reimburse the department for the use of the equipment, the actual cost of materials furnished, and the actual cost of the services rendered plus 10% for overhead and development work.

(j) The department may enter into agreements with the responsible authorities of other states, subject to approval by the governor, relative to methods, means and measures to be employed to control pollution of any interstate streams and other waters and to carry out such agreement by appropriate general and special orders. This power shall not be deemed to extend to the modification of any agreement with any other state concluded by direct legislative act, but, unless otherwise expressly provided, the department shall be the agency for the enforcement of any such legislative agreement.

(k) The department may order or cause the abatement of any nuisance affecting the waters of the state under ss. 146.13 and 146.14.

(l) The department shall by rule establish an examining program for the certification of waterworks and sewage treatment plant operators, setting such standards as the department finds necessary to accomplish the purposes of this

chapter, and may charge applicants for such certificates for the cost of examination. After January 1, 1969, no person shall operate a waterworks or sewage treatment plant unless he holds a valid certificate issued under this paragraph.

(m) Orders issued by the department shall be signed by the person designated by the board.

(n) The department may accept gifts and grants from any private or public source for any purpose under its jurisdiction and may expend or use such gifts and grants for the purposes for which received.

(p) Beginning January 1, 1967, any provision of the state plumbing code which sets specifications for septic tanks and their installation shall be void unless it has been approved by the department.

(q) The department may prohibit the installation or use of septic tanks in any area of the state where the department finds that the use of septic tanks would impair water quality. The department shall prescribe alternate methods for waste treatment and disposal in such prohibited areas.

(r) If the department finds that a system or plant tends to create a nuisance or menace to health or comfort, it shall order the owner or the person in charge to secure such operating results as the department prescribes, within a specified time. If the order is not complied with, the department may order designated changes in operation, and if necessary, alterations or extension to the system or plant, or a new system or plant. If the department finds that the absence of a municipal system or plant tends to create a nuisance or menace to health or comfort, it may order the city, village, town or town sanitary district embracing the area where such conditions exist to prepare and file complete plans of a corrective system as provided by s. 144.04, and to construct such system within a specified time.

(s) In cases of noncompliance with any order issued under par. (d) or (r), the department may take the action directed by the order, and collect the costs thereof from the owner to whom the order was directed. The department shall have all the necessary powers needed to carry out this paragraph including powers granted municipalities under ss. 66.076 and 66.20 to 66.26. It shall also be eligible for financial assistance under s. 144.21.

(3) **WATER RESOURCES COUNCIL.** The water resources council shall advise the department on the setting of water quality standards and other state water problems.

(4) **REGIONS.** By January 1, 1967, the department shall divide the state into not more than 12 regions on the basis of criteria established by the department, taking into consideration such fac-

tors as river basins, watersheds, population density, economic factors, regional planning commissions and geographic, geologic and topographic features, and designate for each region a departmental employe as the regional director to administer the local work of the department in that region.

(5) **REGIONAL BOARDS.** (a) There shall be a regional water resources board for each region composed of the regional director, who shall serve as executive secretary; an employe of the department of health and social services serving in the region, appointed by and serving at the pleasure of the secretary of health and social services; an employe of the department of natural resources serving in the region, appointed by and serving at the pleasure of the secretary of natural resources; and 5 citizen members appointed by and serving at the pleasure of the governor. The executive director of the Minnesota-Wisconsin boundary area commission shall serve as a member for regions contiguous to the Minnesota boundary. The officers of the regional boards shall be selected from the citizen members.

(b) Each regional advisory board shall advise the department on regional water quality standards and other water problems of the region, act as liaison to the public, foster educational programs and aid in fostering the development of sanitary districts.

(c) Each regional advisory board shall meet at least semiannually and at the call of the chairman or a majority of its members.

(d) Regional advisory board members shall be reimbursed for their actual and necessary expenses by the department, but such reimbursement in the case of members who are not citizen members shall be by the employing agency.

(6) Personnel of all state agencies shall report any evidence of water pollution found by them to the department.

(7) The department shall study the feasibility of a system of effluent charges for the control of water pollution in this state and shall report thereon to the 1969 legislature at its convening.

**History:** 1971 c. 307.

Theories of water pollution litigation. Davis, 1971 WLR 738.

**144.03 Septic tank permits.** (1) Before any septic tank may be purchased or installed, the owner of the property on which the septic tank is to be installed shall obtain a permit for such installation from the county clerk, the county zoning administrator or other persons designated by the county board. The permit application shall state the owner's name and address, the location of the property on which the septic

tank is to be installed, the name of the installer and any state license held by him, the specifications of the septic tank and any other information required by the department of health and social services. Upon receipt of an application together with a fee of \$1, the county clerk or such other person shall issue a permit and shall forward the application and fee to the department of health and social services. If the department of health and social services receives the application within 10 days after the application is filed, it shall reimburse the county clerk or such other person 50 cents for issuing the permit. The department of health and social services shall prescribe and furnish application and permit forms, and may designate any person to issue permits, including sellers of septic tanks.

(2) No retailer may sell a septic tank for installation in this state unless the purchaser first displays a permit obtained under this section for that installation.

**History:** 1971 c 164 s 86.

**144.04 Approval of plans.** Every owner within the time prescribed by the department, shall file with the department a certified copy of complete plans of a proposed system or plant or extension thereof, in scope and detail satisfactory to the department, and, if required, of existing systems or plants, and such other information concerning maintenance, operation and other details as the department requires. Material changes with a statement of the reasons shall be likewise submitted. Before plans are drawn a statement concerning the improvement may be made to the department and the department shall, if requested, outline generally what it will require. Upon receipt of such plans for approval, the department or its duly authorized representative shall by return mail notify the owner of their acceptance. The notice shall include the date of receipt. Within 90 days from the time of their acceptance the department or its authorized representative shall examine and take action to approve, approve conditionally or reject the plans and shall state in writing any conditions of approval or reasons for rejection. Approval or disapproval of such plans and specifications shall not be contingent upon eligibility of such project for federal aid. The 90-day time period may be extended by agreement with the owner if the plans and specifications cannot be reviewed within the 90-day time limitation due to circumstances beyond the control of the department or in the case of extensive installation involving expenditures of \$350,000 or more. The extension shall not exceed 6 months. Failure of the department or its authorized representative to act within 90 days or during an

extension of such time period shall constitute an approval of the plans, and upon demand a written certificate of approval shall be issued. Approval may be subject to modification by the department upon due notice. Construction or material change shall be according to approved plans only.

