

CHAPTER 147

POLLUTION DISCHARGE ELIMINATION

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147.01 Statement of policy and purpose. (1) Although in recent years intensive efforts have been made toward the abatement of pollution of the waters of this state, pollution of these waters continues. Unabated pollution of the waters of this state continues to arouse widespread public concern. It continues to endanger public health; to threaten fish and aquatic life, scenic and ecological values; and to limit the domestic, municipal, recreational, industrial, agricultural and other uses of water. It is the policy of this state to restore and maintain the chemical, physical, and biological integrity of its waters to protect public health, safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial, agricultural, and other uses of water. In order to achieve this policy, the legislature declares that:

(a) It is the goal of the state of Wisconsin to eliminate the discharge of pollutants into the waters of the state by 1985;

(b) It is also the goal of the state of Wisconsin that, wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by 1983;

(c) It is also the policy of the state of Wisconsin that the discharge of toxic pollutants in toxic amounts be prohibited.

(2) The purpose of this chapter is to grant to the department of natural resources all authority necessary to establish, administer and maintain a state pollutant discharge elimination system to effectuate the policy set forth under sub. (1) and consistent with all the requirements of the federal water pollution control act amendments of 1972, P.L. 92-500; 86 Stat. 816.

History: 1973 c. 74.

147.015 Definitions. In this chapter:

(1) "Biological monitoring" means the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical and biological characteristic of the effluent and at appropriate frequencies and locations.

(2) "Construction" means any placement, assembly or installation of facilities or equipment, including contractual obligations to purchase such facilities or equipment, at the

premises where such equipment will be used, including preparation work at such premises.

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

(4) "Discharge" when used without qualification includes a discharge of any pollutant.

(5) "Discharge of pollutant" or "discharge of pollutants" means any addition of any pollutant to the waters of this state from any point source.

(6) "Effluent limitation" means any restriction established by the department, including schedules of compliance, on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of this state.

(7) "Municipality" means any city, town, village, county, county utility district, town sanitary district, town utility district, school district or metropolitan sewage district or any other public entity created pursuant to law and having authority to collect, treat or dispose of sewage, industrial wastes or other wastes.

(8) "New source" means any point source the construction of which commenced after the effective date of applicable effluent limitations or standards of performance.

(9) "Owner or operator" means any person owning or operating a point source of pollution.

(10) "Permit" means a permit for the discharge of pollutants issued by the department under this chapter.

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

(12) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants may be discharged either into the waters of this state or into a publicly owned treatment works. "Point source" shall not include diffused surface drainage or any ditch or channel which serves only to intermittently drain excess surface water from rain or melting snow and is not used as a means of conveying pollutants into waters of the state. "Point source" shall not include uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular

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storm runoff discharge has been identified by the department as a significant contributor of pollution.

(13) "Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

(14) "Pollution" means man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

(15) "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or other limitation, prohibition or standard.

(16) "Secretary" means the secretary of the department of natural resources or his designee.

(17) "Toxic pollutants" means those pollutants or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction or physical deformations, in such organisms or their offspring.

(18) "Treatment work" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial waste of a liquid nature or necessary to recycle or reuse water at the most economical cost over the estimated life of the work, including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment. Additionally, "treatment work" means any other method or system for preventing, abating, reducing, storing, treating, separating or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

(19) "Vessel" means any watercraft or other artificial contrivance used or capable of being used as a means of transportation on water.

(20) "Waters of the state" means those portions of Lake Michigan and Lake Superior within the boundaries of Wisconsin, all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface water or groundwater, natural or artificial, public or private within the state or under its jurisdiction, except those waters which are entirely confined and retained completely upon the property of a person.

History: 1973 c. 74; 1979 c. 221; 1983 a. 189; 1987 a. 403

147.017 Exemption for certain alcohol fuel production systems. (1) DEFINITIONS. As used in this section:

(a) "Distillate waste product" has the meaning designated under s. 144.438 (1) (a).

(b) "Environmentally sound storage facility" has the meaning designated under s. 144.438 (1) (b).

(c) "Private alcohol fuel production system" has the meaning designated under s. 144.438 (1) (c).

(2) **EXEMPTION.** No permit is required under this chapter for the owner of a private alcohol fuel production system to discharge or dispose of any distillate waste product if the waste product is stored in an environmentally sound storage facility and disposed of using an environmentally safe land spreading technique and the discharge or disposal is confined to the property of the owner.

History: 1979 c. 221.

147.018 Waiver. The department may waive compliance with any requirement of this chapter or shorten the time periods under this chapter to the extent necessary to prevent an emergency condition threatening public health, safety or welfare.

History: 1983 a. 410.

147.02 Water pollutant discharge elimination system; permits, terms and conditions. (1) The discharge of any pollutant into any waters of the state or the disposal of sludge from a treatment work by any person shall be unlawful unless such discharge or disposal is done under a permit issued by the department. The department may by rule exempt certain classes or categories of vessels from this section. The department shall require only one permit for a publicly owned treatment or collection facility or system, regardless of the number of point sources from such facility or system.

(2) No permit shall be issued by the department for the discharge into the waters of the state of any of the following:

(a) Any radiological, chemical or biological warfare agent or high-level radioactive waste.

(b) Any discharge which the secretary of the army acting through the chief of the army corps of engineers has objected to in writing on the ground that anchorage and navigation would be substantially impaired.

(c) Any discharge to which the U.S. environmental protection agency has objected to in writing pursuant to s. 147.11.

(d) Any discharge from a point source which is in conflict with any existing area-wide waste treatment management plan approved by the department. No area-wide waste treatment management plan may require the abandonment of existing waste treatment facilities which meet the requirements of this chapter unless the abandonment of such facilities clearly represents the most efficient and cost-effective method of providing waste treatment for the entire planning area.

(3) The department may issue a permit for the discharge of any pollutant, or combination of pollutants, other than those prohibited under sub. (2), upon condition that such discharges will meet all the following, whenever applicable:

(a) Effluent limitations;

(b) Standards of performance for new sources;

(c) Effluent standards, effluents prohibitions and pretreatment standards;

(d) Any more stringent limitations, including those:

1. Necessary to meet federal or state water quality standards, or schedules of compliance established by the department; or

2. Necessary to comply with any applicable federal law or regulation; or

3. Necessary to avoid exceeding total maximum daily loads established pursuant to a continuing planning process developed under s. 147.25.

(e) Any more stringent legally applicable requirements necessary to comply with an approved areawide waste treatment management plan.

(f) Groundwater protection standards established under ch. 160.

(4) The department shall prescribe conditions for such permits to assure compliance with the requirements of sub. (3). Such additional conditions shall include at least the following:

(a) That the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit;

(b) That facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants at frequencies or levels in excess of the maximum discharges described in the permit shall be reported to the department under s. 147.14 (1);

(c) That the permittee shall permit authorized representatives of the department upon the presentation of their credentials to enter upon any premises in which an effluent source is located or in which any records are required to be kept for the purpose of administering s. 147.08;

(d) That the permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit;

(e) That if a toxic effluent standard or prohibition, including any schedule of compliance specified in such effluent standard or prohibition, is established under s. 147.07 (1) for a toxic pollutant present in the permittee's discharge and, if such standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the department shall revise or modify the permit in accordance with the toxic effluent standard or prohibition;

(f) That, if the permit is for a discharge from a publicly owned treatment work, the permittee shall:

1. Inform the department of any new introduction of pollutants into the treatment works under s. 147.14 (2);

2. Require that any industrial user of such treatment work comply with the requirements of ss. 147.07 (2), 147.08 and 147.15.

(5) Each permit issued by the department shall, in addition to those criteria provided in subs. (3) and (4), specify maximum levels of discharges. Maximum levels of discharges shall be developed from the permittee's reasonably foreseeable projection of maximum frequency or maximum level of discharge resulting from production increases or process modifications during the term of the permit.

(6) Any permit issued by the department under this chapter which by its terms limits the discharge of one or more pollutants into the waters of the state may require that the location, design, construction and capacity of water intake structures reflect the best technology available for minimizing adverse environmental impact.

History: 1973 c. 74; 1975 c. 349; 1983 a. 410.

