

CHAPTER 159

SOLID WASTE

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SUBCHAPTER I

GENERAL

159.01 Definitions. Except as otherwise provided, in this chapter:

- (1) "Department" means the department of natural resources.
- (2) "Foam polystyrene packaging" means packaging made primarily from foam polystyrene that satisfies one of the following criteria:
- Is designed for serving food or beverages.
 - Consists of loose particles intended to fill space and cushion the packaged article in a shipping container.
 - Consists of rigid materials shaped to hold and cushion the packaged article in a shipping container.
- (3) "Major appliance" means a residential or commercial air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator or stove.
- (4) "Municipality" means a city, village or town.
- (5) "Out-of-state unit" means a general purpose local governmental unit located in a state other than Wisconsin.
- (5m) "Person" includes any individual, corporation, partnership, association, local governmental unit, as defined in s. 66.299 (1) (a), state agency or authority or federal agency.
- (6) "Plastic container" means a plastic container, as defined in s. 100.33 (1) (c), that is required to be labeled under s. 100.33 (2).
- (7) "Postconsumer waste" means solid waste other than solid waste generated in the production of goods, hazardous waste, as defined in s. 144.61 (5), waste from construction and demolition of structures, scrap automobiles, or high-volume industrial waste, as defined in s. 144.44 (7) (a) 1.
- (8) "Region" means the area within the boundaries of a responsible unit or an out-of-state unit.
- (8m) "Resource recovery" means the conversion of solid waste into fuel or energy.
- (9) "Responsible unit" means a municipality, county or solid waste management system under s. 59.07 (135), that is designated under s. 159.09 (1).
- (10) "Solid waste" has the meaning given in s. 144.01 (15).
- (11) "Solid waste disposal" has the meaning given in s. 144.43 (4r).
- (12) "Solid waste facility" has the meaning given in s. 144.43 (5).

(13) "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.

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

(15) "Solid waste storage" has the meaning given in s. 144.43 (7g).

(16) "Solid waste treatment" has the meaning given in s. 144.43 (7r).

(17) "Yard waste" means leaves, grass clippings, yard and garden debris and brush, including clean woody vegetative material no greater than 6 inches in diameter. This term does not include stumps, roots or shrubs with intact root balls.

History: 1989 a. 335 ss. 59, 66b, 76.

159.03 Departmental duties and powers. (1) DUTIES. The department shall do all of the following:

(a) Promulgate rules necessary to implement this chapter.

(am) Promulgate rules concerning the imposition, under s. 66.35, of fees by municipalities on operators of medical waste incinerators.

(b) Establish and modify state priorities for the development of markets for materials derived from postconsumer waste. In establishing and modifying the priorities, the department shall consult with the council on recycling. The priorities shall give preference to market development efforts that do any of the following:

1. Strengthen or expand an existing market for a material for which the demand is insufficient to utilize the projected supply or for which the price is low relative to the costs of separating the material from solid waste, processing the material or transporting the material to the market.

2. Create a new market for a material that provides a higher price for the material or a lower separation, processing or transportation cost than existing markets.

3. Use solid waste that is not separated for recycling as a substitute for nonrenewable fuels to generate steam or electricity if done in a state-approved program that protects the public health and welfare and the environment.

(c) Coordinate research, technical assistance and education programs under this chapter with related activities of the university of Wisconsin system.

(2) **POWERS.** The department may do any of the following:

(a) Hold hearings relating to any aspect of the administration of this chapter and, in connection therewith, compel the attendance of witnesses and the production of evidence.

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

History: 1989 a. 335.

159.05 State solid waste reduction, reuse, recycling, composting and resource recovery policy. The following are declared to be policies of the state concerning the reduction of the amount of solid waste generated, the reuse, recycling and composting of solid waste and resource recovery from solid waste:

(1) That maximum solid waste reduction, reuse, recycling, composting and resource recovery is in the best interest of the state in order to protect public health, to protect the quality of the natural environment and to conserve resources and energy.

(2) That solid waste reduction, reuse, recycling, composting and resource recovery projects should be encouraged in furtherance of these goals.

(3) That encouragement and support should be given to individuals, collectors, handlers and operators of waste facilities to separate solid waste at the source, in processing or at the time of disposal in order to facilitate reuse, recycling, composting or resource recovery.

(4) That research, development and innovation in the design, management and operation of solid waste reduction, reuse, recycling, composting and resource recovery systems and operations are necessary and should be encouraged in order to improve the processes, to lower operating costs and to provide incentives for the use of these systems and operations and their products.

(4m) That the initiatives of current recyclers which facilitate reuse and recycling through separation, collection and processing of substantial volumes of scrap and waste material, reducing the amount of mixed solid waste that is disposed of in landfills or burned without energy recovery in incinerators, should be encouraged.

(4s) That the burning of solid waste with energy recovery as a substitute for the burning of nonrenewable fuels, such as coal, to generate steam or electricity is in the public interest and should be encouraged, if done in a state-approved program that protects the public health and welfare and the environment.

(5) That the implementation of solid waste reduction, reuse, recycling, composting and resource recovery systems and operations requires the involvement and cooperation of all persons and entities comprising this state's society, including individuals, state and local governments, schools, private organizations and businesses. To achieve this involvement and cooperation, state government should rely to the maximum extent feasible on technical and financial assistance, education and managerial practices to implement these policies. Necessary regulations should be developed with maximum flexibility.

(6) That solid waste reduction, reuse, recycling, composting and resource recovery efforts in this state should be planned and coordinated in order to maximize beneficial results while minimizing duplication and inefficiency.

(7) That to achieve the goals in this policy statement the legislature recognizes the necessity of the state to occupy a regulatory role in this field and the necessity to give municipalities and counties certain powers to adopt waste flow control ordinances in order to require the use of recycling and resource recovery facilities.

(8) That the powers enumerated under s. 159.13 constitute proper powers consistent with uniform state policies concerning solid waste reduction, reuse, recycling, composting and resource recovery from solid waste; these powers are necessary for the safe, beneficial, economical and lawful management of solid waste; and these powers are necessary to accomplish or facilitate these uniform state policies by encouraging the financing, acquisition, construction, improvement, operation, maintenance and ownership of recycling and resource recovery facilities. The powers enumerated under s. 159.13 constitute proper powers consistent with essential and legitimate governmental functions; and these powers are to be utilized in providing for the health, safety and welfare of and providing services and benefits for inhabitants of municipalities, counties and this state.

(9) That the state policies declared under this section and the standards, criteria, requirements and procedures established under s. 159.13 ensure that a municipality or county exercising powers under s. 159.13 acts in a manner consistent with uniform state policies and acts as an arm of the state for the public good.

(10) That solid waste reduction, reuse, recycling, composting and resource recovery systems and operations are preferable to land disposal.

(11) That developers and users of land disposal facilities should not become overly committed to land disposal because of the excessively long useful life of a facility or the excessive aggregate capacity of land disposal facilities so that reuse, recycling, composting and resource recovery systems and operations may be implemented rapidly without excessive disruption.

(12) That in the management of solid waste, whenever possible and practical, the state encourages the following priorities:

- (a) The reduction of the amount of solid waste generated.
- (b) The reuse of solid waste.
- (c) The recycling of solid waste.
- (d) The composting of solid waste.
- (e) The recovery of energy from solid waste.
- (f) The land disposal of solid waste.
- (g) The burning of solid waste without energy recovery.

History: 1983 a. 27, 93, 425, 426; 1989 a. 335 ss. 52, 54 to 56, 76; Stats. 1989 s. 159.05.

SUBCHAPTER II

SOLID WASTE REDUCTION, RECOVERY AND RECYCLING

159.07 Prohibitions on land disposal and incineration.

(1m) BATTERIES, MAJOR APPLIANCES AND OIL. Beginning on January 1, 1991, no person may:

(a) Dispose of a lead acid battery or a major appliance in a solid waste disposal facility or burn a lead acid battery or a major appliance in a solid waste treatment facility in this state.

(b) Dispose of waste oil in a solid waste disposal facility or burn waste oil without energy recovery in a solid waste treatment facility in this state.

(2) YARD WASTE. Beginning on January 3, 1993, no person may dispose of yard waste in a solid waste disposal facility or burn yard waste without energy recovery in a solid waste facility in this state.

(3) GENERAL DISPOSAL RESTRICTIONS. Beginning on January 1, 1995, no person may dispose of in a solid waste disposal facility or burn without energy recovery in a solid waste treatment facility in this state any of the following:

- (a) An aluminum container.

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- (b) Corrugated paper or other container board.
- (c) Foam polystyrene packaging.
- (d) A glass container.
- (e) A magazine or other material printed on similar paper.
- (f) A newspaper or other material printed on newsprint.
- (g) Office paper.
- (h) A plastic container.
- (i) A steel container.
- (j) A waste tire, as defined in s. 84.078 (1) (b).
- (k) A container for carbonated or malt beverages that is primarily made of a combination of steel and aluminum.

(4) **GENERAL INCINERATION RESTRICTIONS.** Beginning on January 1, 1995, no person may convert into fuel or burn with energy recovery at a solid waste treatment facility in this state any of the following:

- (a) An aluminum container.
- (b) Corrugated paper or other container board.
- (c) Foam polystyrene packaging.
- (d) A glass container.
- (f) A magazine or other material printed on similar paper.
- (g) A newspaper or other material printed on newsprint.
- (h) Office paper.
- (i) A plastic container.
- (j) A steel container.
- (k) A container for carbonated or malt beverages that is primarily made of a combination of steel and aluminum.