**144.045 Garbage and refuse disposal.**

No person shall dispose of garbage or refuse in any area that is subject to inundation by periodic flooding and from which such garbage or refuse is likely to be washed by flood waters into any surface waters of the state. The department shall order immediate discontinuance of disposal of refuse in a manner or at a site not in compliance with this section.

**144.05 Sewage drains; sewage discharge into certain lakes.**

(1) (a) When any city or village or owner has constructed or constructs a sewage system complying with s. 144.04, the outflow or effluent from such system may be discharged into any stream or drain constructed pursuant to law, but no such outflow of untreated sewage or effluent from a primary or secondary treatment plant from a city, village, town, town sanitary district or metropolitan sewage district in a county having a population of 240,000 or more, according to the latest U.S. bureau of census figures available including any special census of municipalities within the county, any part of which is located within a drainage basin which drains into a lake of more than 2 square miles and less than 16 square miles in area, shall be discharged directly into, or through any stream, or through any drain, into such a lake located within 18 miles of the system or plant of such city, village, town, town sanitary district or metropolitan sewage district. All necessary construction of plant, system or drains for full compliance with this subsection in the discharge of untreated sewage or sewage effluent from all existing primary or secondary plants shall be completed by September 1, 1970, and the plans for any new system or plant shall include provisions for compliance with this subsection. The department may at any time order and require any owner of an existing plant to prepare and file with it, within a prescribed time, preliminary or final plans or both, for proposed construction to comply with this subsection.

(b) Any municipality, which, on April 30, 1972, has an operating sewerage collection and treatment system and has an application for attachment to a metropolitan sewerage district pending in the county court, in such a county, any part of which is located within such a drain-

age basin and which is located within 10 miles of a metropolitan sewerage district on September 1, 1967, shall be added to the metropolitan sewerage district upon application of the governing body of the municipality as provided in s. 66.205 (1), 1969 stats., if such petitioning municipality pays its fair share of the cost of attachment as determined by mutual agreement or a court of competent jurisdiction.

(c) In lieu of the construction in compliance with the foregoing provision for diversion from such lakes, any owner of an existing plant, on or before September 1, 1967, or any owner of a new system or plant prior to construction of such new system or plant, may file with the department such plans for advanced treatment of effluent from primary or secondary treatment as in the judgment of the department will accomplish substantially the same results in eliminating nuisance conditions on such lake as would be accomplished by diversion of secondary sewage effluent from said lake (without at the same time creating other objectionable or damaging results), and such owner shall be exempt from the foregoing provisions of this subsection for diversion from such lakes upon approval of such plans and installation of advanced treatment facilities and procedures in compliance therewith, but nothing shall impair the authority of the department to require at any time preliminary or final plans, or both, for diversion construction.

(d) Any person violating this subsection or any order issued in furtherance of compliance therewith shall forfeit to the state not less than \$100 nor more than \$500 for each violation, failure or refusal. Each day of continued violation is deemed a separate offense. No such penalty shall be invoked during the time that any petition for review of an order is pending under s. 144.56 until final disposition thereof by the courts, if judicial review is sought under ch. 227.

(2) The city or village or the owner of land through which the drain is constructed may apply to the circuit court of the county in which the land is located to determine the damages, if any. No injunction against the use shall be granted until the damages are finally determined and payment refused. Unless within six months after the system is completed the owner of the land shall institute such proceedings he shall be barred. The proceedings shall be according to chapter 32 of the statutes, so far as applicable.

**History:** 1971 c. 164, 276

**144.06 House connections.** To assure preservation of public health, comfort and safety, any city or village or any town having a population of more than 7,500 having a system

of waterworks or sewerage, or both, may by ordinance require buildings used for human habitation and located adjacent to a sewer or water main, or in a block through which one or both of such systems extend, to be connected with either or both in the manner prescribed. If any person fails to comply for more than 10 days after notice in writing the municipality may impose a penalty or may cause connection to be made, and the expense thereof shall be assessed as a special tax against the property. Except in cities of the 1st class, the owner may, within 30 days after the completion of the work, file a written option with the city or village clerk stating that he cannot pay such amount in one sum and asking that it be levied in not to exceed 5 equal annual instalments, and the amount shall be so collected with interest at the rate of 6% per annum from the completion of the work, the unpaid balance to be a special tax lien.

**144.07 Joint sewerage systems.** (1) The department of natural resources may require the sewerage system, or sewage or refuse disposal plant of any governmental unit including any town, village or city, to be so planned and constructed that it may be connected with that of any other town, village or city, and may, after hearing, upon due notice to the governmental units order the proper connections to be made or a group of governmental units including cities, villages, town sanitary districts or town utility districts may construct and operate a joint sewerage system under this statute without being so required by order of the department of natural resources but following hearing and approval of the department.

(1m) An order by the department for the connection of unincorporated territory to a city or village system or plant under this section shall not become effective for 30 days following issuance. Within 30 days following issuance of the order, the governing body of a city or village subject to an order under this section may commence an annexation proceeding under s. 66.024 to annex the unincorporated territory subject to the order. If the result of the referendum under s. 66.024 (4) is in favor of annexation, the territory shall be annexed to the city or village for all purposes, and sewerage service shall be extended to the territory subject to the order. If an application for an annexation referendum is denied under s. 66.024 (2) or the referendum under s. 66.024 (4) is against the annexation, the order shall be void. If an annexation proceeding is not commenced within the 30-day period, the order shall become effective.