Department has authority under (1) to issue permits to federal agencies 68 Atty Gen 52

147.023 General permits. (1) AUTHORIZATION. Instead of issuing a separate permit to an individual point source, the department may issue a general permit applicable to a designated area of the state authorizing discharges from specified categories or classes of point sources located within that area.

(2) **VOLUNTARY WITHDRAWAL.** Upon the request of the owner or operator of a point source, the department shall withdraw the point source from the coverage of the general permit and issue a separate permit for that source.

(3) **WITHDRAWAL.** The department may withdraw a point source from the coverage of a general permit and issue a separate permit for that source if:

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(a) The point source is a significant contributor of pollution;

(b) The point source is not in compliance with the terms and conditions of the general permit;

(c) A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants from the point source;

(d) Effluent limitations or standards are promulgated for a point source covered by the general permit after the issuance of that permit; or

(e) A water quality management plan containing requirements applicable to the point source is approved.

History: 1979 c. 221.

147.025 Applications for permits. (1) The department shall promulgate rules relating to applications for permits under this chapter which shall require at a minimum that every owner or operator of a point source discharging pollutants into the waters of the state shall have on file either a completed permit application on forms provided by the department or a completed permit application under section 13 of the rivers and harbors act of 1899, 33 USC 407 or under the federal water pollution control act, as amended, 33 USC 1251 to 1376.

(2) Any owner or operator of a point source for which a permit is required by s. 147.02 (1) wishing to commence discharging pollutants into state waters from a new source, the construction of which commenced after July 22, 1973, shall submit a completed application not later than 180 days prior to the date on which it is desired to commence discharges.

(3) The application form shall be signed as follows:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice president or by his authorized representative responsible for the overall operation of the point source for which a permit is sought.

(b) In the case of a partnership, by a general partner.

(c) In the case of a sole proprietorship, by the proprietor.

(d) In the case of publicly owned treatment works by a principal executive officer, ranking elected official, or other duly authorized employee.

(4) Prior to the submittal of a permit application for a publicly owned treatment works, each person discharging into such works who is subject to s. 144.96 and rules promulgated thereunder shall submit a discharge report to the owner or operator of such works upon request. The report shall state the person's current discharges, and maximum discharges based on reasonably foreseeable projections of production increases, process modification or facility expansions during the next 5 years. The owner or operator of such publicly owned treatment works shall submit the discharge reports to the department as part of the permit application. The form of the discharge report shall be prescribed by department rule.

(5) The department may require the applicant to submit information in addition to that supplied on the permit application.

(6) Subsections (1) to (5) do not apply to an owner or operator of a point source eligible for coverage under a general permit under s. 147.023 and rules promulgated by the department under that section. The department may require the owner or operator to submit information regarding any discharge.

History: 1973 c. 74; 1979 c. 221 ss. 650d, 650dg, 2202 (39)

147.03 Permit duration, modification, revocation and re-issuance. (1) No permit issued by the department under s. 147.02 shall have a term for more than 5 years.

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(2) (a) Any permit issued by the department under s. 147.02, may, after an opportunity for hearing, be modified, suspended or revoked, in whole or in part, for cause, including but not limited to:

1. Violation of any terms or conditions of the permit;
2. Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
3. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(b) Whenever, on the basis of any information available to it, the department finds that there is cause for modifying, suspending or revoking a permit, in whole or in part, the department shall notify the permittee by certified mail or personal service of its intention to modify, suspend, or revoke the permit, in whole or in part. Such notice shall specify the information upon which the department relies, and if the department intends to modify the permit, shall explain the modifications which the department intends to make in the permit.

(c) The department shall also notify the U.S. environmental protection agency, the U.S. army corps of engineers, any affected state, any interested agency of this state, and any interested members of the public of its intention to modify, suspend or revoke a permit. Such notice shall incorporate the terms of the notice sent to the permittee and shall be circulated to members of the public in accordance with s. 147.09 (1).

(d) The department may hold a public hearing on a proposed permit modification, suspension or revocation if the department determines that there is a significant public interest in holding such a hearing or upon the petition of 5 or more persons. The petition shall indicate the interest of the petitioners and the reasons why a hearing is warranted.

(e) Public notice of any hearing held under this section shall be circulated in accordance with the requirements of pars. (b) and (c).

(f) Hearings held under this section are not contested cases under s. 227.01 (3).

(2d) The department may, with the consent of the permittee, modify a permit issued under s. 147.02 without following the procedures in sub. (2) (b) to (f) in order to do any of the following:

- (a) Correct a typographical error
- (b) Require more frequent monitoring or reporting by the permittee.
- (c) Change an interim compliance date in a schedule of compliance to a date that is not more than 120 days after the date specified in the existing permit if the change does not delay attainment of final compliance.
- (d) Reflect a change in the owner or operator of a facility if the department determines that no other change in the permit is necessary and if the current and new owners or operators submit to the department a written agreement that specifies a date for the new owner to assume responsibility for compliance with the permit and liability for violations of the permit.
- (e) Change the construction schedule for a new source if the change does not affect the permittee's obligation to have required pollution control equipment installed and in operation before beginning to discharge.

(f) Eliminate a point source from a permit if the discharge from that point source terminates and that termination does not cause the discharge of pollutants from other point sources to exceed permit limits.

(g) Incorporate into a permit a condition of a publicly owned treatment works pretreatment program that has been approved by the department.

(2h) The department may, with the consent of the permittee, revoke a permit issued under s. 147.02 without following the procedures in sub. (2) (b) to (f).

(2m) The department may, upon request of the permittee, revise or modify a schedule of compliance in an issued permit if it determines that the revision or modification is necessary because of the happening of an event over which the permittee has little or no control. The first revision made under this subsection during the term of a permit need comply only with sub. (2) (c). Subsequent requests shall be subject to sub. (2) (b) to (f).

(3) (a) Any permittee who wishes to continue to discharge after the expiration date of his permit shall file an application for reissuance of his permit at least 180 days prior to its expiration.

(b) The department shall review each application for reissuance of a permit to ensure that:

1. The permittee is in substantial compliance with all the terms, conditions, requirements and schedules of compliance of the expired permit;

2. The department has current information on the permittee's production levels, waste treatment practices, and the nature, volume, content and frequency of the permittee's discharge;

3. The discharge is consistent with applicable effluent limitations and standards, water quality standards and any other legally applicable requirements, including any additions to, or revisions or modifications of such effluent limitations and standards, water quality standards, or other legally applicable requirements made during the term of the permit.

(c) If, after such review, the department finds that the requirements of par. (b) have not been met, the department shall not reissue such a permit.

(d) The department shall adhere to the notice and public participation procedures specified in ss. 147.09 to 147.13 in connection with each request for reissuance of a permit.

(e) Notwithstanding any other provisions of this section, any new source the construction of which is commenced after October 18, 1972, and which is so constructed to meet all standards of performance adopted under s. 147.06 shall not be subject to any more stringent standard of performance during either the 10-year period beginning on the date of completion of such construction or the period of depreciation or amortization of such facility for the purposes of section 167 or 169 of the internal revenue code, whichever period ends first.

(f) For the purposes of s. 147.20, denial of any application for the reissuance of a permit shall be treated as a denial of an application for a permit.

History: 1973 c. 74, 243; 1979 c. 221; 1985 a. 182 s. 57; 1991 a. 39.

See note to 147.20, citing *Theinsville Village v. DNR*, 130 W (2d) 276, 386 NW (2d) 519 (Ct. App. 1986).

147.033 Groundwater fee; wastewater management fee.

(1) **GROUNDWATER FEE.** The holder of a permit under s. 147.02 shall pay \$100 to the department as a groundwater fee on January 1 if the permittee discharges effluent on land or if the permittee produces sludge from a treatment work which is disposed of on land. If the permittee discharges effluent on land and disposes of sludge from a treatment work on land, the permittee shall pay \$200 to the department as a groundwater fee on January 1. The moneys collected under this subsection shall be credited to the environmental fund for groundwater management.

(2) **WASTEWATER MANAGEMENT FEE.** (a) Any person holding a permit under s. 147.02 for a treatment work, except a person subject to s. 144.96 (3), shall pay a fee as follows:

1. For a treatment work with a design capacity of less than 0.05 million gallons per day, \$150 per year.

2. For a treatment work with a design capacity of at least 0.05 million gallons but less than 0.5 million gallons per day, \$400 per year.

