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A CRITIQUE OF THE CURRENT WISCONSIN

LAWS AND RULES FOR MINING AND MINING WASTE DISPOSAL

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for environmental repair before local impacts

A LAY PERSON'S VIEWPOINT

All interpretations of the law and opinions are strictly those of the author

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Prepared by
Evelyn Churchill
October 1985

Introduction

A mining company was reported as saying that a mining company does not start mining in a new area until it gets the environmental laws of the area knocked down!

Wisconsin law-making for mining and disposal of its wastes, over the past approximately 10 years, demonstrates all too well the truth of that statement.

Throughout those years, lawyers and lobbyists, representing Exxon, Kennecott, Inland Steel, Manufacturing and Commerce, and Waste Management Inc, and working at the heart of the state's law making system, manipulated the drafting and passage of bills and rules that seriously reduced the protection of the environment and the people of the state from the damaging exploitation of multinational corporations.

The current laws and rules, in my opinion, (1) give Wisconsin's groundwater to the potential major polluters, mining and industry, for the disposal of their wastes, (2) relieve mining and industry of the costs for damages caused by their waste disposal, and (3) reduce citizen participation in the decision-making on these matters to a near zero.

A score or more of multinational oil and mining corporations have gained control of hundreds of thousands of acres of mineral rights in northern Wisconsin since 1978. If Exxon Corporation gets a permit under the present inadequate law structure, the precedent will be set for all the others waiting on the sidelines to get permits and to operate under the same bad laws.

(Please note enclosed most recent news item concerning mineral rights - p.V)

This paper concentrates on the actual current laws and rules for mining and the disposal of mining wastes. The main points emphasized are the laws and rules which are destructive or deterring to the environment and the rights and protections of the state's people, especially those of possible future mining areas.

Every county clerk and every town clerk in the state is provided with a set of the current laws of Wisconsin. The assumption is that if there is a point of law that needs clarifying they can look it up and find out on their own.

In writing this paper, I acted under the same assumption, that, I, a citizen of a community that has the potential for mining, needing to know what the mining laws and rules contain and how they will affect mining communities, should be able to go to the statutes and find out what I want to know.

I have gone to the statutes, and, this paper with its opinions and interpretations is my understanding of what I read in the statutes.

This paper is not meant, in any sense of the word, to represent a legal interpretation. It is simply my viewpoints as an ordinary citizen, untrained in law.

If I have strayed, however, to a great degree from the actual meaning of the laws and their implications, I do not feel the need for deep apology. I find the laws for mining and the disposal of its wastes written in such complicated and voluminous legalese, and so studded with ambiguities and words and phrases needing legal interpretation that I think it would take a force of legal experts to get it all straightened out.

For the same reasons, I feel that what I have to say may be only the tip of the iceberg.

I should mention, also, that my opinions have been influenced in a measure, by my experience over the past ten years, as a citizen of the Town of Grant, Rusk County, involved with the town and its contentions with Kennecott Copper Corporation and with the town's efforts to influence law-making for the protection of the local citizens, by impressions gathered from visits to a number of mining areas in the U.S. and Canada, and by research.

Nevertheless, if nothing else, I hope that this paper may spur the interest of concerned and able people to actually look into wisconsin's laws and regulations for mining and see the small protection they hold for the environment and the local citizens of the areas pinpointed by the corporations for mineral extraction.

Far too little has been done about this and the time is late.

Myths, concerning mining and the disposal of its toxic wastes, have been very instrumental in and advantageous to the mining industry's campaign to establish laws that promote mining, relieve the mining companies of resposibility for the damages left in their wake, and erase any hurdles that might hamper their entrance or their activities.

no standards limiting degree of pollution (amount of pollutants) in groundwater of area bounded by Compliance Boundary.

There is the myth that MCL groundwater standards "protect" the groundwater. In reality, MCL pollution standards promote and permit groundwater pollution to the borderline of being too polluted to drink.

There is the myth that the wastes can be encapsulated so that they will not pollute the groundwater, ever, beyond the MCLs. In reality, modified dumping, with its liners and well built dams, can only delay, cannot stop, the final catastrophe of groundwater pollution. (See p. V.)

An associated myth exists that the DNR will stop and remedy the problem if serious pollution should happen. Just a scan of the daily news passes on the message_it is physically and financially impossible for the government to keep abreast with the leaking landfills around the country, the theories do not work and the costs are astronomical. (See Wall Street Journal, May 16,1985 (25))

These myths have served the mining companies well!

1. The fears of the public and the legislators were laid to rest with these assurances.
2, Laws based on these myths gives the mining companies TIME.

Groundwater is slow-moving and a build up of pollution to the point of detectable MCLs could take scores of years, given the factor of well built dams.

So, with good liners and a bit of luck, they will have TIME to finish the mining operation, take their profits, close down the mill, plant some grass and hand the responsibility for long term care to the public before the long term problems surface.

Further myths are afloat, that mining will bring in a surfeit of tax dollars with the present net proceeds mining tax law. In reality, history has proven that a net proceeds mining tax law holds no guarantees of tax money coming in. The federal government even has problems collecting taxes from the powerful corporations. (See p.VII) Where will Wisconsin gets its super strength to do so? A severance tax is the only tax with any guarantees, up to a point.

Another myth has it that unemployment will be greatly alleviated with the advent of mining. True there will be more jobs available; conversely, however, an influx of out-of state unemployed miners may more than fill the quota of jobs, plus causing community growth problems and swelling the welfare rolls.

One final myth surfaced after the Trailor Bill AB800 was passed in 1981, that now Wisconsin had good"comprehensive"

mining laws all in order;and, now, everybody could forget about laws for mining and get on with other things.

In reality, every legislative session since then,has seen the passage of bills that gave ever more benefits to the mining companies.

The most blatant attempt at peaking the Wisconsin legal structure beneficial to the mining industry, was the introduction of SB224 in the latter part of the 1985 spring session of the Wisconsin Legislature, allegedly to attract out-of-state auto manufacturing industry. This bill would have completed the legal system for the free-wheeling of corporations in Wisconsin.

"IDEA" Bill- SB224 allowed the big mining companies to over-ride local controls in getting mining sites. (The laws already give them that privilege for dumping their wastes.)

It allowed the big mining companies to by-pass the enviromental impact statement process for their big projects, and gave the Department of Development the power of condemnation for siting their projects.

Luckily, the bill was tabled after strong opposition from a few watch dogs in the Legislature, Department of Justice and the public. (See p. VI.)

However, this fall's legislative session on economic development could see some of these points slide through under other bills.

It should be kept in mind, too, that these laws built on myths are not just applying to one small Exxon proposal. (Small beginnings do not alarm the populace nearly as much as a super large project would.)

These laws will be applying to other proposals from other powerful corporations; and they will be applying to enlargemnts of projects and enlargements of waste areas.
As far as I can find out, there is no limit to size of enlargements.

It is well to consider, also, that the "fudge" words so prevalent in the mining laws, that will probably need legal interpretation, e.g. substantial, significant, unreasonable, public health, safety and welfare, will get different interpretations at different times, depending on the circumstances at that time, such as if the local pay checks are wholly based on the mining operation.

Scientists Agree Landfills Mean Leakage

The Congressional Office of Technology Assessment (OTA) has recently released a three-year study entitled "Technologies and Management for Hazardous Waste Control" on the safety of burying toxic waste in landfills. Finally the word is out . . . landfills are insecure. Below are some interesting quotes from experts working in the toxic waste field.

"Long-term effectiveness of landfilling can be seriously questioned. Our report will substantiate people's worst fears about land disposal." *Joel Hirschhorn, director of the OTA study.*

"The federal Environmental Protection Agency (EPA) should be required to develop regulations phasing out the burial of toxic waste." *Resolution approved by the National Governor's Association.*

"The use of landfills is not the way to go. They are not really secure. In fact, they are impractical and unsafe." *Samuel Epstein, professor of Environmental Medicine, University of Illinois Medical Center and author of* Hazardous Waste in America.

"Last fall, 11 out of 12 liners tested under field conditions leaked in six months." *Kirk Brown, Texas A & M professor of Social Science.* EPA now requires that landfills be lined before waste is emplaced.

"We found that four state-of-the-art landfills in New Jersey developed leaks within one year. I think the whole idea of secure landfills is really a figment of optimistic imaginations." *Peter Montague Princeton University Center for Energy and Environmental Studies, heading a research project on toxic waste.*

--SIERRA CLUB WASTE PAPER

Land bank selling rights to minerals

St. Paul, Minn. —AP— The Federal Land Bank of St. Paul, hoping to generate more income, plans to seek bids for mineral rights it holds on 3.2 million acres of land in Wisconsin, Michigan, Minnesota and North Dakota.

The land bank, which finances farm mortgages through local federal land bank associations, acquired the mineral rights when it foreclosed on mortgages, mostly in the 1930s.

Land bank spokesman Tom Gahm said the land bank had retained 50% ownership of mineral rights when it resold the land acquired by foreclosure.

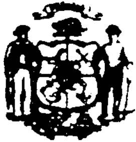
The bank declined to estimate the value of the rights.

About two-thirds of the mineral rights are in North Dakota, a state producing oil and coal.

The bank also owns 506,000 acres of mineral rights in Minnesota, mostly in the southeast and east-central parts of the state; 492,000 acres in Wisconsin; and 156,000 acres in Michigan.

The land bank is part of Farm Credit Services of St. Paul, one of 12 districts in the financially troubled Farm Credit System, which is seeking a federal bailout. Officials of the St. Paul district have said they expect the district's farm credit operations to lose $40 million this year.

M. J. Oct. 17, 1985



The State of Wisconsin
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May 20, 1985

Bronson C. La Follette
Attorney General

Ed Garvey
Deputy Attorney General

Senator Barbara Ulichny, Chairperson and
Members, Senate Economic Development Committee
State Capitol
Madison, Wisconsin 53702

Dear Chairperson Ulichny and Committee Members:

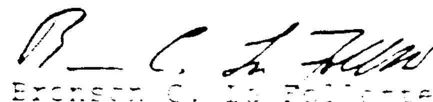
Tomorrow your committee hears public debate on the so-called Industrial Development Expansion Act, "IDEA" bill. Given the substance of the LRB 2825/1 bill draft and its obvious effect of broadsiding Wisconsin's environmental laws, I urge you to reject what is really a bad IDEA.

The bill completely eviscerates the long-standing requirement of state agencies to prepare environmental impact statements on major projects that can injure the environment; it eliminates the ability of citizens to contest industry assertions at public hearings; and it authorizes the automatic issuance of permits by default if agencies do not act hastily on permit applications. The bill also departs from the historic limitation that government can only condemn private property for a public purpose. The bill permits the state to condemn individuals' property for the benefit of private business. What is more, the bill completely eliminates the current ability of local governments to take any action, including making zoning decisions or requiring compliance with basic building code standards, to protect the health and welfare of their citizens.

In the name of "fast-tracking" the permit process for big business, the proposed bill replaces informed decisionmaking with instant permits. Not only would passage of this bill mark a major assault on the quality of the environment that is so vital to many Wisconsin industries, but substantial constitutional questions are raised with respect to both due process rights at hearings, as well as the use of eminent domain for private purposes.

Had industry lobbyists crafted a bill that would expedite the decisionmaking process while maintaining the current balance between public and private rights, as I believe could be accomplished, their bill would likely have met with broader support and success. However, this "fast-track" bill does nothing to accomplish that reasonable goal. Instead, it derails public rights and environmental protection in Wisconsin.

Sincerely yours,



Bronson C. La Follette

Group assails 'corporate welfare'

Washington, D.C. —AP— "Corporate welfare programs" will cost American taxpayers $106.96 billion in 1986, said a report Thursday by Public Citizen Congress Watch, a group founded by consumer advocate Ralph Nader.

"By eliminating corporate welfare, the deficit could be cut in half by 1986 and the budget could be balanced by 1988," without reducing social or military spending or raising tax rates, it said.

The report said corporate welfare programs could be divided into these categories:

"Cash handouts," such as the more than $300 million in operating subsidies given to the maritime industry.

"Credit subsidies," such as the low-interest loans and loan guarantees given by the Export-Import Bank to General Electric, Westinghouse and other large companies.

"Taxpayer-provided services, such as taxpayer-financed cleanups and research and development given to the nuclear industry."

Government agencies that promote business or restrict competition, such as the Interstate Commerce Commission and parts of the Commerce Department.

Laws that restrict competition, such as antitrust exemptions and the Price-Anderson Act limiting the nuclear industry's liability.

Special exemptions, credits, exclusions and deductions in the tax code that benefit either specific industries or corporations in general.

The report said the most expensive corporate welfare program was the investment tax credit, which it said required taxpayers to pay 10% of the cost of new equipment businesses buy.

Jay Angoff, a Congress Watch lawyer, said: "The investment credit will cost the Treasury more than $38 billion in 1986 — more than the cost of food stamps, Aid to Families With Dependent Children, student loans, and veterans' medical care combined."

Joan Claybrook, president of Public Citizen, said the cost of the benefits to businesses was greater than Medicare, Medicaid, veterans' medical care and child nutrition programs, "which serve millions of Americans."

"If Congress and the president do not cut corporate welfare, corporate America will simply get fatter and lazier and will continue to lose ground to foreign competition, secure in the knowledge that if it can't make it on its own the corporate welfare system will always be around to bail it out," Angoff said.

Mil. Journal Feb. 15, 1985

Mil. J. Aug. 29, 1985

40 companies paid no US income tax

Washington, D.C. —AP— Forty companies paid no taxes on more than $10 billion in profits last year, a lobbying group said Wednesday.

Many of the companies actually paid less than no tax — instead taking advantage of laws allowing them tax refunds, according to the study by Citizens for Tax Justice.

Five major defense contractors were among the companies that paid no federal income tax at all or received refunds during the 1981 through 1984 period, the study said.

Those five are: General Dynamics, General Electric, Lockheed, Boeing and Grumman, the study said. Another three — McDonnell Douglas, Martin Marietta and Westinghouse Electric — had effective tax rates of less than 1%, the group's study said.

Citizens for Tax Justice is a liberal research and lobbying group supported by unions, churches, public interest groups and other organizations. Its report on the taxes of 275 large, profitable corporations, nearly half of which paid no taxes in at least one of the last four years, was released as a follow-up to a similar study conducted last year.

"With the addition of the 1984 data, we now have for the first time the complete picture of corporate tax avoidance during President Reagan's first term in office," said Robert S. McIntyre, director of federal tax policy for the group, in releasing the study. "It is a picture of unparalleled success in beating the federal tax collector."

The report said 129 of the 275 profit-making companies surveyed paid no federal income tax or received tax rebates in at least one year. These 129 companies had $66.5 billion in pre-tax domestic profits during the four years and received a total $6.4 billion in tax rebates, for a negative tax rate of minus 9.6%, the report said.

It said 50 of the 275 companies paid an overall total of nothing in federal income taxes over the entire four-year period, despite more than $56 billion in pre-tax domestic profits. They received net tax rebates totaling $2.4 billion.

Federal law taxes corporate income above $100,000 at 46%. But like individuals, businesses are able to cut their taxes with deductions and credits. The biggest tax break for corporations is depreciation — charging some of the cost of new equipment and buildings against current taxes.

McIntyre said the tax cut recommended by Reagan and enacted by Congress in 1981 was in part responsible for the ability of companies to reduce tax liability. That cut allowed accelerated depreciation, expanded investment tax credits and liberalized leasing rules.

The report called Boeing Co. "the leading corporate tax avoider" between 1981 and 1984 for receiving $285 million in tax refunds on profits of more than $2 billion.

Six companies were listed as receiving net refunds of more than $100 million over four years: Dow Chemical, ITT, Tenneco, Santa Fe Southern Pacific Corp., Pepsico and General Dynamics.

The report said the average effective rate paid by all 275 companies surveyed was 15%, and 126 paid 12% or less.

If all the companies had paid at the regular 46% tax rate on their $400.6 billion in profits during the period, their taxes would have totaled $184.3 billion — $124 billion more than actually was paid.

The 40 companies paying no federal income taxes in 1984 were led by AT&T, which also received $242 million in tax refunds on profits of $1.9 billion, the report said.

On the other side, the report said nine companies in the study paid effective tax rates of more than 40% over the four-year period. They were: V.F. Corp., Interco, Whirlpool, Ralston-Purina, Paccar, Raytheon, SuperValu Stores, McGraw-Hill, and Brown-Forman Distillers.

The group said it obtained the basic information on profits and taxes from the companies.

All the companies examined had profits, and most were selected from Fortune magazine's list of the largest 500 companies. But additional companies were selected from the magazine's list of the top 50 companies in various industries and from a group that was the subject of a 1983 congressional study.

II. SUMMARY OF SOME OF THE INADEQUACIES OF THE LAWS FOR MINING

Following is a brief summary of the inadequacies of the laws and rules for mining and the disposal of mining wastes.

Most basic, there are certain laws and rules, that have come to my attention, that weaken the whole legal structure of laws and rules for mining and the disposal of mining wastes, namely:

1) Stat. 144.937 Effects of other statutes. which states that a federal or other state law or rule that governs an activity governed under the mining laws, shall be the controlling standard. This law provides a wide range of unsuspected and unanticipated implications and ramifications. See p. 15a

2) Stat. 144.83(4)(j). This law provides for exemptions or variances to ANY RULE for mining or disposal of mining wastes. p. 10

3) Stat. 144.83(4)(L). This law authorizes rules for groundwater quality standards for mining, prospecting and mining waste facilities. Although laws govern groundwater standards for most other state regulated activities (For instance, a law governs the storage of gasoline.) mining, prospecting and mining waste facilities have the special privilege of rules from which exemptions and variances can be made. p. 10

4) Stat. 144.435(1) and (2) authorizes rules for mining wastes. p. 8

5) Stat. 144.441(2)(d) authorizes rules for the early termination of the long-term care by the mining company, for mining wastes that need surveillance for perpetuity. Termination is possible as early as 10 years after closure by rule. If an exemption were granted, company termination of long term care could be sooner than 10 years. pp. 17 + 18

The flexibility and implications of these laws and rules cause the regulations for mining to take on the nature of guidelines.

Other inadequacies:

1) Local governing bodies have lost their control of the siting, operation and licensing of mining waste facilities, plus, having lost their right to say "no" to a mining waste facility in their midst.

The law was repealed that gave local governing bodies the right to license state permitted waste facilities and the right to make stricter standards than the state for waste disposal.

The law exempts the mining companies from having to obtain local approvals for siting their waste facility.

3) Local governing bodies were not given the right to zone "to protect groundwater sources", instead they were given the weak right to zone " to encourage the protection of groundwater resources."

4) A net proceeds mining tax law was enacted, based on percentage of the net income realized from the mining operation. There are no guarantees that such a tax will bring in sufficient funds. In fact, the history of mining, where this tax was used, shows there were many years when no tax money came in.

5) Yet, the investment and impact fund, that is supposed to be funded by this totally undependable mining tax, has been targeted for all of the big costs of environmantal destruction due to mining and its wastes, that should be the responsibility of the mining companies (even reclamation costs if the company is financially unable to bear the costs.).

The ultimate outcome of this set-up can only be that the ordinary taxpayers of the state will have to bear the costs; and the 10cal people will have to put up with the environmental degradation and its effects.

6) The DNR is authorized to be advised on all matters relating to the disposal of mining wastes and reclamatio, plus rule-making for waste disposal, by the Metallic Mining Council, a 9 member council appointed by the Secretary of the DNR. The Council has been and is well-fortified with mining interests, Exxon being represented by 2 members.

7) The DNR has been pretty much insulated from public challenge of its actions and decisions concerning mining and disposal of mining wastes.

Stat. 144.97 was repealed that gave any person the right to a review of DNR orders. p.26

Stat. 227.064 and its implications deny a contested case hearing under 227.064 for any aspect of the DNR actions or decisions concerning mining or disposal of mining wastes, and for any DNR decision on the environmental impact of the disposal of mining waste. p.45

8) The Master Hearing law Stat. 144.836 has severely reduced opportunities for effective citizen participation in the hearing on the EIS and the permit application. pp.46-4

9) Chap. 160 of the statutes has made all groundwaters of the state candidate for pollution to the level of being hazardous to health. MCLs. pp.11-11c

III. The Laws and Rules Being Reviewed.

Copies of the actual laws and rules are enclosed to help the reader understand why I have arrived at the opinions and interpretations expressed in this paper.

The small number in parenthesis at the top right of each statute or rule indicates the page where a copy of the law or rule can be found.

A. Wetlands can be used for mining and mining waste disposal, if they are technically and economically feasible and are the alternative which causes the least overall adverse environmental impact.

More often than not wetlands fulfill these requirements because of their natural bowl shape with tight underlying layers of clay.

NR 132 (4) (d)

(d) The use of wetlands for mining activities, including the disposal or storage of mining wastes or materials, or the use of other lands for such uses which would have a significant adverse effect on wetlands, are presumed to be unnecessary unless the applicant demonstrates, taking into account economic, environmental, technical, recreational and aesthetic factors, that the site proposed for use:

1. Constitutes a viable site;

2. Is the alternative which causes the least overall adverse environmental impact; and

3. Will be used in a manner so as to minimize the loss of wetlands and the net loss of the functions which those wetlands may serve with respect to related wetlands or other waters of the state, or both, outside the proposed area of use. As used in this paragraph, a presumption shall not be construed to be a prohibition, but rather the creating of a burden of proof on the applicant to demonstrate by the preponderance of evidence that it has complied with all the siting principles and standards of this subsection. As used in this section, viable means technically and economically feasible.

B. Laws governing the construction of the mining waste facility.

"..no matter how carefully the impoundment is constructed, the risk of structural failure exists." Mining Magazine July 1977

Wisconsin laws do not assure the most careful construction possible.

s.144.44(3)(b)(3) Wisconsin law does require a registered professional engineer to prepare the operational plan; however, it does not require continued supervision by a registered professional engineer throughout the actual constructing of the facility.

The actual constructing of the facility is of the utmost importance, when considering the mammoth project being undertaken, and the need for integrity from the beginning to the end to ensure the safety of the facility.

Exxon plans to enclose 600 acres with dams 90 feet high and stable enough to hold up forever; the whole inside lined tight enough to contain millions of tons of acidic wastes forever. This will all be done without the requirement of supervision by a registered professional engineer.

s.144.44(4)(b)(3) All the law requires is that the plan be prepared by a registered professional engineer and that the DNR may require the compliance be certified by a registered professional engineer. (It must be noted that the DNR did rule that a registered professional engineer shall document site construction in conformance with the plan after construction is finished.) NR 182.05(2)(3)

Given this weak law and rules that are vulnerable to change,(10) there is small assurance that powerful corporations will do their utmost to construct the best of tailings impoundments. The safety of the public is jeopardized under this law.

NR 182.10 Construction and completion reports. (1) Construction of a waste site shall be substantially in accordance with the approved plan of operation.

(2) Sites and facilities shall be thoroughly inspected by the owner prior to their use and all associated structures shall be in substantial compliance with the plan of operation. A registered professional engineer shall document site construction and render an opinion whether the site has been constructed in substantial conformance with the plan of operation. Photographs, either aerial or ground, may be used to document this inspection, but shall not in themselves constitute compliance. A complete file describing the items inspected and their condition shall be maintained by the owner.

(3) Prior to licensing, the department will review and inspect all waste sites to ensure that they were constructed according to the approved plan of operation. A written report shall be made of such review and inspection and placed in the applicant's file.

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

s. 144.44(3) PLAN OF OPERATION
(b) Preparation:contents. The proposed plan of operation shall be prepared by a professional engineer and ....

s. 144.44(4) OPERATING LICENSE
(b) Issuance of initial license. The initial operating license for a solid waste disposal facility or a hazardous waste facility shall not be issued unless the facility has been constructed in substantial compliance with the operating plan approved under sub.(3). The department may require that compliance be certified in writing by a registered professional engineer. ....

