

**SECTION 96. Nonstatutory provisions; development.** (1) **SMALL BUSINESS ENVIRONMENTAL COUNCIL.** Notwithstanding the length of terms specified in section 15.157 (10) (intro.) of the statutes, as created by this act, the initial terms of the members of the small business environmental council expire as follows:

- (a) The members appointed under section 15.157 (10) (b) and (e) of the statutes, and one of the members appointed under section 15.157 (10) (a) of the statutes, on July 1, 1995.
- (b) The members appointed under section 15.157 (10) (c) and (d) of the statutes, and one of the members appointed under section 15.157 (10) (a) of the statutes, on July 1, 1994.
- (c) The members appointed under section 15.157 (10) (f) and (g) of the statutes, and one of the members appointed under section 15.157 (10) (a) of the statutes, on July 1, 1993.

## CHAPTER 110

### MOTOR VEHICLES

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**110.20 Motor vehicle emission inspection and maintenance program.** **(1)** DEFINITIONS. In this section, unless the context requires otherwise:

(ac) "Air pollution control equipment" has the meaning given in s. 285.30 (6) (a) 1.

(am) "Federal act" means the federal clean air act, 42 USC 7401 et seq., and regulations issued by the federal environmental protection agency under that act.

(b) "Nonexempt vehicle" means any motor vehicle as defined under s. 340.01 (35) which is owned by the United States or which is required to be registered in this state and to which one or more emission limitations adopted under s. 285.30 (2) applies.

(c) "Nontransient emissions inspection" means an emissions inspection conducted on a vehicle without the use of a chassis dynamometer to vary vehicle engine loads.

**(2)** PROGRAM ESTABLISHED. The department shall establish an inspection and maintenance program as provided in this section.

**(3)** PURPOSE. (a) The inspection and maintenance program shall be designed to determine compliance with the emission limitations promulgated under s. 285.30 (2) and compliance with s. 285.30 (6).

(c) The inspection and maintenance program may be designed to provide information on the fuel efficiency of nonexempt vehicles.

(d) The inspection and maintenance program shall be designed and operated to comply with the requirements of the federal act.

**(4)** DEPARTMENTAL COOPERATION. The department shall consult and cooperate with the department of natural resources in order to efficiently and fairly establish and administer the program established under this section.

**(5)** COUNTIES. The department shall operate the inspection and maintenance program in each of the following counties:

(a) Any county identified in a certification under s. 285.30 (3). The department shall terminate the program in the county at the end of the contractual period in effect when the county is withdrawn under s. 285.30 (4).

(b) Any county whose board of supervisors has adopted a resolution requesting the department to establish an inspection and maintenance program in the county for the purpose of improving ambient air quality beyond the standards mandated by section 7409 of the federal act. The department shall terminate the program in the county at the end of the contractual period in effect when the county board adopts a resolution requesting termination of the program.

**(6) MANDATORY INSPECTION.** (a) The program shall require an emissions inspection under sub. (11) of any nonexempt vehicle customarily kept in a county identified in sub. (5) as follows:

1. For a nonexempt vehicle required to be registered on an annual or other periodic basis in this state, within the period of time specified by the department under sub. (9) (d) prior to renewal of registration in the 2nd year after the nonexempt vehicle's model year and every 2 years thereafter, except as provided in sub. (9) (j).

2. For a nonexempt vehicle required to be registered on an annual or other periodic basis in this state, within the period of time specified by the department under sub. (9) (d) of registration other than renewal if the year of registration is at least 6 years after the nonexempt vehicle's model year.

3. For a nonexempt vehicle that is registered under s. 341.26 (2m), owned by the United States or subject to one-time registration, at any time during the 2nd year following the nonexempt vehicle's model year and every 2 years thereafter.

4. For a nonexempt vehicle, whenever the owner of the vehicle is notified under sub. (9) (g) that an emissions inspection must be performed.

(b) The program shall require an air pollution control equipment inspection to determine compliance with s. 285.30 (6) of any nonexempt vehicle customarily kept in a county identified in sub. (5) whenever a nontransient emissions inspection is performed or at the time of application for a waiver under sub. (13).

**(6m) PROHIBITED INSPECTIONS.** The department may not require an emissions inspection of any vehicle prior to the inspection of the vehicle scheduled under sub. (6) (a) 1. or (9) (d) or (j) if an interest in the vehicle is transferred to a surviving spouse under s. 342.17 (4).