3. For a treatment work with a design capacity of at least 0.5 million gallons but less than 5 million gallons per day, \$800 per year.

4. For a treatment work with a design capacity of at least 5 million gallons per day, \$1,800 per year.

(b) All moneys collected under par. (a) shall be credited to the appropriation under s. 20.370 (2) (bL).

History: 1983 a. 410; 1987 a. 27; 1989 a. 31

147.035 State and federal standards. (1) DEPARTMENT TO ESTABLISH STANDARDS. The department shall promulgate by rule effluent limitations, standards of performance for new sources, toxic effluent standards or prohibitions and pretreatment standards for any category or class of point sources established by the U.S. environmental protection agency and for which that agency has promulgated any effluent limitations, toxic effluent standards or prohibitions or pretreatment standards for any pollutant.

(2) **COMPLIANCE WITH FEDERAL STANDARDS.** All rules promulgated by the department under this chapter as they relate to point source discharges, effluent limitations, municipal monitoring requirements, standards of performance for new sources, toxic effluent standards or prohibitions and pretreatment standards shall comply with and not exceed the requirements of the federal water pollution control act, as amended, 33 USC 1251 to 1376 and regulations adopted under that act.

(3) **STANDARDS FOR NITROGEN, PHOSPHOROUS AND DISINFECTION IN THE ABSENCE OF FEDERAL STANDARDS** (a) *Standards for nitrogen and disinfection.* Notwithstanding sub. (1) or (2), the department may promulgate by rule effluent limitations representing the best available demonstrated control technology, processes, operating methods or other alternatives concerning the discharge of nitrogen compounds and concerning the disinfection of sanitary wastewaters if the U.S. environmental protection agency has not promulgated an effluent limitation, effluent standard or prohibition concerning this type of discharge or disinfection.

(am) *Standards for phosphorous.* Notwithstanding sub. (1) or (2), the department shall promulgate by rule effluent limitations representing the best available demonstrated control technology, processes, operating methods or other alternatives concerning the discharge of phosphorous if the U.S. environmental protection agency has not promulgated an effluent limitation, effluent standard or prohibition concerning this type of discharge.

(b) *Exemptions.* The department may exempt by rule specified types of discharges from the effluent limitations concerning the discharge of phosphorous or nitrogen compounds established under par. (a) or (am) based upon:

1. The amount of phosphorous or nitrogen discharged;
2. The impact of nonpoint sources on the waters affected by the discharge;
3. The additional cost of treatment per unit of phosphorous or nitrogen removed;
4. The type of waters affected by the discharge; or
5. The impact of the discharge on the maintenance or achievement of water quality standards.

(c) *Advisory committee.* In promulgating rules under pars. (a), (am) and (b), the department shall establish an advisory committee under s. 227.13 composed of representatives of municipal dischargers, industrial point sources, farm groups, environmental groups, nonpoint sources and the public to

assist in drafting the rules, evaluating technical studies and advising the department.

(d) *Impact of subsequent federal standards.* If the U.S. environmental protection agency promulgates an effluent limitation, effluent standard or prohibition concerning a type of discharge or disinfection specified under par. (a) or (am) for a category or class of point sources which is applicable to a permit holder, the department may modify, and at the request of the permit holder shall modify, the effluent limitation specified in the permit to conform with the effluent limitation, effluent standard or prohibition promulgated by the U.S. environmental protection agency.

(e) *Compliance dates.* A publicly owned treatment works shall comply with effluent limitations established under par. (a) by July 1, 1983. Any point source other than a publicly owned treatment works shall comply with effluent limitations established under par. (a) by July 1, 1984.

(4) **STANDARDS FOR TOXIC POLLUTANTS IN THE ABSENCE OF FEDERAL STANDARDS.** (a) *Authorization.* Notwithstanding sub. (1) or (2), the department may promulgate by rule, under s. 147.07, a toxic effluent standard or prohibition applicable to a category or class of point sources for the discharge of an identified toxic pollutant, if the U.S. environmental protection agency has not done either of the following for that identified toxic pollutant:

1. Promulgated, under 33 USC 1311 (b) (2), an effluent limitation applicable to the specified category or class of point sources.

2. Promulgated, under 33 USC 1317, an effluent standard or prohibition applicable to the specified category or class of point sources.

(b) *Identification.* An identified toxic pollutant is:

1. Any toxic pollutant or combination of pollutants on the list prepared under s. 147.07 (1) (a).

2. Any toxic pollutant or combination of pollutants on a list prepared under 33 USC 1317.

3. Any other substance which the department has proposed to be added to the list of toxic pollutants under s. 147.07 (1) (a).

(c) *Concurrent rule making.* A toxic effluent standard or a prohibition for a substance identified under par. (b) 3 may not be promulgated before the list of toxic pollutants has been revised under s. 147.07 (1) (a) to include that substance. The revision under s. 147.07 (1) (a) and the toxic effluent standard or prohibition under s. 147.07 (1) (b) may be promulgated concurrently.

(d) *Additional procedures.* As part of the rule-making process for a rule to which this subsection applies, the department shall do all of the following:

1. Specify in the proposed rule whether it applies to all waters of the state or to designated portions of the waters of the state.

2. Consider whether there are available removal technologies which provide the capability of achieving compliance at or for representative point sources likely to be affected by the rule and whether there are alternative control strategies which provide the capability of achieving compliance.

3. If the department finds that the level of pollutant control resulting from the application of available removal technologies or alternative control strategies is inadequate to protect public health, safety or welfare or the environment, consider any evidence presented on the relationship of the economic and social costs of the proposed standard or prohibition, including any social or economic dislocation in representative communities likely to be affected by the rule, to the social and economic benefits likely to be obtained, including attainment of the objectives of this chapter.

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(e) *Impact of subsequent federal standards.* 1. If the U.S. environmental protection agency, under 33 USC 1317, promulgates a toxic effluent standard or prohibition for a toxic pollutant after the department promulgates a toxic effluent standard or prohibition, the department may modify its standard or prohibition to conform to the federal standard or prohibition. At the request of a permittee to which the standard or prohibition promulgated by the department applies under the terms of a permit, the department shall modify the permit to conform to the federal standard or prohibition.

2. If the U.S. environmental protection agency, under 33 USC 1311 (b) (2), promulgates an effluent limitation applicable to the discharge of a toxic pollutant from a point source after the department promulgates a toxic effluent standard or prohibition, the department may modify its standard or prohibition to conform to the federal toxic effluent limitation. A permittee to which the standard or prohibition promulgated by the department applies under the terms of a permit may request that the department modify the permit to conform to the federal effluent limitation. The department shall use the procedures specified under s. 147.03 (2) (b) to (f) to determine whether to grant the request. The department shall grant the request unless it finds that the resulting limitation, as applied to the permittee and to any other permittees subject to the department's standard or prohibition which discharge into the receiving water, would be inadequate to protect the public health, safety or welfare or the environment in the receiving water or any other waters directly affected by the discharge. A decision by the department not to grant the request is reviewable under s. 147.20.

(5) NONAPPLICABILITY. This section does not apply to any water quality based effluent limitation established under s. 147.04 (5).

History: 1973 c. 74; 1979 c. 221 ss. 650c, 650e; 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 27; 1991 a. 39

Sub. (2) does not unlawfully delegate legislative power. *Niagara of Wis. Paper Corp. v. DNR*, 84 W (2d) 32, 268 NW (2d) 153 (1978).

DNR violated (2) by adopting chlorine limitations in WPDES permits which were more stringent than federal limitations. *Wis. Elec. Power Co. v. DNR*, 93 W (2d) 222, 287 NW (2d) 113 (1980).

147.04 Effluent limitations. (1) CATEGORIES AND CLASSES OF POINT SOURCES. The department shall promulgate a list of categories and classes of point sources which is at least as comprehensive as the list appearing in section 1316 (b) (1) (A) of the federal water pollution control act, as amended, 33 USC 1251 to 1376.

(2) SOURCES OTHER THAN PUBLIC TREATMENT WORKS. The discharge from any point source, other than a publicly owned treatment works, shall comply with the following requirements:

(a) *Best practicable technology.* The application of the best practicable control technology currently available.