(39) (below)
Stat. 144.44(4)(a) and NR 182.05(2) . Provisions for the renewal of the license for the mining waste facility, and review of the operational plan to determine compliance, are very weak.
The time of renewal of the license depends on "if and when" the DNR determines it is necessary and can not be more often than once a year.

182.05 (2)

686-210 WISCONSIN ADMINISTRATIVE CODE
NR 182

comply with the approved plan of operation, or if no plan of operation exists, for grievous and continuous failure to comply with the standards of this chapter applicable to such site under s. NR 182.02 (3). The department shall review the license and plan of operation to determine compliance annually or at such other intervals as it determines necessary, but no more frequently than annually. At the time of such review, the operator shall pay review fees as shown in Table 1. Review fees are not refundable.

(3) No person shall establish or construct a waste site or facility prior to obtaining written approval from the department of plans describing site or facility feasibility and operation, or both except as otherwise provided in this chapter. The plan review fee specified in Table 1 shall accompany all plans submitted to the department for approval. Plan review fees are not transferable, proratable or refundable.

(4) Following closure of a site or facility, the owner or any successor in interest shall be required to have a license during the period of owner responsibility indicated in s. 144.441, Stats. The license shall be issued for terms of 5 years with a fee of $250 per license period.

TABLE 1

PLAN REVIEW FEES

Type	Feasibility Report	Plan of Operation
Storage	$350	$350
Land Disposal	600	600
Other	350	350

LICENSE FEES

Type	Initial License	Periodic Review Fee
Storage	$ 500	$ 500
Land Disposal	1000	1000
Other	500	500

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

C. Decline of groundwater protection.

Groundwater quality standards.

Prior to 1981, the traditional policy of the department of natural resources (DNR) and the state laws was one of non-degradation of the waters of the state, both surface and groundwaters.[6]

On July 31, 1981, the lawyers,who represented the mining[7] interests, pressured the DNR into deserting the policy of non-degradation and adopting rules that allowed pollution of the groundwater from mining wastes to the federal drinking water standards or maximum contaminant levels (MCLs), a level of pollution bordering on being unsafe to drink. NR 182.075[9]

As s. 144.435[8] requires that rules for solid waste disposal must conform to the rules for disposal of mining wastes, the same groundwater standards apply to all other solid waste facilities, also.

In October, 1981, AB800, Chap. 86 was passed that gave the DNR authority to promulgate rules to establish groundwater standards for mining wastes (which it had already done in July, 1981) as well as for any prospecting or mining activity. s. 144.83(4)(L)[10]

The same bill created a law that gave the DNR authority to promulgate rules whereby an exemption, modification or variance may be obtained from ANY rule for solid and hazardous waste (includes mining wastes) or ANY rule for exploration, prospecting and mining, if it did not result in the violation of a law. s. 144.83(4)(j)[10] NR 182.19[10]

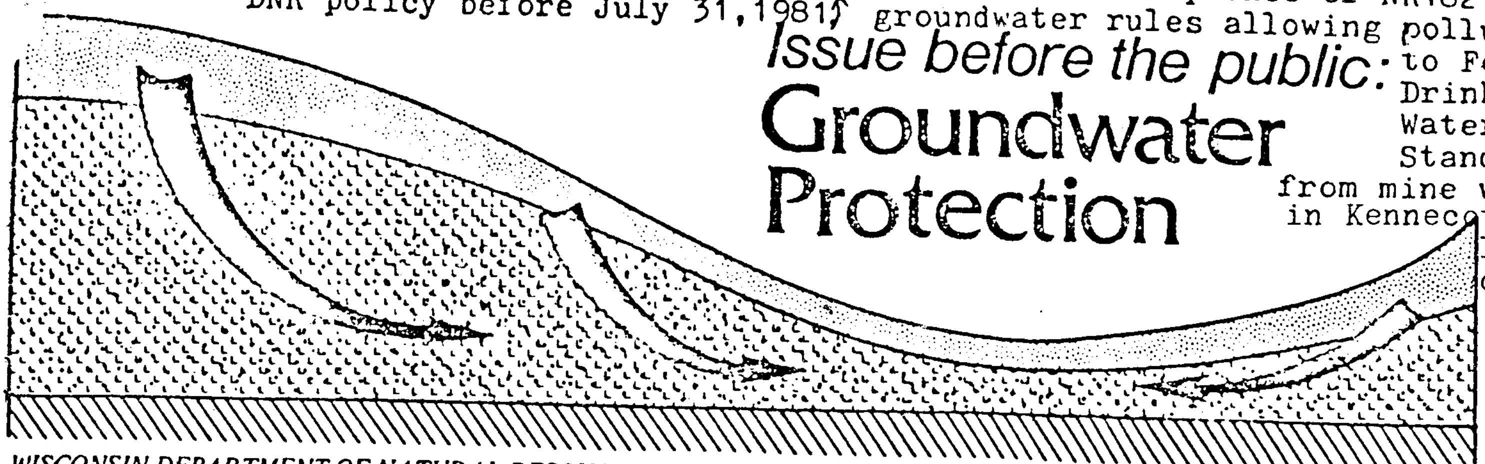
Since the groundwater quality standards for mining and disposal of mining wastes are by rule and not law, the strength of the groundwater quality standards for these activities are considerably weakened by the potential for exemption or variance, as are all of the other rules promulgated for exploration, prospecting, mining and disposal of mining wastes.

In 1984, the final blow was dealt, with the passage of statute chap. 160 as part of the groundwater bill AB595 - Act 410.[11]-[11a] The groundwater standard of MCLs was adopted as the general groundwater standard. This Act made all groundwater of the state candidate for pollution to the borderline of being unsafe.

Although the law maintains this standard for most activities, s. 160.19(12)[8] continues to give mining and mining waste disposal the special privilege of regulation of groundwater quality by rules that are vulnerable to exemptions, modifications and variances.

The rules for mining wastes also stipulate further favors, very beneficial to the mining companies,after large areas of groundwater surrounding mining waste areas become polluted in excess of the MCLs; and more waste sites and waste site emlargements are needed in the area.

To cover such possible circumstances, the rules stipulate groundwater standards to be the baseline concentration of the substances in excess of the MCLs, unless an exemption is granted. NR 182.075(1)(a)2.b.[9]



WISCONSIN DEPARTMENT OF NATURAL RESOURCES *P.O. BOX 7921* *MADISON, WISCONSIN 53707*

Drinking Water Standards . . . Not Good Enough for Wisconsin's Groundwater

Drinking water standards (also called maximum contaminant levels) are limits, set by state and federal government, on certain contaminants of water to define when water is safe enough to drink. It's been suggested that since any water that's safe to drink is also safe to use in any other way, drinking water standards should be used to define acceptable levels of pollution for Wisconsin's groundwater — the drinking water supply for two out of three Wisconsin citizens. What's wrong with this line of thinking? Why are drinking water standards inappropriate for preserving the quality of Wisconsin's priceless groundwater?

As currently provided by state and federal law, health-related drinking water standards cover ten inorganic chemicals, six pesticides, bacteria, and radioactivity. As long as the amount of these substances in a particular water supply is low enough, the water is legally okay as a public drinking water supply. But right now the vast majority of Wisconsin's groundwater is of far better quality than that defined by these minimum drinking water standards. In states where groundwater supplies are already seriously polluted by oil drilling, mining, natural conditions, and many other factors, drinking water standards may be okay. The standards are a way of judging how much the water must be treated to reach a reasonable level of health safety. Wisconsin isn't faced — yet — with widespread pollution of our groundwater supplies. So we aren't asking how much treatment water needs to be deemed relatively risk-free. What we are asking is: Should we allow our still-pure groundwater to be reduced in quality to that defined by the minimum drinking water standards? Should your neighboring landowner be allowed to change the quality of your well water from naturally pure to marginally acceptable?

Drinking water standards — no matter how many contaminants they *try* to cover — can never do an adequate job of preserving the purity of Wisconsin's groundwater supplies. We simply cannot rely on our ability to second guess which of the *thousands* of potential pollutants might someday at some place reach groundwater and render it unfit to use. If it were legal to pollute groundwater with everything but some fixed number of contaminants, your well water might become legally polluted with an as yet unknown contaminant.

Also, groundwater often takes decades (sometimes even centuries) to renew itself. But as we find out more from research, drinking water standards may need change. What happens if we find that the safe level for a particular chemical is really half the level to which we've already allowed our groundwater to be polluted?

Drinking water standards are not enough to guarantee your well water is not polluted. In new administrative codes (NR 105 and 1.97), DNR is proposing that drinking water standards be used to define the acceptable level of groundwater pollution on a waste disposer's property, but also that no one should be allowed to change in any way the groundwater lying beneath his neighbor's property. In this way, the two-thirds of Wisconsin citizenry that rely on a pure and abundant groundwater supply will not need to worry that someone else is changing, legally, the quality of their well water.

The decisions Wisconsin makes now about how to protect its underground water resource are critical indeed. Once lowered, a pure quality of groundwater is difficult, if not impossible, to retrieve, even at great expense. Unless we make the right decisions now, we may find ourselves without a pure resource to protect. □

DNR moves toward more lenient rules

The DNR has moved away from the policy of non-degradation of ground water to one that accommodates the wishes of the mining companies to degrade, according to county board and environmental representatives from Northern Wis. who attended a mediation meeting between the DNR and a group of lawyers, known as the consensus group on mining rules, held in Madison, July 31.

The representatives from the potential mining areas believe the basic issues are not addressed in the mediated revisions of NR 182. Under these revisions, the mining companies could degrade the ground water down to National Drinking Water Standards, which are far below the quality of the drinking water of most of the people in Northern Wisconsin.

Townships would still be financially and physically responsible for supplying water to town residents whose wells would have been damaged from mine dewatering, until the mining company is proven guilty at a DNR hearing. (Sta. 107.05). Now 144.855

Kevin Lyons of Milwaukee, attorney for the Town of Grant in Rusk County, where Kennecott Copper Corp. has a copper deposit, said the rules would not sway those who were unalterably opposed to mining but would go a long way toward meeting concerns about well water.

Peter Peshel, public intervenor and consensus group member, indicated Friday that Exxon played a prominent role in helping develop these ground water revisions.

Exxon's lawyer, James G. Derouin, also of the consensus group, expressed his feelings that these regulations would, "Keep the towns happy." He said that the proposed rules would require mining companies to design lined tailings ponds, or above ground waste containment areas, so that water from wells 1,200 feet way would still meet federal drinking water standards.

Lyons and Derouin said the Department of Natural Resources staff initially insisted on a more vague standard, but Linda Bochert, assistant to DNR Secretary Carroll Besadny, persuaded the staff to accept more rigid rules.

Uninvited but attending, Rusk County Board Representatives Les Tiews and Roscoe Churchill do not share Derouin's opinions. "This mediation proposal on ground water regulations is no better than the so-called Environmental Trailer Bill that the consensus group tried to attach to the legislative Budget Bill, but failed," said Churchill. "It seems that the DNR capitulated under the force of corporate lawyers rather than mediated."

"The people of the state are being cheated by this closed process of determining standards for water quality. It seems that mining companies are having the first say-so about our ground water quality before the public has a chance," said Sandy Barrus, mining task force chairperson of the Northern Alliance, Springbrook.

Mediator Howard Bellman agreed with Inland Steel's Representative, Jeff Bartell's statement, "The process is not over with."

Wesley White, vice president of the Rusk County Citizens Action Group, who attended Friday's meeting, said, "I am looking forward to public hearings in September so the whole issue of ground water standards can be debated in the open and the public can decide whether or not our ground water should be degraded."

Ladysmith News
Aug. 6, 1981

Copy of s. 144.435 (1) and (2).

s. 144.435 Solid waste disposal standards. (1) The department shall promulgate rules establishing minimum standards for the location, design, construction, sanitation, operation and maintenance of solid waste facilities. Following a public hearing, the department shall promulgate rules relating to the operation and maintenance of solid waste facilities as it deems necessary to ensure compliance and consistency with the purposes of and standards established under the resource conservation and recovery act, except that the rules relating to open burning shall be consistent with s. 144.436. The rules promulgated under this subsection shall conform to the rules promulgated under sub. (2)

(2) With the advice and comment of the metallic mining council, the department shall promulgate rules for the identification and regulation of metallic mining wastes. The rules promulgated to identify metallic mining wastes shall be in accordance with any or all of the provisions under chs. 30,144 and 147. The rules shall take into consideration the special requirements of metallic mining operations in the location, design, construction, operation and maintenance of facilities for the disposal of metallic mining wastes as well as any special environmental concerns that will arise as a result of the disposal of metallic mining wastes. In promulgating the rules, the department shall give consideration to research, studies, data and recommendations of the U.S. environmental protection agency on the subject of metallic mining wastes arising from the agency's efforts to implement the resource conservation and recovery act.

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(11) Regulatory agencies shall enforce rules promulgated under this section with respect to specific sites in accordance with ss. 160.23 and 160.25.

S. 160.19 (12) The requirements in this section shall not apply to rules governing an activity regulated under ss.* 144.80 to 144.94, or to a solid waste facility regulated under s. 144.44 which is part of an activity regulated under ss. 144.80 to 144.94, except that the department may promulgate new rules or amend rules governing this type of activity, practice or facility if the department determines that the amendment or promulgation of rules is necessary to protect public health, safety or welfare.

*Ss. 144.80 to 144.94 govern mining.
S.144.44 governs solid waste disposal.

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the maximum compliance boundary under par. (b) 1. or the groundwater standards include a more stringent standard under par. 2. a. 2) or a standard determined under par. (a) 2. d., the department shall, at the hearing, present evidence supporting its proposals. The applicant or any other party may present evidence in support of or in opposition to the department's proposed groundwater quality standards or compliance boundary. Any party may propose alternative groundwater quality standards or an alternative compliance boundary by filing such proposal with the department no later than 90 days prior to the hearing.

2. The department shall apply the following criteria in establishing the groundwater quality standards at the compliance boundary:

a. For substances for which primary or secondary maximum contaminant levels (MCLs) have been promulgated in the state or national drinking water standards, 40 C.F.R. ss. 141 and 143, or ch. NR 109 the groundwater quality standards shall be:

1) The MCL, unless an exemption is granted pursuant to s. NR 182.19; but in no case shall such exemption authorize concentrations which exceed the level required to protect public health, safety and welfare; or

2) A more stringent standard based on the following:

a) That the more stringent standard is achievable based upon performance predictions and other information available to the department relating to the applicant's proposed facility site and design for which approval is sought. In establishing the more stringent standard the department shall allow an appropriate factor for margin of error above the level predicted to be achievable; and

b) That circumstances of the site or the characteristics of the substance make the more stringent standard necessary to protect public health, safety and welfare.

b. Where the baseline concentration of a substance subject to a state or national drinking water standard exceeds the MCL set by state or national drinking water standards, the groundwater quality standard shall be the baseline concentration of that substance unless an exemption is granted pursuant to s. NR 182.19; but in no case shall such exemption authorize concentrations which exceed the level required to protect public health, safety and welfare.

c. For substances toxic to humans for which a groundwater quality standard is to be established and for which no MCL has been promulgated, it shall be a concentration sufficient to protect public health, safety and welfare.

d. For other substances for which a groundwater quality standard is to be established, it shall be based on the following:

1) That the standard is achievable based upon performance predictions and other information available to the department relating to the applicant's proposed facility site and design for which approval is sought. In establishing the standard the department shall allow an appropriate factor for margin of error above the level predicted to be achievable; and

2) That the standard is required to protect the public health, safety and welfare.

3. The department may, in lieu of establishing a specific groundwater quality standard, require that the applicant monitor for that substance and report any significant deviations from the concentrations projected in the assessment prepared pursuant to s. NR 182.08 (2) (e) 9. On the basis of such deviations, the department may require the applicant to prepare an additional assessment of those substances and may, on the basis of that assessment, and pursuant to s. NR 182.19 (5), establish a specific groundwater quality standard for that substance based upon the following:

a. That the standard is achievable based upon performance predictions and other information available to the department relating to the applicant's proposed facility site and design for which approval is sought. In establishing the standard the department shall allow an appropriate factor for margin of error above the level predicted to be achievable; and

b. That the standard is required to protect public health, safety and welfare.

c. If such a monitoring requirement is established for a substance, and if an MCL has been promulgated for such substance, the waste site shall not cause concentrations of such substance in the groundwater at the compliance boundary which exceed by a statistically significant amount the MCL or the baseline concentration, whichever is higher, unless an exemption is granted under s. NR 182.19; but in no case shall such exemption authorize concentrations which exceed the level required to protect public health, safety and welfare. If no MCL has been promulgated for such substance, the waste site shall not cause concentrations of such substance at the compliance boundary in excess of the level required to protect the public health, safety and welfare.

4. For any substance for which the department does not specify a groundwater quality standard pursuant to subd. 2. the waste site shall not cause concentrations which have a substantial deleterious impact on a current beneficial use or on a significant future beneficial use, such as drinking, irrigation, aquaculture, maintenance of livestock, or maintenance of aquatic and terrestrial ecosystems, as designated at a hearing held pursuant to s. 144.836, Stats. This section shall not be construed to require the department to designate uses of groundwater in order to act pursuant to subd. 2. or 3.

(b) Compliance boundary. 1. 'Maximum compliance boundary.' The maximum compliance is 1,200 feet from the outer perimeter of the mining waste site or at the boundary of the property owned or leased by the operator, whichever distance is less. For purposes of this section, highways as defined in s. 340.01 (22), Stats., shall not be considered in determining the property boundary. The applicant or operator may seek a variance, modification or exemption to enlarge the maximum compliance boundary pursuant to s. NR 182.19, but in no event shall such a variance, modification or exemption authorize a boundary which exceeds the distance necessary to protect public health, safety and welfare.

2. 'Reduced compliance boundary.' The department may establish a compliance boundary which is smaller than the maximum compliance

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S.144.83(4)(j) — (j) Promulgate rules by which the department may grant an exemption, modification or variance, either making a requirement more or less restrictive, from any rule promulgated under subch. IV and this subchapter, if the exemption, modification or variance does not result in the violation of any federal or state environmental law or endanger public health, safety or welfare or the environment.

(k) Promulgate rules with respect to minimizing, segregating, backfilling and marketing of mining waste.

S.144.83(4)(l) — (l) Notwithstanding ss. 144.43 to 144.47 and 144.60 to 144.74, promulgate rules establishing groundwater quality standards or groundwater quantity standards, or both, for any prospecting or mining activity, including standards for any mining waste site.

NR 182.19 Exemptions and modifications. (1) The department may grant exemptions from the requirements of this chapter and modifications to any license, plan of operation, or other authority issued under this chapter as provided in s. 144.44 (3) (c) and (7), Stats., if such exemptions or modifications are consistent with the purposes of this chapter and ch. NR 132 and will not violate any applicable federal or state law or regulation.

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

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

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

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

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

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

the reasons why the hearing is demanded. A hearing demanded under this paragraph shall be held within 60 days after the deadline for demanding a hearing, and shall be conducted as a class 1 proceeding under s. 227.07, Stats. The hearing shall be held in an appropriate place designated by the department in one of the counties, cities, villages or towns which are substantially affected by the operation of the facility. Within 45 days after giving notice, or within 30 days after any hearing is adjourned, whichever is later, the department shall determine whether the modification or exemption as requested shall be granted.

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

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

~~**147.31 Animal waste management.** The department may not promulgate rules under this chapter regulating management of animal waste. The department shall cooperate with the department of agriculture, trade and consumer protection in the development and the implementation of the animal waste management program created under ss. 92.20 to 92.30. The department may petition the department of agriculture, trade and consumer protection to promulgate rules to ensure that the purposes of the animal waste management program are being achieved. This section does not affect the authority of the department to act under other statutes and rules or its authority to issue and enforce orders relating to abatement of animal waste pollution under other statutes and rules.~~ **Vetoed in Part**

SECTION 101. Chapter 160 of the statutes is created to read:

CHAPTER 160

GROUNDWATER PROTECTION STANDARDS

160.001 Legislative intent. The legislature recognizes that prior to the effective date of this section (1983), most groundwater regulatory programs were not based on numerical standards. The legislature intends, by the creation of this chapter, to minimize the concentration of polluting substances in groundwater through the use of numerical standards in all groundwater regulatory programs. The numerical standards, upon adoption, will become criteria for the protection of public health and welfare, to be achieved in groundwater regulatory programs concerning the substances for which standards are adopted. To this end, the legislature intends that:

(1) This chapter will establish an administrative process which will produce numerical standards, comprised of enforcement standards and preventive action limits, for substances in groundwater. As more specifically provided in this chapter, administrative procedures also provide for minimizing the concentration of substances in groundwater.

(2) The enforcement standards and preventive action limits will be adopted under the authority of this chapter, independent of any regulatory programs concerning the substances for which enforcement standards and preventive action limits are adopted.

(3) This chapter supplements the regulatory authority elsewhere in the statutes, whether the regulatory programs exist under current statutes on the effective date of this subsection (1983), or are created after that date. Regulatory agencies will continue to exercise the powers and duties in those regulatory programs, consistent with the enforcement standards and preventive action limits for substances in groundwater under this chapter. This chapter provides guidelines and procedures for the exercise of regulatory authority which is established elsewhere in the statutes, and does not create independent regulatory authority.

(4) In order to comply with this chapter, a regulatory agency is not required to adopt a particular type of regulation; regulatory agencies are free to establish any type of regulation which assures that regulated facilities and activities will not cause the concentration of a substance in groundwater affected by the facilities or activities to exceed the enforcement standards and preventive action limits under this chapter at a point of standards application. A regulatory agency may adopt regulations which establish specific design and management criteria for regulated facilities and activities, if the regulations will ensure that the regulated facilities and activities will not cause the concentration of a substance in groundwater affected by the facilities or activities to exceed the enforcement standards and preventive action limits under this chapter at a point of standards application.

(5) The enforcement standards and preventive action limits adopted under this chapter provide adequate safeguards for public health and welfare. However, this chapter does not prevent regulatory agencies from adopting regulations under regulatory authority elsewhere in the statutes based on the best currently available technology for regulated activities and practices which ensure a greater degree of groundwater protection.

(6) Where necessary to comply with federal statutes or regulations, the department of natural resources may adopt rules in regulatory programs administered by it which are more stringent than the enforcement standards and preventive action limits adopted under this chapter.

(7) A regulatory agency may take any actions within the context of regulatory programs established in statutes outside of this chapter, if those actions are necessary to protect public health and welfare or prevent a significant damaging effect on groundwater or surface water quality for present or future consumptive or nonconsumptive uses, whether or not an enforcement standard and preventive action limit for a substance has been adopted under this chapter. Nothing in this chapter requires the department of health and social services or the department of natural resources to establish an enforcement standard for a substance if a federal number or state drinking water standard has not been adopted for the substance and if there is not sufficient scientific information to establish the standard.

(8) Preventive action limits shall serve as a means to inform regulatory agencies of potential groundwater contamination problems, to establish the level of groundwater contamination at which regulatory agencies are required to commence efforts to control the contamination and to provide a

160.09 Establishment of enforcement standards; substances of public welfare concern. (1) Notwithstanding the authority of the department under chs. 144 and 162 to establish standards for pure drinking water, the department shall establish enforcement standards for substances of public welfare concern as follows:

(a) If a single federal number exists for a substance, the federal number shall be the enforcement standard.

(b) If more than one federal number exists for a substance, the most recently established federal number representing the most current data shall be the enforcement standard.

(c) If no federal number exists for a substance, but there is a state drinking water standard, the state drinking water standard shall be the enforcement standard.

(d) If neither a federal number nor a state drinking water standard exists for a substance, the department shall establish an enforcement standard using all relevant and scientifically valid information available in technical literature concerning the substance and, if necessary, by comparison to similar compounds or classes of compounds.