(2) When one governmental unit renders service to another under this section, reasonable compensation shall be paid. The officials in charge of the system, of the governmental unit furnishing the service shall determine the reasonable compensation and report to its clerk who shall, on or before August 1 of each year, certify a statement thereof to the clerk of the governmental unit receiving the service. This clerk shall extend the amount shown in such statement as a charge on the tax roll, in the manner following: a) where the service rendered is available to substantially all improved real estate in the member governmental unit receiving the same, the charges shall be placed upon the tax roll of such member governmental unit as a general tax; b) where the service rendered is for the benefit of public highways in, or real estate owned or operated by, the member governmental unit receiving the same, the charges therefor shall be placed upon the tax roll of such member governmental unit as a general tax; c) where the service rendered does not come under the provisions of a) or b), the charges therefor shall be placed upon the tax roll of such member governmental unit as a special tax upon each parcel of real estate benefited; and when collected it shall be paid to the treasurer of the member governmental unit rendering the service. Where the charges are to be extended on such tax roll under the provisions of c), the clerk of the member governmental unit furnishing such service shall itemize his statement showing separately the amount charged to each parcel of real estate benefited; if, due to delay in determination, such charge cannot be extended on the tax roll of any particular year, it shall be extended as soon as possible.

(3) If the governing body of any governmental unit deems the charge unreasonable, it may by resolution within 20 days after the filing of the report with its clerk:

(a) Submit to arbitration by 3 reputable and experienced engineers, one chosen by each governmental unit, and the 3rd by the other 2. If the engineers are unable to agree, the vote of 2 shall be the decision. They may affirm or modify the report, and shall submit their decision in writing to each governmental unit within 30 days of their appointment unless the time be extended by agreement of the governmental units. The decision shall be binding. Election to so arbitrate shall be a waiver of right to proceed by action. Two-thirds of the expense of arbitration shall be paid by the governmental unit requesting it, and the balance by the other.

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

(4) (a) Any 2 or more governmental units, including cities, villages, town sanitary districts or town utility districts not wishing to proceed under sub. (2) may jointly construct, operate and maintain a joint sewerage system, inclusive of the necessary intercepting sewers and sewerage treatment works. Such joint action by 2 governmental units shall be carried out by a sewerage commission consisting of one member appointed by each of the governing bodies of such governmental units and a 3rd member to be selected by the 2 members so appointed, or in lieu thereof said sewerage commission may consist of 2 members appointed by the governing body of each governmental unit and a 5th member to be selected by the 4 members so appointed or where more than 2 governmental units act to form the commission, the representation on the commission shall be in accordance with a resolution approved by the member governmental units.

(b) 1. Where such sewerage commission shall consist of 3 members, the members chosen by the 2 members first appointed shall serve for 2 years, while the members appointed by the governing bodies of the 2 governmental units shall serve for terms of 4 and 6 years, respectively, the length of term of each to be determined by lot. All subsequent appointments, except for unexpired terms, shall be for 6 years. All such members shall serve until their successors shall have been appointed and shall have qualified.

2. Where such sewerage commission shall consist of 5 members, the member chosen by the 4 members first appointed shall serve for one year, while the members appointed by the governing bodies of the 2 governmental units shall serve for terms of 2, 3, 4 and 5 years respectively, the length of terms of each to be determined by lot. All subsequent appointments, except for unexpired terms, shall be for 6 years. All such members shall serve until their successors shall have been appointed and shall have qualified.

3. Where such sewerage commission representation shall be formed by approval of a resolution, the resolution shall state the method of appointing commissioners and the term of office of each commissioner.

(c) The sewerage commissioners shall project, plan, construct and maintain in the district comprising the member governmental units intercepting and other main sewers for the collection and transmission of house, industrial and other sewage to a site or sites for disposal selected by

them, such sewers to be sufficient, in the judgment of the sewerage commissioners, to care for such sewage of the territory included in such district. The sewerage commissioners shall project, plan, construct and operate sewage disposal works at a site or sites selected by them which may be located within or outside of the territory included in the district. The sewerage commissioners may also project, plan, construct and maintain intercepting and other main sewers for the collection and disposal of storm water which shall be separate from the sanitary sewerage system. The sewerage commissioners may also project, plan, construct and operate solid waste disposal works at a site or sites selected by them which may be located within or outside of the territory included in the district or by contract with counties or municipalities which have solid waste disposal facilities. The sewerage commissioners may employ and fix compensation for engineers, assistants, clerks, employes and laborers, or do such other things as may be necessary for the due and proper execution of their duties. Such sewage disposal works may be used by the sewerage commissioners and by such governmental units for the disposal of garbage, refuse and rubbish.

(d) Such sewerage commission shall constitute a body corporate by the name of "(Insert name of governmental units or area) Sewerage Commission," by which in all proceedings it shall thereafter be known. It may purchase, take and hold real and personal property for its use and convey and dispose of the same. This grant of power shall be retroactive to September 13, 1935 for commissions formed prior to January 1, 1972. Except as provided in this subsection the sewerage commissioners shall have the power and proceed as a common council and board of public works in cities in carrying out the provisions of par. (c). All bond issues and appropriations made by said sewerage commission shall be subject to the approval of the governing bodies of the respective governmental units.

(e) Each such governmental unit shall pay for its proportionate share of such sewerage system, including additions thereto, and also its proportionate share of all operation and maintenance costs as may be determined by the sewerage commission. Each governmental unit may borrow money and issue revenue or general obligation bonds therefor, for the acquisition, construction, erection, enlargement and extension of a joint sewage disposal plant or refuse or rubbish or solid waste disposal plant or system or any combination of plants provided under this section, and to purchase a site or sites for the same. Each governmental unit may, if it so de-

sires, proceed under s. 66.076 in financing its portion of the cost of the construction, operation and maintenance of the joint sewage disposal plant or plants provided for in this section, or system.

(f) Any such governmental unit being aggrieved by the determination of the sewerage commission on matters within its jurisdiction may appeal to the circuit court of the county in which such aggrieved governmental unit is located as provided in sub. (3) (b).