(7) **EXCEPTIONS.** (a) The prohibitions in subs. (3) to (5) do not apply with respect to solid waste, except medical waste, as defined in par. (c) 1. cg, that is generated in a region that has an effective recycling program, as determined under s. 159.11, and, if the region is not in this state, the region is located in a state that has an effective siting program, as determined under s. 159.12.

(b) 1. In this paragraph:

a. "Current service area" means the area served by a solid waste treatment facility under a contract that is in effect on January 1, 1993, and has a term of at least one year.

b. "Operating solid waste treatment facility" means a solid waste treatment facility that has an operating permit or license issued under s. 144.391 or 144.44 (4) prior to May 11, 1990, except for a medical waste incinerator, as defined in par. (c) 1. cr.

2. A prohibition in sub. (3) (b), (c), (e), (f), (g), (h) or (j) or (4) (b), (c), (f), (g), (h) or (i) does not apply to a person who converts into fuel or burns at an operating solid waste treatment facility a type of material identified in one of those paragraphs that was converted into fuel or burned at the operating solid waste treatment facility during April, 1990, and either is generated in the operating solid waste treatment facility's current service area or is generated by the owner of the operating solid waste treatment facility.

(bg) The prohibitions in subs. (1) to (5) do not apply to a person who burns solid waste at a facility that uses solid waste as a supplemental fuel if less than 30% of heat input to the facility is derived from the solid waste burned as supplemental fuel.

(c) 1. In this paragraph:

a. "Clinic" means a place, other than a residence, that is used primarily for the provision of nursing, medical, podiatric, dental, chiropractic, optometric or veterinary care and treatment.

b. "Hospital" has the meaning given in s. 50.33 (2).

c. "Infectious waste" means solid waste that contains pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.

cg. "Medical waste" means containers, packages and materials identified under sub. (3), (4) or (5) that contain infectious waste or that are from a treatment area and are mixed with infectious waste.

cr. "Medical waste incinerator" means a solid waste treatment facility that primarily burns infectious waste and other waste that contains or may be mixed with infectious waste.

d. "Nursing home" has the meaning given in s. 50.01 (3).

e. "Treatment area" means a room or area in a hospital or clinic the primary use of which is to provide emergency care, diagnosis or radiological treatment or to perform surgical procedures; an obstetrics delivery room in a hospital; a room for a patient in a hospital; a room for a resident in a nursing home; or a room or area in a hospital, clinic or nursing home, identified by the department by rule, in which infectious waste may be generated.

2. The prohibitions in subs. (3) to (5) do not apply with respect to any of the following:

a. The burning of medical waste in a medical waste incinerator or other incinerator approved by the department to accept and burn medical waste, except as provided in subd. 3.

b. The disposal of, in a solid waste disposal facility, a container, package or material identified under sub. (3), (4) or (5) that contained infectious waste or that is from a treatment area and is mixed with infectious waste generated in the treatment area, if the container, package or material has been treated, pursuant to standards established under ss. 144.43 to 144.47, to render the infectious waste noninfectious.

3. A person may not burn medical waste at a medical waste incinerator that begins operation on or after January 1, 1990, has a capacity of 25 tons or more per day and is located in Burnett, Dunn, Kenosha, Milwaukee, Ozaukee, Pierce, Polk, Racine, St. Croix, Walworth, Washington or Waukesha county unless the person complies with s. 144.382 and obtains from each generator of the medical waste a copy of the policies under sub. (8) (a) and the annual assessment under sub. (8) (b).

(d) The department may grant, to a responsible unit, an exception to a prohibition in sub. (3), (4) or (5) for up to one year for a material identified in sub. (3), (4) or (5) in the event of an unexpected emergency condition.

(8) **MEDICAL WASTE SOURCE REDUCTION POLICY.** (a) A generator of medical waste that sends waste to a medical waste incinerator described in sub. (7) (c) 3 shall develop policies concerning reduction of medical waste, as defined in sub. (7) (c) 1. cg, including all of the following:

1. Education and training of staff.

2. Alternatives, including sterilization, to the use of disposable equipment.

3. An annual assessment of the medical waste source reduction policy.

(b) The generator shall submit the source reduction policy and the annual assessment to the operator of the medical waste incinerator.

(c) The operator of the medical waste incinerator described in sub. (7) (c) 3 shall retain a copy of the source reduction policy and the annual assessment and provide it to the department upon request. The department may analyze and disseminate the information that it obtains under this paragraph.

(d) The department may charge a fee for the analysis of a source reduction policy and assessment.

History: 1989 a. 335 ss. 66e, 76

159.08 Yard waste bags. After December 31, 1990, no person may discharge, deposit, inject, dump or place in a solid waste facility that is for solid waste treatment or for

solid waste storage yard waste that is in a bag unless the bag is constructed of a material that decomposes within a reasonable time after exposure to weather elements and is labeled as being so constructed.

History: 1989 a. 335.

159.09 Municipal and county duties and powers. (1) DESIGNATION OF RESPONSIBLE UNITS. (a) Except as provided in pars. (b) to (d), each municipality is a responsible unit.

(b) A county board of supervisors may adopt a resolution designating the county a responsible unit. Except as provided in pars. (c) and (d), a county that has adopted such a resolution is the responsible unit for the entire county.

(c) Within 90 days after the county board of supervisors adopts a resolution under par. (b), the governing body of a municipality that is located in part or in whole in the county may adopt a resolution retaining the municipality's status as a responsible unit.

(d) The governing body of a responsible unit designated under par. (a), (b) or (c) may by contract under s. 66.30 designate another unit of government or a solid waste management system created under s. 59.07 (135) to be the responsible unit in lieu of the responsible unit designated under par. (a), (b) or (c). The contract shall cover all functions required under sub. (2), including provisions for financing and enforcing the recycling or other solid waste management program.

(e) The governing body of a county that adopts a resolution under par. (b) or enters into a contract under par. (d) shall submit a copy of the resolution or contract to the department and to the clerk of each municipality in the county, within 30 days after adoption of the resolution or the signing of the contract. The governing body of a municipality that adopts a resolution under par. (c) or enters into a contract under par. (d) shall submit a copy of the resolution or contract to the department and to the clerk of the county in which the municipality is located, within 30 days after adoption of the resolution or the signing of the contract.

(2) DUTIES. Each responsible unit shall do all of the following:

(a) Develop and implement a recycling or other program to manage the solid waste generated within its region in compliance with s. 159.07 (1m) to (4) and the priorities under s. 159.05 (12).

(b) Submit to the department by January 1, 1993, a report setting forth how the responsible unit intends to implement its program under par. (a), as it relates to the requirements of s. 159.07 (3) and (4). The report shall specify all of the following:

1. Whether the responsible unit or another person designated under sub. (3) (a) will implement each component of the program under par. (a).

2. The procedures or processes that the responsible unit intends to use to separate, collect, store, process and market solid waste or components of solid waste and to educate the public on the program.

2m. The procedures or processes that the responsible unit intends to use to manage solid waste that is not separated for recovery or recycling, consistent with the priorities under s. 159.05 (12).

3. A schedule for the implementation of the program.

(c) Provide information requested by the department on the status of the implementation of the program under par. (a).

(3) POWERS. A responsible unit may do any of the following:

(a) Designate one or more other persons to implement specific components of the program under sub. (2) (a), if the designated person consents to the designation.

(b) Adopt an ordinance to enforce the program established under sub. (2) (a). The ordinance may include a schedule of forfeitures to be imposed for violations of that ordinance. The ordinance may authorize the responsible unit or person designated under par. (a) to refuse to accept solid waste at the recycling facility or site if the solid waste is contaminated or otherwise in a condition that makes recycling infeasible. The ordinance may require a person to use a facility for the recycling of solid waste or for the recovery of resources from solid waste, as defined in s. 159.13 (1) (d), only as provided under s. 159.13.

History: 1989 a. 335, 359.

159.095 Responsible unit liability. (1) DEFINITION. In this section, "responsible unit official" means any officer, official, agent or employe of a responsible unit engaged in the planning, management, operation or approval of a recycling program or recycling site or facility.

(2) EXEMPTION FROM LIABILITY. No responsible unit official is liable for civil damages as a result of good faith actions taken by the responsible unit official within the scope of duties relating to the responsible unit's recycling program or recycling site or facility.

History: 1989 a. 335.

159.10 Limit on local regulation. No responsible unit that accepts funds under s. 159.23 or county or municipality located within such a responsible unit may impose a restriction, except one that is consistent with this chapter or ch. 100, or a tax or fee on the sale or distribution of packaging for a purpose relating to the disposal of the packaging.

History: 1989 a. 335.

159.11 Effective recycling programs. (1) DEPARTMENT REVIEW. Upon request of a responsible unit or an out-of-state unit, the department shall review documentation of the responsible unit's solid waste management program created under s. 159.09 (2) (a) or the out-of-state unit's solid waste management program and determine whether the program is an effective recycling program. The department shall complete its review and make a determination within 90 days after receiving the documentation. The department shall promulgate, by rule, its determination that an out-of-state unit's solid waste management program is an effective recycling program.