(e) Notwithstanding pars. (a) and (b), the department may establish an enforcement standard different than the federal number if there is significant technical information which is scientifically valid and which was not considered when the federal number was established, upon which the department concludes, with a reasonable scientific certainty, that such a standard is justified. The department may change an enforcement standard previously adopted by utilization of a federal number. In evaluating the evidence for establishing an enforcement standard different than a federal number, the department shall consider the extent to which the evidence was developed in accordance with scientifically valid analytical protocols and may consider whether the evidence was subjected to peer review, resulted from more than one study and is consistent with other credible medical or toxicological evidence.

(2) The department shall establish an enforcement standard for each substance of public welfare concern in the order of rankings within each category under s. 140.05 (4).

(3) The department shall establish enforcement standards by rule. The department shall prepare proposed rules establishing enforcement standards and shall provide the notice under s. 227.02 (1) (e), 227.021 or 227.027 (2) within 9 months after the name of a substance is received under s. 160.05.

(4) If a federal number is changed or newly established for a given substance after an enforcement standard is established by the department and if a request is submitted to the department by any person or regulatory agency, the department shall determine whether the enforcement standard needs to be revised based on sub. (1).

D.

The mining companies are largely relieved of their responsibility for the costs of environmental damages from mining and its wastes.

1. Long term care responsibility. The mining company, who produces an environmental hazard lasting for perpetuity, namely, mammoth toxic tailings waste areas, is responsible for long term care after closure for only 30 years. Early termination of long term care as early as 10 years after closure is possible by DNR rule. If an exemption is granted to that rule, early termination could be possible in less than 10 years.
s. 144.441(2)(d)[17] NR182.16(10)(a)[18] NR 182.19(1)[10]

2. After the company's responsibility for long term care terminates, the state is responsible for future costs. Money can be used from the environmental repair fund for environmental damages from mining; and if that fund is insufficient, money can be used from the investment and Local impact fund. ss 144.442(6)[19] and (7).[19] However, these funds could be miniscule.

The environmental repair fund will be funded by non-approved waste facilities - $100 annually if contracted to close by 1999, $1000 if not contracted plus 25% and 50% surcharges on the waste fees of non-approved waste facilities. It is very likely that a big share of the money will be coming from non-approved municipal dumps. Is it fair that mining damages be funded by local money? ss. 144.442(2)[20] & (3)[20] 144.442 (7)[19] 70.395(2)(j)[21] & (k)[21]

The investment and impact fund will be funded by the mining tax, if there is any. The mining tax is a net proceeds tax and carries no guarantees on the amount of tax money to be generated. Only a severance tax quarantees tax money while the mine is operating. There is every possibility of there being far too little in this fund. (Investment and impact fund can be dipped into for long term care also if there isn't enough in the waste management fund for that purpose.)

Please note the news item concerning how even the federal government finds it impossible to collect its rightful share of taxes from the corporations. How could Wisconsin do any better? (See page VII.)

3. Investment and Local Impact Fund Stat. 70.395(2)

Stat. 70.395(2)(a) was repealed, in 1981, with the enactment of AB800 now Chap.86.

This subsection stated that the Investment and Local Impact Fund was to be used exclusivelyto provide funds to municipalities for costs associated with impacts of metalliferous minineral mining, and it also stated that the fund was not to be used for reclamation, as that was the responsibility of the mining operator.

PROPERTY TAXES 70.395

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(2) INVESTMENT AND LOCAL IMPACT FUND. (a) It is the intent of the legislature that the investment and local impact fund be used exclusively to provide funds to municipalities for costs associated with social, educational, environmental and economic impacts of metalliferous mineral mining incurred prior to, during and after the extraction of metalliferous minerals, including the impacts of metalliferous mineral mining occurring prior to July 7, 1977. The fund may not be used to compensate counties, towns, ities and villages for the costs of mine reclamatio for which the person mining the metalliferous minerals is liable under s. 144.91 (2). –

Repealed!

With the enactment of AB800 in 1981, AB936 in 1982,and AB595 in 1984, into law, the fund is now designated to be used for purposes that should be the responsibility of the mining company. Stat. 144.441(6)(c) and (d) and (e).[43]

Funds from the Investment and Local Impact Fund can be used for:

*Costs of environmental damages and other long term care costs occurring during long-term care after the termination of the mining company long term care. Stat. 144.441(6)(d).[43]

*Costs for closure and the required long-term care by the mining company if the mining company does not have the financial ability to do so. Stat. 144.441(6)(e).[43]

Closure requirements for a mining waste facility is made a part of the reclamation plan. NR 182.15.[14] So it is possible for funds from the Investment and Local Impact Fund to be used for reclamation costs!

If the funds in the Investment and Impact Fund should be insufficient to cover reclamation costs, as could easily be the case under the present net proceeds mining tax, then who pays?

NR 182.15 Closure. (1) the closure requirements of this chapter shall be incorporated in and made a part of the mining reclamation plan submitted pursuant to ch.NR 132 but shall be referenced in the plan of operation.

* Environmental repair costs under s. 144.442(6)(b)[19] if the Environmental Repair Fund is insufficient to make complete payments for damages from a mining waste facility. S. 144.442(7)[19]

* Treating water or replacing wells contaminated from mining wastes, if the Environmental Repair Fund is insufficient. S. 144.265[24] and S. 144,442(7)[19]

* To reimburse local municipalities for the costs of supplying water to owners of wells depleted or damaged from mining,and to reimburse local municipalities for monitoring and for legal and technical assistance at the hearing. S. 144.855(5)(a)[23]

* to reimburse the mining company, if an order requiring the company to supply water is appealed and not upheld, for the costs incurred in providing water pending the final decision to be reimbursed from the investment and local impact fund. S. 144.855(5)(c)[23]

* Depending on the interpretation of ss. 70.395(2)(j) and (k),[31] and 70.395(2)(d)[16], it may be possible that the 1st priority of the distribution will be for the above mentioned costs before distribution to the local communities.

4. Mining tax law. The irony of the whole Investment and Impact Fund plan is that all of the above costs,that could be giganic, plus funds to be distributed to local municipalities for other environmental and socio-economic impacts,depend on a net proceeds mining tax, that is a totally undependable source of money. There are no guarantees as to how much tax money will be generated.

Mining history confirms that fact, as well as the recent failure of the U.S. to collect income tax from the corporations.(See p. VII)

A net proceeds mining tax is structured similar to the U.S. income tax. Corporations are known for their flexibility in book-keeping, managing to swallow up profits on the deficit side of the ledger page.

Stat. 70.375 Net proceeds occupation tax on mining of metallic minerals; computation.

5. Water Supply Damages.

The people of the Town of Grant, Rusk County, where Kennecott proposed to open pit mine a copper deposit, worked hard to get a bill passed that would give them the same protections that Montana's law gave owners of wells in the coal mining districts. However, the mining influence in Madison resulted in a law that is a hopeless maze for the owner of a damaged well in a mining area.

Montana,s law (22) requires the mining company to provide immediate water and replace the damaged water supply. The burden of proof is with the mining company.

S.144.855(4) (23) *Wisconsin's law requires the local municipality, who is ill-equiped financially, to supply water immediately to owners of wells with polluted or depleted water supplies until the results of a DNR hearing are implemented.

*The burden of proof lies with the local municipality.

*There are no time limits for holding a hearing or the implementing of the decision.and the case could go on indefinitely.

*The owner of a damaged well must repay all costs of supplying the water if the DNR decides that the mining company was not at fault.

*If the mining operator appeals the DNR decision that the operator was responsible for the damage, and the appeal is not upheld, all costs of supplying the water while the appeals case was pending will be refundable from the impact fund.

If statute 144,937 (15a) Effects of other statutes causes s.144.265 (24) to control if the wells are contaminated, rather than s.144.855, (23) the prospect of getting an immediate supply of water when the well goes bad is slim indeed!

*The owner under s.144.265, cannot file a claim for an"immediate"supply until the DNR "finds"(which implies overwhelming proof) the operator has contaminated the well and DNR has started actions.

*The town can assess the owner of the contaminated well for the water supplied if the court or DNR decision decides the operator did not cause the problem.

Under s. 144.265, the senario for obtaining relief from a contaminated well is anything but encouraging,

If the department "finds"that a regulated activity caused contamination(pollution in excess of MCLs) the DNR may hold a hearing. The DNR will be reluctant to hold a hearing or start any action, unless there is overwhelming evidence; otherwise they may have a suit on their hands. The law states that the DNR shall hold a hearing upon request of the owner or operator of the regulated activity.

If the damage is caused by an occurrence "unanticipated", which poses a threat to public safety, (results in the greatest costs,) money from the environmental fund can be used.

If the damage is not caused by an occurrence not unanticipated, or is not a threat to public safety, or there is not sufficieant money in the environmental repair fund the DNR may order the owner of the activity to correct the water problem.

It is doubtful that many will care to go these routes to try and get their water problem cleaned up.

* An owner of a well damaged by mining activities cannot get well compensation under s. 144.027. s. 144.027(17)(b) (bottom of page)

Stat. 144.937 Effect of other statutes.

144.937 Effect of other statutes. If there is a standard under other state or federal statutes or rules which specifically regulates in whole an activity also regulated under ss. 144.80 to 144.94 the other state or federal statutes or rules shall be the controlling standard. If the other state or federal statute or rule only specifically regulates the activity in part, it shall only be controlling as to that part.

History: 1977 c. 421.

There is no way for average John Doe to find out the full implications and ramifications of this law.

It should be erased from the statutes as it is a Pandora's box.

S. 144.027 (17)

(b) This section does not apply to contamination which is compensable under subch. II of ch. 107 or s. 144.855 (4).

70.395 (2)

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of the secretary of revenue and shall be charged to the proper appropriation for the department of revenue. The sheriff shall be entitled to the same fees for executing upon the warrant as upon an execution against property issued out of a court of record, to be collected in the same manner. Upon the sale of any real estate the sheriff shall execute a deed of the real estate, and the person may redeem the real estate as from a sale under an execution against property upon a judgment of a court of record. No public official may demand prepayment of any fee for the performance of any official act required in carrying out this section.

History: 1977 c. 31; 1983 a. 27.

70.395 Distribution and apportionment of tax. (1) DISTRIBUTION. Fifteen days after the collection of the tax under ss. 70.38 to 70.39, the department of administration, upon certification of the department of revenue, shall transfer the amount collected as follows:

(a) 1. To the investment and local impact fund, an amount equal to the first-dollar payment or 60% of the taxes collected under ss. 70.38 to 70.39 in respect to mines not in operation on November 28, 1981, whichever is greater.

2. In this paragraph, except as provided in subd. 3. "first-dollar payment" means an amount equal to $100,000 for each county, Native American community or municipality eligible to receive a payment under sub. (2) (d) 1, 2 or 2m.

3. If the tax collected under ss. 70.38 to 70.39 in any year is less than the first-dollar payment as defined in subd. 2, "first-dollar payment" for that year means the amount of taxes collected under ss. 70.38 to 70.39 in respect to mines not in operation on November 28, 1981.

(b) After the transfers under par. (a), the undistributed portion of the amount of taxes collected under ss. 70.38 to 70.39 in respect to mines not in operation on November 28, 1981, shall be deposited to the badger fund under s. 25.28.

(c) Annually, the dollar amounts under par. (a) 2 shall be adjusted as specified under s. 70.375 (6).

(1g) DISTRIBUTION. Fifteen days after the collection of the tax under ss. 70.38 to 70.39, the department of administration, upon certification of the department of revenue, shall transfer the amount collected to January 1, 1991, in respect to mines in operation on November 28, 1981, as follows:

(a) Forty percent to the general fund.

(b) Sixty percent to the investment and local impact fund.

(1m) LIMIT ON INVESTMENT AND LOCAL IMPACT FUND. If the fund under sub. (1) (a) has a balance of more than $20 million on January 1 of any year, the excess over $20 million shall be transferred to a separate account to be administered under s. 25.28. The badger board may not commingle the moneys transferred under this subsection with the other moneys constituting the badger fund. The interest on the moneys transferred under this subsection shall be used for the purposes under s. 25.28. If the investment and local impact fund does not have sufficient moneys to make the payments under this section for any year, or if the balance in the fund under sub. (1) (a) falls below a level of $20 million on any January 1, the investment and local impact fund board may transfer from the funds under s. 25.28, up to the amount of the moneys previously transferred under this subsection for all prior years, sufficient funds to make the payments under this section or to provide a balance in the investment and local impact fund of $20 million.

(a) – repealed

(2) INVESTMENT AND LOCAL IMPACT FUND. (b) There is created an investment and local impact fund under the jurisdiction and management of the investment and local impact fund board, as created under s. 15.435.

(c) The board shall, according to procedures established by rule:

1. Certify to the department of administration the amount of funds to be distributed to municipalities under pars. (d) to (g) and to be paid under par. (j).

2. Determine the amount which is not distributed under subd. 1 which shall be invested under s. 25.17 (1) (jc).

(d) Annually on the first Monday in January, the department of administration shall distribute, upon certification by the board:

1. To each county in which metalliferous minerals are extracted, the first-dollar payment under sub. (1) (a).

1m. To each county in which metalliferous minerals are extracted, 20% of the tax collected annually under ss. 70.38 to 70.39 from persons extracting metalliferous minerals in the county or $250,000, whichever is less, to be used for metalliferous mining related purposes listed under par. (g) and s. 70.396, and other metalliferous mining related purposes as defined by the board.

2. To each city, town or village in which metalliferous minerals are extracted, the first-dollar payment under sub. (1) (a) minus any payment during that year under par. (d) (intro.) or subd. 5. If the minable ore body is located in 2 contiguous municipalities and if at least 15% of the minable ore body is in each municipality, each qualifying municipality shall receive a full

144.441 (2) (d)

operation, closure plans and license applications, issuing determinations of feasibility, plan of operation approvals and operating licenses, and taking other actions in administering this section.

(e) The department shall establish solid waste review fees at a level anticipated to recover the solid waste program staff review costs of conducting solid waste review activities.

History: 1977 c. 377; 1979 c. 34 s. 2102 (39) (g); 1979 c. 110; 1979 c. 221 ss. 629m to 630g, 2202 (39); 1979 c. 355; 1981 c. 86; 1981 c. 374 ss. 33 to 50, 148; 1983 a. 27 ss. 1532m, 2200 (1); 1983 a. 36, 93; 1983 a. 189 s. 329 (16); 1983 a. 282, 298; 1983 a. 410 ss. 42 to 47, 2202 (38); 1983 a. 426, 538.

144.441 Long-term care. (1) DEFINITIONS. In this section:

(a) "Approved facility" means a solid or hazardous waste disposal facility with an approved plan of operation under s. 144.44 (3) or a solid waste disposal facility initially licensed within 3 years prior to May 21, 1978, whose owner successfully applies, within 2 years after May 21, 1978, for a determination by the department that the facility's design and plan of operation comply substantially with the requirements necessary for plan approval under s. 144.44 (3).

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

(c) "Nonapproved facility" means a licensed solid or hazardous waste disposal facility which is not an approved facility.

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

(2) OWNER RESPONSIBILITY; TERMINATION. (b) *Long-term care responsibility; 30-year.* The owner of an approved mining facility or an approved facility which is a hazardous waste disposal facility is responsible for the long-term care of the facility for 30 years after the closing of the facility unless the responsibility is terminated earlier under par. (d). The owner of an approved facility which is a solid waste disposal facility is responsible for the long-term care of the facility for 30 years after the closing of the facility unless the responsibility is terminated earlier under par. (c) or (d).

(c) *Long-term care responsibility; 20-year.* If the plan of operation for an approved facility which is a solid waste disposal facility indicates or if the owner of the facility requests and the department approves, the owner's responsibility for long-term care of the facility terminates 20 years after the closing of the facility unless the owner's responsibility is terminated earlier under par. (d). This paragraph does not apply to the owner's responsibility for the long-term care of either a mining waste facility or an approved facility which is a hazardous waste disposal facility.

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

(3) IMPOSITION OF TONNAGE FEE; EXCEPTIONS; USE. (a) *Imposition of tonnage fee.* Except as provided under pars. (b) to (d) and (e), the owner or operator of a licensed solid or hazardous waste disposal facility shall pay periodically to the department a tonnage fee for each ton or equivalent volume of solid or hazardous waste received and disposed of at the facility during the preceding reporting period. The department may determine by rule the volume which is equivalent to a ton of waste.

(b) *Exemption from tonnage fees; certain materials used in the operation of the facility.* Solid waste materials approved by the department for lining or capping or for construct-

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NR182.16 (10) EARLY TERMINATION. (a) The owner of an approved mining waste facility may apply to the department for termination of its responsibility for long-term care at any time after the facility has been closed for at least 10 years. Within 30 days of the receipt of such application in writing, the department shall, using the procedures set forth in par. (b), provide notice to the public and to the owner and an opportunity for a hearing on the termination of its responsibility. In this proceeding the burden shall be on the applicant to prove by a preponderance of the evidence that additional long-term care is not necessary for adequate protection of public health or the environment.

EI-66-84

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SECTION 1. NR 2.085 is created to read:

NR 2.085 ENVIRONMENTAL IMPACT STATEMENTS. (1) When a final environmental impact statement has been written on a proposed action for which a contested case hearing is held, all evidence regarding compliance with s. 1.11, Stats., shall be taken at that hearing.

(2) In the absence of specific authority for a contested case hearing on a proposed action for which a final environmental impact statement has been written, a contested case hearing shall be held on the proposed action if a petition for a hearing meeting the requirements of s. 227.064, Stats., is received by the department.

(3) If a contested case hearing will be held on a proposed action for which a final environmental impact statement has been drafted, the informational hearing provided for by s. NR 150.09(2) shall be combined with the contested case hearing if circumstances allow. At a combined hearing, the informational portion shall precede the contested portion.

(4) If no contested case hearing will be held on a proposed action for which a final environmental impact statement has been drafted, any person may petition for an opportunity to cross examine the person who is responsible for a specific portion of the final environmental impact statement or present witnesses or evidence at the public informational hearing held under s. NR 150.09(2). The petition shall include a statement of position on the action or proposal and specific statements and issues that are desired to be cross examined or presented. Petitions for opportunity to cross examine shall be filed with the department within 20 days after the notice of the final environmental impact statement is published under s. NR 150.09(2)(c)2. The notice under s. NR 150.09(2)(c)2., published in conformance with

144.442 (6) and (7)

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repair fund are insufficient to make complete payments. The amount expended by the department under this subsection may not exceed the balance in the environmental repair fund at the beginning of that fiscal year or 50% of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

(a) Methods for preparing the inventory and conducting the analysis under sub. (4).

(b) Methods for remedial action under sub. (6).

(c) Methods and criteria for determining the appropriate extent of remedial action under sub. (6).

(d) Means of ensuring that the costs of remedial action are appropriate in relation to the associated benefits over the period of potential human exposure to substances released by the site or facility.

(e) Appropriate roles and responsibilities under this section for federal, state and local governments and for interstate and nongovernmental entities.

(6) ENVIRONMENTAL REPAIR. (a) *Applicability.* This subsection applies only to a site or facility which presents a substantial danger to public health or welfare or the environment.

(b) *Department authority.* 1. The department may take direct action under subds. 2 to 9 or may enter into a contract with any person to take the action.

2. The department may take action to avert potential environmental pollution from the site or facility.

3. The department may repair the site or facility or isolate the waste.

4. The department may abate, terminate, remove and remedy the effect of environmental pollution from the site or facility.

5. The department may restore the environment to the extent practicable.

6. The department may establish a program of long-term care, as necessary, for a site or facility which is repaired or isolated.

7. The department may provide temporary or permanent replacements for private water supplies damaged by a site or facility.

8. The department may assess the potential health effects of the occurrence, not to exceed $10,000 per occurrence.

9. The department may take any other action not specified under subds. 2 to 8 consistent with this subsection in order to protect public health, safety or welfare or the environment.

(c) *Sequence of remedial action.* In determining the sequence for taking remedial action under this subsection, the department shall consider the hazard ranking of each site or facility, the amount of funds available, the information available about each site or facility, the willingness and ability of an owner, operator or other responsible person to undertake or assist in remedial action, the availability of federal funds under 42 USC 9601, et seq., and other relevant factors.

(d) *Emergency responses.* Notwithstanding the hazard ranking list or the considerations for taking action under par. (c), the department may take emergency action under this section at a site or facility if delay will result in imminent risk to public health or safety or the environment. The department is not required to hold a hearing under par. (f) if emergency action is taken under this paragraph. The decision of the department to take emergency action is a final decision of the agency subject to judicial review under ch. 227.

(e) *Access to property.* The department, any authorized officer, employe or agent of the department or any person under contract with the department may enter onto any property or premises at reasonable times and upon notice to the owner or occupant to take action under this subsection. Notice to the owner or occupant is not required if the delay required to provide this notice is likely to result in an imminent risk to public health or welfare or the environment.

(f) *Notice; hearing.* The department shall publish a class 1 notice, under ch. 985, prior to taking remedial action under this section which describes the proposed remedial action and the amount and purpose of any proposed expenditure. Except as provided under par. (d), the department shall provide a hearing to any person who demands a hearing within 30 days after the notice is published for the purpose of determining whether the proposed remedial action and any expenditure is within the scope of this section and is reasonable in relation to the cost of obtaining similar materials and services. The department is not required to conduct more than one hearing for the remedial action proposed at a single site or facility. Notwithstanding s. 227.064, the hearing shall not be conducted as a contested case. The decision of the department to take remedial action under this section is a final decision of the agency subject to judicial review under ch. 227.

(6m) MONITORING COSTS AT NONAPPROVED FACILITIES OWNED OR OPERATED BY MUNICIPALITIES. Notwithstanding the inventory, analysis and hazard ranking under sub. (4), the environmental response plan prepared under sub. (5) or the environmental repair authority, remedial action sequence and emergency response requirements under sub. (6), the department shall pay that portion of the cost of any monitoring requirement which is to be paid from the appropriation under s. 20.370 (2) (dr) prior to making other payments from that appropriation.

(7) PAYMENTS FROM THE INVESTMENT AND LOCAL IMPACT FUND. The department may expend moneys received from the investment and local impact fund for the purposes specified under sub. (6) only for approved mining facilities in the environmental

144.442

(7) PAYMENTS FROM THE INVESTMENT AND LOCAL IMPACT FUND. The department may expend moneys received from the investment and local impact fund for the purposes specified under sub. (6) only for approved mining facilities and only if moneys in the environmental repair fund are insufficient to make complete payments. The amount expended by the department under this subsection may not exceed the balance in the environmental repair fund at the beginning of that fiscal year or 50% of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

S. 144.442 (2) + (3)   20

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(e) *In addition to other fees.* The groundwater fee collected and paid under par. (b) is in addition to the tonnage fee imposed under sub. (3), the waste management base fee imposed under sub. (5), the environmental repair base fee imposed under s. 144.442 (2) and the environmental repair surcharge imposed under s. 144.442 (3).

(f) *Exemption from groundwater fee; certain materials used in operation of the facility.* Solid waste materials approved by the department for lining or capping or for constructing berms, dikes or roads within a solid waste disposal facility are not subject to the groundwater fee imposed under par. (a).

(g) *Reporting period.* The reporting period under this subsection is the same as the reporting period under sub. (3). The owner or operator of any licensed solid or hazardous waste disposal facility shall pay groundwater fees required to be collected under par. (b) at the same time as any tonnage fees under sub. (3) and the waste management base fee under sub. (5) are paid.

(h) *Use of groundwater fee.* The fees collected under par. (b) shall be credited to the groundwater fund.

History: 1977 c. 377; 1979 c. 142; 1979 c. 221 ss. 630q to 630t, 2202 (39); 1981 c. 86, 374; 1983 a. 27 ss. 1533 to 1536, 2202 (38); 1983 a. 298; 1983 a. 410 ss. 48 to 61, 2200 (38), 2202 (38).