History: 1971 c. 89, 276.

**144.09 Enforcement.** Records required by the department shall be kept by the owners and the department supplied with certified copies and such other information as it may require. Agents of the department may enter buildings, structures and premises of owners supplying the public or industrial plants with water, ice, sewerage systems, sewage or refuse disposal service and private properties to collect samples, records and information, and to ascertain if the rules and orders of the department are complied with. The department of justice shall assist in the enforcement of this chapter.

**144.10 Review of orders.** Any owner or other person in interest may secure a review by the department of natural resources of the necessity for and reasonableness of any order of the department in the manner provided by s. 144.56 and the determination of the department shall be subject to judicial review as provided by ch. 227.

**144.12 Limitation.** Nothing in this chapter shall be construed to affect the provisions of sections 196.01 to 196.79 or of chapter 31 of the statutes.

**144.14 Nondegradable detergents, sale prohibited.** On and after December 31, 1965, the sale and use of nondegradable detergents containing alkyl benzene sulfonate is prohibited in this state.

History: 1971 c. 40.

**144.21 Financial assistance program. (1)** The legislature finds that state financial assistance for the construction and financing of pollution prevention and abatement facilities is a public purpose and a proper state government function in that the state is trustee of the waters of the state and that such financial assistance is necessary to protect the purity of state waters.

(2) In order that the construction of pollution prevention and abatement facilities necessary to the protection of state waters be encouraged, a



state program of assistance to municipalities and school districts for the financing of such facilities is established and a program of state advances in anticipation of federal aid reimbursement is established to meet the state's water quality standards. These state programs shall be administered by the department of natural resources and the department shall make such rules as are necessary for the proper execution of the state program.

(2m) In this section "estimated reasonable costs" include the costs of preliminary planning to determine the economic and engineering feasibility of pollution prevention and abatement facilities, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary to the construction of pollution prevention and abatement facilities and the erection, building, acquisition, alteration, remodeling, improvement or extension of pollution prevention and abatement facilities and the inspection and supervision of the construction of pollution prevention and abatement facilities.

(3) (a) The department shall establish criteria to determine those municipalities and school districts and projects which are eligible for the state program and to determine appropriate priorities among the projects.

(c) All municipalities and school districts are eligible for agreements under sub. (6) (a) and (b) based on the criteria in this paragraph. The criteria shall consider the health hazards of existing conditions, the extent and nature of pollution, per capita costs of the project, property valuation of the municipalities or school districts as equalized by the state, income of the residents in the municipalities or school districts, the availability of federal funds for the project, soil conditions, the feasibility and practicality of the project, the borrowing capacity of the municipality or school district and any other factors which the department considers important. Municipalities or school districts commencing projects but not completed prior to January 18, 1970, shall be deemed eligible for agreements under sub. (6) (a) and (b). School district projects are not eligible if the project is located within the corporate limits of a city or of a village with an operating municipal sewage system.

(4) Municipalities or school districts which desire to participate in the state program shall submit application for participation to the department. The application shall be in such form and include such information as the department prescribes.

(5) The department shall review applications for participation in the state program. It shall determine those applications which meet the criteria it established under sub. (3), and shall arrange the applications in appropriate priority order.

(6) The department may enter into agreement with municipalities and school districts to provide state assistance for the financing of those pollution prevention and abatement facilities projects it approves under sub. (5).

(a) The department may enter into agreements with municipalities and school districts to make payments to them from the appropriation made by s. 20.370 (5) (c) to pay not less than 25% and not more than 30% of the estimated reasonable costs of the approved project. These payments shall be in even annual amounts and shall extend for a period of not less than 5 years and not more than 30 years. The department shall not enter into such additional agreements after July 1, 1969, but shall continue to make payments on existing agreements until the terms of the agreement are fully satisfied.

(b) The department may enter into agreements with municipalities and school districts to make payments to them from the appropriation made by s. 20.866 (2) (tm).

1. These payments shall not exceed 50% of the approved project in conjunction with the state program of advancement in anticipation of federal reimbursement under sub. (2). To provide for the financing of pollution prevention and abatement facilities, the natural resources board, with the approval of the governor, subject to the limits of s. 20.866 (2) (tm) may direct that state debt be contracted as set forth in subd. 2 and subject to the limits set therein. Said debts shall be contracted for in the manner and form as the legislature hereafter prescribes.

2. It is the intent of the legislature that state debt not to exceed \$144 million in the 10-year period from 1969 to 1979 may be incurred for state water pollution and abatement assistance.

(c) In addition to any agreements entered into under pars. (a) and (b), the department may enter into agreements with municipalities and school districts to make payments to them from the appropriation made by s. 20.370 (5) (fm) to provide direct financial assistance for smaller facilities, including but not limited to chlorination treatment and phosphate removal.

(e) The department shall review and approve the plans and specifications of all facilities designed and constructed by agreement under this section.

(11) This section shall be construed liberally in aid of the purposes declared in sub. (1).

History: 1971 c. 95.

**144.26 Navigable waters protection law.**

(1) To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience and general welfare, it is declared to be in the public interest to make studies, establish policies, make plans and authorize municipal shoreland zoning regulations for the efficient use, conservation, development and protection of this state's water resources. The regulations shall relate to lands under, abutting or lying close to navigable waters. The purposes of the regulations shall be to further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.

(2) In this section, unless the context clearly requires otherwise:

(a) "Subcommittee" means the water subcommittee of the natural resources council of state agencies.

(c) "Municipality" or "municipal" means a county, village or city.

(d) "Navigable water" or "navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state.

(e) "Regulation" refers to ordinances enacted under ss. 59.971 and 62.23 (7) and means shoreland subdivision and zoning regulations which include control of uses of lands under, abutting or lying close to navigable waters for the purposes specified in sub. (1), pursuant to any of the zoning and subdivision control powers delegated by law to cities, villages and counties.

(f) "Water resources," where the term is used in reference to studies, plans, collection of publications on water and inquiries about water, means all water whether in the air, on the earth's surface or under the earth's surface. "Water resources" as used in connection with the regulatory functions under this section means navigable waters.