(2) EFFECTIVE PROGRAM CRITERIA FOR RESPONSIBLE UNITS. A responsible unit's solid waste management program is an effective recycling program if it includes all of the following:

(a) A public education component to inform residents of the region of the reasons to recycle, local opportunities to recycle and the prohibitions in s. 159.07 (3) and (4).

(b) A requirement that the occupants of single-family residences, buildings containing 2 or more dwelling units and commercial, retail, industrial and governmental facilities in the region either separate the materials identified in s. 159.07 (3) and (4) from postconsumer waste generated in the region or treat that postconsumer waste at a facility that will recover those materials from solid waste in as pure a form as is technically feasible, except that this paragraph does not apply to postconsumer waste burned at a facility described in s. 159.07 (7) (bg).

(c) A requirement that owners of buildings containing 5 or more dwelling units in the region do all of the following if postconsumer waste generated in those buildings is not

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treated at a facility that will separate the materials identified in s. 159.07 (3) and (4) from that postconsumer waste:

1. Provide adequate, separate containers for the program established under par. (b).

2. Notify tenants at the time of renting or leasing the dwelling and semiannually thereafter of the programs under this paragraph and par. (b).

3. Provide for the collection of recyclable materials separated from solid waste by the tenants and the delivery of the recyclable materials to a recycling facility.

(d) A requirement that owners of commercial, retail, industrial and governmental facilities in the region do all of the following if postconsumer waste generated in those buildings is not treated at a facility that will separate the materials identified in s. 159.07 (3) and (4) from that postconsumer waste:

1. Provide adequate, separate containers for the program established under par. (b).

2. Regularly notify all users and occupants of the facilities of the programs under this paragraph and par. (b).

3. Provide for the collection of recyclable materials separated from solid waste by the users and occupants and the delivery of the recyclable materials to a recycling facility.

(dm) A system of volume-based solid waste fees to generate revenue equal to the responsible unit's costs for solid waste management other than those reimbursed by the state. This criterion shall not apply to any responsible unit that separates for recycling at least 25% by volume or by weight of the solid waste collected within the region by the responsible unit or by any person under contract with the responsible unit.

(e) A system for collecting from single-family residences in the region any materials separated pursuant to par. (b).

(em) A system for the processing and marketing of recyclable materials collected by the responsible unit or by municipalities located in the responsible unit.

(er) A prohibition on disposing of in a solid waste disposal facility or burning in a solid waste treatment facility any material identified under s. 159.07 (3) and (4) that is separated for recycling as part of the program.

(ew) Provisions for the management of postconsumer waste that is not separated for recycling or recovery under par. (b) consistent with the highest feasible priority under s. 159.05 (12).

(f) Other provisions established by the department by rule.

(g) Adequate enforcement of the programs established under pars. (b) to (f).

(h) The equipment or means necessary to implement pars. (a), (b), (e), (em) and (g), including contracts for service, staff, supplies and equipment from vendors.

(i) A reasonable effort, through the implementation of pars. (a) to (h), to reduce to the maximum extent feasible the amount, by weight, of each material specified in s. 159.07 (3) and (4) that is generated as solid waste within the region and disposed of in a solid waste disposal facility or converted into fuel or burned without energy recovery in a solid waste treatment facility.

(2e) EFFECTIVE PROGRAM CRITERIA FOR OUT-OF-STATE UNITS. (a) An out-of-state unit's solid waste management program is an effective recycling program if it is in compliance with all recycling requirements imposed by the state in which the out-of-state unit is located and has all of the components under sub. (2).

(b) The department shall promulgate rules for the determination of comparability under par. (a). The rules shall require the comparison of an out-of-state unit to a similarly situated responsible unit. The rules shall require comparability in at least the following respects:

1. The level of governmental financing for the solid waste management program.

2. Enforcement mechanisms and effort.

3. The number of materials being separated and recycled.

(2m) VARIANCE. (a) In this subsection:

1. "Cost of disposing of processed material" means the gross cost of transferring processed material to a solid waste disposal facility and disposing of the processed material in the facility, including any disposal costs not paid through fees charged by the facility.

2. "Cost of selling processed material" means the net cost, including any storage costs, of selling processed material to a broker, dealer or manufacturing facility, plus any cost of transporting the processed material from the waste processing facility to the destination specified by the broker, dealer or manufacturing facility, less the portion of any state financial assistance received under s. 159.23 or 159.25 attributable to the processed material.

3. "Processed material" means a component of solid waste that has been collected, transported to a waste processing facility and prepared for sale to a broker, dealer or manufacturer.

(b) The department shall, at the request of a responsible unit that has been determined to have an effective recycling program under this section, grant a variance to the requirements in sub. (2) (b) and (er) for up to one year for a material identified in s. 159.07 (3) or (4) that is generated in the responsible unit's region if the department determines that the cost of selling processed material exceeds any of the following:

1. Forty dollars per ton of processed material, as annually adjusted by the department to reflect changes in price levels due to inflation since 1989.

2. The cost of disposing of processed material.

(c) The department may on its own initiative grant, to one or more responsible units that have been determined to have effective recycling programs under this section, a variance to the requirements in sub. (2) (b) and (er) for up to one year for a material identified in s. 159.07 (3) or (4) that is generated in the responsible units' regions if the department determines that the cost of selling processed material exceeds the amount under par. (b) 1 or 2.

(d) The department may grant a responsible unit a variance to a requirement in sub. (2) (b) or (er) for up to one year for a material identified in s. 159.07 (3) or (4) in the event of an unexpected emergency condition.

(2s) NOTIFICATION. (a) The department shall notify the department of agriculture, trade and consumer protection whenever variances granted under sub. (2m) (b) for a plastic container, foam polystyrene packaging or any type of packaging that contains carbonated or malt beverages are in effect for responsible units representing 25% or more of the state's population.

(b) The department shall notify the department of agriculture, trade and consumer protection if, within 2 years after providing notification under par. (a) for a packaging material, the condition under par. (a) no longer exists for that packaging material.

(3) LIST. The department shall prepare and periodically update a list of responsible units and out-of-state units that have an effective recycling program.

History: 1989 a. 335, 359.

159.12 Out-of-state effective siting programs. (1) DEFINITIONS. In this section:

(a) "Municipal solid waste treatment facility" means a solid waste facility designed primarily to burn or convert into fuel solid waste collected from residential or commercial

sources that is owned or operated by a municipality or county or a private entity that offers incineration or conversion services to the public, a county or a municipality.

(b) "Municipal waste landfill" means a solid waste disposal facility that is not one of the following:

1. A solid waste disposal facility designed exclusively for the disposal of waste generated by a pulp mill, paper mill, foundry, prospecting or mining operation, electric or process steam generating facility or demolition activity.

2. A hazardous waste disposal facility.

(2) **DEPARTMENT REVIEW.** Upon the request of an out-of-state unit, the department shall review documentation of the solid waste management program of the state in which the out-of-state unit is located to determine whether that state has an effective program for siting municipal solid waste treatment facilities and municipal waste landfills.

(3) **EFFECTIVE SITING PROGRAM.** The state in which an out-of-state unit is located has an effective program for siting municipal solid waste treatment facilities and municipal waste landfills if the combined capacity added within the previous 4 years by the construction of new or the expansion of existing municipal solid waste treatment facilities and municipal waste landfills in that state exceeded the amount of solid waste generated in the state during those years, excluding high-volume industrial waste, as defined in s. 144.44 (7) (a) 1, prospecting or mining waste and demolition waste.

History: 1989 a. 335.

159.13 Municipal waste flow control; required use of recycling or resource recovery facility. (1) DEFINITIONS. In this section:

(b) "Collection" means the aggregating of solid waste from its primary source and includes all activities up to such time as the waste is delivered to a facility for transfer, processing or disposal.

(d) "Facilities for the recycling of solid waste or for the recovery of resources from solid waste" means facilities the primary use of which is to convert or recycle solid waste into usable materials, products or energy or to incinerate solid waste for energy recovery.

(e) "Municipality" means a county, a city, a village or a town if the town has a population of 10,000 or more. Notwithstanding the fact that the population of a town is less than 10,000, if the town enters into an agreement with a city or village concerning the establishment of a facility for the recycling of solid waste or for the recovery of resources from solid waste and concerning the required use of that facility, the town shall be considered a municipality except the town may not be the municipality responsible for a facility.

(f) "Local unit of government" includes a county, city, village, town, school district, county utility district, sanitary district or metropolitan sewerage district.

(g) "Person" includes individuals, partnerships, associations, corporations and local units of government.

(h) "Recycling" means the transfer, transporting, processing, marketing and conversion of solid wastes into usable materials or products and includes the stockpiling and disposal of nonusable portions of solid wastes, but does not include the collection of solid wastes.

(i) "Sewage or industrial waste sludge" means the residue material resulting from the treatment of sewage or industrial waste water.

(2) **REQUIRED USE; IMPLEMENTATION PROCEDURE.** A municipality may require any local unit of government, occupant of a single-family or multifamily residence, retail business, commercial business or industry to use a facility for the recycling of solid waste or for the recovery of resources from solid

waste generated within the limits of the municipality which is not exempt under sub. (5) if:

(a) The municipality adopts an initial intent resolution.

(b) The municipality prepares or arranges for the preparation of a comprehensive facility project description report and submits this report to the department.

(c) The municipality determines that required usage of the facility is in the best public interest.