(b) *Requirements for certain pollutants.* For pollutants identified under pars. (c), (d) and (f):

1. a. The application of the best available technology economically achievable for a point source or a category or class of point sources which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants as stated in the federal water pollution control act, as amended, 33 USC 1251 to 1376; or

b. The application of the best available technology which will result in the elimination of the discharge of all pollutants if the department finds on the basis of information available to it that the elimination is technologically and economically achievable for a category or class of point sources.

2. The application of any applicable pretreatment requirements or any other requirements under s. 147.07 to any point

source discharging pollutants into a publicly owned treatment works.

(c) *Certain toxic pollutants; compliance by July 1, 1984.* Compliance with the effluent limitations under par. (b) with respect to all toxic pollutants referred to in table 1 of committee print number 95-30 of the committee on public works and transportation of the U.S. house of representatives by no later than July 1, 1984.

(d) *Other toxic pollutants; compliance within 3 years after limitations are established.* Compliance with effluent limitations under par. (b) with respect to all toxic pollutants included on the list promulgated under s. 147.07 (1) (a) but which are not included in the table referred to under par. (c) not later than 3 years after the date the effluent limitations are established.

(e) *Conventional pollutants; compliance by July 1, 1984.* The application of the best conventional pollutant control technology for pollutants identified under section 1314 (a) (4) of the federal water pollution control act, as amended, 33 USC 1251 to 1376 by no later than July 1, 1984.

(f) *Other pollutants.* Compliance with effluent limitations under par. (b) with respect to all pollutants not included under pars. (c) to (e) not later than 3 years after the date effluent limitations are established, but in no case before July 1, 1984 or after July 1, 1987.

(g) *Certain innovative processes; compliance before July 1, 1987.* 1. For a facility which proposes to comply with the requirements of par. (b) by utilizing an innovative production process, innovative control technique or innovative system by a date established by the department after consulting with U.S. environmental protection agency but not later than July 1, 1987.

2. An innovative production process is a process to replace existing production capacity with a process which will result in an effluent reduction significantly greater than that required by the applicable effluent limitation and which moves toward the goal of eliminating the discharge of all pollutants.

3. An innovative control technique is a technique which has a substantial likelihood of enabling the facility to achieve a significantly greater effluent reduction than that required by the applicable effluent limitation and which moves toward the national goal of eliminating the discharge of all pollutants as stated under the federal water pollution control act, as amended, 33 USC 1251 to 1376.

4. An innovative system is a system which has the potential for significantly lower costs than the systems which the department has determined to be economically achievable if the department determines that the system has the potential for industrywide application.

(3) MODIFICATIONS. (a) *Maximum use of technology and reasonable progress.* The department may modify the requirements of sub. (2) (f) in accordance with s. 147.20 for any point source for which a permit application is filed after July 1, 1977 if the owner or operator of the point source satisfactorily demonstrates to the department that the modified requirements will represent the maximum use of technology within the economic capability of the owner or operator and will result in reasonable further progress toward the national goal of elimination of the discharge of pollutants as stated in the federal water pollution control act, as amended, 33 USC 1251 to 1376.

(b) *Minimum compliance.* 1. The department with the concurrence of the U.S. environmental protection agency shall modify the requirements of sub. (2) (f) with respect to the discharge of any pollutant other than heat from any point source upon a showing by the owner or operator of the point

source satisfactory to the department in a proceeding under s. 147.20 that:

a. The modified requirements will result in compliance with the requirements of sub. (2) (a) or (5), whichever is applicable;

b. The modified requirements will not result in any additional requirements for any other point or nonpoint source; and

c. The modification will not interfere with the attainment or maintenance of water quality which assures protection of public water supplies, which assures the protection and propagation of a balanced population of shellfish, fish, and wildlife and which allows recreational activities in and on the water and that the modification will not result in the discharge of pollutants in quantities which reasonably may be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity including carcinogenicity, mutagenicity or teratogenicity or synergistic propensities.

2. If an owner or operator of a point source applies for a modification under this paragraph with respect to the discharge of any pollutant, that owner or operator is eligible to apply for modification under this subsection with respect to that pollutant only during the same time period as the owner or operator is eligible to apply for a modification under this paragraph.

(c) *Applications for modification.* 1. Any application filed under this subsection for a modification of the requirements of sub. (2) (b) as it applies to pollutants identified in sub. (2) (f) shall be filed not later than 270 days after the date of promulgation of an applicable effluent limitation by the department under this chapter.

2. Any application for a modification filed under this subsection does not operate to stay any requirement under this chapter, unless in the judgment of the department the stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity, including carcinogenicity, mutagenicity or teratogenicity, or synergistic propensities and there is a substantial likelihood that the applicant will succeed on the merits of the application. If an application is filed under this subsection, the department may condition any stay granted under this subdivision upon the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

(d) *No modification for toxic pollutants.* Notwithstanding pars. (a) and (b), the department may not modify any requirement of this subsection or sub. (2) applicable to any toxic pollutant which is on the list promulgated under s. 147.07 (1).

(4) **EFFLUENT LIMITATIONS FOR PUBLIC TREATMENT WORKS.** Discharges from publicly owned treatment works shall comply with the following requirements:

(a) *Secondary treatment for certain works.* Secondary treatment by no later than July 1, 1977, for all publicly owned treatment works in existence on that date or approved prior to June 30, 1974, and for which construction is completed within 4 years of approval;

(b) *Best practicable waste treatment technology.* The application of the best practicable waste treatment technology over the life of the works consistent with the purposes of this chapter by no later than July 1, 1983.

(c) *Other limitations for combined sewer overflows.* In lieu of pars. (a) and (b), effluent limitations required by subs. (2) (a) and (5) for combined sewer systems tributary to treatment works owned and operated by any metropolitan sewerage district created under ss. 66.88 to 66.918.

(5) **MORE STRINGENT LIMITATIONS.** The department shall establish more stringent effluent limitations than required under subs. (2) and (4) and shall require compliance with such water quality based effluent limitations in any permit issued, reissued or modified if these limitations are necessary to meet applicable water quality standards, treatment standards, schedules of compliance or any other state or federal law, rule or regulation. The department shall require compliance with these water quality based effluent limitations by no later than July 1, 1977, or by a later date as specified in the water quality standard, treatment standard, schedule of compliance or other state or federal law, rule or regulation.

(6) **MODIFICATION OF TIME LIMITS.** (a) Except as provided under par. (d), the department may modify the time limitations specified under subs. (4) and (5) for any publicly owned treatment works to increase the period of time for compliance with effluent limitations.

(b) The modification of the time limitations mentioned under par. (a) may be granted if the department determines that the construction of treatment works necessary to achieve compliance with effluent limitations cannot be completed within the prescribed time period due to events over which the permittee has little or no control unless the modification is prohibited under par. (d).

(c) The modification of the time limitations mentioned under par. (a) shall be granted if the department determines that the construction of treatment works necessary to achieve compliance with effluent limitations cannot be completed within the prescribed time period due to the unavailability of federal or state funds unless the modification is prohibited under the federal water pollution control act, as amended, 33 USC 1251 to 1376.

(d) Except as provided under par. (c), no modification of the time limitations under par. (a) may extend beyond December 31, 1985.

History: 1973 c. 74; 1975 c. 206; 1979 c. 34, 221; 1981 c. 282; 1981 c. 314 s. 146; 1981 c. 393; 1987 a. 27; 1989 a. 56.

147.05 Variances to water quality standard. (1) DEFINITION. In this section, "variance" means a variance to a water quality standard adopted under s. 144.025 (2) (b).

(2) **REQUEST FOR VARIANCE.** (a) 1. When the department issues, reissues or modifies a permit to include a water quality based effluent limitation under s. 147.04 (5), the permittee may apply to the department for a variance from the water quality standard used to derive the limitation.

2. After an application for a variance is submitted to the department, and until the last day for seeking review of the secretary's final decision on the application or a later date fixed by order of the reviewing court, the water quality based effluent limitation under s. 147.04 (5) and the corresponding compliance schedule are not effective. All other provisions of the permit continue in effect except those for which a petition for review has been submitted under s. 147.20. For those provisions for which an application for variance has been submitted under this section, the corresponding or similar provisions of the prior permit continue in effect until the last day for seeking review of the department's final decision or a later date fixed by order of the reviewing court.