(g) "Shorelands" means the lands specified under par. (e) and s. 59.971 (1).

(3) (a) The subcommittee shall serve in an ex officio advisory capacity to the department and provide a liaison function whereby the several

state agencies may better co-ordinate their activities in managing and regulating water resources.

(b) The department shall make studies, establish policies and make plans for the efficient use, conservation, development and protection of the state's water resources and:

1. On the basis of these studies and plans make recommendations, through the subcommittee, to existing state agencies relative to their water resource activities.

2. Locate and maintain information relating to the state's water resources. The department shall collect pertinent data available from state, regional and federal agencies, the university of Wisconsin, local units of government and other sources.

3. Serve as a clearinghouse for information relating to water resources including referring citizens and local units of government to the appropriate sources for advice and assistance in connection with particular water use problems.

(5) (a) The department shall prepare a comprehensive plan as a guide for the application of municipal ordinances regulating navigable waters and their shorelands as defined in this section for the preventive control of pollution. The plan shall be based on a use classification of navigable waters and their shorelands throughout the state or within counties and shall be governed by the following general standards:

1. Domestic uses shall be generally preferred.

2. Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source.

3. Areas in which the existing or potential economic value of public, recreational or similar uses exceeds the existing or potential economic value of any other use shall be classified primarily on the basis of the higher economic use value.

4. Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility.

5. Use dispersions within an area shall be preferred over concentrations of uses or their undue proximity to each other.

(b) The department shall apply to the plan the standards and criteria set forth in sub. (6).

(6) Within the purposes of sub. (1) the department shall prepare and provide to municipalities general recommended standards and criteria for navigable water protection studies and planning and for navigable water protection regulations and their administration. Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquat-

ic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations.

(7) The department, the municipalities and all state agencies shall mutually co-operate to accomplish the objective of this section. To that end, the department shall consult with the governing bodies of municipalities to secure voluntary uniformity of regulations, so far as practicable, and shall extend all possible assistance therefor.

(8) This section and s. 59.971 shall be construed together to accomplish the purposes and objective of this section.

(9) Sections 30.50 to 30.80 are not affected or superseded by this section.

(10) A person aggrieved by an order or decision of the department under this section may cause its review under ch. 227.

Water quality protection for inland lakes in Wisconsin; a comprehensive approach to water pollution. Kusler, 1970 WLR 35.

#### 144.30 Definitions. As used in this chapter:

(1) "Air contaminant" means dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination thereof but shall not include uncombined water vapor.

(2) "Air pollution" means the presence in the atmosphere of one or more air contaminants in such quantities and of such duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.

(3) "Emission" means a release of air contaminants into the atmosphere.

(4) "Solid waste" means garbage, refuse and other discarded or salvageable solid materials, including solid-waste materials resulting from industrial, commercial and agricultural operations, and from domestic use and public service activities, but does not include solids or dissolved material in waste water effluents or other common water pollutants.

(5) "Garbage" means discarded materials resulting from the handling, processing, storage and consumption of food.

(6) "Refuse" means combustible and noncombustible rubbish, including, but not limited to, paper, wood, metal, glass, cloth and products thereof; litter and street rubbish, ashes; and lumber, concrete and other debris resulting from the construction or demolition of structures.

(7) "Solid waste disposal" means the collection, storage treatment, utilization, processing or final disposal of solid waste.

(8) "Solid waste disposal sites and facilities" include commercial and municipal establishments such as, without limitation because of enumeration, dumps, incinerator sites, auto junkyards and scrap metal salvage yards.

(9) "Environmental pollution" means the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

(10) "Toxic and hazardous substances" means waste materials such as pesticides, acids, caustics, pathological wastes, radioactive materials, flammable or explosive materials and similar chemicals and harmful wastes which require special handling and disposal to protect and conserve the environment.

(11) "Solid waste management" means planning, organizing, financing, and implementing programs to effect the storage, collection, transporting, processing, recycling or final disposal of solid wastes in a sanitary, nuisance-free manner.

(12) "Solid waste management plan" means a plan prepared to provide for solid waste management.

History: 1971 c. 125, 130, 211.

#### 144.31 General powers and duties. (1) The department shall:

(a) Promulgate rules implementing and consistent with ss. 144.30 to 144.46 and 144.54.

(b) Encourage voluntary co-operation by persons and affected groups to achieve the purposes of ss. 144.30 to 144.46 and 144.54.

(c) Encourage local units of government to handle air pollution and solid waste disposal problems within their respective jurisdictions and on a regional basis, and provide technical and consultative assistance therefor.

(d) Collect and disseminate information and conduct educational and training programs relating to the purposes of ss. 144.30 to 144.46 and 144.54.

(e) Organize a comprehensive and integrated program to enhance the quality, management and protection of the state's air, land and water resources.

(2) The department may:

(a) Hold hearings relating to any aspect of the administration of ss. 144.30 to 144.46 and 144.54 and, in connection therewith, compel the attendance of witnesses and the production of evidence.

(b) Issue orders to effectuate the purposes of ss. 144.30 to 144.46 and 144.54 and enforce the same by all appropriate administrative and judicial proceedings.

(c) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(d) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere and make recommendations to appropriate public and private bodies with respect thereto.

(e) Advise, consult, contract and co-operate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.

**History:** 1971 c. 125 s. 522 (2).

**144.32 Federal aid.** Subdivisions of this state and interlocal agencies may make application for, receive, administer and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control and solid waste disposal sites and facilities if first submitted to and approved by the department. The department shall approve any such application if it is consistent with the purposes of ss. 144.30 to 144.46 and any other applicable requirements of law.

**144.33 Confidentiality of records.** Any records or other information furnished to or obtained by the department in the administration of ss. 144.30 to 144.46 and 144.54, which records or information, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the department in the administration of ss. 144.30 to 144.46 and 144.54, unless such owner or operator expressly agrees to their publication or availability to the general public. Nothing herein shall prevent the use of such records or information by the department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, if such analyses or summaries do

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not identify any owner or operator or reveal any information otherwise confidential under this section.