(d) The facility is constructed, operated, maintained, expanded, modified and closed in compliance with this chapter and ch. 144 and all necessary permits, licenses and approvals required by the department are obtained.

(e) The municipality adopts a valid solid waste flow control ordinance and issues a required use order.

(3) **REQUIRED USE; JOINT IMPLEMENTATION PROCEDURE.** Two or more municipalities may enter into an agreement concerning the establishment of a facility for the recycling of solid waste or for the recovery of resources from solid waste and concerning the required use of that facility. The municipalities which enter into this type of agreement may require any local unit of government, occupant of a single-family or multifamily residence, retail business, commercial business or industry to use a facility for the recycling of solid waste or for the recovery of resources from solid waste generated within the limits of those municipalities which is not exempt under sub. (5) if:

(a) Each of the municipalities adopts an initial intent resolution.

(b) The municipality which is responsible for the facility prepares or arranges for the preparation of a comprehensive facility project description report and submits this report to the department.

(c) Each of the municipalities determines that the required use is in the best public interest.

(d) The facility is constructed, operated, maintained, expanded, modified and closed in compliance with this chapter and ch. 144 and all necessary permits, licenses and approvals required by the department are obtained.

(e) Each of the municipalities adopts a valid solid waste flow control ordinance and issues a required use order.

(4) **REQUIRED USE; CONFLICTS BETWEEN MUNICIPALITIES.** (a) *Conflicts in nonpopulous counties.* If one municipality has a valid initial intent resolution, no other municipality may adopt an initial intent resolution or municipal waste flow control ordinance which covers the same type of solid waste generated in the same recycling or resource recovery area unless the first municipality revises its initial intent resolution or adopts a municipal waste flow control ordinance so that there is no conflict. This paragraph is not applicable to a county with a population of 500,000 or more or to any municipality in this type of county.

(b) *Conflicts in a populous county.* 1. If a city, a village or a town which is a municipality in a county with a population of 500,000 or more has a valid initial intent resolution, the county may not adopt an initial intent resolution or municipal waste flow control ordinance which covers the same type of solid waste generated in the same recycling or resource recovery area unless the city, a village or a town which is a municipality revises its initial intent resolution or adopts a municipal waste flow control ordinance so that there is no conflict.

2. An initial intent resolution for a county with a population of 500,000 or more is not valid for a city, a village or a town which is a municipality in that county if the city, a village or a town which is a municipality adopts a resolution of refusal to participate in a county waste flow control program within 6 weeks after the county initial intent resolu-

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89-90 Wis. Stats. 2772

tion is adopted and if the city, a village or a town which is a municipality adopts an initial intent resolution of its own within 3 months after the county initial intent resolution is adopted.

(5) **EXEMPTION FOR CERTAIN SOLID WASTES.** A municipality may not require the use of a facility for:

(a) Solid waste produced by a retail business, commercial business or industry which is privately processed and reused.

(b) Solid waste consisting of scrap, new material or used material which is separated from other waste for sale, reuse or recycling.

(c) Solid waste from a single-family dwelling which is disposed of on or held for disposal on land surrounding the dwelling by a person who owns or leases and occupies the dwelling and owns or leases the surrounding land.

(d) Solid waste which is sewage or industrial waste sludge.

(e) Solid waste produced by a commercial business or industry which is disposed of or held for disposal in an approved facility, as defined under s. 144.441 (1) (a), owned by the generator and designed and constructed for the purpose of accepting that type of solid waste.

(f) Solid waste received and processed by a recycling or resource recovery facility which exists on January 1, 1984, or for which a feasibility report, a permit application or other application is submitted to the department on or before January 1, 1984.

(g) Solid waste generated within a town if the town voluntarily has entered into an agreement or contract with a city or village for the recycling or the recovery of resources from these wastes and if the city or village has adopted a waste flow control ordinance or if the facility operated by the city or village may receive waste under par. (f).

(h) Solid waste which is a type of waste which the municipality determines is unsuitable for recycling or resource recovery at the facility.

(6) **INITIAL INTENT RESOLUTION.** A municipality may adopt an initial intent resolution at any time except as provided under sub. (4) and except that a municipality may not adopt more than one initial intent resolution covering a specific recycling or resource recovery service area within a 10-year period. An initial intent resolution remains valid only if a comprehensive facility project description report is submitted within 2 years after that resolution is adopted and if a municipal waste flow control ordinance is adopted within 5 years after that resolution is adopted. An initial intent resolution shall include:

(a) A statement of the municipality's intention to establish or utilize or to contract for the establishment or utilization of a facility for the recycling of solid waste or for the recovery of resources from solid waste or, if the municipality enters into an agreement under sub. (3) but is not the responsible municipality, a statement of the municipality's intention to participate in that project.

(b) A statement of the municipality's intention to adopt a solid waste flow control ordinance.

(c) A description of the types of solid waste which may be subject to the ordinance.

(d) A description of the anticipated recycling or resource recovery area which may be subject to the ordinance.

(7) **COMPREHENSIVE FACILITY PROJECT DESCRIPTION REPORT.** After an initial intent resolution is adopted and prior to the adoption of a waste flow control ordinance, the responsible municipality is required to prepare or arrange for the preparation of a comprehensive facility project description report and submit it to the department for review in order to assess the environmental regulatory permits, licenses and approvals required for the facility and to determine the acceptability of

the proposed effective period. At a minimum, this report shall include:

(a) A detailed description of the proposed facility for the recycling of solid waste or for the recovery of resources from solid waste, including details on facility size and location, preliminary engineering design plans, a study of the required waste quantities and waste composition and a detailed report of the facility anticipated capital and operating costs.

(b) A detailed description of methods for transporting solid wastes to the facility including transportation routes, transfer facilities and estimates on proposed collection, storage, transportation and residual disposal costs.

(c) An identification of energy or material markets; a project timetable and implementation schedule; an identification of parties responsible for facility procurement; and a summary of the tipping fee, schedule of rates and other charges required for facility implementation.

(d) An identification of the quantity, composition and types of solid waste to be processed at the proposed facility for the recycling of solid waste or for the recovery of resources from solid waste, an identification of the quantity, composition and types of solid waste in the municipality which are not to be processed at that facility, plans for the treatment or disposal of this residual solid waste and a summary of the economic and environmental impacts of the reduction in volume or the change in characteristics of the residual solid waste on existing solid waste treatment and disposal facilities serving the recycling or resource recovery area.

(e) The proposed effective period for any municipal waste flow control ordinance adopted for the facility. The department shall determine if the proposed effective period is acceptable based upon all of the following:

1. The expected life of the facility.

2. The length of time required to finance the capital cost of the facility.

3. The potential for the development of improved or alternate methods or technology for the recycling or the recovery of resources from the types of solid waste to be processed at the facility.

(8) **BEST PUBLIC INTEREST; CRITERIA.** A municipality may determine that a required usage is in the best public interest if it finds the:

(a) Required use will result in reuse or recovery of material from solid waste.

(b) Required use will lessen the demand for solid waste disposal facilities.

(c) Required use will conserve natural resources or energy.

(d) Required use is necessary to obtain the type and quantity of solid waste necessary for operational volumes needed to make the facility economically feasible.

(e) Alternatives to required use which may be used to obtain the necessary type and quantity of solid waste have been compiled, analyzed and considered.

(f) Required use is consistent with planning efforts of the municipality.

(h) Operation of the facility is technically feasible and will not result in significant adverse environmental impacts based upon a comprehensive facility project description report prepared under sub. (7).

(i) Required use and operation of the facility will be responsive to the extent feasible with legitimate public concerns expressed at the public hearing under sub. (9).

(j) Construction, operation, maintenance, expansion, modification and closure of the facility will comply with ch. 144 and all permits, licenses and approvals required by the department will be obtained.

(k) Proposed effective period is reasonable based upon the factors specified under sub. (7) (e) 1 to 3.

(9) BEST PUBLIC INTEREST; HEARING; APPEALS. (a) A municipality shall conduct a public hearing and permit public participation at that hearing prior to issuing any determination concerning best public interest under sub. (8).

(b) Any person adversely affected by the municipality's determination concerning best public interest under sub. (8) may appeal the determination under ch. 68.

(10) MUNICIPAL WASTE FLOW CONTROL ORDINANCE. Except as provided under sub. (4), a municipality may adopt a municipal waste flow control ordinance if the municipality adopted an appropriate initial intent resolution under sub. (6), if the municipality or, if the municipality enters into an agreement under sub. (3), the responsible municipality submitted the necessary comprehensive facility project description report required under sub. (7), if the municipality issued a determination of best public interest utilizing criteria under sub. (8) after conducting the hearing required under sub. (9) and if the facility complies with this chapter and ch. 144 and all permits, licenses and approvals required by the department are obtained. The municipal waste flow control ordinance shall include:

(a) A description of the applicable facility for the recycling of solid waste or for the recovery of resources from solid waste.

(b) A description of the recycling or resource recovery area subject to the ordinance and for which a required use order may be issued.

(c) A description of the types and quantities of solid waste which are subject to the ordinance and for which a required use order may be issued.

(d) A description of the persons who are subject to the ordinance and who may be required to use the facility under a required use order.

(e) A description of the minimums and maximums for the tipping fee, schedule of rates and other charges which may be imposed for use of the facility without amendment or revision of the ordinance.