144.442 Environmental repair. (1) DEFINITIONS. In this section:

(a) "Approved facility" has the meaning specified under s. 144.441 (1) (a).

(b) "Approved mining facility" has the meaning specified under s. 144.441 (1) (b).

(c) "Nonapproved facility" has the meaning specified under s. 144.441 (1) (c).

(cm) "Private water supply" means a well which is used as a source of water for humans, livestock or poultry. As used in this paragraph "livestock" has the meaning specified under s. 95.80 (1) (b).

(d) "Site or facility" means an approved facility, an approved mining facility, a nonapproved facility or a waste site.

(e) "Waste site" means any site, other than an approved facility, an approved mining facility or a nonapproved facility, where waste is disposed of regardless of when disposal occurred.

(2) ENVIRONMENTAL REPAIR BASE FEE. (a) *Imposition of environmental repair base fee.* The owner or operator of a nonapproved facility shall pay to the department an environmental repair base fee for each calendar year.

(b) *Amount of environmental repair base fee.* 1. The environmental repair base fee is $100 if the owner or operator of the nonapproved facility enters into an agreement with the department to close the facility on or before July 1, 1999. The $100 base fee first applies for the calendar year in which the owner or operator of a nonapproved facility enters into a closure agreement. If the owner or operator of a nonapproved facility fails to comply with the closure agreement, the department shall collect the additional base fees which would have been paid by the owner or operator under subd. 2 in the absence of the closure agreement.

2. The environmental repair base fee is $1,000 if the owner or operator of a nonapproved facility has not entered into an agreement with the department to close the facility on or before July 1, 1999.

(c) *Use of environmental repair base fees.* Environmental repair base fees shall be credited to the environmental repair fund.

(d) *Reduction of base fee; monitoring.* This paragraph applies to a nonapproved facility which is subject to the $1,000 base fee under par. (b) 2 and which is required by the department to conduct monitoring under s. 144.44 (4) (f). The base fee under par. (b) 2 shall be reduced by the cost of monitoring for the calendar year to which the base fee applies, or $900, whichever is less.

(3) ENVIRONMENTAL REPAIR SURCHARGE. (a) *Imposition of environmental repair surcharge.* If the owner or operator of a nonapproved facility is required to pay a tonnage fee under s. 144.441 (3), the owner or operator shall pay to the department an environmental repair surcharge for each calendar year.

(b) *Amount of environmental repair surcharge.* 1. With respect to solid or hazardous waste disposed of at a nonapproved facility for which the owner or operator enters into an agreement with the department to close the facility on or before July 1, 1999, the owner or operator shall pay to the department an environmental repair surcharge equal to 25% of the tonnage fees imposed under s. 144.441 (3). The 25% surcharge first applies for the calendar year in which the owner or operator enters into a closure agreement. If the owner or operator fails to comply with the closure agreement, the department shall collect the additional tonnage fees which would have been paid by the owner or operator under subd. 2 in the absence of the closure agreement.

2. With respect to solid or hazardous waste disposed of at a nonapproved facility for which the owner or operator has not entered into an agreement with the department to close the facility on or before July 1, 1999, the owner or

operator shall pay to the dept. an environmental repair surcharge equal to 50% of the tonnage fees imposed under. 144.441 (3)

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was reached. The board and the school district may, by mutual consent, modify the provisions of the agreement at any time. The payment shall be considered a nondeductible receipt for the purposes of s. 121.07 (6). In this paragraph, "nonshared costs" means the amount of the school district's principal and interest payments on long-term indebtedness and annual capital outlay for the current school year, which is not shared under s. 121.07 (6) (a) or other non-shared costs and which is attributable to enrollment increases resulting from the development of metalliferous mineral mining operations.

(g) The board may distribute the revenues received under subs. (1) (a) and (1g) (b) or proceeds thereof in accordance with par. (h) for the following purposes, as the board determines necessary:

1. Protective services, such as police and fire services associated with the construction and operation of the mining facility.

2. Highways, as defined in s. 990.01 (12), repaired or constructed as a consequence of the construction and operation of the mining facility.

3. Studies and projects for local development.

4. Monitoring the effects of the mining operation on the environment.

5. Extraordinary community facilities and services provided as a result of mining activity.

6. Legal counsel and technical consultants to represent and assist municipalities appearing before state agencies on matters relating to metalliferous mineral mining.

7. Other expenses associated with the construction and operation of the mining facility.

8. The preparation of areawide community service plans for municipalities applying for funds under par. (h) which identify social, economic, educational and environmental impacts associated with mining and set forth a plan for minimizing the impacts.

9. Provision of educational services in a school district.

10. Expenses attributable to a permanent or temporary closing of a mine including the cost of providing retraining and other educational programs designed to assist displaced workers in finding new employment opportunities and the cost of operating any job placement referral programs connected with the curtailment of mining operations in any area of this state.

(h) Distribution under par. (g) shall be as follows:

1. Distribution shall first be made to those municipalities in which metalliferous minerals are extracted or were extracted within 3 years previous to December 31 of the current year, or in which a permit has been issued under s. 144.85 to commence mining;

2. Distribution shall next be made to those municipalities adjacent to municipalities in which metalliferous minerals are extracted or were extracted more than 3 years, but less than 7 years previous to December 31 of the current year;

3. Distribution shall next be made to those municipalities which are not adjacent to municipalities in which metalliferous minerals are extracted and in which metalliferous minerals are not extracted.

(i) The board may require financial audits of all recipients of payments made under pars. (d) to (g). The board shall require that all funds received under pars. (d) to (g) be placed in a segregated account. The financial audit may be conducted as part of a municipality's or county's annual audit, if one is conducted. The cost of the audits shall be paid by the board from the appropriation under s. 20.566 (7) (a).

(j) Prior to the beginning of a fiscal year, the board shall certify to the department of administration for payment from the investment and local impact fund any sum necessary for the department of natural resources to make payments under s. 144.441 (6) (d) and (e) for the long-term care of mining waste sites, if moneys in the waste management fund are insufficient to make complete payments during that fiscal year, but this sum may not exceed the balance in the waste management fund at the beginning of that fiscal year or 50% of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

(k) Prior to the beginning of each fiscal year, the board shall certify to the department of administration for payment from the investment and local impact fund any sum necessary for the department of natural resources to make payments under s. 144.442 for the environmental repair of mining waste sites, if moneys in the environmental repair management fund are insufficient to make complete payments during that fiscal year. This sum may not exceed the balance in the environmental repair fund at the beginning of that fiscal year or 50% of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

(3) FEDERAL REVENUE DISTRIBUTION. The investment and local impact fund board shall distribute federal mining revenue received by the state from the sales, bonuses, royalties and rentals of federal public lands located within the state. The distribution of such federal revenues by the board shall give priority to those municipalities socially or economically impacted by

"The Montana Strip and Underground Mine Reclamation Act" + Water Resource Guidelines

court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct and known channel, may sue an operator to recover damages for contamination, diminution or interruption of the water supply, proximately resulting from strip mining or underground mining.

(a) Prima facie evidence of injury in a suite under this subsection is established by the removal of coal or disruption of overlying aquifer from designated "ground water areas" as prescribed in Title 89, Chapter 29. If the area is not a designated "ground water area", a showing that the coal or overlying strata is an aquifer in that geographical location and that the coal or the overlying strata has been removed or disrupted shifts the burden to defendant (operator) to show that plaintiff's (owner's) water supply was not injured thereby.

(b) An owner of water rights adversely affected may file a complaint, detailing the loss in quality and quantity of his water, with the Department. Upon receipt of this complaint the Department shall:

(i) investigate the complaint using all available information including monitoring data gathered at the mine site;

(ii) require the defendant (operator) to install such monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity or quality;

(iii) issue, within ninety (90) days, a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity or quality;

(iv) order the mining operator in compliance with the water use act to replace the water immediately on a temporary basis to provide the needed water and within a reasonable time replace the water in like quality, quantity, and duration, if the loss is caused by the surface coal mining operation; and

(v) order the suspension of the operator's permit, for failure to replace the water, until such time as the operator provides substitute water.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining or underground mining on

need for an immediate alternative source of water, with the town, village or city where the private water supply is located. The department shall conduct an investigation and if the department concludes that there is reason to believe that the prospecting or mining is interrelated to the condition giving rise to the complaint, it shall schedule a hearing.

(c) The town, village or city within which is located the private water supply which is the subject of the complaint shall, upon request, supply necessary amounts of water to replace that water formerly obtained from the damaged private supply. Responsibility to supply water shall commence at the time the complaint is filed and shall end at the time the decision of the department made at the conclusion of the hearing is implemented.

(d) If the department concludes after the hearing that prospecting or mining is the principal cause of the damage to the private water supply, it shall issue an order to the operator requiring the provision of water to the person found to be damaged in a like quantity and quality to that previously obtained by the person and for a period of time that the water supply, if undamaged, would be expected to provide a beneficial use, requiring reimbursement to the town, village or city for the cost of supplying water under par. (c), if any, and requiring the payment of compensation for any damages unreasonably inflicted on the person as a result of damage to his or her water supply. The department shall order the payment of full compensatory damages up to $75,000 per claimant. The department shall issue its written findings and order within 60 days after the close of the hearing. Any judgment awarded in a subsequent action for damages to a private water supply caused by prospecting or mining shall be reduced by any award of compensatory damages previously made under this subsection for the same injury and paid by the operator. The dollar amount under this paragraph shall be changed annually according to the method under s. 70.375 (6). Pending the final decision on any appeal from an order issued under this paragraph, the operator shall provide water as ordered by the department. The existence of the relief under this section is not a bar to any other statutory or common law remedy for damages.

(e) If the department concludes after the hearing that prospecting or mining is not the cause of any damage, reimbursement to the town, village or city for the costs of supplying water under par. (c), if any, is the responsibility of the person who filed the complaint.

(f) Failure of an operator to comply with an order under par. (d) is grounds for suspension or revocation of a prospecting or mining permit.

(g) This subsection applies to any claim for damages to a private water supply occurring after June 3, 1978.

(5) Costs reimbursed. (a) Costs incurred by a town, village or city in monitoring the effects of prospecting or mining on surface water and groundwater resources, in providing water to persons claiming damage to private water supplies under sub. (4) (c), or in retaining legal counsel or technical consultants to represent and assist the town, village or city appearing at the hearing under sub. (4) (b) are reimbursable through the investment and local impact fund under s. 15.435.

(b) Any costs paid to a town, village or city through the investment and local impact fund under par. (a) shall be reimbursed to the fund by the town, village or city if the town, village or city receives funds from any other source for the costs incurred under par. (a).

(c) If an order under sub. (4) (d) requiring the operator to provide water or to reimburse the town, village or city for the cost of supplying water is appealed and is not upheld, the court shall order the cost incurred by the operator in providing water or in reimbursing the town, village or city pending the final decision to be reimbursed from the investment and local impact fund under s. 15.435.

History: 1977 c. 420; 1979 c. 221; 1981 c. 86 ss. 38 to 54, 64.

144.855

(4) Damage claims. (a) As used in this subsection, "person" does not include a town, village or city.

(b) A person claiming damage to the quantity or quality of his or her private water supply caused by prospecting or mining may file a complaint with the department and, if there is a

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statement of the Law of Torts. State v. Deetz, 66 W (2d) 1, 224 NW (2d) 407.

See note to 88.21, citing 63 Atty. Gen. 355.

The necessity of zoning variance or amendments notice to the Wisconsin department of natural resources under the shoreland zoning and navigable waters protection acts. Whipple, 57 MLR 25.

The public trust doctrine. 59 MLR 787.

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

Land as property; changing concepts. Large, 1973 WLR 1039.

144.265 Damage to water supplies. (1) In this section:

(a) "Private water supply" has the meaning specified under s. 144.442 (1) (cm), except this term excludes a well which is not a source of water for humans unless the well is constructed by drilling.

(b) "Regulated activity" means an activity for which the department may issue an order under this chapter, if the activity is conducted in violation of this chapter, or in violation of licenses, permits or special orders issued or rules promulgated under this chapter.

(2) (a) Except as provided under par. (b), if the department finds that a regulated activity has caused a private water supply to become contaminated, polluted or unfit for consumption by humans, livestock or poultry, the department may conduct a hearing on the matter. The department shall conduct a hearing on the matter upon request of the owner or operator of the regulated activity. At the close of the hearing, or at any time if no hearing is held, the department may order the owner or operator of the regulated activity to treat the water to render it fit for consumption by humans, livestock and poultry, repair the private water supply or replace the private water supply and to reimburse the town, village or city for the cost of providing water under sub. (4).

(b) If the department finds that a regulated activity caused a private water supply to become contaminated, polluted or unfit for consumption by humans, livestock or poultry, and if the regulated activity is an approved facility, as defined in s. 144.442 (1) (a), the department may conduct a hearing under s. 144.442 (6) (f). If the damage to the private water supply is caused by an occurrence not anticipated in the plan of operation which poses a substantial hazard to public health or welfare, the department may expend moneys in the environmental repair fund to treat the water to render it drinkable, or to repair or replace the private water supply, and to reimburse the town, village or city for the cost of providing water under sub. (4). If the damage to the private water supply is not caused by an occurrence not anticipated in the plan of operation, if the

damage does not pose a substantial hazard to public health or welfare, or if insufficient moneys are available in the environmental repair fund, the department may order the owner or operator of the regulated activity to treat the water to render it fit for consumption by humans, livestock and poultry, or to repair or replace the private water supply, and to reimburse the town, village or city for the cost of providing water under sub. (4).

(3) In any action brought by the department of justice under s. 144.98, if the court finds that a regulated activity owned or operated by the defendant has caused a private water supply to become contaminated, polluted or unfit for consumption by humans, livestock or poultry, the court may order the defendant to treat the water to render it fit for consumption by humans, livestock and poultry, repair the private water supply or replace the private water supply and to reimburse the town, village or city for the cost of providing water under sub. (4).

(4) (a) The owner of land where the private water supply is located may submit the following information to the town, village or city where the private water supply is located:

1. Documentation from an action under sub. (2) or (3) showing that the department or the department of justice is seeking to obtain treatment, repair or replacement of the damaged private water supply.

2. A declaration of the need for an immediate alternative source of water.

(b) A person who submits information under par. (a) may file a claim with the town, village or city where the private water supply is located. The town, village or city shall supply necessary amounts of water to replace that water formerly obtained from the damaged private water supply. Responsibility to supply water commences at the time the claim is filed. Responsibility to supply water ends upon notification to the town, village or city that an order under sub. (2) or (3) has been complied with or upon a finding that the regulated activity is not the cause of the damage.

(c) If the department or the court does not find that the regulated activity is the cause of the damage to a private water supply, reimbursement to the town, village or city for the costs of supplying water under par. (b), if any, is the responsibility of the person who filed the claim. The town, city or village may assess the owner of the property where the private water supply is located for the costs of supplying water under this subsection by a special assessment under s. 66.60.

History: 1981 c. 374; 1983 a. 27 s. 2202 (38); 1983 a. 410 ss. 75g to 77g.

Toxic-Waste Cleanup Is Expensive and Slow And Tough to Achieve

Critics Urge Stopgap Efforts To Minimize the Spread; Land Disposal Criticized

A Hole Here and a Hill There

THE WALL STREET JOURNAL THURSDAY, MAY 16, 1985

By ROBERT E. TAYLOR
Staff Reporter of THE WALL STREET JOURNAL

The Charles George Landfill belches gas and oozes cancer-causing chemicals into groundwater under condominiums in Tyngsborough, Mass. Neighbors want it carted away, but it's staying put.

Why? Because the chemicals permeate much of the 70-acre landfill at least 75 feet deep. Digging up and hauling off this huge toxic sponge could cost $1.6 billion—about what the federal government has spent on all hazardous-waste cleanups since 1980.

"Besides," says Michael Deland, regional administrator for the Environmental Protection Agency, "where the hell would you put it?"

Five years after launching its "Superfund" hazardous-waste cleanup program, the U.S. is discovering that toxic contamination is far more extensive—and fixing it is far more difficult, costly and time-consuming—than almost anyone expected. The EPA struggles to master the problem, but a growing chorus of critics believe that it must make major strategic changes or be overwhelmed by the task.

How Many Sites?

Estimates vary widely on the scope of the problem, but there isn't any question that it is staggering. The EPA estimates that its Superfund program will eventually have to clean up as many as 2,200 sites. The General Accounting Office, Congress's watchdog agency, analyzes the EPA's information and says the total could be double that. State officials, meanwhile, triple the EPA figure, and Congress's nonpartisan Office of Technology Assessment reports that the total could "easily" exceed 10,000 sites.

What just about everyone agrees on, though, is the snail-like pace of cleanup efforts so far. After almost five years, states and the EPA have started long-term cleanups at only 62 sites and have won commitments from private parties to clean only 72 others.

The action is picking up as more target sites emerge from the three- to four-year planning stage and as some emergency cleanups get under way. But the pace is still slow considering the size of the problem. Joel Hirschhorn, the chief author of the OTA report, contends that while the EPA pursues long, expensive and often ineffective long-term cleanups at only a few sites, the spread of contamination from many other sites could lead to "an environ- [illegible]

Water Warning

Toxic chemicals are already tainting groundwater supplies at an alarming rate, Mr. Hirschhorn says, and cleaning water is expensive and sometimes impossible. "Five to 10 years from now," he warns, "you're going to wake up and find half the drinking water in this country is contaminated with toxic pollutants." To at least stem the spread, he says, the EPA should divert more resources from long-term efforts into more-numerous, less-expensive stopgap cleanups.

Though less pleasant, even former EPA administrator William Ruckelshaus shares concerns that the current focus on permanent cleanups may be misplaced, but he stresses budget considerations. Already, he worries, the federal government is taking on groundwater projects that the nation can't long afford.

Such issues arise just as Congress grapples with the question of whether and how to beef up the five-year-old Superfund, whose initial $1.6 billion funding runs out Sept. 30. The program is designed to clean up uncontrolled hazardous wastes and is funded primarily by a tax on chemical feedstocks; the government later seeks, if possible, to identify those responsible for the messes and recoup its cost from them.

Cost Is Debatable

As projections of the program's scale expand, so do the estimates of how expensive it will be and how long it will take. Lee Thomas, the current EPA chief, talks of wrapping up Superfund in eight years at a cost of $7.6 billion to $22.7 billion. The GAO estimates the cost at up to $39.1 billion. The OTA says that it could exceed $100 billion and that the effort may take 20 or even 50 years.

The differing estimates of the size and cost of the task stem largely from political and philosophical conflicts over the program. The Reagan administration says the Superfund should clean only a limited number of sites, with the rest being cleaned up by the states and the mess makers. But Mr. Hirschhorn and other critics charge the administration with purposely underestimating the problems to hold down the program's size. They add that only the federal government has the resources and know-how to conduct a reliable nationwide cleanup effort.

In any event, the experience of the last five years suggests that know-how in dealing with toxic wastes is still in short supply.

For instance, in Nashua, N.H., the EPA built an 80-foot-deep "slurry wall" of clay around the 20-acre Sylvester dump, capped the dump with clay, and installed pumps to prevent escape of contaminated water. The $13 million project won awards for civil-en-

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gineering excellence, but it only slowed rather than stopped the flow of toxics into a nearby river, says John Hackler, chief of EPA cleanups in New England. "We had all these great theories of what we were going to do up there," Mr. Hackler says. "Some of them worked, some of them didn't."

Breakdowns are common. One environmental lawyer recalls a conference where an engineer told how he built a clay cap to seal a dump. The next speaker told how he fixed the same cap after it failed.

Most communities want toxic hazards removed to a safe dump—one that won't leak—but the expense is often prohibitive. For months this year, big trucks lugged loads of toxic sludge and soil from an abandoned chemical dump in Dartmouth, Mass., to disposal sites in New York and Ohio. But even after spending $4.5 million to move 16,000 cubic yards of earth, the EPA hadn't found any end to the contamination.

About the only practical effect of the effort, says Mr. Hackler, was that "we were creating a hole in Massachusetts and a hill in New York." The agency, which has stopped the shipments, is currently taking more samples and deciding what to do next.

Leaky Disposal Spots

An even more vexing problem: Some of the Superfund disposal sites are themselves far from secure. "Of the sites looked at carefully, all are leaking or appear to be leaking," says hydrologist William Myers, who conducted the EPA's first disposal-site inspections. Top EPA officials are less pessimistic, but they concede that about half the sites lack enough groundwater-monitoring wells even to tell whether they are leaking or not.

Rep. Ron Wyden, Democrat of Oregon, says that the removal of untreated toxics from one site to another amounts to little more than "an elaborate shell game." And Richard Fortuna, the executive director of the Hazardous Waste Treatment Council, says that many cleanups utilizing such simple land disposal "do nothing more than create the next generation of Superfund sites."

Mr. Fortuna's group promotes, instead, the treatment or incineration of toxic wastes, and in fact the EPA has begun urging its project managers to consider incinerating wastes or solidifying and then neutralizing them. But in most cases, officials say, such solutions aren't cost-effective. By some EPA estimates, solidifying toxics costs three to four times as much—and incineration eight to 10 times as much—as simple land disposal. New technology, and the growing costs of monitoring and repairing land-disposal sites, may shrink that gap. But many experts say that methods to economically clean up many sites simply haven't yet been developed.

E. Decline of local control and public participation in decision-making.

1. No town or county may establish a groundwater quality standard that is more strict than the state standard, according to DNR legal opinion and the analysis of the legislative council. No law explicitly states that fact in so many words; however, towns and counties have only the powers specifically allotted them; and no statute gives them the power to make a groundwater standard more strict than the state's.

2. The right of a local governing body under s. 144.435(2)(33) to issue licenses and permits for any state licensed site or facility or to adopt standards for location, construction or operation of solid waste sites and facilities more restrictive than the state's was repealed in 1982 under AB936 chap. 374.

3. The zoning laws for cities, towns and counties were amended to give them the dubious right to zone " to encourage the protection of groundwater sources" rather than the outright power to zone " to protect groundwater sources". AB595 Groundwater bill. ss. 59.97(1) 62.23(7) 60.74(1)(a)7 (33) Act 410

4. "Mining" was added to the list of land uses that municipalities can zone for, thus putting mining on an even par with other state approved land uses, such as agriculture, forestry etc. AB936 chap.374, 1982 59.97(4)(a) 60.74(1)(a)1. 62.23(7)(a)(33)

5. The right of any owner or person in interest to get a review of any order of the DNR under 144.97 by filing a petition was repealed in part under AB936 chap 374; and now only an order of the DNR under s.144.025 Water resources can be petitioned for review.

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

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

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

History: 1979 c. 34 s. 987e

Repealed.

6. Disposal of mining wastes and tailings.

A mining company wants the assurance that once a project gets going that nothing will stand in its way for the disposal of the tremendous volumes of waste, for future enlargements of the operation and the accompanying enlargements of its waste facilities. The present laws of Wisconsin meet those goals. The local municipalities and the public have been stripped of most of their control in these matters.

*Stat. 144.435(2) [33] that gave local municipalities the right to issue licenses for state licensed facilities and the right to adopt stricter standards than the state for waste facilities was repealed. in 1982

*Stat. 144.44(lm)(c) [34] requiring the obtaining of local approvals when siting a waste facility was amended so as not to apply to a mining waste facility. Groundwater Bill Act 410 passed in 1984.

*Stat. 144.445(12)(d) [44] exempts mining waste facilities from the negotiation and arbitration process. Solid and hazardous waste amendments Chap. 374 - passed in 1982.

*Stat.144.44(2)(nr) [36] was created to exempt mining waste facilities and paper mill waste facilities (both of which produce great volumes of waste and much of it hazardous) from the requirement to justify the need of the facilities. However, any municipal waste facility is required to justify its need. Wis. Act 93 1983.