**History:** 1971 c. 125 s. 522 (2).

**144.34 Inspections.** Any duly authorized officer, employe or representative of the department may enter and inspect any property, premise or place on or at which an air contaminant source or solid waste disposal site or facility is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with ss. 144.30 to 144.46 and 144.54 and rules in force pursuant thereto. No person shall refuse entry or access to any such authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. The department, if requested, shall furnish to the owner or operator of the premises a report setting forth all facts found which relate to compliance status.

**History:** 1971 c. 125 s. 522 (2).

**144.35 Violations: enforcement.** (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 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 may include an order that necessary corrective action be taken within a reasonable time. Any such order shall become effective unless, no later than 10 days after the date the notice and order are served, the person named therein 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, 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.

(b) If after such hearing the department finds that a violation has occurred, it shall affirm or modify its order previously issued, or issue an appropriate order for the prevention, abatement or control of the problems involved or for the taking of such other corrective action as may be appropriate. If the department finds that no violation has occurred, it shall rescind its order. Any order issued as part of a notice or after hearing may prescribe one or more dates by

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which necessary action shall be taken in preventing, abating or controlling the violation.

**History:** 1971 c. 125 s. 522 (2).

**144.36 Air pollution control powers and duties.** (1) The department shall:

(a) Prepare and develop one or more comprehensive plans for the prevention, abatement and control of air pollution in this state. The department thereafter shall be responsible for the revision and implementation of such plans.

(b) Conduct or direct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control and, by means of field studies and sampling, determine the degree of air contamination and air pollution throughout the state.

(c) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source, device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall relieve any person from compliance with ss. 144.30 to 144.46 or rules pursuant thereto, or any other provision of law.

(2) The department may examine any records relating to emissions which cause or contribute to air contamination.

**144.37 Air pollution control council.** The air pollution control council shall advise the natural resources board on proposed and existing rules and any matters pertaining to air pollution.

**144.38 Classification and reporting.** (1)

(a) The department, by rule, shall classify air contaminant sources which may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution, and may require reporting for any such class. Classifications made pursuant to this section may be for application to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(b) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the department require reporting shall make reports containing such information as the department requires concerning location, size and heights of contaminant outlets, processes employed, fuels used and the nature and time periods of duration of

emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

**144.39 Notice required for construction.**

(1) The department shall require that notice be given to it prior to the construction, installation or establishment of particular types or classes of air contaminant sources specified in its rules. Within 15 days after receipt of such notice, the department shall require, as a condition precedent to the construction, installation or establishment of the air contaminant source covered thereby, the submission of plans, specifications and such other information as it deems necessary in order to determine whether the proposed construction, installation or establishment will be in accordance with applicable rules in force pursuant to ss. 144.30 to 144.46. If within 30 days after the receipt of such plans, specifications or other information the department determines that the proposed construction, installation or establishment will not be in accordance with the requirements of ss. 144.30 to 144.46 or applicable rules, it shall issue an order prohibiting the construction, installation or establishment of the air contaminant source. If the department does not issue such order within such 30-day period the construction, installation or establishment may proceed in accordance with the plans, specifications or other information, if any, required to be submitted.

(2) In lieu of state view of plans and specifications, the department may authorize counties which are administering approved air pollution control programs to review and approve plans and specifications of air contaminant sources being constructed within the jurisdiction of said counties.

(3) In addition to any other remedies available on account of the issuance of an order prohibiting construction, installation or establishment of such source, and prior to invoking any such remedies, any person aggrieved thereby shall, upon request in accordance with rules of the department, be entitled to a hearing on the order. Following such hearing, the order may be affirmed, modified or withdrawn.

(4) Any addition to or enlargement or replacement of an air contaminant source, or any major alteration therein, shall be construed as construction, installation or establishment of a new air contaminant source.

(5) Any features, machines and devices constituting parts of or called for by plans, specifications or other information submitted pursuant to sub. (1) shall be maintained in good working order.

(6) Nothing in this section authorizes the department to require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices or equipment otherwise available.

(7) The absence of or failure to issue a rule, or order pursuant to this section does not relieve any person from compliance with any emission control requirements or with any other provision of law.

(8) The department may by rule prescribe and provide for the payment and collection of reasonable fees for the review of plans and specifications required to be submitted pursuant to this section.

**144.40 Emergency procedure.** (1) If the secretary finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, he shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants, and such order shall fix a place and time, not later than 24 hours thereafter, for a hearing to be held before the department. Not more than 24 hours after the commencement of such hearing, and without adjournment thereof, the natural resources board shall affirm, modify or set aside the order of the secretary.

(2) In the absence of a generalized condition of air pollution of the type referred to in sub. (1), if the secretary finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he may order the persons responsible for the operations in question to reduce or discontinue emissions immediately, without regard to s. 144.35. In such event, the requirements for hearing and affirmance, modification or setting aside of orders set forth in sub. (1) shall apply.

**144.41 Local air pollution control programs.** (1) After consultation with incorporated units of local government, any county may establish and thereafter administer within its jurisdiction, including incorporated areas, an air pollution control program which:

(a) Provides by ordinance for requirements compatible with, or stricter or more extensive than those imposed by ss. 144.30 to 144.46 and rules issued thereunder. Such ordinances shall supersede any existing local ordinances;

(b) Provides for the county-wide enforcement of such requirements by appropriate administrative and judicial process;

(c) Provides for administrative organization, staff and financial and other resources necessary to effectively and efficiently carry out its program;

(d) May authorize municipalities to participate in the administration and enforcement of air pollution programs; and

(e) Is approved by the department as adequate to meet the requirements of ss. 144.30 to 144.46 and any applicable rules pursuant thereto.

(2) Any county may consult with regional planning commissions and may administer all or part of its air pollution control program in cooperation with one or more other counties or municipalities. Performance by or on behalf of a county pursuant to such co-operative undertaking shall be considered to be performance by the county for purposes of this section.