(b) 1. The department shall specify by rule the information to be included in the application. The permittee shall submit an application for a variance within 60 days after the department issues, reissues or modifies the permit.

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2. If a permittee applies for a variance before the promulgation of rules under subd. 1, the permittee shall submit an application for a variance within 30 days after the department issues, reissues or modifies the permit. Within 30 days after receipt of the application, the department shall specify the information which the permittee must include in the application. The permittee shall provide the information within 60 days after receipt of the department's request.

3. In addition to the information required under subd. 1 or 2, the permittee may, within the time limits specified in subd. 1 or 2, submit to the department any other information to support the request for a variance.

(c) The department may request additional information from the permittee within 30 days after receiving either the application under par. (b) 1 or the information under par. (b) 2. The permittee shall provide the additional information within 30 days after receipt of the department's request. An application is not complete until the additional information is provided to the department.

(d) If the permittee does not provide information as required under par. (b) or (c), the department shall deny the application.

(e) Within 30 days after the department receives a complete application for a variance, the department shall circulate to the parties in s. 147.03 (2) (c) a public notice of receipt of the application for a variance and of any deadlines for submission of written arguments on facts and law by interested parties. In the public notice, the department shall establish a deadline for submitting written comments on the application.

(3) **TENTATIVE DECISION.** The secretary shall issue a tentative decision on the variance within 120 days after receipt of a completed application. The department shall circulate the tentative decision to the parties in s. 147.03 (2) (c). If the tentative decision is to grant a variance based upon one or more of the conditions specified in sub. (4) (a) 1. a to e, the department shall include in the notice under this subsection a statement on the effect of the variance, if granted, on the designated use of the water body during the term of the underlying permit. The department shall provide a 30-day period for written comments on the tentative decision.

(4) **FINAL DECISION ON VARIANCE.** (a) 1. Within 90 days after expiration of the comment period under sub. (3), the secretary shall approve all or part of a requested variance, or modify and approve a requested variance if the permittee demonstrates, by the greater weight of the credible evidence, that attaining the water quality standard is not feasible because:

a. Naturally occurring pollutant concentrations prevent the attainment of the standard;

b. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the standard, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating water conservation requirements;

c. Human caused conditions or sources of pollution prevent the attainment of the standard and cannot be remedied or would cause more environmental damage to correct than to leave in place;

d. Dams, diversions or other types of hydrologic modifications preclude the attainment of the standard, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the standard;

e. Physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

f. The standard, as applied to the permittee, will cause substantial and widespread adverse social and economic impacts in the area where the permittee is located.

2. Within 90 days after the expiration of the comment period under sub. (3), the secretary shall deny a requested variance if the permittee fails to make the demonstration required under subd. 1.

3. The failure of the secretary to issue a final decision under subd. 1 or 2 within the time required under this paragraph shall constitute a denial of the application for the variance.

(b) If the secretary issues a decision under par. (a) 1, the secretary shall, as part of the decision, establish all permit conditions needed to implement the variance.

(c) Within 30 days after the date of the decision under par. (a) 1, the department shall issue the notice required under s. 147.03 (2) (b) and (c) of its intent to modify the permit to incorporate the decision to approve all or part of a variance or to modify and approve the variance. Section 147.03 (2) (d) does not apply to the proposed permit modification.

(d) The decision under this subsection is reviewable under subch. III of ch. 227, except that ss. 227.40 to 227.46, 227.485 to 227.51 and 227.60 do not apply to the decision under this subsection.

(5) **CONDITIONS ON VARIANCES.** (a) A variance applies only to the permittee requesting the variance and to the pollutant specified in the variance. A variance does not affect or require the department to modify the corresponding water quality standard adopted under s. 144.025 (2) (b).

(b) A variance applies for the term established by the secretary, but not to exceed 3 years. The term of the initial variance and any renewals thereof may not exceed the time that the secretary determines is necessary to achieve the water quality based effluent limitation. Initial and interim effluent limitations established under par. (c) 1 apply, as appropriate, for the term of the underlying permit as issued, reissued or modified to implement the decision under sub. (4) (b) or as extended by operation of s. 227.51 (2). Notwithstanding sub. (4) (d), s. 227.51 (2) shall apply for the purposes of continuing the provisions of a permit pending the issuance or reissuance of a permit. Upon the issuance or reissuance of the new permit, sub. (2) (a) 2 and s. 147.20 (1) (am) apply.

(c) The permit modified pursuant to sub. (4) (c) to implement a variance shall require:

1. Compliance with an initial effluent limitation which at the time the variance is approved represents the level currently achievable by the permittee. At the time a variance is approved a compliance schedule and an interim effluent limitation that is achievable by the permittee during the term of the variance may be specified. The initial and the interim effluent limitations may not be less stringent than a categorical effluent limitation that applies to the permittee under s. 147.04 (2) or (4) or 147.06 or a toxic effluent standard that applies to the permittee under s. 147.07.

2. Investigation of treatment technologies, process changes, wastewater reuse or other techniques that may result in compliance by the permittee with the water quality standard adopted under s. 144.025 (2) (b), and submission of reports on the investigations at such times as required by the department. The secretary shall modify or waive the requirements specified in this subdivision if the secretary determines, based upon comments received on the tentative decision under sub. (3), that the requirements of this subdivision are:

a. Reasonably beyond the technical or financial capability of the permittee; or

b. Unreasonable in light of the conditions specified in sub. (4) (a) 1. a to e.

(d) The department may impose conditions in the permit as necessary to administer the variance including, but not limited to, additional monitoring requirements.

(6) **RENEWAL.** A variance may be renewed using the procedures in and subject to subs. (2) to (5). A variance may not be renewed if the permittee did not submit the reports required under sub. (5) (c) 2 or substantially comply with all other conditions of the variance.

(7) **DELEGATION OF SECRETARY'S AUTHORITY.** The secretary may designate an officer or employe of the department to make any decision that the secretary is required to make under this section.

(8) **NO RIGHT TO A HEARING.** Notwithstanding s. 227.42, there is no right to a hearing under this section.

(9) **RELATION TO PERMIT REVIEW.** If the secretary approves part or all of a variance or modifies and approves the variance under this section and the department issues a modified water quality based effluent limitation under s. 147.20 for the same substance, the permittee shall comply with the least stringent of the 2 effluent limitations.

(10) **APPLICABILITY.** (a) Subsections (2) to (5) do not apply if the water quality based effluent limitation results from the decision of the department under s. 147.20 to make the water quality based effluent limitation less stringent than the effluent limitation in the permit as issued, reissued or modified.

(b) Subsections (2) to (5) apply if the water quality based effluent limitation results from the decision of the department under s. 147.20 to make the water quality based effluent limitation more stringent than the effluent limitation in the permit as issued, reissued or modified.

(c) This section does not apply to the issuance, reissuance or modification of a permit to incorporate a toxic effluent standard or prohibition promulgated by rule under s. 147.035 (4) or 147.07.

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1985 a. 29; 1987 a. 27, 60

147.055 Thermal effluent limitations. (1) Any thermal effluent limitation proposed by the department may be modified by it in accordance with s. 147.20, if the owner or operator of the point source which is the subject of the proposed limitation demonstrates to the satisfaction of the department that the proposed limitation is more stringent than necessary to assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(2) Any point source of a discharge having a thermal component, the modification of which is commenced after October 18, 1972, and which, as modified, meets the most stringent effluent limitation established under s. 147.04 or sub. (1) and this subsection, where the limitation assures protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component during either the 10-year period beginning on the date of completion of the modification or the period of depreciation or amortization of the facility for the purpose of section 167 or 169 of the internal revenue code, whichever ends first.

History: 1987 a. 27 ss. 1846mg, 1846ms; Stats. 1987 s. 147.055; 1991 a. 39

147.06 Standards of performance. (1) The department shall, by rule, promulgate standards of performance for each class or category of sources referred to under s. 147.04 (1) which shall reflect the greatest degree of effluent reduction achievable through the application of the best available demonstrated control technology, processes, operating methods, or other alternatives. Where practicable, a standard of

performance permitting no discharge of pollutants shall be adopted.