*Stat. 144.87(1)(d) [42] If a mining operator wishes to enlarge his operation or make a substantial change (DNR must decide what substantial involves), a hearing on the enlargement or change need not be held on the matter unless 5 or more interested persons request a hearing within 30 days of notice. 144.87(1)(c) [4]

*Stat. 144.44(2)(j) and (L) and (m) [35 36] Stat. 144.44(2g) [37]
In the case of a feasibility report for a mining waste facility, as part of an already permitted mining operation, but other than the initial waste facility:

Neither an informational nor a contested case hearing need be held on the fesibility report, unless requested by 6 persons, the municipality or the applicant.

No informational hearing will be held if a contested case hearing has been granted.

If a contested case hearing is not granted, then an informational hearing can be held if requested by 6 people, or if the DNR feels enough public interest warrants an informational hearing.

The hearing on the environmental impact statement is not a contested case hearing. Stat. 144.44(2)(j).(35)

The adequacy of environmental assessment, environmental impact statement or environmental impact report cannot be challenged at either of the above informational or contested case hearing on the feasibility report. s. 144.44(2)(n)3.(36)

*Stat. 227.064(5)(45) No person has the right to a contested case hearing under s.227.064 on any decision of the DNR relating to the environmental impact of the disposal of mining wastes.

(33)

Stat. 66.122(1)(a) and (b) states that any state, county, city, village or town officer, agent or employee is deemed a peace officer with the power to serve inspection warrants for obtaining data required for an initial site report, a feasibility report or an environmental impact statement for a waste facility, which includes a mining waste facility.

In my opinion, this smacks of police power over the ordinary citizen for the benefit of the corporations.

The ultimate effect is that local municipalities will have virtually no control of the disposal of mining wastes in their midst.

7. Restricitons on the right to a hearing under s. 227.064. (45)

*It appears that the right of a person to a hearing that is conducted as a contested case under s.227.064 is denied for review of any aspect of the DNR's administration of the laws for mining or the disposal of mining waste(solid waste) under that statute. 227.42

Please read s. 227.064. You will note that s. 227.064(3) does not apply to actions where hearings are at the disretion of the DNR.

Pleaae refer, also, to the following statutes:
ss. 144.431(2)(a) (32) and 144.83(4)(a), (32) whimh,you will note,expressly authorize hearings at the discretion of the DNR for,
(1) any aspect of the administration by the DNR of the mining and the mining waste (solid waste) laws; and
ss. 144.44(3)(g) (39) and 144.44(4)(e) (39) which expressly authorize hearings at the discretion of the DNR for,
(2) the operation plan of a waste facility or the licensing of a waste facility.

It is my understanding then, that since hearings relating to any aspect of the DNR's administration of the laws for mining or the disposal of mining wastes are expressly authorized at the discretion of the DNR, and since s. 227.064 does not apply where hearings are expressly authorized at the discretion of the DNR, that a person is denied the right to a hearing under s. 227.064 on the afore mentiond matters.

* Stat. 226.064(4) If a hearing on a matter was conducted as part of the Master Hearing on the EIS and mining permit, no further contested case hearing under s. 227.064 can be held on that matter.

* Stat. 226.064(5) denies any person the right to a hearing under s.226.064 for:
1.any part of the process for approving a feasibility report, plan of operation or license for a solid waste facility(mining waste facility) except 6 persons may request a hearing on the feasibility report other than the initial mining waste facility.
2. any decision of the DNR relating to the environmental impact on a solid or hazardous waste facility.

The only option seems to be a judicial review(court case) under s. 144.94.

8, Hearing procedure for the Environmental Impact Statement and the Mining Permit Application. Master Hearing

*Stat. 144.836(4)(47), Rules- EIS contested case hearings NR 2 (46) and Rules on EIS informational hearings. NR 150

44.836 (1) a) Requires that one hearing cover both the environmental impact statement(EIS) and the permit application. The informational hearing will be held on the combined EIS and the permit application, followed by the contested case hearing on the EIS and permit application.

b) Parties to the contested case must file 30 days before the hearing.

c) The decision on the adequacy of the EIS is postponed until the decision on the permit is made.

The above arrangement : 1) eliminates any time period between the informational and contested case portions of the hearing for the public and the local people to assess the disclosures and come to appropriate actions,.2) Parties of the contested case do not have the advantage of informational hearing disclosures before preparing briefs, and 3) There is no opportunity to file for party status after informational hearing when disclosures may warrant party status.

* No one who testifies at the informational portion of the Master Hearing on a mining proposal has the right to petition to cross-examine those who prepared the EIS. Only those who are parties to the contested case, which will be <u>small</u> in number, have this right during the contested case portion of the hearing. EIS hearing rules NR 2 (18)

On the other hand, if a hearing is held on some other project than mining, that is insignificant enough to require only an informational hearing on the environmental impact statement(EIS), then <u>any</u> person can petition to cross-examine those who prepared the EIS,

It does not make sense to <u>limit</u> the number who can cross-examine those who prepared the EIS for a mining project that has potential for major environmental impacts, while putting <u>no</u> limit on the number who can cross-examine those who prepared the EIS for a very minor project.

* Only the feasibility report for the mining waste facility may be reviewed at the Master Hearing for the mining permit. The operational plan and licensing will be implemented by the DNR with no opportunities for public hearings except at the discretion of the DNR. Ss. 144.44(3)(g)(35) and 144.44(4)(e).(35)

(continued on the next page.)

All of these provisions or lack of provisions add up to a substantial cutting-back on effective citizen participation in the hearing process on the environmantal impact statement and the permit for a mining proposal.

9. Local Impact Committees.

* Stat. 144.838. (see below) Provisions are made for local impact committees. However, in order to be funded, these committees must operate as if the project is a fact.

There are no opportunities presented for making the important decision of whether mining should be permitted.

The committes are established for purposes of:

(a) Facilitating communications between operators and itself. A liaison person from the mining company is required to be a member of the committee. Only the most expert P.R. person will be chosen for this position.

(b) Analyzing implications of mining.

(c) Reviewing reclamation plans.

(D) Deveopling solutions to mining induced growth problems. etc.

144.838 Local impact committee. (1) A county, town, village, city or tribal government likely to be substantially affected by potential or proposed mining may designate an existing committee, or establish a committee, for purposes of:

(a) Facilitating communications between operators and itself.

(b) Analyzing implications of mining.

(c) Reviewing and commenting on reclamation plans.

(d) Developing solutions to mining-induced growth problems.

(e) Recommending priorities for local action.

(f) Formulating recommendations to the investment and local impact fund board regarding distribution of funds under s. 70.395 (2) (g).

(2) A county, town, village, city or tribal government affected in common with another county, town, village, city or tribal government by a proposed or existing mine may cooperatively designate or establish a joint committee, but may also maintain a separate committee under sub. (1). Committees under this section may include representatives of affected units of government, business and industry, manpower, health, protective or service agencies, school districts, or environmental and other interest groups or other interested parties.

(3) Persons giving notice under s. 144.831 (1) shall thereafter appoint a liaison person to any committee established under sub. (1) or (2), and shall provide such reasonable information as is requested by the committee. Operators and persons giving notice under s. 144.831 shall thereafter make reasonable efforts to design and operate mining operations in harmony with community development objectives.

(4) Committees established under sub. (1) or (2) may be funded by their appointing authority, and may, through their appointing authority, submit a request for operating funds to the investment and local impact fund board under s. 70.395. Committees established under sub. (1) shall be eligible for funds only if the county, town, village or city is also a participant in a joint committee, if any, established under sub. (2). The investment and local impact fund board may not grant funds for the use of more than one committee established under sub. (1) in relation to a particular mining proposal unless a joint committee has been established under sub. (2). Committees may hire staff, enter into contracts with private firms or consultants or contract with a regional planning commission or other agency for staff services.

(5) Any county, town, village or city receiving notice of the filing of an application in the manner provided under s. 144.836 (3) (a) or (b) shall refer the application and reclamation plan to a committee established under sub. (1) or (2), if any, for review and comment. Such counties, towns, villages or cities may participate as a party in the hearing on the application and may make recommendations on the reclamation plan and future use of the project site.

History: 1977 c. 421.

Groundwater Bill AB595 1983 Act 410 32

SECTION 21g. 70.32 (1m) of the statutes is created to read:

70.32 (1m) In addition to the factors set out in sub. (1), the assessor shall consider the environmental impairment of the value of the property because of the presence of a solid or hazardous waste disposal facility.

This will be a real boon to mining companies with their hundreds of acres of mining wastes, and a deficit to the local municipality.

SECTION 19. 59.97 (1) of the statutes is amended to read:

59.97 (1) PURPOSE. It is the purpose of this section to promote the public health, safety, convenience and general welfare; to encourage planned and orderly land use development; to protect property values and the property tax base; to permit the careful planning and efficient maintenance of highway systems; to ensure adequate highway, utility, health, educational and recreational facilities; to recognize the needs of agriculture, forestry, industry and business in future growth; to encourage uses of land and other natural resources which are in accordance with their character and adaptability; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to preserve wetlands; to conserve soil, water and forest resources; to protect the beauty and amenities of landscape and man-made developments; to provide healthy surroundings for family life; and to promote the efficient and economical use of public funds. To accomplish this purpose the county board of any county may plan for the physical development and zoning of territory within the county as set forth in this section and shall incorporate therein the master plan adopted under s. 62.23 (2) or (3) and the official map of any city or village in the county adopted under s. 62.23 (6).

SECTION 20. 60.74 (1) (a) 7 of the statutes is created to read:

60.74 (1) (a) 7. Encourage the protection of groundwater resources.

SECTION 21. 62.23 (7) (c) of the statutes is amended to read:

62.23 (7) (c) *Purposes in view.* Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

Stat. 144.83(4) The department may:
(a) Hold hearings relating to any aspect of the administration of ss. 144.80 to 144.94 and, in connection therewith, compel the attendance of witnesses and production of evidence.

Stat. 144.431 Solid waste, powers and duties.
(2) The department may:
(a) Hold hearings relating to any aspect of the administration of ss. 144.43 to 144.47 and, in connection therewith, co,pel the attendance of witnesses and the production of evidence.

(7)

144.435 (2) Nothing in ss. 144.43 to 144.47 shall limit the authority of any local governing body to issue licenses and permits for any state-licensed sites or facilities or to adopt, subject to department approval, standards for the location, design, construction, operation and maintenance of solid waste disposal sites and facilities more restrictive than those adopted by the state under this section.

History: 1975 c. 83; 1977 c. 377; 1979 c. 34 ss. 984rb, 2102 (39) (g).

Repealed

SECTION 8. 20.505 (1) (fa) of the statutes is created to read:

20.505 (1) (fa) *Waste facility siting board administrative expenses.* The amounts in the schedule for administrative expenses, travel, materials, staff salaries and other necessary expenses for the purposes of s. 144.445.

SECTION 9. 25.45 of the statutes is amended to read:

25.45 Waste management fund. There is established a separate nonlapsible trust fund designated as the waste management fund, to consist of all tonnage fees ~~collected~~ imposed under s. 144.441 (3) and waste management base fees imposed under s. 144.441 (5). Moneys in the waste management fund shall be used for the purposes ~~enumerated in~~ specified under s. 144.441 ~~(3) (g)~~ (6) (d) to (f).

SECTION 10. 32.02 (12) of the statutes is amended to read:

32.02 (12) Any person operating a plant which creates waste material which, if released without treatment would cause stream pollution, for the location of treatment facilities. This subsection does not apply to a person licensed under ss. 144.80 to 144.94.

SECTION 11. 59.51 (17) of the statutes is amended to read:

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

SECTION 12. 59.97 (4) (a) of the statutes is amended to read:

59.97 (4) (a) The areas within which agriculture, forestry, industry, mining, trades, business and recreation may be conducted.

SECTION 13. 59.97 (9) of the statutes is renumbered 59.97 (9) (a).

SECTION 14. 59.97 (9) (b) of the statutes is created to read:

59.97 (9) (b) This subsection does not apply to land subject to a town zoning ordinance which is purchased by the county for use as a solid or hazardous waste disposal facility or hazardous waste storage or treatment facility, as these terms are defined under s. 144.43.

SECTION 15. 60.74 (1) (a) 1 of the statutes is amended to read:

60.74 (1) (a) 1. Regulate, restrict and determine the areas within which agriculture, forestry, mining and recreation may be conducted, the location of roads, schools, trades and industries, the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, size of yards, courts and other open spaces, the density and distribution of population, and the location of buildings designed for specified uses, and establish districts of such number, shape and area as may be necessary for ~~such~~ these purposes;

SECTION 16. 62.23 (7) (a) of the statutes is amended to read:

62.23 (7) (a) *Grant of power.* For the purpose of promoting health, safety, morals or the general welfare of the community, the council may ~~by ordinance~~ regulate and restrict by ordinance the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, mining, residence or other purposes ~~provided that~~ if there ~~shall be~~ is no discrimination against temporary structures. This subsection and any ordinance, resolution or regulation~~, heretofore or hereafter~~ enacted or adopted ~~pursuant thereto~~ under this section, shall be liberally construed in favor of the city and as minimum requirements adopted for the purposes stated. ~~It shall~~ This subsection may not be deemed a limitation of any power ~~elsewhere~~ granted elsewhere.

SECTION 17. 66.122 (1) of the statutes is amended to read:

66.122 (1) ~~All~~ (a) Any state, county, city, village ~~and~~ or town ~~officers and their agents and employes,~~ officer, agent or employe charged under statute or municipal ordinance with powers or duties involving inspection of real or personal property, including buildings, building premises and building contents, ~~for~~ is deemed a peace officer for the purpose of applying for, obtaining and executing special inspection warrants under s. 66.123 for inspection purposes.

(b) "Inspection purposes" include, without limitation because of enumeration, such purposes as building, housing, electrical, plumbing, heating, gas, fire, health, safety, environmental pollution, water quality, waterways, use of water, food, zoning, property assessment, meter~~, and weights and measures inspections and investigations, shall be deemed peace officers for the purpose of applying for, obtaining and executing special inspection warrants under s. 66.123~~ and obtaining data required to be submitted in an initial site report or feasibility report under s. 144.44 or 144.64 or an environmental impact statement related to one of those reports.

Stat, 144.445(12) APPLICABILITY
(d) Nonapplicability to mining waste facilities. This section does not apply to any waste facility which is part of a prospecting or mining operation with a permit under s.144.84 or 144.85.

144.439 Solid waste storage. No person may store or cause the storage of solid waste in a manner which causes environmental pollution.

History: 1981 c. 374.

144.44 Approval process; operating license.

(1) DEFINITIONS. As used in this section:

(a) "Class 1 proceeding" has the meaning specified under s. 227.01 (2) (a).

(b) "Contested case" has the meaning specified under s. 227.01 (2).

(c) "Informational hearing" means a hearing conducted under s. 227.022.

(1m) LOCAL APPROVAL. (a) *Definition.* As used in this subsection, "local approval" has the meaning specified under s. 144.445 (3) (d).

(b) *Application for local approvals required.* Prior to constructing a solid waste disposal facility or hazardous waste facility, the applicant shall submit a written request for the specification of all applicable local approvals to each affected municipality. Within 15 days after the receipt of a written request from the applicant, a municipality shall specify all local approvals for which applications are required or issue a statement that there are no applicable local approvals. Prior to constructing a solid waste disposal facility or a hazardous waste facility, the applicant shall apply for each local approval required to construct the waste handling portion of the facility.

(bn) *Standard notice.* The waste facility siting board shall develop and print a standard notice designed to inform an affected municipality of the time limits and requirements for participation in the negotiation and arbitration process under s. 144.445. An applicant shall submit a copy of this standard notice, if it has been printed, with any written request submitted under par. (b).

(c) *Attempts to obtain local approvals required.* Following applications for local approvals under par. (b) and prior to submitting a feasibility report, any applicant subject to s. 144.445 shall undertake all reasonable procedural steps necessary to obtain each local approval required to construct the waste handling portion of the facility except that the applicant is not required to seek judicial review of decisions of the local unit of government.

See top of this page.

(d) *Waiver of local approvals.* If a local approval precludes or inhibits the ability of the applicant to obtain data required to be submitted in a feasibility report or environmental impact report, the applicant may petition the department to waive the applicability of the local approval to the applicant. If a petition is received, the department shall promptly schedule a hearing on the matter and notify the local government of the hearing. If the department determines at the hearing that the local approval is unreasonable, the department shall waive the applicability of the local approval to the applicant.

(e) *Compliance required.* Except as provided under par. (d), no person may construct a solid waste disposal facility or a hazardous waste facility unless the person complies with the requirements of pars. (b) and (c).

(2) FEASIBILITY REPORT. (a) *Feasibility report required.* Prior to constructing a solid waste disposal facility or a hazardous waste facility the person who seeks to construct the facility shall submit to the department a feasibility report.

(b) *Local approval application prerequisite.* Except as provided under par. (c), no person subject to s. 144.445 may submit a feasibility report until the latest of the following periods:

1. At least 120 days after the person submits applications for all applicable local approvals specified as required by the municipality under sub. (1m) (b).

2. At least 120 days after the receipt by the applicant of a statement by the municipality that there are no applicable local approvals.

3. At least 120 days after the deadline for the municipal response under sub. (1m) (b) if the municipality does not respond within that time limit.

(c) *No prerequisite for certain mining facilities.* An operator engaged in mining, as defined under s. 144.81 (5), on May 21, 1978, may, but is not required to, submit a feasibility report for any solid waste disposal facility for waste resulting from those mining operations.

(d) *Compliance required.* No person may construct a solid waste disposal facility or a hazardous waste facility unless the person complies with the requirements of this subsection.

(e) *Notification of proposed facility.* Immediately upon receipt of a feasibility report the department shall send a notice to the persons specified under sub. (4m) containing a brief description of the proposed facility and a statement that the applicant is required to send a copy of the feasibility report after it is determined to be complete by the department.

(f) *Contents of feasibility reports; preparation.* The department shall specify by rule the minimum contents of a feasibility report and no report is complete unless the specified information is provided by the applicant. The rules may specify special requirements for a feasibility report relating to a hazardous waste facility. The department may require a feasibility report to be prepared by a registered professional engineer. A feasibility report shall include:

1. A general summary of the site characteristics as well as any specific data the department requires by rule regard[...] soils, geology, ground[...] and other features of [...] area.

2. Preliminary eng[...] including the propos[...] facility and an indicat[...] characteristics of th[...] stored or disposed.

3. A description of [...] relates to any applic[...] management plan ap[...]

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5. The proposed [...] facility.

6. Sufficient inform[...] mination of need fo[...] subsection unless the [...] par. (nr).

7. An analysis of [...] disposal of waste in[...] reuse, recycling, c[...] recovery.

8. A description o[...] centives and recyclin[...] or provided with the [...]

(g) *Determination* [...] *complete.* Within 6[...] report is submitted, t[...] determine that the fe[...] or shall notify the ap[...] feasibility report is n[...] information which is [...] before the feasibility [...]

(h) *Distribution o*[...] same time an appli[...] report to the depart[...] submit a copy of tha[...] participating munici[...] (b). Immediately a[...] notification of the d[...] that the feasibility re[...] cant shall distribute [...] report to the persons [...]

(i) *Preliminary det*[...] *tal impact statemen*[...] after the department[...] bility report is com[...] issue a preliminary [...] an environmental im[...] under s. 1.11 prior [...] feasibility. If the de[...] review of the feasibil[...] tion of feasibility ca[...] environmental impa[...] partment intends to [...]

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requires by rule regarding the site's topography, soils, geology, groundwaters and surface waters and other features of the site and surrounding area.

2. Preliminary engineering design concepts including the proposed design capacity of the facility and an indication of the quantities and characteristics of the wastes to be treated, stored or disposed.

3. A description of how the proposed facility relates to any applicable county solid waste management plan approved under s. 144.437.

4. A description of the advisory process undertaken by the applicant prior to submittal of the feasibility report to provide information to the public and affected municipalities and to solicit public opinion on the proposed facility.

5. The proposed date of closure for the facility.

6. Sufficient information to make the determination of need for the facility under this subsection unless the facility is exempt under par. (nr).

7. An analysis of alternatives to the land disposal of waste including waste reduction, reuse, recycling, composting and energy recovery.

8. A description of any waste reduction incentives and recycling services to be instituted or provided with the proposed facility.

(g) *Determination if a feasibility report is complete.* Within 60 days after a feasibility report is submitted, the department either shall determine that the feasibility report is complete or shall notify the applicant in writing that the feasibility report is not complete and specify the information which is required to be submitted before the feasibility report is complete.

(h) *Distribution of feasibility report.* At the same time an applicant submits a feasibility report to the department, the applicant shall submit a copy of that feasibility report to each participating municipality under s. 144.445 (6) (b). Immediately after the applicant receives notification of the department's determination that the feasibility report is complete, the applicant shall distribute copies of the feasibility report to the persons specified under sub. (4m).

(i) *Preliminary determination if environmental impact statement is required.* Immediately after the department determines that the feasibility report is complete, the department shall issue a preliminary determination on whether an environmental impact statement is required under s. 1.11 prior to the determination of feasibility. If the department determines after review of the feasibility report that a determination of feasibility cannot be made without an environmental impact statement or if the department intends to require an environmental impact report under s. 23.11 (5), the department shall notify the applicant in writing within the 60-day period of these decisions and shall commence the process required under s. 1.11 or 23.11 (5).

(j) *Environmental impact statement process.* If an environmental impact statement is required, the department shall conduct the hearing required under s. 1.11 (2) (d) in an appropriate place it designates in a county, city, village or town which would be substantially affected by the operation of the proposed facility. The hearing on the environmental impact statement is not a contested case. The department shall issue its determination of the adequacy of the environmental impact statement within 30 days after the close of the hearing. Except as provided under s. 144.836, the department shall complete any environmental impact statement process required under s. 1.11 before proceeding with the feasibility report review process under par. (k) and subs. (2g) and (2r).

(k) *Notification on feasibility report and preliminary environmental impact statement decisions.* Immediately after the department issues a preliminary determination that an environmental impact statement is not required or, if it is required, immediately after the department issues the environmental impact statement, the department shall publish a class 1 notice under ch. 985 in the official newspaper designated under s. 985.04 or 985.05 or, if none exists, in a newspaper likely to give notice in the area of the proposed facility. The notice shall include a statement that the feasibility report and the environmental impact statement process are complete. The notice shall invite the submission of written comments by any person within 30 days after the notice for a solid waste disposal facility or within 45 days after the notice for a hazardous waste facility is published. The notice shall describe the methods by which a hearing may be requested under pars. (l) and (m). The department shall distribute copies of the notice to the persons specified under sub. (4m).

(l) *Request for an informational hearing.* Within 30 days after the notice under par. (k) is published for a solid waste disposal facility, or within 45 days after the notice under par. (k) is published for a hazardous waste facility, any county, city, village or town, the applicant or any 6 or more persons may file a written request for an informational hearing on the matter with the department. The request shall indicate the interests of the municipality or persons who file the request and state the reasons why the hearing is requested.

(m) *Request for treatment as a contested case.* Within 30 days after the notice under par.

(k) is published for a solid waste disposal facility, or within 45 days after the notice under par. (k) is published for a hazardous waste facility, any county, city, village or town, the applicant or any 6 or more persons may file a written request that the hearing under par. (l) be treated as a contested case, as provided under s. 227.064. A county, city, village or town, the applicant or any 6 or more persons have a right to have the hearing treated as a contested case only if:

1. A substantial interest of the person requesting the treatment of the hearing as a contested case is injured in fact or threatened with injury by the department's action or inaction on the matter;

2. The injury to the person requesting the treatment of the hearing as a contested case is different in kind or degree from injury to the general public caused by the department's action or inaction on the matter; and

3. There is a dispute of material fact.

(n) *Criteria for determination of feasibility; environmental impact.* 1. A determination of feasibility shall be based only on ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under those sections. A determination of feasibility for a facility for the disposal of metallic mining waste shall be based only on ss. 144.43 to 144.47 and 144.60 to 144.74 and rules promulgated under those sections with special consideration given to s. 144.435 (2) and rules promulgated under that section.