(3) If the department finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the department may determine the boundaries within which such program is necessary and require it.

(4) (a) If the department has reason to believe that the absence of an air pollution control program or a program in force pursuant to this section is inadequate to prevent and control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of ss. 144.30 to 144.46, the department shall, on due notice, conduct a hearing on the matter.

(b) If, after such hearing, the department determines that a program is required or is inadequate to prevent and control air pollution in the county to which such program relates, or that such program is not accomplishing the purposes of ss. 144.30 to 144.46, it shall require that necessary corrective measures be taken within a reasonable period of time, not to exceed 60 days.

(c) If the county fails to take such necessary corrective action within the time required, the department shall administer within such county all of the regulatory provisions of ss. 144.30 to 144.46. Such air pollution control program shall supersede all county air pollution regulations, ordinances and requirements in the affected jurisdiction. The cost of such administration shall be a charge on the county.

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(5) Any county in which the department administers its air pollution control program under sub. (4) may, with the approval of the department, establish or resume a county air pollution control program which meets the requirements of sub. (1).

(6) Nothing in ss. 144.30 to 144.46 supersedes the jurisdiction of any county air pollution control program in operation on July 26, 1967, but any such program shall meet all requirements of ss. 144.30 to 144.46 for a county air pollution control program. Any approval required from the department shall be deemed granted unless the department takes specific action to the contrary.

**144.415 State aid.** (1) The department may develop a program for the training of technical personnel to facilitate the administration of county air pollution control programs. Annual grants-in-aid may be made by the department to any county or group of counties for the training of employes or potential employes in air pollution detection and control. The qualifications and criteria for participation in this program shall be established by the department.

(2) The department may enter into agreements with any county to provide in-service training programs and facilities for the purpose described in sub. (1). In accordance with criteria established by the department, annual grants-in-aid may be made by the department to any county establishing an approved in-service training program for the costs of developing and maintaining such program.

**144.42 Motor vehicle pollution.** (1) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of ss. 144.30 to 144.46, the department may provide by rule for the control of emissions from motor vehicles. Such rules may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and vehicles. Any rules pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The department shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

(2) Except as permitted or authorized by law, no person shall fail to maintain in good working order or remove, dismantle or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle and required by rules of the department to be maintained in or on the vehicle. Any such failure to maintain in good working order or removal, dismantling or causing of inoperability shall subject the owner or operator to suspension or cancellation of the registration for the vehicle. The vehicle shall not thereafter be eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(3) The department shall consult with the division of motor vehicles and furnish it with technical information, including testing techniques, standards and instructions for emission control features and equipment.

(4) In this section "motor vehicle" has the meaning designated in s. 340.01 (35).

**History:** 1971 c. 164 s. 81.

**144.421 Mercury users.** Every owner of an establishment using 50 pounds or more of mercury compounds or metallic mercury in any one year shall furnish the department with a materials balance statement for the mercury compound or metallic mercury. Such statement shall itemize the type and amount of mercury compound or metallic mercury used, the processes used in and the means by and the place where it is disposed. The statement shall be on a form prescribed by the department and shall be filed each January 1 for the preceding year.

**History:** 1971 c. 272.

**144.422 Air standards for mercury.** The department shall, no later than 6 months after April 29, 1972, prepare and adopt minimum standards for the emission of mercury compounds or metallic mercury into the air.

**History:** 1971 c. 272.

**144.423 Mercury discharge into water.** Discharge of mercury compounds and metallic mercury into the waters of this state by any person shall be limited to fifteen-hundredths of a pound of mercury per day averaged over a 30-day period, and not more than one-half pound in any one day. The department may establish lower maximum discharge limits by rule.

**History:** 1971 c. 272.

**144.43 Solid waste disposal standards.**

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.

**144.435 Solid waste management.**

(1) Each county board individually or jointly with another county board may prepare and adopt a county solid waste management plan consistent with state criteria.

(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. During its review, the department of local affairs and development may consult with the appropriate regional planning commission to determine whether any site use and operation is not in conflict with any plans adopted by the commission.

**History:** 1971 c. 130.

**144.437 Solid waste management criteria.** 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.

**History:** 1971 c. 130.

**144.44 License.** (1) After the department has promulgated minimum standards for the location, design, construction, operation and maintenance of solid waste disposal sites and facilities, no person shall establish, maintain, conduct or operate a solid waste disposal site or facility which does not adhere to such minimum standards. Such sites or facilities shall be licensed annually by the department providing they comply with said standards. The department may charge a reasonable fee for the costs of administering this section.

(2) Nothing in ss. 144.30 to 144.46 shall limit the authority of any local governing body to issue licenses and permits for any state-licensed sites or facilities or to adopt, subject to department approval, standards for the location, design, construction, operation and maintenance of solid waste disposal sites and facilities more restrictive than those adopted by the state under this section.

**144.445 Local permits not required; departmental license.** (1) Any site 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 shall not be required to obtain any local permits or authorization.

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

(b) Any license issued under this section shall supersede all local requirements. However, operations licensed under this section may be required to render payments in lieu of local license or permit fees to the municipality in whose jurisdiction they lie not to exceed \$100 per site per year.

**History:** 1971 c. 130.

**144.45 Research.** The department may conduct or direct scientific experiments, investigations, demonstration grants and research on any matter relating to solid waste disposal, including, but not limited to, land fill, disposal and utilization of junked vehicles, and production of compost.

**144.46 Shoreland and flood plain zoning.**

Solid waste disposal sites and facilities are prohibited within areas under the jurisdiction of shoreland and flood plain zoning regulations adopted pursuant to ss. 59.971 and 87.30, except that the department may issue permits authorizing sites and facilities in such areas.

**144.536 Enforcement of orders; duty of department of justice; expenses.**

All orders of the department shall be enforced by the attorney general. The circuit court of Dane county or any other county where violation of such an order has occurred in whole or in part shall have jurisdiction to enforce the order by injunctive and other relief appropriate to the enforcement of the order. For purposes of such proceeding where the order prohibits in whole or in part any pollution, a violation thereof shall be deemed a public nuisance. The expenses incurred by the department of justice in assisting with the administration of ch. 144 shall be charged to the appropriation made by s. 20.370 (5).