**(7) VOLUNTARY INSPECTIONS.** The inspection and maintenance program shall require inspection of any nonexempt vehicle which a person presents for inspection at an inspection station.

**(8) CONTRACTORS.** (a) The emissions test and equipment inspection of nonexempt vehicles shall be performed by persons under contract with the department. The contract shall require the contractor to operate inspection stations for a minimum of 3 years and shall provide for equitable compensation to the contractor if the operation of an inspection and maintenance program within any county is terminated within 3 years after the inspection and maintenance program in the county is begun. No officer, director or employee of the contractor may be an employee of the department or a person engaged in the business of selling, maintaining or repairing motor vehicles or of selling motor vehicle replacement or repair parts. The department shall require the contractor to operate a sufficient number of inspection stations, permanent or mobile, to ensure public convenience in those counties identified under sub. (5).

(b) The department may require the contractor to test the fuel efficiency of nonexempt vehicles during emission inspections.

(c) The department may delegate to the contractor specified registration functions of the department under ch. 341. The department may direct the contractor to perform specified registration functions under ch. 341.

(cm) The department may delegate to the contractor functions associated with the issuance of a temporary operating permit under sub. (10) (b) or the waiver of compliance under sub. (13) (a) or both.

(d) No inspection station may be established within 0.5 mile of an air monitoring station which reported a violation during the period from 1976 to 1979 of the carbon monoxide primary national ambient air quality standard as defined by the department of natural resources.

(e) The contractor shall collect, maintain and report data as the department requires. The department shall reserve the right to enter and inspect test station premises, equipment and records at all reasonable times in the discharge of its administrative duties. The department of revenue shall audit the records of the contractor

annually and shall provide for the publication of the results of audits conducted under this paragraph in the official state newspaper.

**(9) RULES.** The department shall promulgate rules which:

(a) Specify procedures for the inspection of vehicles, including the method of measuring emissions, the types of equipment which may be used in performing the measurements and the calibration requirements for the equipment. The procedures and methods shall be capable of being correlated with the federal test procedures established under section 7525 of the federal act.

(b) Prescribe a procedure for determining whether the cost of necessary repairs and adjustments exceeds the limit under sub. (13).

(c) Specify procedures under which a vehicle may be refused inspection for safety reasons or for defects which would result in inaccurate measurement of emissions.

(d) Specify a period of time during which an emissions inspection must be performed for a nonexempt vehicle subject to sub. (6) (a) 1. or 2.

(e) Prescribe a procedure for conducting all federally required performance audits of inspection and maintenance program operations and personnel and all enforcement against contractors required by 40 CFR 51.364.

(f) Establish a performance monitoring system to inform the public regarding repair efficacy.

(g) Prescribe a procedure for remote sensing of not less than 0.5% of nonexempt vehicles and, for such vehicles that grossly exceed applicable emission limitations, as determined by the department, notifying vehicle owners by mail that an emissions inspection must be performed under sub. (6) (a) 4.

(h) Provide procedures for identifying any nonexempt vehicle subject to a recall by the manufacturer of the vehicle that is related to emissions and ensuring motorist compliance with the recall.

(i) Provide a procedure for detecting and preventing the fraudulent classification of any nonexempt vehicle as a vehicle that is not a nonexempt vehicle.

(j) Prescribe an annual frequency for inspection for any model year subset of nonexempt vehicles if the department determines annual inspection to be appropriate after additional program evaluation.

**(10) RECIPROCITY; TEMPORARY OPERATING PERMIT AND EXEMPTIONS.** The department may promulgate rules which:

(a) Authorize the acceptance of an inspection performed in another state instead of an inspection required under this section if the inspection in the other state was performed under procedures, requirements and standards comparable to those required under this section and it satisfies the requirements of the federal act.

(b) Authorize the issuance of a temporary operating permit, valid for not more than 30 days, to allow time for inspection and necessary repairs and adjustments of any motor vehicle subject to inspection under sub. (6).

(c) Permit a temporary exemption for nonexempt vehicles absent from an emissions inspection area.

(d) Authorize the issuance of a certificate of compliance for nonexempt vehicles that fail the inspection tests under sub. (11) (a) for applicable emission limitations but complete a comprehensive physical and functional diagnostic inspection which indicates that no adjustments or repairs will bring the vehicle into compliance with applicable emissions limitations.