2. If there is a negotiated agreement or an arbitration award prior to issuance of the determination of feasibility, the final determination of feasibility may not include any item which is less stringent than a corresponding item in the negotiated agreement or arbitration award.

3. The department may receive into evidence at a hearing conducted under sub. (2g) or (2r) any environmental impact assessment or environmental impact statement for the facility prepared under s. 1.11 and any environmental impact report prepared under s. 23.11 (5). The adequacy of the environmental impact assessment, environmental impact statement or environmental impact report is not subject to challenge at that hearing.

4. The department may not approve a feasibility report for a solid or hazardous waste disposal facility unless the design capacity of that facility does not exceed the expected waste to be disposed of at that facility within 15 years after that facility begins operation. The department may not approve a feasibility report for a solid or hazardous waste disposal facility unless the design capacity of that facility exceeds the expected waste to be disposed of at that facility within 10 years after that facility begins operation except that this condition does not apply to the expansion of an existing facility.

(nm) *Determination of need; issues considered.* A feasibility report shall contain an evaluation to justify the need for the proposed facility unless the facility is exempt under par. (nr). The department shall consider the following issues in evaluating the need for the proposed facility:

1. An approximate service area for the proposed facility which takes into account the economics of waste collection, transportation and disposal.

2. The quantity of waste suitable for disposal at the proposed facility generated within the anticipated service area.

3. The design capacity of the following facilities located within the anticipated service area of the proposed facility:

a. Approved facilities, as defined under s. 144.441 (2) (a) 1, including the potential for expansion of those facilities on contiguous property already owned or controlled by the applicant.

b. Nonapproved facilities, as defined under s. 144.442 (1) (c), which are environmentally sound. It is presumed that a nonapproved facility is not environmentally sound unless evidence to the contrary is produced.

c. Other proposed facilities for which feasibility reports are submitted and determined to be complete by the department.

d. Facilities for the recycling of solid waste or for the recovery of resources from solid waste which are licensed by the department.

e. Proposed facilities for the recycling of solid waste or for the recovery of resources from solid waste which have plans of operation which are approved by the department.

f. Solid waste incinerators licensed by the department.

g. Proposed solid waste incinerators which have plans of operation which are approved by the department.

4. If the need for a proposed municipal facility cannot be established under subds. 1 to 3, the extent to which the proposed facility is needed to replace other facilities of that municipality at the time those facilities are projected to be closed in the plans of operation.

(nr) *Determination of need; exempt facilities.* Paragraphs (f) 6, (n) 4, (nm) and (om) do not apply to:

1. Any facility which is part of a prospecting or mining operation with a permit under s. 144.84 or 144.85.

2. Any solid waste disposal facility designed for the disposal of waste generated by a pulp or paper mill.

(o) *Contents of final determination of feasibility.* The department shall issue a final deter-

mination of feasibility wh findings of fact and conclu which it is based. The depa tion the issuance of the fin feasibility upon special des other requirements to be s plan of operation under su determination of feasibility design capacity of the prop issuance of a favorable fina feasibility constitutes approv the purpose stated in the ap not guarantee plan approva licensure under sub. (4).

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(p) *Issuance of final deter bility.* Except as provided ur hearing is conducted under su department shall issue the fi of feasibility within 60 days 45-day period under par. (m

(q) *Issuance of final deter bility in certain situations inv mining.* If a determination quired under s. 196.491 (2m) final determination of feasib the time limits under s. 196.4 If a determination of feasi under s. 144.836, the issuance nation of feasibility is subject under s. 144.84 (3) or 144.85 applicable.

(2g) INFORMATIONAL HEAR*bility.* This subsection applie the treatment of the hearing a is granted and if:

1. An informational hea under sub. (2) (l) within the period; or

2. No hearing is requested within the 30-day or 45-da department determines that t public interest in holding a h

(h) *Nonapplicability; hear part of certain mining hearin*. par. (a) this subsection d hearing on the feasibility repo part of a hearing under s. 14 ents, notice and hearing p section supersede the time l hearing provisions under sub. this subsection.

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mination of feasibility which shall state the findings of fact and conclusions of law upon which it is based. The department may condition the issuance of the final determination of feasibility upon special design, operational or other requirements to be submitted with the plan of operation under sub. (3). The final determination of feasibility shall specify the design capacity of the proposed facility. The issuance of a favorable final determination of feasibility constitutes approval of the facility for the purpose stated in the application but does not guarantee plan approval under sub. (3) or licensure under sub. (4).

(om) *Issuance of determination of need.* Except for a facility which is exempt under par. (nr), the department shall issue a determination of need for the proposed facility at the same time the final determination of feasibility is issued. If the department determines that there is insufficient need for the facility, the applicant may not construct or operate the facility.

(p) *Issuance of final determination of feasibility.* Except as provided under par. (q), if no hearing is conducted under sub. (2g) or (2r), the department shall issue the final determination of feasibility within 60 days after the 30-day or 45-day period under par. (m) has expired.

(q) *Issuance of final determination of feasibility in certain situations involving utilities and mining.* If a determination of feasibility is required under s. 196.491 (2m), the issuance of a final determination of feasibility is subject to the time limits under s. 196.491 (3) (f) and (ff). If a determination of feasibility is required under s. 144.836, the issuance of a final determination of feasibility is subject to the time limits under s. 144.84 (3) or 144.85 (5), whichever is applicable.

(2g) INFORMATIONAL HEARING. (a) *Applicability.* This subsection applies if no request for the treatment of the hearing as a contested case is granted and if:

1. An informational hearing is requested under sub. (2) (l) within the 30-day or 45-day period; or

2. No hearing is requested under sub. (2) (l) within the 30-day or 45-day period but the department determines that there is substantial public interest in holding a hearing.

(b) *Nonapplicability; hearing conducted as a part of certain mining hearings.* Notwithstanding par. (a) this subsection does not apply if a hearing on the feasibility report is conducted as a part of a hearing under s. 144.836 and the time limits, notice and hearing provisions in that section supersede the time limits, notice and hearing provisions under sub. (2) (j) to (m) and this subsection.

(c) *Informational hearing.* The department shall conduct the informational hearing within 60 days after the expiration of the 30-day or 45-day period under sub. (2) (l). The department shall conduct the informational hearing in an appropriate place designated by the department in a county, city, village or town which would be substantially affected by the operation of the proposed facility.

(e) *Issuance of final determination of feasibility.* Except as provided under sub. (2) (q), the department shall issue a final determination of feasibility within 60 days after the informational hearing under this subsection is adjourned.

(2r) HEARING CONDUCTED AS A CONTESTED CASE. (a) *Applicability.* This subsection applies only if a person requests the treatment of the hearing as a contested case under sub. (2) (m) within the 30-day or 45-day period and has a right to a hearing under that subsection. Any denial of a request for the treatment of the hearing as a contested case received within the 30-day or 45-day period under sub. (2) (m) shall be in writing, shall state the reasons for denial and is an order reviewable under ch. 227. If the department does not enter an order granting or denying the request for the treatment of the hearing as a contested case within 20 days after the written request is filed, the request is deemed denied.

(b) *Nonapplicability.* Notwithstanding par. (a), this section does not apply if a hearing on the feasibility report is conducted as a part of a hearing under s. 144.836 and the time limits, notice and hearing provisions under that section supersede the time limits, notice and hearing provisions under sub. (2) (j) to (m) and this subsection.

(d) *Time limits.* Except as provided under sub. (2) (q):

1. The division of hearings and appeals in the department of administration shall schedule the hearing to be held within 120 days after the expiration of the 30-day or 45-day period under sub. (2) (m).

2. The final determination of feasibility shall be issued within 90 days after the hearing is adjourned.

(e) *Determination of need; decision by hearing examiner.* If a contested case hearing is conducted under this subsection, the secretary shall issue any decision concerning determination of need, notwithstanding s. 227.09 (2) to (4). The secretary shall direct the hearing examiner to certify the record of the contested case hearing to him or her without an intervening proposed decision. The secretary may assign responsibility for reviewing this record and making recom-

mendations concerning the decision to any employe of the department.

(3) PLAN OF OPERATION. (a) *Plan of operation required.* Prior to constructing a solid waste disposal facility or a hazardous waste facility, the applicant shall submit to the department a plan of operation for the facility.

(ag) *Feasibility report prerequisite.* Except as provided under par. (ar), no person may submit a plan of operation for a facility prior to the time the person submits a feasibility report for that facility. A person may submit a plan of operation with the feasibility report or at any time after the feasibility report is submitted. If a person submits the plan of operation prior to the final determination of feasibility, the plan of operation is not subject to review at any hearing conducted under sub. (2), (2g) or (2r) and is not subject to judicial review under ss. 227.15 to 227.21 in the review of any decision under sub. (2), (2g) or (2r).

(am) *Feasibility report; certain facilities.* The department may require the applicant for a hazardous waste treatment or storage facility to submit the feasibility report and the plan of operation at the same time and, notwithstanding pars. (ag), (f) and (g), both the feasibility report and the plan of operation shall be considered at a public hearing conducted under subs. (2), (2g) and (2r), and both are subject to judicial review in a single proceeding.

(ar) *Feasibility report prerequisite; exception.* The owner or operator of a licensed solid waste disposal facility in existence on May 21, 1978, may, but is not required to, submit a plan of operation for that facility and seek approval under this subsection. An operator engaged in mining, as defined under s. 144.81 (5), on May 21, 1978, may, but is not required to, submit a plan of operation for any solid waste disposal facility for waste resulting from those mining operations and seek approval for that plan of operation under this subsection.

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

(c) *Approval; disapproval.* The department may not approve or disapprove a plan of operation until a favorable determination of feasibility has been issued for the facility. Upon the submission of a complete plan of operation, the department shall either approve or disapprove the plan in writing within 90 days or within 60 days after a favorable determination of feasibility is issued for the facility, whichever is later. The determination of the department shall be based upon compliance with the standards established under s. 144.435 or, in the case of hazardous waste facilities, with the rules and standards established under s. 144.62. An approval may be conditioned upon any requirements necessary to comply with the standards. Any approval may be modified by the department upon application of the licensee if newly discovered information indicates that the modification would not inhibit compliance with the standards adopted under s. 144.435 or, if applicable, s. 144.62. No plan of operation for a solid or hazardous waste facility may be approved unless the applicant submits technical and financial information required under ss. 144.441 and 144.443.

(cm) *No environmental impact statement required.* A determination under this subsection does not constitute a major state action under s. 1.11 (2).

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

1. The facility is not constructed in accordance with the approved plan;

2. The facility poses a substantial hazard to public health or welfare; or

3. In-field conditions, not disclosed in the feasibility report or plan of operation, necessitate modifications of the plan to comply with

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standards in effect at the time of plan approval under s. 144.435 or, if applicable, s. 144.62.

(e) *Failure to comply with plan of operation.* Failure to operate in accordance with the approved plan subjects the operator to enforcement under s. 144.47 or 144.73. If the department establishes that any failure to operate in accordance with the approved plan for a solid waste disposal facility is grievous and continuous, the operator is subject to suspension, revocation or denial of the operating license under sub. (4). If the operator fails to operate a hazardous waste facility in accordance with the approved plan, the department may suspend, revoke or deny the operating license under sub. (4).

(f) *Feasibility report not subject to review.* In any judicial review under ss. 227.15 to 227.21 of the department's decision to approve or disapprove a plan of operation, no element of the feasibility report, as approved by the department, is subject to judicial review.

(g) *No right to hearing.* There is no statutory right to a hearing before the department concerning the plan of operation but the department may grant a hearing on the plan of operation under s. 144.431 (2) (a).

(4) OPERATING LICENSE. (a) *License requirement.* No person may operate a solid waste facility or hazardous waste facility unless the person obtains an operating license from the department. The department shall issue an operating license with a duration of one year or more except that the department may issue an initial license with a duration of less than one year. The department may deny, suspend or revoke the operating license of a solid waste disposal facility for failure to pay fees required under ss. 144.43 to 144.47 or for grievous and continuous failure to comply with the approved plan of operation under sub. (3) or, if no plan of operation exists with regard to the facility, for grievous and continuous failure to comply with the standards adopted under s. 144.435. The department may deny, suspend or revoke the operating license of a hazardous waste facility for failure to pay the fees required under ss. 144.43 to 144.47 or for failure to comply with the approved plan of operation under sub. (3). If the license application is for a solid waste disposal facility for solid waste resulting from mining operations in existence on May 21, 1978, the department shall make any determination with respect to whether disposal is being undertaken in an environmentally sound manner and shall administer compliance with the licensing requirement of this subsection in a manner which, with respect to nonhazardous solid waste, does not require substantial structural modification of the existing facility, expenditure which is not appropriate for the nonhazardous nature of the waste or interruption of the mining operation.

(am) *Environmental impact statement not required.* A determination under this subsection does not constitute a major state action under s. 1.11 (2).

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

(c) *Notice; hazardous waste facilities.* Before issuing the initial operating license for a hazardous waste facility, the department shall give notice of its intent to issue the license by all of the following means:

1. Publishing a class 1 notice, under ch. 985, in a newspaper likely to give notice in the area where the facility is located.

2. Broadcasting a notice by radio announcement in the area where the facility is located.

3. Providing written notice to each affected municipality.

(d) *Feasibility report and plan of operation not subject to review.* In any judicial review under ss. 227.15 to 227.21 of the department's decision to issue or deny an operating license, no element of either the feasibility report or the plan of operation, as approved by the department, is subject to judicial review.

(e) *No right to hearing.* There is no statutory right to a hearing before the department concerning the license but the department may grant a hearing on the license under s. 144.431 (2) (a).

(f) *Monitoring requirements.* 1. Upon the renewal of an operating license for a nonapproved waste facility, as defined under s. 144.442 (1) (c), the department may impose requirements for monitoring at the facility as a condition of the license.

2. The owner or operator of a nonapproved facility, as defined under s. 144.442 (1) (c), which is in operation is responsible for conducting any monitoring requirements imposed under subd. 1.

3. The department may require by special order the monitoring of a facility, as defined

under s. 144.442 (1), which is no longer in operation.

4. If the owner or operator of a facility, as defined under s. 144.442 (1), is not a municipality, the owner or operator is responsible for conducting any monitoring requirements ordered under subd. 3.

5. If the owner or operator of a nonapproved facility, as defined under s. 144.442 (1) (c), is a municipality, the municipality is responsible for paying up to $3 per person residing in the municipality toward the cost of any monitoring requirement ordered under subd. 3. The remainder of the cost of any monitoring requirement ordered under subd. 3 shall be paid from the environmental repair fund appropriation under s. 20.370 (2) (dr).

(g) *Closure agreement.* Any person operating a solid or hazardous waste facility which is a nonapproved facility as defined under s. 144.442 (1) (c) may enter into a written closure agreement at any time with the department to close the facility on or before July 1, 1999. The department shall incorporate any closure agreement into the operating license. The operating license shall terminate and is not renewable if the operator fails to comply with the closure agreement. Upon termination of an operating license under this paragraph as the result of failure to comply with the closure agreement, the department shall collect additional surcharges and base fees as provided under s. 144.442 (2) and (3) and enforce the closure under ss. 144.98 and 144.99.

(4m) DISTRIBUTION. One copy of the notice or documents required to be distributed under this section shall be mailed to:

(a) The clerk of each affected municipality.

(b) The main public library in each affected municipality.

(c) The applicant if the notice or document is not required to be distributed by the applicant.

(6) CLOSURE. At least 120 days prior to the closing of a solid waste disposal facility or at least 180 days prior to the closing of a hazardous waste facility, the owner or operator shall notify the department in writing of the intent to close the facility.

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

(b) *Waiver; research projects.* The intent of this paragraph is to encourage research projects designed to demonstrate the feasibility of recycling and reusing certain solid wastes while providing adequate and reasonable safeguards for the environment. The department may waive compliance with the requirements of this section and ss. 144.441 and 144.445 for a project developed for research purposes to evaluate the potential for the recycling and beneficial use of high volume industrial waste limited to coal combustion residues, foundry sands and pulp and paper mill sludge if the following conditions are met:

1. The project is designed to demonstrate the feasibility of recycling or reusing solid waste or the feasibility of improved solid waste disposal methods.

2. The department determines that the project is unlikely to violate any law relating to surface water or groundwater quality including this chapter or ch. 147 or 160.

3. The department reviews and approves the project prior to its initiation.

4. The owner or operator of the project agrees to provide all data, reports and research publications relating to the project to the department.

5. The owner or operator of the project agrees to take necessary action to maintain compliance with surface water and groundwater laws, including this chapter and chs. 147 and 160 and to take necessary action to regain compliance with these laws if a violation occurs because of the functioning or malfunctioning of the project.

(c) *Exemption from licensing; development of improved methods.* The department may exempt by rule specified solid wastes or specified facilities from licensing as solid waste facilities if it finds that regulation under this section would discourage the development of improved methods of solid waste disposal, including the landspreading of sludges, or would not be warranted, in light of the potential hazard to public health or the environment.

(d) *Exemption from regulation; single-family waste disposal.* The department may not regulate under this chapter any solid waste from a single family or household disposed of on the property where it is generated.

(e) *Exemption from licensing; agricultural landspreading of sludge.* The department may not require a license under s. 144.44 for agricultural land on which nonhazardous sludges from a treatment work, as defined under s. 147.015 (18), are land spread for purpose of a soil conditioner or nutrient.

(8) ENFORCEMENT PROCEDURES FOR OLDER FACILITIES. Notwithstanding s. 144.47, for solid waste facilities licensed on or before January 1, 1977, which the department believes do not meet minimum standards promulgated under s.

144.435, the followi[ng]
shall apply:

(a) The departmen[t]
ing to the facility or
facility.

(b) The departme[nt]
of its intended actio[n]
licensee, within 30 da[ys]
shall notify the depa[rtment]
hearing under par. (c

(c) If the licensee
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(d) If the licensee
under par. (b), the d
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complaint shall alleg[e]
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(9) COMMERCIAL P[CB]
TREATMENT FACILITIES
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144.79 (1).

3. "PCB waste" me[ans]
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(b) *Feasibility repo[rt]*
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PROCEDURES FOR OLDER
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144.435, the following enforcement procedure shall apply:

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

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

(c) If the licensee desires a hearing, the department may not issue the order or decision under par. (a) until a hearing, conducted as a class 2 proceeding under ch. 227, is held. The hearing shall be held in the county where the facility is located. At the hearing the department must establish by a preponderance of all the available evidence that the facility does not adhere to the minimum standards promulgated under s. 144.435. If the hearing examiner's decision is in favor of the department, the order or decision may be issued. The order or decision shall be subject to judicial review under ch. 227.

(d) If the licensee does not request a hearing under par. (b), the department shall issue the order or decision under par. (a). The licensee may challenge the order or decision by commencing an action in the circuit court for the county in which the facility is located within 60 days after issuance of the order or decision. The complaint shall allege that the facility adheres to the minimum standards promulgated under s. 144.435. The licensee shall receive a new trial on all issues relating to the facility and relicensing of the facility. The trial shall be conducted by the court without a jury.

(9) COMMERCIAL PCB WASTE STORAGE AND TREATMENT FACILITIES. (a) *Definitions.* As used in this subsection:

1. "Commercial" means providing services to persons other than the owner or operator.

2. "PCBs" has the meaning specified under s. 144.79 (1).

3. "PCB waste" means any product containing PCBs, as defined under s. 144.79 (1) (c), which is subject to regulation under s. 144.79 after the product becomes a solid waste. This term also means any material which is contaminated by the discharge, as defined under s. 144.76 (1) (a), of a substance containing PCBs subject to regulation under s. 144.76.

(b) *Feasibility report and related provisions.* Except as provided under par. (f), no person may establish or construct a commercial PCB waste storage or treatment facility unless the person complies with the requirement under subs. (2) to (2r) in the same manner as if the facility were a solid waste disposal facility including each of the following:

1. Submitting a feasibility report under sub. (2) (a) to determine whether the site has potential for use in establishing a PCB waste storage or treatment facility.

2. Complying with requirements for the preparation and contents of a feasibility report under sub. (2) (f) including any special requirements for PCB waste storage or treatment facilities.

3. Following the notice, hearing, procedure and other requirements under subs. (2) to (2r) including any environmental impact requirements.

(c) *Plan of operation and related provisions.* Except as provided under par. (f), no person may establish, construct or operate a commercial PCB waste storage or treatment facility unless the person complies with the requirements under sub. (3) as if the facility were a solid waste disposal facility including all of the following:

1. Submitting a plan of operation which complies with requirements for preparation and contents specified under sub. (3) (b) including any special requirements for PCB waste storage or treatment facilities except the department may waive any requirement for the specification of long-term care responsibility.

2. Constructing the facility in accordance with an approved plan of operation as required under sub. (3) (d).

3. Operating the facility in accordance with the approved plan of operation subject to the sanctions under sub. (3) (e).

(d) *Financial responsibility requirements.* Except as provided under par. (f), no person may establish or construct a commercial PCB waste storage or treatment facility unless the person complies with s. 144.443.

(e) *License requirement.* Except as provided under par. (f), no person may operate a commercial PCB waste storage or treatment facility unless the person obtains an operating license under sub. (4).

(f) *Exceptions.* The department may exempt a person establishing, constructing or operating certain categories of facilities which store or treat PCB waste or which store or treat certain types, amounts or concentrations of PCB waste from the provisions of this subsection.

(g) *Applicability.* The subsection applies to any facility which is not otherwise subject to this section.

(10) LICENSES AND REVIEW FEES. (a) The department shall adopt by rule a graduated schedule of reasonable license and review fees to be charged for solid waste license and review activities.

(b) Solid waste license and review activities consist of reviewing feasibility reports, plans of

144.87 (1) (c) and (d)

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(2) The applicant shall submit a certificate of insurance certifying that the applicant has in force a liability insurance policy issued by an insurer authorized to do business in this state, or in lieu of a certificate of insurance evidence that the applicant has satisfied state or federal self-insurance requirements, covering all mining operations of the applicant in this state and affording personal injury and property damage protection in a total amount deemed adequate by the department but not less than $50,000.

(3) Upon approval of the operator's bond, mining application and certificate of insurance, the department shall issue written authorization to commence mining at the permitted mining site in accordance with the approved mining and reclamation plans.

(4) Any operator who obtains mining permits from the department for 2 or more mining sites may elect, at the time the 2nd or any subsequent site is approved, to post a single bond in lieu of separate bonds on each site. Any single bond so posted shall be in an amount equal to the estimated cost to the state determined under sub. (1) of reclaiming all sites the operator has under mining permits. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds may not be released until the new bond has been accepted by the department.

(6) Any person who is engaged in mining on July 3, 1974 need not file a bond or deposit cash, certificates of deposits or government securities with the department under this section to obtain the written authorization to commence mining under sub. (3).

History: 1973 c. 318; 1977 c. 421; 1979 c. 102 s. 236 (3); 1979 c. 176.

144.87 Modifications. (1) (a) *Application.* An operator at any time may apply for amendment or cancellation of a mining permit or for a change in the mining or reclamation plans for any mining operation which the operator owns or leases. The operator shall submit any application for the amendment, cancellation or change on a form provided by the department and shall identify the tract of land to be added to or removed from the permitted mining site or to be affected by a change in the mining or reclamation plans.

(b) *Procedure.* The department shall process the application for an increase or decrease in the area of a mining site or for a substantial change in the mining or reclamation plans in the same manner as an original application for a mining permit except as provided under par. (d).

(c) *Substantial changes.* The department shall determine if any change in the mining or reclamation plans is substantial and provide notice of its determination in the same manner as specified under s. 144.836 (3) (b) 1 to 3.