The provision that the violation of an order prohibiting pollution constitutes a public nuisance does not mean that there is no nuisance until an order is issued. *State v. Dairyland Power Coop.* 52 W (2d) 45, 187 NW (2d) 878.

#### 144.537 Hearings; procedure, review.

The department shall hold a public hearing relating to alleged or potential environmental pollution upon the verified complaint of 6 or more citizens filed with the department. The complaint shall state the name and address of a person within the state authorized to receive service of answer and other papers in behalf of complainants. The department may order the complainants to file security for costs in a sum deemed to be adequate but not to exceed \$100 within 20 days after the service upon them of a copy of such order and all proceedings on the part of such complainants shall be stayed until security is filed. The department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to his last known post-office address at least 20 days prior to the time set for the hearing which shall be held not later than 90 days from the filing of the complaint. The respondent shall file his verified answer to the complaint with the department and serve a copy on the person so designated by the complainants not later than 5 days prior to the date set for the hearing, unless the time for answering is extended by the department for cause shown. For purposes of any hearing under this chapter, the secretary may issue subpoenas and administer oaths. Within 90 days after the closing of the hearing, the department shall make and file its findings of fact, conclusions of law and order, which shall be subject to review under ch. 227. If the department determines that any complaint has been filed maliciously or in bad faith it shall so find, and the person complained against shall be entitled to recover his expenses on the hearing in a civil action. Any situation, project or activity which upon continuance or implementation would cause, beyond reasonable doubt, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution.

#### 144.54 Reports on substances used; monitoring fee.

(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. This shall include industrial wastes and toxic and hazardous substances discharged into any sewerage system

operated by a municipality. The department may verify field monitoring of industrial waste and other waste outfalls and air contaminant sources.

(2) The department by rule shall prescribe method of analysis and form of the reports required by this section and shall establish parameters for the pollutants on which reports are required by this section. The pollutants for which parameters are to be established shall include, but are not limited to:

- (a) Toxic and hazardous substances;
- (b) Air contaminants; and
- (c) Elemental discharges such as mercury or cadmium which may be toxic or hazardous when released to the environment.

(3) In order to provide for adequate departmental field monitoring and related efforts, there is established an annual monitoring fee to be paid by each person required to report under sub. (1). Such fee shall be based on an administrative fee of \$50 plus an additional fee, to be set by the department by rule and to be based on the concentration and quantity of pollutants discharged in relation to the parameters established under sub. (2). No annual monitoring fee established under this subsection may exceed \$10,000.

(4) Violators of the reporting requirements established under sub. (1) shall be fined not less than \$200 nor more than \$10,000 for each offense.

(5) Within 6 months after November 5, 1971, the department shall conduct hearings for the purpose of establishing parameters as required under sub. (2), except parameters for air pollutants. Within 12 months after November 5, 1971, the department shall conduct hearings for the purpose of establishing parameters for air pollutants.

History: 1971 c. 125.

#### 144.55 Visitorial powers of department.

Every owner of an industrial establishment shall furnish to the department all information required by it in the discharge of its duties under s. 144.025 (2). Any member of the natural resources board or any employe of the department may enter any industrial establishment for the purpose of collecting such information, and no owner of an industrial establishment shall refuse to admit such member or employe. The department shall make such inspections at frequent intervals. The secretary and all members of the board shall have power for all purposes falling within the department's jurisdiction to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of necessary or essential data.

**144.555 Report of intended new waste.** Any industry which intends to increase the quantity of industrial wastes discharging to the surface waters of the state or to discharge a new waste to said waters or which intends to alter an existing outlet or build a new outlet for industrial wastes shall, before starting such work, advise the department in writing concerning its intentions and supply the department with a general report describing steps which shall be taken to protect the surface waters of the state against new pollution or an increase in existing pollution. The report shall be submitted not less than 30 days before approval is desired, and no construction work shall be started until the report has been approved. Variation in or resumption of operation of existing facilities shall not be construed as creating new pollution nor an increase of existing pollution within the meaning of this section.

**History:** 1971 c. 164.

**144.56 Review of orders.** Any owner or other person in interest may secure a review of the necessity for and reasonableness of any order of the department of natural resources in the following manner:

(1) They shall first file with the department a verified petition setting forth specifically the modification or change desired in such order. Such petition must be filed within 60 days of the issuance of the orders sought to be reviewed. Upon receipt of such a petition the department shall order a public hearing thereon and make such further investigations as it shall deem advisable. Pending such review and hearing, the department may suspend such orders under terms and conditions to be fixed by the department on application of any such petitioner. The department shall affirm, repeal or change the

order in question within 60 days after the close of the hearing on the petition.

(2) The determination of the department shall be subject to review as provided in ch. 227.

**144.57 Penalties.** Any person who violates this chapter, or who fails, neglects or refuses to obey any general or special order of the department, shall forfeit not less than \$10 nor more than \$5,000, for each violation, failure or refusal. Each day of continued violation is a separate offense. While the order is suspended, stayed or enjoined, such penalty shall not accrue.

**144.76 Natural beauty council.** (2) The natural beauty council shall employ, under the classified service, such staff as is necessary to perform clerical duties.

(3) The over-all objectives of the council shall be to plan, co-ordinate, educate and motivate both public and private agencies and persons to preserve and enhance Wisconsin's natural beauty. To this end the council shall:

(a) Serve as a general information center and catalytic agent on all matters affecting the natural beauty of Wisconsin.

(b) Advise the governor, legislature and state departments on such matters.

(c) Submit a report of its activities and recommendations to the governor and legislature in December of each even-numbered year.

(d) Co-ordinate and stimulate the natural beauty activities of county councils and other public and private organizations, and such activities of the federal government as apply to this state.

(e) Hold state and regional conferences.

(4) The council may accept gifts and grants for the execution of its functions.