(2) (a) Standards of performance adopted under this section shall apply to all new sources within each class or category of sources for which a standard of performance has been adopted under this section.

(b) The term "new source" means any source, the construction of which commenced after the adoption of the standard of performance applicable to the category of sources of which it is a member.

(3) The department shall revise such standards to reflect changes in control technology, processes, operating methods or other alternatives. When establishing or revising standards of performance under this section, the department shall consider the cost of achieving such effluent reductions and the nonwater quality environmental impact and energy requirements of such reductions.

(4) The department may distinguish among classes, types and sizes within categories of sources for the purpose of establishing or revising standards of performance under this section.

(5) After the effective date of any standard of performance promulgated by the department under this section, no owner or operator of any new source may operate such source in violation of any standard of performance applicable to such a source.

History: 1973 c. 74

147.07 Toxic and pretreatment effluent standards. (1) **TOXIC EFFLUENT LIMITATIONS AND STANDARDS.** (a) *List.* The department shall promulgate by rule a list of toxic pollutants or combinations of pollutants subject to this chapter which consists of those toxic pollutants referred to in table 1 of committee print number 95-30 of the committee on public works and transportation of the U.S. house of representatives. After promulgation of this list, the department may revise by rule the list periodically and may add to or remove from the list any pollutant. In revising this list the department shall consider the toxicity of the pollutant, its persistence, degradability, the usual or potential presence in any waters of any organisms affected by the discharge of the toxic pollutant or combination of pollutants, the importance of the affected organism and the nature and extent of the effect of the toxic pollutant on these organisms. A determination by the department under this subsection is subject to declaratory judgment proceedings under s. 227.40.

(b) *Effluent standards.* The department may promulgate by rule an effluent standard, which may include a prohibition, establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, is applicable to that category or class of point sources only if this effluent standard imposes more stringent requirements than are imposed under s. 147.04 (2) (b). An effluent standard promulgated under this section shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of affected organisms in any waters, the importance of affected organisms, the nature and extent of the effect of the toxic pollutant on these organisms and the extent to which effective control is being or may be achieved under other regulatory authority.

(c) *Promulgation; review.* The department shall promulgate by rule an effluent standard which may include a prohibition in accordance with par. (a) for each toxic pollutant referred to in table 1 of committee print number 95-30 of the committee on public works and transportation of the U.S. house of representatives as soon as practicable but no later than one year after the U.S. environmental protection agency

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promulgates an effluent standard for the pollutant. The department shall establish effluent standards for any other toxic pollutant listed under par. (a) as soon as practicable after it is listed. Each effluent standard promulgated under this paragraph shall be reviewed and, if appropriate, revised every 3 years.

(d) *Ample margin of safety.* An effluent standard promulgated under this subsection shall be established at that level which the department determines provides an ample margin of safety.

(e) *Applicability to classes or categories of sources.* If the department proposes or promulgates an effluent standard under this subsection, it shall designate the class or category of point sources to which the effluent standard applies. The department may include the disposal of dredged material in a class or category of point sources.

(f) *Effective date.* An effluent standard promulgated under this subsection takes effect on the date specified in the order promulgating the standard, but not more than one year after the date of the order. If the department determines that compliance within one year after the date of the order is technologically infeasible for a class or category of sources, the department may establish the effective date for the effluent standard for that class or category of sources at the earliest date upon which compliance can be feasibly attained by those sources, but in no case more than 3 years after the date of the order.

(g) *Procedure for promulgation in absence of federal standards.* In promulgating rules establishing a toxic effluent standard or prohibition for which the U.S. environmental protection agency has not promulgated a toxic effluent limitation, standard or prohibition, the department shall follow the additional procedures specified in s. 147.035 (4) (d).

(2) **PRETREATMENT STANDARDS.** (a) The department shall by rule promulgate pretreatment standards to regulate the introduction into publicly owned treatment works of pollutants which are not susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works.

(b) Pretreatment standards promulgated under this section shall specify a time for compliance, not to exceed 3 years after the date of promulgation, and shall be established to prevent the discharge through any publicly owned treatment work of any pollutant which interferes with, passes through, or otherwise is incompatible with the treatment works. If any toxic pollutant under sub. (1) is introduced by a source into a publicly owned treatment works, if the treatment by the works removes all or any part of that toxic pollutant, if the discharge from the works does not violate the effluent limitation or standard which would be applicable to that toxic pollutant if it were discharged by the source other than through a publicly owned treatment works and if the treatment of that toxic pollutant does not prevent sludge use or disposal by the works in accordance with section 1345 of the federal water pollution control act, as amended, 33 USC 1251 to 1376, then the pretreatment requirements for the sources actually discharging the toxic pollutant into the publicly owned treatment works may be revised by the owner or operator of the works to reflect the removal of that toxic pollutant by the works.

(c) The department shall by rule promulgate the classes or categories of sources to which the pretreatment standards adopted under this section shall apply.

(d) The department shall revise the pretreatment standards adopted under this section to reflect changes in control

technology, processes, operating methods or other alternatives.

History: 1973 c. 74; 1979 c. 221; 1985 a. 29; 1985 a. 182 ss. 11, 57.

147.08 Monitoring and reporting access to premises. (1) MONITORING AND REPORTING REQUIREMENTS. Every owner or operator of a point source shall:

(a) Establish and maintain records of the volume of effluent discharged and the amount of each pollutant discharged from each point source under his ownership or control;

(b) Make regular reports to the department on the volume of effluent discharged and the amount of each pollutant discharged from each such point source;

(c) Install, use and maintain such monitoring equipment or methods, including where appropriate, biological monitoring methods, as are necessary to determine the volume of effluent discharged and to identify and determine the amount of each pollutant discharged from each such point source;

(d) Sample the effluents discharged from each such point source in accordance with such methods, at such locations and in such manner as the department shall by rule prescribe;

(e) Provide such other information as the department finds is necessary to identify the type and quantity of any pollutants discharged from the point source.

(2) **ACCESS TO MONITORING EQUIPMENT AND RECORDS.** (a) Any duly authorized officer, employe or representative of the department shall have right to enter upon or through any premises in which an effluent source is located or in which any records required to be maintained by this section are located, and may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required by this section, and sample any effluents which the owner and operator of such source is required to sample under this section.

(b) No person shall refuse entry or access to any authorized representative of the department who requests entry under this subsection, and who presents appropriate credentials nor shall any person obstruct, hamper or interfere with any such inspection.

(c) Any records or other information furnished to or obtained by the department in the administration of this chapter, including effluent data, shall be a public record as provided in subch. II of ch. 19. Any records or other information, except effluent data, provided to the department may be treated as confidential upon a showing to the secretary that said records or information is entitled to protection as a trade secret as defined in s. 134.90 (1) (c). Nothing herein shall prevent the use of any confidential records or information obtained by the department in the administration of this section in compiling or publishing general analyses or summaries, if such analyses or summaries do not identify a specific owner or operator.

(3) **CONSTRUCTION OF LAW.** Subsection (1) shall be construed so as not to require actions unnecessarily redundant with s. 144.96. When a publicly owned treatment facility is required under state or federal law to monitor discharges into its system, records of such monitoring provided to the department, if substantially in compliance with the requirements of this section, shall serve in the place of the monitoring which would ordinarily be required of a person discharging into such system. Nothing in this section shall be construed to affect the validity of s. 144.96, nor shall that section be construed to limit the application of this section.

History: 1973 c. 74; 1979 c. 221 s. 2202 (39); 1981 c. 335 s. 26; 1985 a. 236.

147.09 Public notice. (1) The department shall promulgate by rule procedures for circulating to interested and poten-

tially interested members of the public notices of each complete application for a permit. Procedures for the circulation of public notices shall include at least the following:

(a) Publication of the notice as a class 1 notice under ch. 985;

(b) Mailing of the notice to any person or group upon request.

(2) The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views on the tentative determinations with respect to the permit application. All written comments submitted during the period for comment shall be retained by the department and considered in the formulation of the final determinations for the permit application.