(f) The effective period of the municipal waste flow control ordinance. The effective period and any revision of the effective period is required to be approved by the department based upon factors specified under sub. (7) (e) 1 to 3. A municipal waste flow control ordinance is not valid after the expiration of its effective period.

(g) A description of the methods proposed to be used to meet the recycling requirements of sub. (17).

(11) REQUIRED USE ORDER. A municipality may issue a required use order following the procedures required under sub. (12) if it adopted a municipal waste flow control ordinance and if the order is consistent with that ordinance. A required use order shall include:

(a) A description of the specific recycling or resource recovery area subject to the order.

(b) Specification of the types and quantities of solid waste subject to the order.

(c) A summary of the plans for the use of the solid waste.

(d) A description of the point or points where the solid waste is to be delivered or where the solid waste will be collected under the order.

(e) A summary of the tipping fee, rates and other charges which will be imposed for use of the facility under the order.

(12) NEGOTIATION. A municipality shall proceed as follows in issuing a required use order which requires use of a facility for the recycling of solid waste or for the recovery of resources from solid waste:

(a) The municipality shall notify those persons who are subject to the required use order at least 90 days prior to the effective date of that order. The municipality shall notify in writing all licensed collectors operating in the recycling or resource recovery area at least 90 days prior to the effective date of that order. The municipality shall notify other local units of government in the recycling or resource recovery area by providing a written notice to the clerk of those units of government. The municipality shall notify in writing the owner or operator of all solid waste disposal and treatment facilities located in or serving generators located in the recycling or resource recovery area at least 90 days prior to the effective date of that order. In addition, the municipality shall publish a class 3 notice, under ch. 985, in a newspaper having general circulation in the area. Each notification shall include information specified under sub. (11) (a) to (e).

(b) If a municipality fails to notify a person required to be notified under par. (a), the required use order is not effective and may not be enforced with respect to that person. If a municipality fails to notify the owner or operator of a solid waste disposal or treatment facility as required under par. (a), the required use order is not effective and may not be enforced with respect to that owner or operator or to a person furnishing solid waste to the owner or operator.

(c) During the 90-day period following the notification, the municipality shall negotiate with any or all of the persons subject to or affected by the required use order and attempt to develop a contractual agreement on the terms of required usage of the facility.

(d) In negotiating under this subsection, the municipality shall consider penalty fees, charges imposed and other financial consequences which will result from the termination of existing service contracts if a required use order takes effect and is enforced.

(e) If a contract is not entered into on or before the end of the 90-day period, or if, in the case of a person other than a local unit of government, the person does not make adequate arrangements for the processing for reuse of the waste generated by it, the municipality shall hold a public hearing on the matter and take testimony for and against the required use of the facility.

(f) If a contract is not entered into within 30 days after the public hearing, or if, in the case of a person other than a local unit of government, the person does not make adequate arrangements for the processing for reuse of the waste generated by it, the municipality may issue a special enforcement order requiring any person given notice to use the facility, starting on a specified date at least 30 days after the special enforcement order is issued.

(g) The municipality shall provide procedures so that any person adversely affected by the issuance of a special enforcement order may appeal that decision under ch. 68.

(13) TERMINATION OF REQUIRED USE. (a) A municipality may not terminate, suspend or curtail services provided to any person required to use a facility under this section without that person's consent.

(b) The obligations of a person under a required use order issued under this section may not be terminated or affected unless the municipality consents to the termination or revision.

(c) A municipality shall consent to the termination or revision of a required use order if the person subject to the order establishes that solid waste generated by that person will be recycled or treated for the recovery of resources and that:

1. The proposed recycling or recovery of resources is economically efficient;

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2. The proposed recycling or recovery of resources would not reduce the type or quantity of solid waste available to the facility for which the required use order was issued to such an extent that the facility could not maintain minimum operational volumes necessary to fulfill existing contractual obligations for products or energy or necessary to make the facility economically feasible; and

3. The proposed recycling or recovery of resources results in a higher or better use of solid waste resources. A higher or better use of solid waste resources results if:

a. Recyclable or reusable materials are derived from the solid waste resources; or

b. Energy is derived from the solid waste resources.

(15) **FEE AND RATE REVIEW.** The tipping fee, rates and other charges and any revision in the tipping fee, rates and other charges established by a municipality for use of a facility for the recycling of solid waste or for the recovery of resources from solid waste which is required under this section are subject to review under ch. 68.

(16) **PERMITS, LICENSE AND APPROVALS; REPORT REVIEW AND FEES; PROOF OF FINANCIAL RESPONSIBILITY.** (a) A municipality may not construct, operate, maintain, expand, modify or close any facility for the recycling of solid waste or for the recovery of resources from solid waste in violation of ch. 144 or without any license, permit or approval required by the department.

(b) The department shall review each comprehensive facility project description report submitted under sub. (7) and may require a municipality to pay a fee to cover costs incurred by the department associated with this review.

(c) The department may require a municipality to maintain proof of financial responsibility to ensure the availability of funds necessary for closure costs associated with the closing of a facility for the recycling of solid waste or for the recovery of resources from solid waste, and to remedy, abate or prevent hazards to public health or the environment.

(17) **INCINERATION; RECYCLING REQUIREMENTS.** (a) In this subsection, "incinerator" means a device which maintains a controlled process by which solid waste is thermally altered into gases and residue containing little or no combustible material.

(b) A municipality which adopts a waste flow control ordinance may not operate an incinerator as one of the means of recycling solid waste unless the department certifies that the requirements of par. (bg) are met.

(bg) Solid waste of each type to be incinerated, as determined in the air permit under s. 144.391, shall be recycled by means other than incineration to the extent of economic feasibility.

(e) This subsection applies to incinerators in operation on and after July 1, 1989.

History: 1983 a. 27, 192, 425; Stats. 1983 s. 144.794; 1985 a. 120; 1987 a. 27; 1989 a. 31; 1989 a. 56 ss. 177, 259; 1989 a. 335 ss. 57 to 57j, 59, 61 to 63; Stats. 1989 s. 159.13.

159.15 Waste oil collection and recycling. (1) DEFINITIONS. As used in this section, unless the content requires otherwise:

(a) "Automotive engine oil" means any oil to be used in the engine or crankcase of a motor vehicle.

(b) "Consumer" means a person who, for personal or family purposes, purchases or uses automotive engine oil or generates, collects, stores or transports engine waste oil in quantities of less than 200 gallons per year.

(c) "Engine waste oil" means automotive engine oil after it is used and removed from the engine or crankcase of a motor vehicle but before that oil is recycled.

(d) "Fuel oil" means any oil to be burned to produce heat.

(e) "Motor vehicle" means any vehicle propelled by an internal combustion engine and includes any automobile, truck, bus, motorcycle, snowmobile or vehicle which travels on or off roads or highways.

(f) "Reclaimed oil" means engine waste oil which is processed by settling, dehydration, filtration or mixing, or combinations of those procedures, which removes some of the harmful physical and chemical characteristics which are acquired through use.

(g) "Recycled oil" means re-refined oil or reclaimed oil.

(h) "Re-refined oil" means engine waste oil which is processed by high temperature distillation and chemical treatment or any other process which removes all harmful physical and chemical characteristics acquired through use.

(i) "Retail sales establishment" means a person who is engaged in the business of selling automotive engine oil to consumers.

(j) "Service establishment" means a person who is engaged in the business of servicing and removing automotive engine oil from motor vehicles for consumers.

(k) "Waste oil" means any oil after use or which is contaminated through storage or handling before that oil is recycled.

(2) **WASTE OIL COLLECTION.** (a) *Retail sales establishment.* A retail sales establishment:

1. Shall maintain an engine waste oil collection facility for the temporary storage of engine waste oil returned by consumers and post at least one sign at the location of sale which contains wording similar to: "Engine waste oil collection facility. Please return your waste oil here."; or

2. Shall post at least one sign at the location of sale which contains wording similar to: "Engine waste oil can be recycled. Please return your waste oil to a waste oil storage facility. The nearest waste oil storage facility is located and is open". The sign shall describe the location and the days and hours of operation.

(b) *Approved waste oil collection facilities.* The department shall establish by rule standards for the approval of certain types of facilities to be used for engine waste oil collection.

(c) *Exemption.* An engine waste oil collection facility maintained by a retail sales establishment which is of a type approved by the department is exempt from the rules promulgated under s. 144.435 and need not be licensed as a solid waste disposal facility under s. 144.44.

(d) *Compliance with solid and hazardous waste regulations.* Except as provided under par. (c), no person may maintain or operate an engine waste oil collection facility unless the person complies with the requirements of ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under those sections with respect to that facility.

(3) **WASTE OIL STORAGE FACILITIES.** (a) *Required storage facilities.* 1. As used in this paragraph, "adequate engine waste oil storage facilities" means at least the minimum number of separate engine waste oil storage facilities each with a capacity of at least 250 gallons, approved by the department and accessible to the public. The department shall establish standards for the approval of certain types of facilities to be used for engine waste oil storage. These standards may allow the same facility to serve as an engine waste oil collection facility and an engine waste oil storage facility.

2. The minimum number of engine waste oil facilities for a city, village or town located in a county with a population of 50,000 or more is:

- a. Zero if the population is less than 3,500.
- b. One if the population is at least 3,500 but less than 25,000.

c. Two if the population is at least 25,000 but less than 100,000.

d. Three if the population is at least 100,000, plus one for each additional 100,000 of population.