(d) *Notice.* The department shall provide notice of any modification which involves an increase or decrease in the area of a mining site or a substantial change in the mining or reclamation plan in the same manner as an original application for a mining permit under s. 144.836 (3). If 5 or more interested persons do not request a hearing in writing within 30 days of notice, no hearing is required on the modification. The notice shall include a statement to this effect.

(e) *Hearing.* If a hearing is held, testimony and exhibits from the hearing on either the original applications for a mining permit or from previous modification hearings which are relevant to the instant modification may be adopted, subject to cross-examination and rebuttal if not unduly repetitious.

(f) *Removal.* If the application is to cancel any or all of the unmined part of a mining site, the department shall ascertain, by inspection, if mining has occurred on the land. If the department finds that no mining has occurred, the department shall order release of the bond or the security posted on the land being removed from the permitted mining site and cancel or amend the operator's written authorization to conduct mining on the mining site. No land where mining has occurred may be removed from a permitted mining site or released from bond or security under this subsection, unless reclamation has been completed to the satisfaction of the department.

(2) When one operator succeeds to the interest of another in an uncompleted mining operation by sale, assignment, lease or otherwise, the department shall release the first operator from the duties imposed upon the first operator by ss. 144.80 to 144.94 as to such operation if:

(a) Both operators have complied with the requirements of ss. 144.80 to 144.94; and

(b) The successor operator discloses whether it has forfeited any bond, as defined under s. 144.85 (3) and (5) (b), within the previous 20 years, posts any bond required under s. 144.86 and assumes all responsibilities of all applicable permits, licenses and approvals granted to the predecessor operator.

(3) If the department finds that because of changing conditions, including but not limited to changes in reclamation costs, reclamation technology, minimum standards under s. 144.83 or governmental land use plans, the reclamation plan for a mining site is no longer sufficient to reasonably provide for reclamation of the project site consistent with ss. 144.80 to 144.94 and any rules adopted under ss. 144.80

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144.441(6)

(5) WASTE MANAGEMENT BASE FEE. (a) *Imposition of waste management base fee.* Except as provided under par. (b), the owner or operator of an approved facility shall pay to the department a waste management base fee for each calendar year.

(b) *Exemption from waste management base fee; when waste management fund exceeds maximum.* If the solid and hazardous waste received by a facility are not subject to the tonnage fees imposed under sub. (3) (a) because of sub. (3) (c), the owner or operator of the facility is not subject to the waste management base fee imposed under par. (a).

(c) *Amount of waste management base fee.* The waste management base fee is $100.

(d) *Use of waste management base fees.* Waste management base fees shall be paid into the waste management fund to be used for the purposes specified under sub. (6) (d) and (e).

(6) PAYMENTS FROM THE WASTE MANAGEMENT FUND AND RELATED PAYMENTS. (b) *Payments from the waste management fund.* The department may expend moneys in the waste management fund only for the purposes specified under pars. (d) to (g). The department may expend moneys appropriated under s. 20.370 (2) (cq) for the purposes specified under pars. (d) and (e). The department may expend moneys appropriated under s. 20.370 (2) (ct) for the purposes specified under par. (f). The department may expend moneys appropriated under s. 20.370 (2) (cs) for the purposes specified under par. (g).

(c) *Payments from the investment and local impact fund.* The department may expend moneys received from the investment and local impact fund only for the purposes specified under pars. (d) and (e), only for approved mining facilities and only if moneys in the waste management fund are insufficient to make complete payments. The amount expended by the department under this paragraph may not exceed the balance in the waste management fund at the beginning of that fiscal year or 50% of the balance in the investment and local impact fund at the beginning of that fiscal year, whichever amount is greater.

(d) *Payments for long-term care after termination of owner responsibility.* The department may make payments for all costs of long-term care of an approved facility accruing after the responsibility of the owner is terminated under sub. (2). The department shall by rule provide for the method of payment.

(e) *Payment of closure and long-term care costs; responsibility based on net worth.* The department may make payments for the cost of compliance with closure and long-term care requirements in the plan of operation of a waste facility for which the owner or operator establishes proof of financial responsibility under s. 144.443 (4) and complies with minimum security requirements under s. 144.443 (8) if the owner or operator fails to comply with these requirements and if the department or the department of justice is unable to obtain compliance with these requirements after appropriate legal action because of bankruptcy, insolvency or financial inability of the owner or operator or the company, as defined under s. 144.443 (1) (b), to comply with these requirements.

(f) *Payment of closure and long-term care costs: forfeited bonds and similar moneys.* The department may utilize moneys appropriated under s. 20.370 (2) (ct) for the payment of costs associated with compliance with closure and long-term care requirements under s. 144.443 (11) (b).

(g) *Prevention of imminent hazard.* The department may utilize moneys appropriated under s. 20.370 (2) (cs) for the payment of costs associated with imminent hazards as authorized under s. 144.443 (11) (c).

(7) GROUNDWATER FEE. (a) *Imposition of groundwater fee on generators.* Except as provided under par. (f), a generator of solid or hazardous waste shall pay a groundwater fee for each ton or equivalent volume of solid or hazardous waste which is disposed of at a licensed solid or hazardous waste disposal facility. If a person arranges for collection or disposal services on behalf of one or more generators, that person shall pay the groundwater fee to the licensed solid or hazardous waste disposal facility or to any intermediate hauler used to transfer wastes from collection points to a licensed facility. An intermediate hauler who receives groundwater fees under this paragraph shall pay the fees to the licensed solid or hazardous waste disposal facility. Tonnage or equivalent volume shall be calculated in the same manner as the calculation made for tonnage fees under sub. (3).

(b) *Collection.* The owner or operator of a licensed solid or hazardous waste disposal facility shall collect the groundwater fee from the generator, a person who arranges for disposal on behalf of one or more generators or an intermediate hauler and shall pay the fees collected to the department according to the amount of solid or hazardous waste received and disposed of at the facility during the preceding reporting period.

(c) *Amount of groundwater fee.* Except as provided under par. (d), the groundwater fee imposed under par. (a) is 10 cents per ton for solid or hazardous waste.

(d) *Amount of groundwater fee; prospecting or mining waste.* The groundwater fee imposed

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disposal facility shal
quired to be collected
time as any tonnage
waste management
paid.
(h) *Use of groun*
lected under par. (b
groundwater fund..
History: 1977 c. 377;
630t, 2202 (39); 1981 c. 86
2202 (38); 1983 a. 298; 198
(38).

144.442 Environme
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144.445 (12)(d)

(p) *Arbitration award.* Within 90 days after the last day for submitting final offers under par. (f), the board may issue an arbitration award with the approval of a minimum of 5 board members. If the board fails to issue an arbitration award within this period, the governor shall issue an arbitration award within 120 days after the last day for submitting final offers under par. (f). The arbitration award shall adopt, without modification, the final offer of either the applicant or the local committee except that the arbitration award shall delete those items which are not subject to arbitration under sub. (8) or are not consistent with the legislative findings and intent under subs. (1) and (2). A copy of the arbitration award shall be served on the applicant and the local committee.

(q) *Award is binding; approval not required.* If the applicant constructs and operates the facility, the arbitration award is binding on the applicant and the participating municipalities and does not require approval by the participating municipalities.

(r) *Applicability of arbitration statutes.* Sections 788.09 to 788.15 apply to arbitration awards under this subsection.

(s) *Environmental impact.* An arbitration award under this subsection is not a major state action under s. 1.11 (2).

(11) SUCCESSORS IN INTEREST. Any provision in a negotiated agreement or arbitration award is enforceable by or against the successors in interest of any person directly affected by the award. A personal representative may recover damages for breach for which the decedent could have recovered.

(12) APPLICABILITY. (a) *Solid waste disposal facilities.* 1. This section applies to new or expanded solid waste disposal facilities for which an initial site report is submitted after March 15, 1982, or, if no initial site report is submitted, for which a feasibility report is submitted after March 15, 1982.

2. This section does not apply to modifications to a solid waste disposal facility which do not constitute an expansion of the facility or to a solid waste disposal facility which is exempt from the requirement of a feasibility report under ss. 144.43 to 144.47 or by rule promulgated by the department.

(b) *Hazardous waste facilities.* 1. This section applies to all new or expanded hazardous waste facilities for which an initial site report is submitted after March 15, 1982, or, if no initial site report is submitted, for which a feasibility report is submitted after March 15, 1982.

2. Except as provided under subd. 1 and par. ... (5) (a) and (b) apply to a May 7, 1982, which has a license, an interim license or a variance under s. 144.64 or the resource conservation and recovery act and which complies with all local approvals applicable to the facility on May 7, 1982.

3. Only subs. (3) and (5) (a) to (c) and (e) apply to a hazardous waste treatment or storage facility which accepts waste only from the licensee.

(c) *Existing solid waste disposal facilities or hazardous waste facilities.* 1. This section applies to an existing solid waste disposal facility or hazardous waste facility which shall be treated as a new or expanded facility upon the adoption of a siting resolution by any affected municipality under sub. (6):

a. At any time during the life of a solid waste disposal facility or a hazardous waste facility if the owner or operator and one or more affected municipalities agree to negotiate and arbitrate under this section.

b. When a negotiated settlement or arbitration award under this section provides for the reopening of negotiations.

c. At any time after the date specified in the feasibility report, if such a date has been specified under s. 144.44 (2) (f), as the proposed date of closure of a solid or hazardous waste disposal facility and if the facility is not closed on or before that date.

2. Except as provided under subd. 1 and pars. (a), (b) and (d), only subs. (3) and (5) (a) and (b) apply to an existing solid waste disposal facility or a hazardous waste facility.

(d) *Nonapplicability to mining waste facilities.* This section does not apply to any waste facility which is part of a prospecting or mining operation with a permit under s. 144.84 or 144.85.

History: 1981 c. 374; 1983 a. 128; 1983 a. 282 ss. 6 to 34; 1983 a. 416 s. 19; 1983 a. 532 s. 36; 1983 a. 538.

144.446 Landfill official liability. **(1)** DEFINITION. As used in this section, "landfill official" means any officer, official, agent or employe of the state, a political corporation, governmental subdivision or public agency engaged in planning, management, operation or approval of a solid or hazardous waste disposal facility.

(2) EXEMPTION FROM LIABILITY. A landfill official is immune from civil prosecution for good faith actions taken within the scope of his or her official duties under this subchapter.

History: 1983 a. 410; 1983 a. 538 s. 158.

144.447 Acquisition of property by condemnation. **(1)** DEFINITION. In this section "property" includes any interest in land including any estate, easement, covenant or lien, any restriction on the use of land other

those imposed by exercis... any building, structure, f... and any personal prope... with land.

(2) PROPERTY MAY BE ... standing s. 32.03, propert... solid or hazardous wast... demned if all of the fol... met:

(a) The entity proposin... erty for use as a solid or h... has authority to conde... purpose.

(b) The property is det... for use as a solid or hazar... the department if that det... under s. 144.44 (2).

(c) The property is a... lease, gift or condemnati... public board or commissi... except for the state, so as... within the limitations o... general power of condem... within:

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History: 1981 c. 374.

144.448 Duties of metall... The metallic mining cou... department on the im... 144.435, 144.44, 144.44... 144.445, 144.60 to 144.74 ... those sections relate to r... state.

(2) The council shall s... problem-solving body to ... department on matters... tion of mined land i... methods of and criteria fo... struction and operatio... sites for the disposa... ted wastes.

(3) All rules proposed... to the subjects sp... submitted to the co... prior to the tim... final draft form... partment shall trans... all members of th... comments with t... rules to the a... tees of the legislatu... Written minutes of ... shall be prepared by...

statement of facts alleged, unless it is altered or set aside by a court. A ruling shall be subject to review in the circuit court in the manner provided for the review of administrative decisions.

(2) Petitions for declaratory rulings shall conform to the following requirements:

(a) The petition shall be in writing and its caption shall include the name of the agency and a reference to the nature of the petition.

(b) The petition shall contain a reference to the rule or statute with respect to which the declaratory ruling is requested, a concise statement of facts describing the situation as to which the declaratory ruling is requested, the reasons for the requested ruling, and the names and addresses of persons other than the petitioner, if any, upon whom it is sought to make the declaratory ruling binding.

(c) The petition shall be signed by one or more persons, with each signer's address set forth opposite his name, and shall be verified by at least one of the signers. If a person signs on behalf of a corporation or association, that fact also shall be indicated opposite his name.

(3) The petition shall be filed with the administrative head of the agency or with a member of the agency's policy board.

(4) Within a reasonable time after receipt of a petition pursuant to this section, an agency shall either deny the petition in writing or schedule the matter for hearing. If the agency denies the petition, it shall promptly notify the person who filed the petition of its decision, including a brief statement of the reasons therefor.

Doctrine of res judicata does not apply to proceedings of administrative agency, but this section requires internal consistency within proceeding by binding agency within that proceeding to its own declaratory ruling. Board of Regents v. Wisconsin Pers. Comm. 103 W (2d) 545, 309 NW (2d) 366 (Ct. App. 1981).

227.064 Right to hearing. **(1)** In addition to any other right provided by law, any person filing a written request with an agency for hearing shall have the right to a hearing which shall be treated as a contested case if:

(a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;

(b) There is no evidence of legislative intent that the interest is not to be protected;

(c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and

(d) There is a dispute of material fact.

(2) Any denial of a request for a hearing shall be in writing, shall state the reasons for denial, and is an order reviewable under this chapter. If the agency does not enter an order disposing of the request for hearing within 20 days from the date of filing, the request shall be deemed denied as of the end of the 20-day period.

(3) This section does not apply to rule-making proceedings or rehearings, or to actions where hearings at the discretion of the agency are expressly authorized by law.

(4) This section does not apply if a hearing on the matter was conducted as a part of a hearing under s. 144.836.

(5) Except as provided under s. 144.44 (2) (m), this section does not apply to any part of the process for approving a feasibility report, plan of operation or license under s. 144.44 or 144.64, any decision by the department of natural resources relating to the environmental impact of a proposed action under ss. 144.43 to 144.47 or 144.60 to 144.74, or any part of the process of negotiation and arbitration under s. 144.445.

(6) This section does not apply to a decision issued or a hearing conducted under s. 144.645.

History: 1975 c. 414; 1977 c. 418; 1979 c. 221; 1981 c. 374; 1983 a. 298.

227.065 Notice of hearing to division of hearings and appeals. The department of natural resources shall notify the division of hearings and appeals in the department of administration of every pending hearing to which the administrator of the division is required to assign a hearing examiner under s. 227.012 after the department of natural resources is notified that a hearing on the matter is required.

History: 1977 c. 418; 1983 a. 27 s. 2200 (1).

227.066 Payment for hearings and appeals examiner services. The department of natural resources shall pay all costs of the services of a hearing examiner assigned to the department under s. 227.012 according to the fee schedule set by the administrator of the division of hearings and appeals in the department of administration under s. 227.012 (2).

History: 1977 c. 418; 1983 a. 27 ss. 2200 (1), 2202 (1).

227.07 Contested cases; notice; hearing; records. **(1)** In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Except in the case of an emergency, reasonable notice shall consist of mailing notice to known interested parties at least 10 days prior to the hearing.

(2) The notice shall include:

(a) A statement of the time, place, and nature of the hearing, including whether the case is a class 1, 2 or 3 proceeding.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held, and, in the case of a class 2 proceeding, a reference to the particular statutes and rules involved.

(c) A short and plain statement of the matters asserted. If the matters cannot be stated with specificity at the time the notice is served, the notice may be limited to a statement of the issues involved.

(3) Opportunity shall be afforded all parties to present evidence and to rebut or offer countervailing evidence.

(4) (a) In any action to be set for hearing, the agency or hearing examiner may direct the parties to appear before it for a conference to consider:

1. The clarification of issues.
2. The necessity or desirability of amendments to the pleadings.
3. The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof.
4. The limitation of the number of witnesses.
5. Such other matters as may aid in the disposition of the action.

(b) The agency or hearing examiner presiding at a conference under this subsection shall make a memorandum for the record which summarizes the action taken at the conference, the amendments allowed to the pleadings and the agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements of the parties. Such memorandum shall control the subsequent course of the action, unless modified at the hearing to prevent manifest injustice.

(5) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. In any proceeding in which a hearing is required by law, if there is no such hearing, the agency or hearing examiner shall record in writing the reason why no such hearing was held, and shall make copies available to interested persons.

(6) The record in a contested case shall include:

(a) All applications, pleadings, motions, intermediate rulings and exhibits and appendices thereto.

(b) Evidence received or considered, stipulations and admissions.

(c) A statement of matters officially noticed.

(d) Questions and offers of proof, objections, and rulings thereon.

(e) Any proposed findings or decisions and exceptions.

(f) Any decision, opinion or report by the agency or hearing examiner.

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safety or welfare resulting from radioactive waste site exploration.

(c) *Hearing*. The department shall conduct a public hearing in the county where radioactive waste site exploration is to occur prior to exploration.

(3) APPROVAL REQUIRED PRIOR TO DRILLING. No person may engage in radioactive waste site exploration by drilling on a parcel unless notice is provided as required under sub. (2) and s. 144.832 (4) (a) and unless the department issues a written approval authorizing drilling on that parcel. If the person seeking this approval is the federal department of energy or an agent or employe of the federal department of energy, the department may not issue the approval unless the radioactive waste review board certifies that the federal department of energy and its agents or employes have complied with any requirement imposed by the radioactive waste review board under s. 16.08 or any agreement entered into under that section.

(4) REGULATION OF EXPLORATION AND RELATED PROVISIONS. Sections 144.83, 144.93 and 144.935 and rules promulgated under those sections apply to radioactive waste site exploration, to activities related to radioactive waste site exploration and to persons engaging in or intending to engage in radioactive waste site exploration or related activities in the same manner as those sections and rules are applicable to mineral exploration, to activities related to mineral exploration and to persons engaging in or intending to engage in mineral exploration or related activities.

(5) GROUNDWATER REGULATIONS. A person engaging in radioactive waste site exploration shall comply with any restrictions or prohibitions concerning the pollution or contamination of groundwater under ss. 144.025 or 144.80 to 144.94 or ch. 147 or any rule or order promulgated under those sections or that chapter.

(6) ENVIRONMENTAL IMPACT. Radioactive waste site exploration may constitute a major action significantly affecting the quality of the human environment. No person may engage in radioactive waste site exploration unless the person complies with the requirements under s. 1.11. Notwithstanding s. 23.40, the state may charge actual and reasonable costs associated with field investigation, verification, monitoring, preapplication services and preparation of an environmental impact statement.

(7) IMPACT ON RADIOACTIVE WASTE REVIEW BOARD. Nothing in this section limits the power or authority of the radioactive waste review board to impose more stringent requirements for the negotiation and approval of agreements under s. 16.08.

(8) IMPACT ON OTHER REQUIREMENTS. In addition to the requirements under this section, a person engaged in radioactive waste site exploration shall comply with all other applicable statutory requirements, rules and municipal ordinances and regulations. If a conflict exists between this section and another statute, rule, ordinance or requirement, the stricter provision controls.

History: 1983 a. 27.

144.834 Reclamation plans. (1) A reclamation plan shall accompany all applications for prospecting or mining permits. If it is physically or economically impracticable or environmentally or socially undesirable for the reclamation process to return the affected area to its original state, the plan shall set forth the reasons therefor and shall discuss alternative conditions and uses to which the affected area can be put.

(2) The plan shall specify how the applicant intends to accomplish, to the fullest extent possible, compliance with the minimum standards under s. 144.83 (2) (c).

History: 1977 c. 421.

144.836 Hearings on permit applications. This section, and ch. 227 where it is not inconsistent, shall govern all hearings on applications for prospecting or mining permits.

(1) SCOPE. (a) The hearing on the prospecting or mining permit shall cover the application and any statements prepared under s. 1.11 and, to the fullest extent possible, all other applications for approvals, licenses and permits issued by the department. The department shall inform the applicant as to the timely application date for all approvals, licenses and permits issued by the department, so as to facilitate the consideration of all other matters at the hearing on the prospecting or mining permits.

(b) Except as provided in this paragraph, for all department issued approvals, licenses and permits relating to prospecting or mining including solid waste feasibility report approvals and permits related to air and water, to be issued after April 30, 1980, the notice, hearing and comment provisions, if any, and the time for issuance of decisions, shall be controlled by this section and ss. 144.84 and 144.85. If an applicant fails to make application for an approval, license or permit for an activity incidental to prospecting or mining in time for notice under this section to be provided, the notice and comment requirements, if any, shall be controlled by the specific statutory provisions with respect to that application. If notice under those specific statutory notice requirements can

be given for consideration of the approval, license or permit at the hearing under this section, the application shall be considered at that hearing; otherwise, the specific statutory hearing provisions, if any, with respect to that application shall control. The substantive requirements for the issuance of any approval, permit or license incidental to prospecting or mining are not affected by the fact that a hearing on the approval, permit or license is conducted as part of a hearing under this section.

(2) LOCATION. The hearing shall be held in the county where the prospecting or mining site, or the largest portion of the prospecting or mining site, is located, but may subsequently be adjourned to other locations.

(3) TIMING OF NOTICE AND OF HEARING; GIVING OF NOTICE. (a) If it is determined that a statement under s. 1.11 is not required, the hearing shall be scheduled for a date not less than 60 days nor more than 90 days after the announcement of that determination, and the scheduling and providing of notice shall be completed not later than 10 days following the announcement. Notice of the hearing shall be given by mailing a copy of the notice to any known state agency required to issue a permit for the proposed operation, to the regional planning commission for the affected area, to the county, city, village and town within which any part of the affected area lies, to all persons who have requested this notification and, if applicable, to all persons specified under par. (b) 3. Written comments may be submitted to the department within 30 days of the date of notice.

(b) If it is determined that a statement under s. 1.11 is required, the department shall hold at least one informational meeting regarding the preliminary environmental report within 60 days of its issuance. The meeting shall be held not sooner than 30 days nor later than 60 days after the issuance of the report. The scheduling and providing of notice of the meeting shall be completed not later than 10 days following the issuance of the preliminary environmental report. A hearing referred to under sub. (1) shall be scheduled for a date not less than 120 days nor more than 180 days after the issuance of the environmental impact statement. The scheduling and providing of notice of the hearing shall be completed within 30 days from the date of issuance of the environmental impact statement. The providing of notice shall be accomplished by:

1. Mailing a copy of the notice to all known departments and agencies required to grant any permit necessary for the proposed operation, to any regional planning commission within which the affected area lies, to the governing bodies of all towns, villages, cities and counties within which any part of the proposed prospecting or mining site lies, to the governing bodies of any towns, villages or cities contiguous to any town, village or city within which any part of the proposed prospecting or mining site lies and to any interested persons who have requested such notification.

2. Publication of a class 2 notice, under ch. 985, utilizing a display advertising format, in the weekly newspaper published in the closest geographic proximity to the proposed prospecting or mining site, in the newspaper having the largest circulation in the county within which the proposed site lies and in those newspapers published in counties contiguous to the county within which the proposed site lies which have a substantial circulation in the area of, or adjacent to, the proposed prospecting or mining site.

3. Mailing a copy of the notice to the U.S. environmental protection agency, U.S. army corps of engineers and other states potentially affected by the proposed discharge if a water discharge permit under ch. 147 is to be considered at the hearing under this section and to the U.S. environmental protection agency and appropriate agencies in other states which may be affected if an air pollution control permit under ss. 144.30 to 144.426 is to be considered at the hearing under this section.

(c) Written comments may be submitted by any governmental agency within 80 days of the date of issuance of the statement under par. (b). Individual persons may submit written comments within 120 days of the date of issuance of the statement. The last day for receipt of comments shall be specified by the department in all notices.