(3) The department shall by rule prescribe the form and content of public notices issued under sub. (1). Every such notice issued by the department shall include at least the following information:

(a) The name and address of each applicant;

(b) A brief description of each applicant's activities or operations which result in the discharge described in the application;

(c) The name of the waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or existing discharge;

(d) A statement of the tentative determination to issue or deny a permit for the discharge described in the application;

(e) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required under sub. (2).

History: 1973 c. 74; 1975 c. 349.

147.10 Fact sheets. (1) For every discharge which has a total volume of more than 500,000 gallons on any day of the year, the department shall, following public notice, prepare and send to any person who so requests, a fact sheet concerning the application described in the public notice.

(2) The contents of such fact sheets shall be established by the department by rule and shall include at least the following information:

(a) A sketch or detailed description of the location of the discharge described in the application;

(b) A quantitative description of the discharges described in the application;

(c) A statement of the tentative determination to issue or deny the permit application;

(d) If a determination to issue a permit is made, then the following information shall also be included:

1. The proposed effluent limitation for those pollutants proposed to be limited;

2. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations;

3. A brief description of any other proposed special conditions which will have a significant impact upon the discharge described in the application;

(e) A brief description of the uses for which the receiving waters have been classified, of the applicable water quality standards and effluent standards;

(f) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice.

(3) If the department proposes to include a water quality based effluent limitation in the permit, a fact sheet prepared under this section shall include all of the following:

(a) A description of the calculation used by the department to derive the water quality based effluent limitation.

(b) A discussion of the rationale used by the department to determine whether or not a compliance schedule for the water quality based effluent limitation shall be included in the proposed permit and the rationale used to develop any such schedule. The discussion shall include a description of treatment technologies or control strategies that may be available to the permittee for achieving compliance with the water quality based effluent limitation.

(c) The assumptions and information used by the department to calculate the mixing zone for the discharge.

History: 1973 c. 74; 1987 a. 60.

147.105 Requests for information by permittee. When a permit for which a fact sheet is required to be prepared under s. 147.10 is issued, reissued or modified, if the permittee submits, during the public comment period afforded under s. 147.09, to the department a written request for information on the background levels in the receiving water of substances for which a water quality based effluent limitation under s. 147.04 (5) is included in the proposed permit, the department shall, to the extent the information is available, provide to the permittee no later than the time that the permit is issued, reissued or modified such information or list of documents which present such information. Nothing in this section limits rights under ss. 19.31 to 19.37.

History: 1987 a. 60.

147.11 Notice to other government agencies. (1) The department shall promulgate by rule procedures for notifying the U.S. environmental protection agency, the U.S. army corps of engineers, other states potentially affected by the proposed discharge, and any other interested agency or unit of government of any complete application or proposed modification thereof for a permit.

(2) The department shall provide the U.S. environmental protection agency a period of time not to exceed 90 days to submit to the department its written views, recommendations or objections. All other interested government agencies and affected states shall be given 30 days to submit to the department written views or recommendations.

History: 1973 c. 74; 1975 c. 349.

147.12 Public access to information. (1) (a) The department shall make available to and provide facilities for the public to inspect and copy completed permit application forms, fact sheets, draft permits, or any public document thereon.

(b) The department shall make available to the U.S. environmental protection agency any completed permit application forms, fact sheets, draft permits, or any public comments thereon, and shall also make available any other records, reports, plans or other information obtained by the department under this chapter.

(2) The department shall protect as confidential any information, other than effluent data, contained in permit application forms, or in other records, reports or plans, that is found to be confidential under s. 147.08 (2) (c).

(3) Any information afforded confidential status may be disclosed by the department to the U.S. environmental protection agency or its authorized representative.

History: 1973 c. 74.

147.13 Public hearing. (1) (a) The department shall provide an opportunity for the applicant, any affected state, the U.S. environmental protection agency, any interested state or federal agency, person or group of persons to request a public hearing with respect to a permit application. Such request for

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a public hearing shall be filed with the department within 30 days after the circulation of the public notice of the complete permit application and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted.

(b) The department shall hold a public hearing on a permit application or a group of applications if requested by the U.S. environmental protection agency, any affected state, on the petition of 5 or more persons or if the department deems that there is a significant public interest in holding such a hearing.

(c) The department shall promulgate by rule procedures for the conduct of public hearings held under this section. Hearings held under this section are not contested cases under s. 227.01 (3).

(2) (a) Public notice of any hearing held under this section shall be circulated in accordance with the requirements of s. 147.09 (1).

(b) The form and content of such public notice shall be established by departmental rule.

History: 1973 c. 74; 1985 a. 182 s. 57.

147.135 Mining hearing. If a hearing on the permit application is conducted as a part of a hearing under s. 144.836, the notice, comment and hearing provisions in that section supersede the notice, comment and hearing provisions of ss. 147.09, 147.11 and 147.13.

History: 1979 c. 221

147.14 Reporting of new discharges. (1) Any permittee discharging pollutants into the waters of the state shall report to the department any facility expansion, production increases, or process modifications which result in new or increased discharges of pollutants exceeding the terms of the permit. Such report shall be by submission of a new permit application or, if the new or increased discharge does not violate the effluent limitations specified in the permit, by submission of notice to the department of the nature of such new or increased discharge. The form and content of such notice shall be prescribed by departmental rule.

(2) Any person discharging, or intending to begin discharging, into a publicly owned treatment works who is or will become subject to the discharge reporting requirements of s. 147.025 (4), shall give notice to the department and the owner or operator of such works the following:

(a) Any introduction of pollutants into such treatment works from any new source; or

(b) Any types or volumes of pollutants being introduced into such treatment works which were not described in the report submitted under s. 147.025 (4).

(3) The owner or operator of a publicly owned treatment works receiving a notice under sub. (2) is subject to sub. (1), and shall also include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such pollutants on the quantity or quality of effluent to be discharged from such works.

(4) Notice of a new or increased discharge submitted to the department under this section shall be given at least 180 days prior to the date such new or increased discharge shall commence. The department, through the department of justice as provided under s. 147.29, may enforce violations of this section directly against persons subject to s. 147.025 (4).

History: 1973 c. 74

147.15 Waste treatment service charges. No permit shall be issued to any publicly owned treatment works any part of which was constructed with the aid of federal grants made after March 1, 1973, unless it has adopted or will adopt a system of charges to assure that:

(1) Each recipient of waste treatment services shall pay its proportionate share of the cost of operation and maintenance, including replacement, of any waste treatment services provided by such treatment works;

(2) Each industrial user of the treatment works shall pay that portion of the cost of construction of the treatment works paid by the federal government allocable to the treatment of its industrial waste.

History: 1973 c. 74.

147.20 Review of permits, decisions, terms and conditions.

(1) Any permit applicant, permittee, affected state or 5 or more persons may secure a review by the department of any permit denial, modification, suspension or revocation, the reasonableness of or necessity for any term or condition of any issued, reissued or modified permit, any proposed thermal effluent limitation established under s. 147.055 or any water quality based effluent limitation established under s. 147.04 (5). Such review shall be accomplished in the following manner:

(a) A verified petition shall be filed with the secretary setting forth specifically the issue sought to be reviewed by the department. Such petition must be filed within 60 days after notice of any action which is reviewable under this section is issued by the department. The petition shall indicate the interest of the petitioners and the reasons why a hearing is warranted. Upon receipt of such petitions, the department shall circulate a notice of public hearing in accordance with the requirements of s. 147.09 (1) at least 10 days prior to holding a public hearing thereon.

(am) After a verified petition for review is filed and until the last day for seeking review of the department's decision or a later date fixed by order of the reviewing court, any term or condition, thermal effluent limitation or water quality based effluent limitation which is the subject of the petition is not effective. All other provisions of the permit continue in effect except those for which an application for a variance has been submitted under s. 147.05. For those provisions for which a petition for review has been submitted under this section, the corresponding or similar provisions of the prior permit continue in effect until the last day for seeking review of the department's final decision or a later date fixed by order of the reviewing court.

(b) The department shall hold a public hearing at the time and place designated in the notice of hearing. At the beginning of each such hearing the petitioner shall present evidence to the department which is in support of the allegation made in the petition. All interested persons or their representative shall be afforded an opportunity to present facts, views or arguments relevant to the issues raised by the petitioners, and cross-examination shall be allowed. The department shall consider anew all matters concerning the permit denial, modification, suspension or revocation. No person may be required to appear by attorney at any hearing under this section.