3. The minimum number of engine waste oil storage facilities for a county with a population under 50,000 is one.

4. A city, village or town located in a county with a population of 50,000 or more shall provide for adequate engine waste oil storage facilities if these facilities do not exist.

5. A county with a population of less than 50,000 shall provide for an adequate engine waste oil storage facility if a facility does not exist.

(b) *Exemption.* If a municipality submits and obtains approval from the department for an informal plan of operation for an engine waste oil storage facility and constructs, maintains or provides for an engine waste oil storage facility of a type approved by the department, that facility is exempt from the rules promulgated under s. 144.435 and need not be licensed as a solid waste disposal facility under s. 144.44. The informal plan of operation shall contain the information and be in a form approved by the department but is not required to be prepared by a registered professional engineer.

(c) *Compliance with solid and hazardous waste regulations.* Except as provided under par. (b), no person may maintain or operate a facility for the storage of engine waste oil unless the person obtains a license and complies with the requirements of ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under those sections with respect to that facility.

(4) **WASTE OIL TRANSPORTATION.** (a) *Exemptions.* 1. The department shall exempt a consumer from the licensing and other requirements of s. 144.64 and rules promulgated under that section for the transportation of engine waste oil.

2. The department may exempt a retail sales establishment or a service establishment from the licensing and other requirements of s. 144.64 and rules promulgated under that section for the transportation of engine waste oil.

(b) *Compliance with solid and hazardous waste regulations.* Except as provided under par. (a), no person may transport engine waste oil unless the person obtains a license and complies with the requirements of ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under those sections with respect to the transportation of the engine waste oil.

(c) *Collection and transportation service.* A person who collects and transports waste oil for sale or transfer to waste oil recyclers or for other approved methods of disposal shall obtain a license and comply with the requirements of ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under these sections. When issuing the license under s. 144.64, the department shall require any person who collects and transports waste oil to provide services to any collection or storage facility within his or her geographic area which has accumulated 200 gallons or more of engine waste oil. The department may revoke a license issued under s. 144.64 if a person who collects and transports waste oil fails to provide services to collection or storage facilities within his or her geographic area which have accumulated 200 gallons or more of engine waste oil.

(5) **WASTE OIL RECYCLING.** No person may maintain or operate a facility for the recycling of engine waste oil unless the person obtains a license and complies with the requirements of ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under those sections with respect to that facility.

(6) **SALE OF RECYCLED OIL.** (a) *Re-refined oil.* No person may sell or possess with the intent to sell any re-refined oil unless the container clearly and prominently states on the front panel "RE-REFINED OIL" and unless the container

complies with the labeling standards established by the federal trade commission and the environmental protection agency.

(b) *Reclaimed oil.* No person may sell or possess with intent to sell any reclaimed oil unless the container clearly and prominently states on the front panel "RECLAIMED OIL" and unless the container complies with the labeling standards established by the federal trade commission and environmental protection agency.

(7) **STATE CONTRACTS; USE OF RE-REFINED OIL.** All contracting agencies of the state shall be encouraged to purchase re-refined oil to be used as automotive engine oil if re-refined oil is available in sufficient supply of comparable quality, satisfies applicable American petroleum institute standards and is available at prices competitive with new oil.

(8) **PROMOTION OF RECYCLED OIL.** The department, in conjunction with other interested state agencies, shall develop and conduct public information and educational programs regarding the availability of collection facilities, the merits of recycled oil, the need for using recycled oil to maintain oil reserves and the need to minimize the disposal of waste oil in ways harmful to the environment.

History: 1979 c. 221; 1981 c. 374 s. 148; 1987 a. 384; 1989 a. 335 s. 51; Stats. 1989 s. 159.15.

159.17 Waste tire removal and recycling. (1) DEFINITIONS. In this section:

(a) "Recovery activity" means a project designed to reduce the number or volume of waste tires, recycle waste tires or recover energy from waste tires.

(b) "Solid waste facility" has the meaning given under s. 144.43 (5).

(c) "Tire dump" has the meaning given under s. 144.449 (1) (b).

(d) "Waste tire" has the meaning given under s. 84.078 (1) (b).

(2) **FEE USE PLAN.** The department shall promulgate, by rule, a statewide plan for the use of moneys appropriated under s. 20.370 (2) (d) to accomplish all of the following:

(a) The removal of waste tires from solid waste facilities.

(b) The recovery of rubber from waste tires for use in highway improvements, as defined under s. 84.06 (1).

(c) The providing of grants under sub. (3) for development costs or operating costs of recovery activities.

(d) Any recovery activity conducted by the department under sub. (5).

(3) **GRANTS; ELIGIBILITY; APPLICATIONS.** (a) A municipality, governmental body, as defined in s. 19.82 (1), private business or nonprofit organization which meets eligibility requirements established by the department by rule may apply to the department for a grant for development costs or operating costs of a recovery activity.

(b) A grant application shall comply with the department's requirements as to contents, form and manner of submission.

(c) No grant may be awarded for a recovery activity which receives less than 95% of its tires from Wisconsin tire dumps, retailers or residents.

(d) The department shall promulgate rules concerning requirements for the documentation of the sources from which a tire dump receives tires for the purpose of establishing eligibility under par. (c). The burden of proof shall be on the applicant to show that the eligibility requirement under par. (c) is met.

(4) **GRANT AMOUNTS.** In awarding grants, the department shall give a higher priority to applications for development costs than to applications for operating costs.

(5) **OTHER RECOVERY ACTIVITIES BY DEPARTMENT.** The department may conduct a recovery activity designed to reduce

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the volume of waste tires in a tire dump that does not receive at least 95% of its tires from Wisconsin retailers and residents if the department, after due diligence, is unable to recover nuisance abatement expenses under s. 144.449 (5) from a person responsible for a nuisance at a tire dump after the department has initiated abatement activities.

History: 1987 a. 27, 110; 1987 a. 403 s. 256; 1989 a. 335 s. 68; Stats. 1989 s. 159.17.

159.18 Lead acid battery collection. (1) DEFINITIONS. In this section:

- (a) "Battery" means a lead acid battery.
- (b) "Consumer" means a person who uses a battery.
- (c) "Retailer" means a person who sells batteries to consumers.

(1m) NOTICE. (a) The department shall provide a notice concerning the disposal of batteries to all retailers. The notice shall be 8.5 inches by 11 inches and all notices shall be of the same color, typeface and type size. The notice shall include all of the following information:

1. That it is illegal to dispose of a motor vehicle battery or other battery in a landfill or incinerator.
2. That batteries should be recycled.
3. That state law requires retailers to accept used batteries in trade and in some other instances.

(b) A retailer shall post the notice provided under par. (a) in a place where it can be seen by consumers.

(2) SALE AND INSTALLATION. (a) Beginning on January 1, 1991, a retailer who sells a battery to a consumer and installs the battery shall accept the used battery unless the consumer refuses to relinquish the used battery.

(b) If the consumer refuses to relinquish the used battery under par. (a), the retailer shall comply with sub. (3).

(3) COUNTER SALES. (a) Beginning on January 1, 1991, if a retailer sells a battery to a consumer without installing the battery or if sub. (2) (b) applies, the retailer shall do all of the following:

2. Offer to take the consumer's used battery in trade.
3. Subject to par. (b), accept the consumer's used battery in trade for a new battery without charge or time limit, during normal business hours, at any business location owned or operated by the retailer.

(b) A retailer accepting a used battery in trade under par. (a) 3 may require the consumer to provide proof that the consumer purchased a battery from the retailer.

(4) ACCEPTANCE OF OTHER BATTERIES. (a) Except as provided in par. (b), beginning on January 1, 1991, if a person delivers to a retailer a used battery to which sub. (3) (a) 3 does not apply, the retailer shall accept the used battery. A retailer may charge up to \$3 for each battery delivered under this paragraph.

(b) A retailer is not required to accept more than 2 batteries delivered under this subsection by a person on one day.

(5) DEPOSIT. Beginning on January 1, 1991, a retailer may charge a deposit of not more than \$5 on the sale of a battery. The retailer shall refund the deposit if the consumer delivers the battery to the retailer under sub. (3) (a) 3.

History: 1989 a. 335.

159.19 Statewide technical assistance. The department shall provide assistance to individuals, groups, businesses, state agencies, counties and municipalities in all aspects of recycling consistent with this subchapter, and whenever practical shall be provided with an emphasis on documents and material easy to read and understand by the general public. This assistance may be provided through programs established under s. 159.21 and shall include all of the following:

(1) WASTE GENERATION. (a) Providing information on how to conduct a survey of the composition of solid waste and, as appropriate, conducting one or more surveys.

(b) Maintaining current estimates of the amount of components of solid waste specified in s. 159.07 generated by categories of businesses, industries, municipalities and other governmental entities.

(c) Providing solid waste generators with information on how to manage solid waste consistent with s. 159.05 (12).

(2) RECYCLING PROGRAMS. With respect to programs created under s. 159.09 (2) (a):

(a) Identifying appropriate qualifications of program coordinators and staff.

(b) Preparing sample ordinances, procedural handbooks and contracts.

(c) Identifying sources of information regarding the creation and operation of a municipal or county program.

(d) Providing advice, upon the request of a municipality or county, on implementing the municipality's or county's solid waste management plan.