**(10m) REINSPECTION.** The owner of a nonexempt vehicle inspected under this section is entitled, if the inspection determines that any applicable emission limitation is exceeded, to one reinspection of the same vehicle at any inspection station within this state if the reinspection takes place within 30 days after the initial inspection or the owner presents satisfactory evidence that the repairs and adjustments which were performed on the vehicle could not have been made within 30 days of the initial inspection.

**(11) INSPECTION TESTS; RESULTS.** (a) The contractor shall perform the tests required under the federal act. The tests shall include one of the approved short tests required by the federal act to determine compliance with applicable emission limitations for carbon monoxide, hydrocarbons and oxides of nitrogen. The department may require the contractor to provide information on the fuel efficiency of the motor vehicle.

(b) The department shall require the contractor to furnish the results of the emissions inspection in writing to the person presenting the vehicle for inspection before he or she departs from the inspection station. If the inspection shows that the vehicle does not comply with one or more applicable emissions limitations, the results shall include, to the extent possible, a description of the noncompliance and the adjustments or repairs likely to be needed for compliance.

**(12) REPAIRS.** Repairs or adjustments necessary to bring a vehicle into compliance with applicable emissions limitations are the responsibility of the vehicle owner and may be made by the owner or any person selected by the owner. For a nonexempt vehicle with a model year of 1981 or later, only repairs performed by automotive repair technicians, as defined by the department by rule, shall be valid for the issuance of a waiver of compliance under sub. (13).

**(13) REPAIR COST LIMIT.** (a) The department shall issue a waiver of compliance valid until the next required inspection of the vehicle under sub. (6) if the owner presents satisfactory evidence to the department that the actual costs of repairs performed on a vehicle in accordance with an inspection report under sub. (11) (b) exceeded the repair cost limit established under par. (b).

(b) The department of natural resources shall, by rule, establish the amount of the repair cost limit to equal the amount required under 42 USC 7511a (b) 4. or (c) (3) (C).

(c) In determining the costs of repairs and adjustments included in the repair cost limit, the following costs shall be excluded:

1. Costs covered by any warranty.
2. Costs necessary to repair or replace any emissions control system or mechanism which has been removed, dismantled or rendered inoperative in violation of s. 285.30 (6) or rules promulgated under that section.

**(14g) USE OF STATE SUPPORTED REVENUE BORROWING.** The department may not use state supported revenue borrowing for the inspection and maintenance program without the approval of the joint committee on finance.

**(15) PENALTY.** Any person who violates this section or rules promulgated under this section may be required to forfeit not more than \$500.

**History:** 1979 c. 274; 1981 c. 20; 1983 a. 27; 1987 a. 27, 218; 1989 a. 56; 1991 a. 39, 302; 1993 a. 16, 288, 491; 1995 a. 227; 1997 a. 46; 2001 a. 16.

**Cross Reference:** See also ch. Trans 131, Wis. adm. code.

**CHAPTER 144****WATER, SEWAGE, REFUSE, MINING AND AIR POLLUTION**

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## SUBCHAPTER I

## DEFINITIONS

**144.01 Definitions.** Except as the context requires otherwise, the following terms as used in this chapter mean:

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

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

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

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

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

(6) "Municipality", any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district.

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

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

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

(9m) "Person" means an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.

(10) "Pollution" includes contaminating or rendering unclean or impure the waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

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

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

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

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

(15) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 147, or source, special nuclear or by product material as defined under s. 140.52.

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

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

(18) "Wastewater", all sewage.

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

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

(21) "Waterworks," or "water system," all structures, conduits and appurtenances by means of which water is delivered to consumers except piping and fixtures inside buildings

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~~appropriate sources for advice and assistance in connection with particular water use problems.~~

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

- ~~1. Domestic uses shall be generally preferred.~~
- ~~2. Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source.~~
- ~~3. Areas in which the existing or potential economic value of public, recreational or similar uses exceeds the existing or potential economic value of any other use shall be classified primarily on the basis of the higher economic use value.~~
- ~~4. Use locations within an area tending to minimize the possibility of pollution shall be preferred over locations tending to increase that possibility.~~
- ~~5. Use dispersions within an area shall be preferred over concentrations of uses or their undue proximity to each other.~~

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

~~(6) Within the purposes of sub. (1) the department shall prepare and provide to municipalities general recommended standards and criteria for navigable water protection studies and planning and for navigable water protection regulations and their administration. Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations.~~

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

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

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

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

*History:* 1975 c. 232; 1977 c. 29.