(4) HEARING PROCEDURE. (a) At the opening of the hearing, the hearing examiner shall advise all persons present of their right to express their views either orally or in writing, under oath or otherwise, and of the legal effect of each form of testimony. All interested persons, at the hearing or at a time set prior to the hearing, shall be given an opportunity, subject to reasonable limitations on the presentation of repetitious or irrelevant material, to express their views on any aspect of the matters under consideration. The presentation of these views need not be under oath nor subject to cross-examination. A written record of unsworn testimony shall be made.

(b) Persons who wish to participate as parties shall file a written notice with the hearing examiner setting forth their interest at least 20 days prior to the scheduled time of the hearing or prior to the scheduled time of any prehearing

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History: 1977 c. 421; 1[...]

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F. Metallic Mining Council

Stat. 15.347 (12) METALLIC MINING COUNCIL A 9 member council is appointed by the Secretary of the DNR.

The Council is authorized to advise the department on the implementation of the laws for mining and the laws for the disposal of the mining wastes.

It is authorized to act as an advisory board on methods of and criteria for the dumping of mining wastes and on matters relating to reclamation.

The Council is authorized to review and comment on all rules proposed by the department relating to mining and the dumping of its wastes, and comments are required to be sent on to the appropriate standing committees. S. 144.448 (50)

The appointment of the 9 member board by the secretary of the DNR to supervise and advise the DNR, added to the fact that statutes lack provisions for public challenge of DNR's actions, establishes a closed circle that is well insulated from the public.

It was under this framework, with influential mining representatives on the Council, that the rules for mining and for disposal of the mining wastes were developed.

With the above set of circumstances, plus the flexibilities possible through exemptions and variances to any rule and the implementation of Stat.144.937 "Effects of other statutes", it is safe to say that the opportunity is there for the regulated to assume the role of the regulator.

> Stat. 15.347 (12) METALLIC MINING COUNCIL. There is created in the department of natural resources a metallic mining council consisting of 9 persons representing a variety and balance of economic, scientific and environmental viewpoints. Members shall be appointed by the secretary of the department for staggered 3-year terms.

those imposed by exercise of the police power, any building, structure, fixture or improvement and any personal property directly connected with land.

(2) PROPERTY MAY BE CONDEMNED. Notwithstanding s. 32.03, property intended for use as a solid or hazardous waste facility may be condemned if all of the following conditions are met:

(a) The entity proposing to acquire the property for use as a solid or hazardous waste facility has authority to condemn property for this purpose.

(b) The property is determined to be feasible for use as a solid or hazardous waste facility by the department if that determination is required under s. 144.44 (2).

(c) The property is acquired by purchase, lease, gift or condemnation by a municipality, public board or commission or any other entity, except for the state, so as to bring the property within the limitations on the exercise of the general power of condemnation under s. 32.03 within:

1. Five years prior to the determination of feasibility if a determination of feasibility is required for the facility under s. 144.44 (2).

2. Five years prior to the service of a jurisdictional offer under s. 32.06 (3) if a determination of feasibility is not required for the facility under s. 144.44 (2).

History: 1981 c. 374.

144.448 Duties of metallic mining council. (1) The metallic mining council shall advise the department on the implementation of ss. 144.435, 144.44, 144.441, 144.442, 144.444, 144.445, 144.60 to 144.74 and 144.80 to 144.94 as those sections relate to metallic mining in this state.

(2) The council shall serve as an advisory, problem-solving body to work with and advise the department on matters relating to the reclamation of mined land in this state and on methods of and criteria for the location, design, construction and operation and maintenance of facilities for the disposal of metallic mine-related wastes.

(3) All rules proposed by the department relating to the subjects specified in this section shall be submitted to the council for review and comment prior to the time the rules are proposed in final draft form by the department. The department shall transmit the written comments of all members of the council submitting written comments with the summary of the proposed rules to the appropriate standing committees of the legislature under s. 227.018.

(4) Written minutes of all meetings of the council shall be prepared by the department and made available to all interested parties upon request.

History: 1979 c. 355; 1981 c. 374 s. 148; 1983 a. 410 s. 2292 (38).

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

144.46 Shoreland and flood plain zoning. Solid waste facilities are prohibited within areas under the jurisdiction of shoreland and flood plain zoning regulations adopted pursuant to ss. 59.971, 61.351, 62.231 and 87.30, except that the department may issue permits authorizing facilities in such areas.

History: 1981 c. 374 s. 148; 1983 a. 416 s. 19.

144.465 Review of alleged violations. Any 6 or more citizens or any municipality may petition for a review of an alleged violation of ss. 144.43 to 144.47 or any rule promulgated or special order, plan approval, license or any term or condition of a license issued under those sections in the following manner:

(1) They shall submit to the department a petition identifying the alleged violator and setting forth in detail the reasons for believing a violation occurred. The petition shall state the name and address of a person within the state authorized to receive service of answer and other papers in behalf of the petitioners and the name and address of a person authorized to appear at a hearing in behalf of the petitioners.

(2) Upon receipt of a petition under this section, the department may:

(a) Conduct a hearing in the matter within 60 days of receipt of the petition. A hearing under this paragraph shall be a contested case under ch. 227. Within 60 days after the close of the hearing, the department shall either:

1. Serve written notice specifying the law or rule alleged to be violated, containing findings of fact, conclusions of law and an order, which shall be subject to review under ch. 227; or

2. Dismiss the petition.

(b) Initiate action under s. 144.47.

(3) If the department determines that a petition was filed maliciously or in bad faith, it shall issue a finding to that effect, and the person complained against is entitled to recover expenses on the hearing in a civil action.

History: 1981 c. 374.

144.47 Violations: enforcement. (1) (a) If the department has reason to believe that a viola-

G. Condemnation of land for waste facilities.

Stat. 32.02(12)[52] gives the power of condemnation of land for the siting of waste facilities.

Although proclaimed to prohibit mining companies the power of condemnation for the purpose of disposal of mining wastes, Stat. 32.02(12) does contain ambiguous language that conceivably could provide loopholes for the mining companies.

Who may condemn - S.32.02(12) Any person operating a plant which creates waste material which, if released without treatment would cause stream pollution, for the location of treatment facilities. This subsection does not apply to a person licensed under ss. 144.80 to 144.94.

Under strict interpretation, the only "license" obtainable under ss. 144.80 to 144.94 is a license to explore. (A "permit" is issued for mining.) The company that does the exploration seldom does the mining; and, if that were the case in a specific proposal for mining, the mining company would not be "licensed" under ss. 144.80 to 144.94. Presumably, then, it would have the power of condemnation for waste siting.

Also, the mining company can contract with other entities for the disposal of its wastes who would have the power of condemnation.

Another statute, s. 144.447[53] Acquisition of prop-erty by condemnation provides another interesting angle concerning the condemnation issue.

The general power of condemnation is not extended in certain circumstances, e.g., to property owned by the state or a municipality. This would make it possible for a community or a person, who does not want a proposed mining waste site on a certain property, to cede the property desired for a waste site, to the state or the municipality by various procedures, thus making it unavailable for condemnation.

However, in order to prevent lands being made unavailable for waste disposal in this manner, Stat, 144.447 was passed in 1982, which provides for condemnation of lands acquired by a municipality within a five year limitation.

(3) Any railroad corporation, any street or interurban railway corporation, any grantee of a permit to construct a dam to develop hydroelectric energy for sale to the public or for the operation of a street or interurban railway, any Wisconsin plank or turnpike road corporation, any drainage corporation, any interstate bridge corporation, or any corporation formed under chapter 288, laws of 1899, for any public purpose authorized by its articles of organization.

(4) Any Wisconsin telegraph or telephone corporation for the construction and location of its lines.

(5) Any Wisconsin corporation engaged in the business of transmitting or furnishing heat, power or electric light for the public for the construction and location of its lines or for ponds or reservoirs or any dam, dam site, flowage rights or undeveloped water power.

(6) Any Wisconsin corporation furnishing gas, electric light or power to the public, for additions or extensions to its plant and for the purpose of conducting tests or studies to determine the suitability of a site for the placement of a facility.

(7) Any Wisconsin corporation formed for the improvement of any stream and driving logs therein, for the purpose of the improvement of such stream, or for ponds or reservoir purposes.

(8) Any Wisconsin corporation organized to furnish water or light to any city or village or the inhabitants thereof, for the construction and maintenance of its plant.

(9) Any Wisconsin corporation transmitting gas, oil or related products in pipelines for sale to the public directly or for sale to one or more other corporations furnishing such gas, oil or related products to the public.

(10) Any rural electric co-operative association organized under ch. 185 which operates a rural electrification project to:

(a) Generate, distribute or furnish at cost electric energy at retail to 500 or more members of said association in accordance with standard rules for extension of its service and facilities as provided in the bylaws of said association and whose bylaws also provide for the acceptance into membership of all applicants therefor who may reside within the territory in which such association undertakes to furnish its service, without discrimination as to such applicants; or

(b) Generate, transmit and furnish electric energy at wholesale to 3 or more rural electric cooperative associations furnishing electric energy under the conditions set forth in par. (a), for the construction and location of its lines, substation or generating plants, ponds or reservoirs, any dam, dam site, flowage rights or undeveloped water power, or for additions or extension of its plant and for the purpose of conducting tests or studies to determine the suitability of a site for the placement of a facility.

(11) Any housing authority created under ss. 66.40 to 66.404, any redevelopment authority created under s. 66.431 or community development authority created under s. 66.4325.

(12) Any person operating a plant which creates waste material which, if released without treatment would cause stream pollution, for the location of treatment facilities. This subsection does not apply to a person licensed under ss. 144.80 to 144.94.

(13) Any corporation licensed to do business in Wisconsin that shall transmit oil or related products including all hydrocarbons which are in a liquid form at the temperature and pressure under which they are transported in pipelines in Wisconsin, and shall maintain terminal or product delivery facilities in Wisconsin, and shall be engaged in interstate or international commerce, subject to the approval of the public service commission upon a finding by it that the proposed real estate interests sought to be acquired are in the public interest.

(15) The department of transportation for the acquisition of abandoned railroad and utility property under s. 85.09.

(16) The department of natural resources with the approval of the appropriate standing committees of each house of the legislature as determined by the presiding officer thereof and as authorized by law, for acquisition of lands.

History: 1971 c. 100 s. 23; 1973 c. 243, 305; 1975 c. 6[illegible] 311; 1977 c. 29, 203, 438, 440; 1979 c. 34 s. 2102 (52) (b); 19[illegible] c. 122; 1979 c. 175 s. 53; 1981 c. 86, 346, 374; 1983 a. 2[illegible]

Cross Reference: See 13.48 (16) for limitation on condemnation authority of the building commission.

32.03 When condemnation not to be exercised. (1) The general power of condemnation conferred in this subchapter does not extend to property owned by the state, a municipality, public board or commission, nor to the condemnation by a railroad, public utility or electric cooperative of the property of either a railroad, public utility or electric cooperative unless such power is specifically conferred by law, provided that property not to exceed [illegible] feet in width owned by or otherwise under the control or jurisdiction of a public board or commission of any city may be condemned by a railroad corporation for right of way or other purposes, whenever such city by ordinance consents thereto. This subchapter does not apply to the acquisition by municipalities of the property of public utilities used and useful in their business, nor to any city of the 1st class, except that every such city may conduct any condemnation proceedings either under this subchapter

Stat. 144.447 Acquisition of property by condemnation. (1) DEFINITION. In this section, "property" includes any interest in land including an estate, easement, covenant or lien, any restriction or limitation on the use of land other than those imposed by exercise of the police power, any building, structure, fixture, or improvement and any personal property directly connected with the land.

(2) PROPERTY MAY BE CONDEMNED. Notwithstanding s. 32.03, property intended for use as a solid or hazardous waste facility may be condemned if all of the following conditions are met.

(a) The entity proposing to acquire the property for use as a solid or hazardous waste facility has authority to condemn property for this purpose.

(b) The property is determined to be feasible for use as a solid or hazardous waste facility by the department if that determination is required under s.144.44(2).

(c) The property is acquired by purchase, lease, gift or condemnation by a municipality, public board or commission or any other entity, except for the state, so as to bring the property within the limitations on the exercise of the general power of condemnation under s. 32.03 within:

1. Five years prior to the determination of feasibility if a determination of feasibility is required for the facility under s. 144.44(2).

2. Five years prior to the service of a jurisdictional offer under s. 32.06(3) if a determination of feasibility is not required for the facility under s. 144.44(2).

History: 1981 c.374.

H. Severed Mineral Rights Law.

Stat. 706.057 does not fulfill the original intent for a law that would result in the locating of all severed mineral rights in the state, identification of the owners and the recording of these facts in a form that would be readily accessible to the public.

The "uses" allowed in the law, to prevent a lapse of severed mineral rights, frustrate that original intent, and do more to conceal than reveal the wanted information.

E.g., One "use" allowed for preventing a lapse, a land transaction by which an interest in minerals (severed mineral rights) is created, reserved, mortgaged or assigned, will keep the records of most of the severed mineral rights exactly where they are now, for the time being, buried in land abstracts and volumes of real estate records needing an untold number of hours to research out.

At the end of the next twenty years, with no public notice required at that time, it is very doubtful that there will then be much action to bring severed mineral rights facts to light, and things will be pretty much as they are, concerning severed mineral rights.

Also, defining minerals to include sand and gravel, and allowing mining of sand and gravel as a "use" with no requirement to record the act, gives the owner of severed mineral rights a great opportunity to sidestep the revealing and recording of his claim.

The owner of severed mineral rights has ~~eminent domain~~ dominant estate of the property, which means he has the right to extract the minerals without permission of the surface owner. The only requirement is that he pay for any damages caused by his mining of the minerals.

The owner of the surface rights is required to pay taxes for his right to the land; while the owner of severed mineral rights is not required to pay any tax and yet enjoys ~~eminent domain~~ dominant estate of the land.

Only a law that requires every owner of severed mineral rights to record his claim with the register of deeds in a special volume for that purpose will accomplish the locating and recording of the severed mineral rights in the state.

STATE OF WISCONSIN

1983 Senate Bill 480

Date of enactment: May 10, 1984
Date of publication*: May 17, 1984

1983 Wisconsin Act 455

AN ACT *to repeal* 700.30; and *to create* 59.51 (18), 706.01 (7m) and (8m) and 706.057 of the statutes; and *to affect* laws of 1973, chapter 260, section 2, *relating to* requiring the registration of interests in minerals which are separate from the surface of land.

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

SECTION 1. 59.51 (18) of the statutes is created to read:

59.51 (18) Record and index statements of claim and perform other duties specified under s. 706.057 (7).

SECTION 2. 700.30 of the statutes is repealed.

SECTION 3. 706.01 (7m) and (8m) of the statutes are created to read:

706.01 (7m) "Interest in minerals" means any fee simple interest in minerals beneath the surface of land which is:

(a) Separate from the fee simple interest in the surface of the land; and

(b) Created by an instrument transferring, granting, assigning or reserving the minerals.

(8m) "Mineral" means a naturally occurring substance recognized by standard authorities as mineral, whether metalliferous or nonmetalliferous.

SECTION 4. 706.057 of the statutes is created to read:

706.057 Lapse and reversion of interests in minerals. (1) APPLICABILITY. This section does not apply to an interest in minerals which is owned by the same person who owns the fee simple interest in the surface of the land above the interest in minerals.

(2) USE OF AN INTEREST IN MINERALS. In this section, an interest in minerals is used if any of the following occur:

(a) Any minerals are mined in exploitation of the interest in minerals.

(b) A conveyance of mineral interests is recorded under this chapter.

(c) Any other conveyance evidencing a transaction by which the interest in minerals is created, aliened, reserved, mortgaged or assigned is recorded under this chapter.

(d) Property taxes are paid on the interest in minerals by the owner of the interest in minerals.

(e) The owner of the interest in minerals records a statement of claim under sub. (4) or (5) concerning the interest in minerals.

(3) LAPSE. (a) Except as provided in par. (b) or (c), an interest in minerals lapses if the interest in minerals was not used during the previous 20 years.

(b) An interest in minerals which was not used during the 20-year period prior to the effective date of this paragraph (1983), does not lapse if the interest in minerals is used within 3 years after the effective date of this paragraph (1983).

(c) An interest in minerals which was used during the period from 17 to 20 years prior to the effective date of this paragraph (1983), does not lapse if the interest in minerals is used within 3 years after the effective date of this paragraph (1983).

* Section 991.11, WISCONSIN STATUTES 1981-82: **Effective date of acts.** "Every act and every portion of an act enacted by the legislature over the governor's veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication must be within 10 working days from the date of enactment].

55a

(4) STATEMENT OF CLAIM; RECORDING; REQUIREMENTS. If the owner of an interest in minerals uses the interest in minerals by recording a statement of claim, the statement of claim shall comply with this subsection. The statement of claim shall contain the name and address of the owner of the interest in minerals, a description of the location and boundary of the interest in minerals and a reference to the recorded instrument which created the interest in minerals. The statement of claim shall be recorded with the register of deeds for the county in which the interest in minerals is located.

(5) CURE OF LAPSE. The lapse of an interest in minerals under sub. (3) is cured if the owner of the interest in minerals records a statement of claim complying with all of the requirements of sub. (4) and if the statement of claim is recorded before a statement of claim is recorded under sub. (6).

(6) CLAIM OF LAPSED INTEREST IN MINERALS. The owner of the land under which a lapsed interest in minerals exists may claim that portion of the interest in minerals which lies beneath the owner's land by recording a statement of claim. The statement of claim shall contain the name and address of the owner of the land under which the lapsed interest in minerals is located and a description of the land under which the interest in minerals is located. The statement of claim shall be recorded with the register of deeds for the county in which the land is located.

(7) STATEMENT OF CLAIM; RECORDING; REGISTER OF DEEDS' DUTY. The register of deeds shall provide copies of the uniform form for statements of claim under subs. (4), (5) and (6). Upon receipt of a statement of claim under sub. (4), (5) or (6) in the office of the register of deeds, the register of deeds shall record the claim in a manner which will permit the existence of an interest in minerals to be determined by reference to the parcel or parcels of land above the interest in minerals. The claimant shall pay the recording fee under s. 59.57.

(9) DETERMINATION OF OWNERSHIP. (a) The owner of an interest in minerals which is the subject of a claim under sub. (6), within 3 years after the claim is recorded with the register of deeds, may bring an action for a declaratory judgment or declaration of interest on the ownership of the interest in minerals. The action shall be commenced in the circuit court in the county where the interest in minerals is located.

(b) 1. If the court finds that the owner of the interest in minerals used the interest in minerals within the time limits specified under sub. (3) or that the owner of the interest in minerals recorded a claim under sub. (5) before the surface owner recorded a claim under sub. (6), the court shall issue a judgment declaring that the interest in minerals is not lapsed.

2. If the court finds that the owner of the interest in minerals did not use the interest in minerals within the time limits specified under sub. (3) and that the surface owner's claim under sub. (6) was recorded before the claim under sub. (5), the court shall issue a judgment affirming the surface owner's claim.

(c) Upon the issuance of a judgment affirming the surface owner's claim or, if no action is brought under par. (a), at the end of the 3-year period after the surface owner's claim is recorded, the ownership of the interest in minerals reverts to the owner of the land under which the lapsed interest in minerals is located and title to the interest in minerals is merged with the title to the surface of the land.

(10) WAIVER; LIMITATION. No person may waive or agree to waive the provisions of this section and any waiver or agreement of this type is void.

SECTION 5. Laws of 1973, chapter 260, section 2 is repealed.

SECTION 6. **Nonstatutory provisions; administration.** (1) NEWSPAPER NOTICE. At least 3 years and not later than 3 years and one month after the effective date of this SECTION, the secretary of administration shall publish a class 1 notice, under chapter 985 of the statutes, in a sufficient number of newspapers with statewide circulation that the notice is likely to be received by all persons in this state. The notice shall state that surface owners who do not own the minerals beneath their land may be able to claim the interest in minerals. The notice shall describe the circumstances in which the surface owner may file a claim and all of the procedures in section 706.057 of the statutes, as created by this act.

(2) UNIFORM FORM. As soon as possible after the effective date of this SECTION, the department of administration in cooperation with various registers of deeds shall prepare a uniform form for the statement of claim specified under section 706.057 (4), (5) and (6) of the statutes, as created by this act.

SECTION 7. **Effective date.** This act takes effect on July 1, 1984.

I. The final point that I am going to deal with, which in actuality is a question, maybe important and maybe of little consequence, is Stat. 144.44(2r)(b).(31) No one, as yet, has given me a satisfactory answer.

Question: What possible implications could result because of the word "section" in s. 144.44(2r)(b) instead of the word "subsection"?

"Subsection" is the word appearing in s. 144.44(2g),(37) in a comparable situation. Both of these statutes are dealing with hearings, yet I am sure that the ensuing implications will differ considerably. "Section"covers the whole of s. 144.44 dealing with siting, feasibility report, operational plan and licensing of solid wastes, while "subsection" covers only the pertinent subsection.

Note: The following clause from s. 144.44(2r)(b) seems to be made redundant by s. 144.836(1)(b)(46): " and the time limits, notice and hearing provisions under that section supersede the time limits, notice and hearing provisions under sub. (2)(j) to (m) and this subsection."

Study finds long-range link to acid rain

Aug 24 1985 M.J.

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New York, N.Y. — According to a new scientific report, for the first time changes in the acidity of rainfall have been directly linked to changes in pollution emissions hundreds of miles away.

The existence of a direct correlation between levels of pollution and the level of acids in distant rainfall has been the subject of intense debate, and drafts of the report have already stirred more controversy. Government experts questioned its conclusions, while other scientists said the report represented a major advance in acid-rain research.

The study was prepared by scientists from the Environmental Defense Fund, a group that has advocated strong measures against acid rain. Its findings were published Friday in the journal Science.

The study examined the effects of the large annual variations in smokestack emissions from smelters in the Southwest. The study said those copper smelters accounted for about two-thirds of the sulfur dioxide discharged to the atmosphere in the region between the Sierras in California and the Continental Divide. Sulfur dioxide is one of the chief agents that can be transformed into acids that fall back to Earth in precipitation.

IV. CONCLUSION

One can only conclude, after reviewing these laws and rules, that if mining proceeds under the present laws and rules, the local people of the mining areas and the taxpayers will be subsidizing the mining industry. Furthermore, future generations will suffer the dangers and costs of the treacherous pollution problems associated with the mining and smelting of sulfuric acid producing massive sulfide mineral orebodies, such as Exxon's near Crandon and Kennecott's near Ladysmith.

Smelting has had little mention. However, no metal mined can be used until it is refined. If mining proceeds, so will smelting. Smelting is the major source of acid rain in Canada where mining is an important industry; and recent studies show that copper smelters account for about two-thirds of the sulfur dioxide(acid rain) discharged to the atmosphere between the Sierras in California and the Continental Divide. See p. 56

Regardless of these serious facts, the fundamental question has remined unanswered; indeed, it has not even been asked in the public square. Should mining happen in Wisconsin?

Cleverly, all attention was averted from this most important question; and the state and local governmens were geared up to view mining as an established fact.

Why are the corporations so interested in Wisconsin's minerals at this time? We can only guess.

Basically, a corporation is established for perpetuity, for the purpose of making profits; so in order to perpetuate itself, it must ever be searching for new areas to exploit.

Wisconsin's minerals have been targeted as a new area to exploit. The mining corporations have done well in getting laws in this new area that will accomplish their goal of the greatest possible profits with little regard for the consequences of their actions.

In my estimation, unless the law and policy makers of the state do a turn around and listen to the people instead of the corporate powers, enact laws that protect the people instead of the corporations, and enact laws that curtail the corporations instead of the people, northern Wisconsin will be forced into the role of a resource colony for the multinational corporations.

This is said with all due respect and admiration for those in the state government, who have been and are taking strong stands against the inroads of the corporations. Unfortunately, they are in the minority.