(3) MARKETING OF RECOVERED MATERIALS. (a) Identifying prospective buyers and brokers of materials recovered from solid waste.

(b) Preparing suggestions for regional programs to market materials recovered from solid waste.

(c) Identifying methods to successfully accommodate fluctuating markets for materials recovered from solid waste.

History: 1989 a. 335.

159.21 Statewide education program. The department shall collect, prepare and disseminate information and conduct educational and training programs designed to assist in the implementation of solid waste management programs under ss. 159.01 to 159.31, enhance municipal and county solid waste management programs under s. 159.09 (2) (a) and inform the public of the relationship among an individual's consumption of goods and services, the generation of different types and quantities of solid waste and the implementation of the solid waste management priorities in s. 159.05 (12). The department shall prepare the information and programs on a statewide basis for the following groups:

(1) Municipal, county and state officials and employees.

(2) Kindergarten through graduate students and teachers.

(3) Private solid waste scrap brokers, dealers and processors.

(4) Businesses that use or could use recycled materials or that produce or could produce products from recycled materials and persons who provide support services to those businesses.

(5) The general public.

History: 1989 a. 335.

159.215 Yard waste publicity. The department shall conduct activities to make the public aware of the need to cease disposing of yard waste in solid waste disposal facilities.

History: 1989 a. 31; 13 93 (1) (b); Stats. 1989 s. 159.215.

159.22 Council on recycling. (1) DEFINITION. In this section, "council" means the council on recycling.

(2) DUTIES. The council shall do all of the following:

(a) Promote the efficient and prompt implementation of state programs related to solid waste reduction, recovery and recycling.

(b) Advise and assist state agencies and authorities and county and municipal officials in the coordination of programs and the exchange of information related to solid waste reduction, recovery and recycling. This assistance, whenever practical, shall be provided with an emphasis on documents

and material easy to read and understand by the general public.

(c) Advise state agencies concerning the promulgation of rules under ss. 100.29, 100.295, 101.126, 560.12, 560.65 and 560.835 and the establishment of priorities under s. 159.03 (1) (b).

(d) Advise the department and the university of Wisconsin system concerning educational efforts and research related to solid waste reduction, recovery and recycling.

(e) Develop recommendations concerning and promote a regional and interstate marketing system for recycled materials.

(f) Develop recommendations and submit a report to the legislature for distribution under s. 13.172 (2) concerning the establishment of a market development and research program to encourage recycling and the use of recycled materials that is funded by the federal and state governments and private industry.

(g) Develop recommendations and cooperate with the packaging industry concerning establishing and implementing standards for recyclable packaging.

(h) Advise the department concerning the development of a statewide plan for public service announcements that would provide information about recycling programs and the benefits of recycling through radio and television announcements produced in this state's production facilities and designate a liaison with television and radio stations to try to secure the broadcast of the public service announcements.

(i) Advise the governor and the legislature.

(2m) STATUS REPORTS. The council may request a status report from any state agency or authority implementing a solid waste reduction, recovery or recycling program.

(3) SUBCOMMITTEES. The council may create subcommittees to assist in its work. Subcommittee members may include members of the council, state employes and representatives of counties and municipalities and others.

(4) ASSISTANCE. State agencies shall assist the council in fulfilling its duties to the fullest extent possible.

History: 1989 a. 335.

159.23 Financial assistance for responsible units. (1) DEFINITIONS. In this section:

(a) "Avoided disposal cost" means the amount of the cost of disposing of processed material, as defined in s. 159.11 (2m) (a) 1, that a responsible unit avoids as a result of operating a solid waste management program with one or more of the components specified in s. 159.11 (2) (a) to (h) during the year for which an application is submitted under sub. (4).

(c) "Population" means the number of persons residing in a region, as determined by the department based upon the most recent decennial or special census or the most recent, subsequent population estimate under s. 16.96.

(d) "Prevailing market rate" means a reasonable estimate of the price for a recyclable material that will be paid by a collection facility serving the area within the boundaries of a responsible unit during the year for which an application for assistance is submitted.

(2) DEPARTMENT POWERS AND DUTIES. The department shall develop, implement and administer a program to provide financial assistance to responsible units. The department shall develop criteria for reporting on and evaluating the program. Each year the department shall audit at least 5% of the recipients of grants in the previous year to ensure that programs and activities funded by grants under this section meet the requirements of this section.

(3) ELIGIBILITY. (a) Subject to par. (am), the following responsible units are eligible for assistance under the program:

1. For assistance in 1992 to 1994, any responsible unit.

2. For assistance in 1995 to 2000, a responsible unit that has been determined under s. 159.11 to have an effective recycling program.

(am) The department may withhold all or a portion of the assistance for a responsible unit for one year if the department determines any of the following:

1. That the responsible unit has not maintained an effective recycling program following approval of the recycling program under s. 159.11.

2. That the responsible unit spent funds received under this section on activities not eligible for assistance under par. (b).

(b) Only expenses, including capital expenses, anticipated to be incurred for planning, constructing or operating a recycling program with one or more of the components specified in s. 159.11 (2) (a) to (h) during the year for which an application is submitted under sub. (4) are eligible for assistance under the program.

(d) A responsible unit or its designee may not use assistance under this section to pay at retail at a collection facility any amount for a recyclable material in excess of the prevailing market rate.

(e) No expenses related to the purchase of plastic containers for the collection of recyclable materials are eligible for assistance under the program unless the recycled content of the plastic containers is at least 25% by weight.

(4) APPLICATION. A responsible unit that seeks assistance under the program shall submit an application to the department by September 1 in the year preceding the year for which the assistance is sought. An application shall include all of the following:

(a) The information specified in s. 159.09 (2) (b).

(b) Documentation that the assistance, when combined with future anticipated assistance, will result in the responsible unit doing one of the following:

1. Making continued progress in creating an effective recycling program under s. 159.11 by January 1, 1995.

2. Maintaining an effective recycling program following approval of the recycling program under s. 159.11.

(c) If the responsible unit received a grant under this section or 1989 Wisconsin Act 335, section 85 (5) for the grant period preceding the grant period for which the application is being made, a financial report on the activities that have been or are likely to be funded by the grant in that preceding grant period, including a statement of whether any portion of that grant was or is likely to be spent on activities not related to the requirements of this subchapter and, if so, how much of the grant was or is likely to be spent on those activities.

(5) GRANT AWARD. The department shall award a grant to each eligible responsible unit that submits a complete grant application under sub. (4) for expenses allowable under sub. (3) (b). Except as provided under sub. (5m), the amount of the grant shall be determined as follows:

(a) For a county that is the responsible unit for at least 75% of the population of the county, \$100,000 or the amount determined under par. (c), whichever is greater.

(c) For all other responsible units, the amount of the grant equals the lesser of the following:

1. The population of the responsible unit times \$6.

2. Sixty-six percent of eligible expenses, less any avoided disposal costs.

(5m) ALTERNATE PROCESS. The department shall establish, by rule, a process for distributing grants if the amount that

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would be awarded under sub. (5) exceeds the amount of funds available under s. 20.370 (4) (cw).

(5s) SUPPLEMENTAL GRANT. Beginning with grants for 1994, the department shall annually allocate 10% of the funds appropriated under s. 20.370 (4) (cw) for supplemental grants under this subsection. A responsible unit is eligible for a supplemental grant if, in at least part of the region, it imposes fees for residential solid waste collection on the basis of the volume of solid waste collected. The department shall base the amount of a supplemental grant on the number of persons within the responsible unit's region who pay volume-based fees for residential solid waste collection.

(6) DISBURSEMENT. The department shall disburse 50% of a grant to the applicant upon approval, but no later than January 1 of the year for which the grant is made.

(7) SUNSET. No grant may be awarded under this section for any year after 2000.

History: 1989 a. 335

159.25 Waste reduction and recycling demonstration grants. (1) DEFINITIONS. As used in this section:

(a) "Demonstration grant" means a waste reduction and recycling demonstration grant.

(b) "Development costs" means engineering, design, equipment, property and construction costs associated with the implementation of waste reduction and recycling activities.

(c) "Waste reduction and recycling activity" includes any project or incentive to reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste or recover energy from solid waste.

(2) DEPARTMENT POWERS AND DUTIES. The department shall develop, implement and administer a demonstration grant program. The department shall develop evaluation criteria for reporting on and evaluating this program including the number of demonstration grants awarded, the extent to which the grant moneys are used as required under this section and the impact of activities financed with these grants on the amount of solid waste disposed of at land disposal facilities.

(3) DEMONSTRATION GRANTS; ELIGIBILITY; APPLICATIONS. (a) A municipality, public entity, private business or non-profit organization which meets eligibility requirements established by the department may apply for a demonstration grant for the purpose of implementing innovative waste reduction and recycling activities.

(b) An application for a demonstration grant shall contain the information, shall be in a form and shall be submitted in the manner required by the department.

(cm) Beginning on January 1, 1993, no responsible unit may apply for a demonstration grant unless it has complied with s. 159.09 (2) (b).

(4) DEMONSTRATION GRANTS; CRITERIA. The department shall develop by rule criteria for determining eligibility, for approving, for determining the amount of and for establishing priorities for distributing demonstration grants. These criteria shall include:

(a) The weight or equivalent volume of solid waste which is anticipated to be diverted from disposal at land disposal facilities through the implementation of waste reduction and recycling activities. This weight or equivalent volume shall not include solid waste diverted from waste reduction or recycling facilities or activities in existence or for which a feasibility report is submitted on or before the date of application for the demonstration grant.