(c) Any duly authorized representative of the department may administer oaths or affirmations, compel the attendance of witnesses and the production of information by subpoena and continue or postpone the hearing to such time and place as the department determines.

(d) The department shall issue its decision on the issues raised by the petitioner within 90 days after the close of the hearing.

(2) The decisions of the department issued under this section shall be subject to judicial review as provided in ss. 227.52 to 227.58.

(3) Subsections (1) and (2) do not apply if a hearing on the permit application is conducted as a part of a hearing under s. 144.836.

(4) Subsections (1) and (2) do not apply to the modification of a permit which implements a decision under s. 147.05 or the denial of a request for a variance under s. 147.05. A proceeding under subs. (1) and (2) shall not be delayed pending completion of the review of a variance request under s. 147.05.

(5) Rules promulgated under s. 144.025 (2) (b) may not be reviewed under this section. The application of rules promulgated under s. 144.025 (2) (b) may be reviewed under this section.

History: 1973 c. 74; 1979 c. 110, 221; 1985 a. 182 s. 57; 1987 a. 27, 60. Judicial review of administrative rules under this chapter is available only under 227.05, 1983 stats. [now 227.40]. *Phillips Plastics Corp. v. Natural Resources Dept.* 98 W (2d) 524, 297 NW (2d) 69 (Ct. App. 1980).

Judicial review procedure under this section, in conjunction with 227.05, 1983 stats. [now 227.40], is exclusive. *Sewerage Commission of Wisconsin v. DNR*, 102 W (2d) 613, 307 NW (2d) 189 (1981).

Timely review under this section of modified permit does not reopen for consideration those unmodified portions of permit for which review period has expired. *Theinsville Village v. DNR*, 130 W (2d) 276, 386 NW (2d) 519 (Ct. App. 1986).

147.21 Civil and criminal remedies. (1) The department of justice, upon a referral pursuant to s. 147.29, may initiate a civil action for a temporary or permanent injunction for any violation of this chapter or any rule promulgated thereunder or of a term or condition of any permit issued under this chapter.

(2) Any person who violates this chapter, any rule promulgated under this chapter, any term or condition of a permit issued under this chapter, or any rule promulgated or order issued under s. 66.902 (1) or (2) shall forfeit not less than \$10 nor more than \$10,000 for each day of violation, except that the minimum forfeiture does not apply if the point source at which the violation occurred is an animal feeding operation.

(3) Any person who wilfully or negligently violates this chapter, any rule promulgated under this chapter or any term or condition of a permit issued under this chapter shall be fined not less than \$10 nor more than \$25,000 per day of violation, or imprisoned for not more than 6 months or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, the person shall be fined not less than \$10 nor more than \$50,000 per day of violation, or imprisoned for not more than one year in the county jail or both. The minimum forfeiture does not apply if the point source at which the violation occurred is an animal feeding operation. In determining the amount of the fine under this subsection, the court shall assess an amount which represents an actual and substantial economic deterrent to the action which was the basis of the conviction.

(4) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall be fined not less than \$10 nor more than \$10,000 or imprisoned for not more than 6 months or both.

(5) In addition to all other civil and criminal penalties prescribed under this chapter, the court may assess as an additional penalty a portion or all of the total costs of the investigation, including monitoring, which led to the establishment of the violation.

(6) For the purposes of subs. (3) and (4), the term "person" means in addition to the definition under s. 147.015 (11), any responsible corporate officer.

History: 1973 c. 74; 1983 a. 189 s. 329 (16); 1987 a. 157; 1989 a. 337

147.23 Liability for water pollution. (1) DEPARTMENT MAY RECOVER COSTS. In an action against any person who violates this chapter or any provision of s. 29.29 or ch. 30, 31 or 144 relating to water quality the department may recover the cost of removing, terminating or remedying the adverse effects upon the water environment resulting from the unlawful discharge or deposit of pollutants into the waters of the state, including the cost of replacing fish or other wildlife destroyed by the discharge or deposit.

(2) ADVERSE EFFECTS. The department may introduce evidence of the environmental pollution, as defined under s. 144.01 (3), that resulted from the unlawful discharge or deposit and evidence of the potential of the water environment for public use if the unlawful discharge or deposit had not occurred in order to assist the court in determining the adverse effects upon the water environment resulting from the unlawful discharge or deposit and in determining the amount of liability under sub. (1).

(3) ADMINISTRATION OF AWARD. The court shall administer an award made under this section. An award made under this section may be used to remove, terminate or remedy the adverse effects of the discharge or deposit, to restore or develop the water environment for public use or to provide grants to municipalities consistent with any court order.

History: 1973 c. 74; 1979 c. 221.

147.25 Continuing planning process. The department shall establish a continuing water pollution control planning process which is consistent with applicable state requirements. The continuing planning process shall result in plans for all waters of the state, which plans shall include:

(1) Adequate effluent limitations and schedules of compliance;

(2) The incorporation of all elements of any applicable areawide waste management plans, basin plans and statewide land use plans;

(3) Total maximum daily load for pollutants;

(4) Procedures for revision;

(5) Procedures for intergovernmental cooperation;

(6) Implementation procedures, including schedules of compliance, for revised or new water quality standards;

(7) Controls over the disposition of all residual waste from any water treatment processing;

(8) An inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet applicable requirements.

History: 1973 c. 74

147.26 Design of publicly owned treatment facilities. (1) The department shall encourage the design of publicly owned treatment works which provide for:

(a) The recycling of sewage pollutants by using them in agriculture, silviculture or aquaculture;

(b) The confined and contained disposal of those pollutants not recycled;

(c) The reclamation of wastewater;

(d) The ultimate disposal of sludge in a manner not resulting in environmental hazards; and

(e) The integration of facilities for sewage disposal with other facilities designed to dispose of solid waste and thermal pollution, for the purpose of producing revenues in excess of cost in the operation of the integrated facility.

(2) All plans submitted under s. 144.04 after July 22, 1973, for new treatment works, or modifications of treatment works, which will be eligible for construction grants or loans under s. 144.21 or 144.24 or under ss. 144.241 and 144.2415, shall contain:

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(a) Adequate analysis and data establishing that the works or modification is the most cost efficient method of meeting limitations and standards required of the facility; and

(b) A feasibility plan on using ultimate disposal of pollutants to land rather than to air or the waters of the state.

History: 1973 c. 74; 1979 c. 34 s. 2102 (39) (d); 1987 a. 399; 1989 a. 366

147.27 Savings clause. Except as provided in this chapter, nothing in this chapter shall be deemed to supersede any other statute or session law.

History: 1973 c. 74.

147.29 Enforcement. (1) Whenever on the basis of any information available to it the department finds that any person is violating this chapter, any rule adopted thereunder or any term or condition of any permit issued pursuant to this chapter, the department shall refer the matter to the department of justice for enforcement under s. 147.21.

(2) The department of justice shall initiate the legal action requested by the department under sub. (1) within 30 days of receipt of the written request. In any action commenced by it under this subsection, the department of justice shall, prior to stipulation, consent order, judgment or other final disposition of the case, consult with the department for the purpose of determining the department's views on final disposition. The department of justice shall not enter into a final disposition different than that previously discussed without first informing the department.

(3) In any criminal action commenced under s. 147.21, the department of justice may request the assistance of the district attorney of any county in which the violation occurred, and the district attorney shall provide the requested assistance.

(4) Any civil action on a violation shall be commenced in the circuit court for the county in which the violation occurred in whole or in part, unless all the parties consent to the commencement of the action in the circuit court for Dane county. Any criminal action on a violation shall be commenced in the circuit court for the county in which the violation occurred.

History: 1973 c. 74; 1979 c. 34

147.30 Environmental pollution. Regulatory actions taken by the department to eliminate or control environmental pollution shall be exempt from the provisions of s. 1.11, other than:

(1) Involvement in federal financial assistance grants for the construction of publicly owned treatment works;

(2) Financial assistance under s. 144.21 or 144.24 or under ss. 144.241 and 144.2415; and

(3) Issuance of permits or approvals for new sources of environmental pollution.

History: 1973 c. 74; 1979 c. 34 s. 2102 (39) (d); 1987 a. 399; 1989 a. 366.