(b) The type or types of waste reduction and recycling activities to be implemented.

(c) Consideration of existing waste reduction and recycling activities.

(d) Consideration of existing and anticipated solid waste management needs.

(e) The value of implementation of the waste reduction or recycling activity as a demonstration or experimental project.

(f) Consideration of the implementation of innovative technologies in a waste reduction or recycling activity. No grant moneys may be awarded for costs of proven technologies, including, but not limited to, incinerator projects.

(g) Consideration of the application or implementation of innovative technologies in a project which employs a proven technology in a waste reduction or recycling activity. Notwithstanding par. (f), a project which employs a proven technology may receive grant moneys for that portion of the project which implements innovative technologies and applications.

(4m) DEMONSTRATION GRANTS; PREFERENCES. The department shall give preference in awarding demonstration grants to waste reduction and recycling activities that do any of the following:

(a) Reduce the amount of one or more components of postconsumer waste disposed of in land disposal facilities by reducing the amount of the components generated.

(b) Result in an improved or more efficient collection or processing of one or more components of postconsumer waste.

(c) Develop or expand a market for one or more materials separated from postconsumer waste, pursuant to the priorities established under s. 159.03 (1) (b).

(5) DEMONSTRATION GRANTS; FINANCIAL ASSISTANCE. (a) The department may enter into agreements with eligible applicants to make demonstration grants from the appropriation under s. 20.370 (4) (ct).

(b) An eligible applicant for a demonstration grant may receive a grant based upon the weight or equivalent volume of solid waste anticipated to be diverted from disposal at land disposal facilities but a demonstration grant may not exceed 50% of the actual eligible costs or \$150,000, whichever is less. An applicant's required contribution for a demonstration grant may consist of funding or an in-kind contribution. The department may award up to 75% of the grant to the applicant upon approval. The department shall award the remainder of the grant only if the waste reduction and recycling activities are implemented and approved by the department. An applicant may receive only one demonstration grant.

(6) RESTRICTIONS ON BEVERAGE CONTAINER DEPOSIT REGULATIONS. The department may not require a municipality to establish beverage container deposit regulations as a condition for receiving a grant under this section. The department may not consider the establishment of beverage container deposit regulations as a factor in issuing any grant under this section. The department may not institute beverage container deposit regulations by rule under this section.

History: 1983 a. 426; 1985 a. 29 s. 3202 (39); 1987 a. 27; 1989 a. 31; 1989 a. 335 ss. 69b to 71b, 73b, 73d, 73h, 73L, 73p, 74, 76; Stats. 1989 s. 159.25; 1989 a. 359

159.31 Newspaper recycling fee. (1) DEFINITIONS. In this section:

(a) "Newspaper" means a publication that is printed on newsprint and that is published, printed and distributed in this state, at daily, weekly or other short, periodic intervals, for the dissemination of current news and information of a general character and of a general interest to the public. "Newspaper" also includes any "shoppers guide", as defined in s. 77.54 (15), that is printed on newsprint.

(b) "Recycled content" means the proportion of fiber in a newspaper that is derived from postconsumer waste.

(2) **FEE FOR NOT MEETING TARGET.** Except as provided in sub. (4) (a), each publisher of a newspaper shall annually pay to the department a newspaper recycling fee.

(3) **AMOUNT.** (a) Except as provided in sub. (4) (b), the amount of the newspaper recycling fee imposed on a publisher under sub. (2) for any year is 1% of the total cost of newsprint used to print the newspaper during the year multiplied by the recycling status specified in par. (b).

(b) The recycling status is the target recycled content specified in par. (c) minus the actual recycled content specified in par. (d).

(c) The target recycled content is the following recycled content in the specified year:

1. 1992, 10%.
2. 1994, 25%.
3. 2001 and thereafter, 45%.

(d) The actual recycled content is the average of the recycled content of all newsprint used by that publisher to print the publisher's newspaper during the year.

(4) **EXCEPTIONS.** (a) The newspaper recycling fee imposed under sub. (2) does not apply to the publisher of a newspaper that meets or exceeds the target recycled content specified in sub. (3) (c).

(am) The newspaper recycling fee imposed under sub. (2) does not apply to the publisher of a newspaper if the publisher is unable to obtain recycled newsprint in sufficient quantity, has attempted to obtain recycled newsprint from every producer of recycled newsprint that offered to sell recycled newsprint to the publisher within the preceding 12 months, and submits to the department documentation of its attempts including the name and address of each producer of recycled newsprint that the publisher contacted and the name and telephone number of the contact person at each of the producers.

(b) 1. The department shall reduce the newspaper recycling fee imposed on a publisher if it determines that the publisher purchased newsprint under a contract signed on or before July 1, 1989, and all of the following apply:

a. The contract requires the publisher to accept and pay for newsprint having a recycled content less than the target recycled content specified in sub. (3) (c).

b. The contract does not contain language releasing the publisher from the obligation to purchase and pay for the newsprint upon the enactment of laws by this state relating to taxation or recycling of newsprint.

2. The department shall calculate the reduced fee under this paragraph as follows:

a. Subtract the amount of newsprint described in subd. 1 used by the publisher during the year from the total amount of newsprint used by the publisher during the year.

b. Divide the amount of newsprint determined under subd. 2. a by the total amount of newsprint used by the publisher during the year.

c. Multiply the amount determined under subd. 2. b by the amount of the newspaper recycling fee calculated under sub. (3).

(5) **COLLECTION.** The department shall specify by rule the form and manner for payment of the newspaper recycling fee.

(6) **USE OF REVENUES.** The newspaper recycling fees collected under sub. (5) shall be deposited in the recycling fund under s. 25.49.

History: 1989 a. 335.

SUBCHAPTER III

LITTERING

159.81 Littering. (1) In this section:

(a) "Highway" has the meaning given in s. 340.01 (22).

(b) "Vehicle" has the meaning given in s. 340.01 (74).

(c) "Waters of the state" has the meaning given in s. 144.01 (19).

(2) Except as provided in sub. (3), a person who does any of the following may be required to forfeit not more than \$500:

(a) Deposits or discharges any solid waste on or along any highway, in any waters of the state, on the ice of any waters of the state or on any other public or private property.

(b) Permits any solid waste to be thrown from a vehicle operated by the person.

(c) Fails to remove within 30 days or otherwise abandons any automobile, boat or other vehicle in the waters of the state.

(3) (a) Subsection (2) (a) does not apply to a person who places solid waste in a receptacle designed for solid waste storage that is located along a highway or on other public or private property.

(b) Subsection (2) does not apply to a person who deposits or discharges solid waste in conformance with ch. 30, 31, 144 or 147 or a permit, license or other approval issued by the department under those chapters.

History: 1989 a. 335.

SUBCHAPTER IV

ENFORCEMENT AND PENALTIES

159.91 Enforcement; duty of department of justice; expenses. The attorney general shall enforce this chapter except for ss. 159.07, 159.08 and 159.81 and all rules promulgated under this chapter except under those sections. The circuit court for Dane county or for any other county where a violation occurred in whole or in part has jurisdiction to enforce this chapter or related rules by injunctive and other relief appropriate for enforcement. The department of natural resources shall reimburse the department of justice for the expenses incurred in enforcing this chapter from the appropriation under s. 20.370 (2) (ma).

History: 1989 a. 335.

159.93 Inspections. Any officer, employe or authorized representative of the department may enter and inspect any place at which a solid waste facility is located or is being constructed or installed, or inspect any record relating to solid waste management of any person who generates, transports, treats, stores or disposes of solid waste, at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules promulgated under this chapter. No person may refuse entry or access to any officer, employe or authorized representative of the department who requests entry or access for purposes of inspection, and who presents appropriate credentials. No person may 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 that relate to compliance status.

History: 1989 a. 335.

159.95 Penalties concerning land disposal and incineration; citations. (1) Any person who violates s. 159.07 (1m) may be required to forfeit \$50 for a first violation, may be required to forfeit \$200 for a 2nd violation and may be

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required to forfeit not more than \$2,000 for a 3rd or subsequent violation.

(2) (a) Any person who violates s. 159.07 (2) or 159.08 before January 1, 1995, is not subject to a penalty.

(b) After December 31, 1994, any person who violates s. 159.07 (2) or 159.08 may be required to forfeit \$50 for a first violation, may be required to forfeit \$200 for a 2nd violation and may be required to forfeit not more than \$2,000 for a 3rd or subsequent violation.

(3) (a) Any person who violates s. 159.07 (3) and (4) before January 1, 1997, is not subject to a penalty.

(b) After December 31, 1996, any person who violates s. 159.07 (3) and (4) may be required to forfeit \$50 for a first violation, may be required to forfeit \$200 for a 2nd violation

and may be required to forfeit not more than \$2,000 for a 3rd or subsequent violation.

(4) The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for the violations under subs. (1), (2) (b) and (3) (b).

History: 1989 a. 335, 359

159.97 Penalties. Any person who violates this chapter, except s. 159.07, 159.08 or 159.81, or any rule promulgated under this chapter, except under s. 159.07, 159.08 or 159.81, may be required to forfeit not less than \$10 nor more than \$1,000 for each violation.

History: 1989 a. 335.