*See note to art. I, sec. 13, citing Just v. Marinette County, 56 W (2d) 7, 201 NW (2d) 761.*

*The concept that an owner of real property can, in all cases, do as he pleases with his property is no longer in harmony with the realities of society. The supreme court herein adopts the "reasonable use" rule codified in the second Re-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.*

**144.27 Limitation.** Nothing in this sub-chapter affects ss. 196.01 to 196.79 or ch. 31.

*History:* 1979 c. 221 s. 624.

### SUBCHAPTER III

#### AIR POLLUTION

**144.30 Air pollution; definitions.** As used in ss. 144.30 to 144.426 unless the context requires otherwise:

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

~~(2) "Air contaminant source" means any facility, building, structure, equipment, vehicle or action which may emit or result in the emission of an air contaminant directly, indirectly or in combination with another facility, building, structure, equipment, vehicle or action.~~

~~(3) "Air pollution control permit" means any permit required or allowed under s. 144.391.~~

~~(3m) "Allocation of the available air resource" means either:~~

~~(a) The apportionment among air contaminant sources of the difference between an ambient air quality standard and the concentration in the atmosphere of the corresponding air contaminant in existence at the time the rule promulgated under s. 144.373 becomes effective; or~~

~~(b) The apportionment among air contaminant sources of the difference between an ambient air increment and the baseline concentration if a baseline concentration is established.~~

~~(4) "Allowable emission" means the emission rate calculated using the maximum rated~~

capacity of the origin of, or the equipment emitting an air contaminant based on the most stringent applicable emission limitation and accounting for any enforceable permit conditions which limit operating rate, or hours of operation, or both.

(5) "Ambient air increment" means the maximum allowable concentration of an air contaminant above the base line concentration.

(6) "Ambient air quality standard" means a level of air quality which will protect public health with an adequate margin of safety or may be necessary to protect public welfare from anticipated adverse effects.

(7) "Attainment area" means an area which is not a nonattainment area.

(8) "Base line concentration" means concentration in the atmosphere of an air contaminant which exists in an area at the time of the first application to the U.S. environmental protection agency for a prevention of significant deterioration permit under section 165 of the federal clean air act or the first application for an attainment area major source permit under s. 144.391 (2), whichever occurs first, less any contribution from stationary sources identified in section 169 (4) of the federal clean air act.

(9) "Best available control technology" means an emission limitation for an air contaminant based on the maximum degree of reduction achievable as specified by the department on an individual case-by-case basis taking into account energy, economic and environmental impacts and other costs related to the source.

(9m) "Construction or modification permit" means any permit under s. 144.391 (1) (b) 1, (2) (b) 1 or (3) (b) 1.

(9p) "Construction or new operation permit" means a permit under s. 144.391 (1) (b), (2) (b) or (3) (b).

(9r) "Elective operation permit for an existing source" or "elective operation permit" means a permit under s. 144.391 (1) (c), (2) (c) or (3) (c).

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

(11) "Emission limitation" or "emission standard" means a requirement which limits the quantity, rate or concentration of emissions of air contaminants on a continuous basis. An emission limitation or emission standard includes a requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(12) "Emission reduction option" means:

(a) An offsetting of greater emissions from a stationary source against lower emissions from the same or another stationary source.

(b) A reduction in emissions from a stationary source which is reserved as a credit against future emissions from the same or another stationary source.

(c) Other arrangements for emission reduction, trade off, credit or offset permitted by rule by the department.

(14) "Federal clean air act" means the federal clean air act, as amended, on July 29, 1979 (42 USC 7401 et seq.) and regulations issued by the federal environmental protection agency under that act.

(15) "Lowest achievable emission rate" means the rate of emission which reflects the more stringent of the following:

(a) The most stringent emission limitation which is contained in the air pollution regulatory program of any state for this class or category of source, unless an applicant for a permit demonstrates that these limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by the class or category of source.

(17m) "Mandatory operation permit for an existing source" or "mandatory operation permit" means a permit under s. 144.391 (1) (bm), (2) (bm) or (3) (bm).

(18m) "Major source construction or new operation permit" means a permit under s. 144.391 (1) (b) or (2) (b).

(19) "Major source permit" means any permit under s. 144.391 (1) or (2).

(19m) "Minor source construction or new operation permit" means a permit under s. 144.391 (3) (b).

(20) "Modification" means any changes in the physical size or method of operation of a stationary source which increases the potential amount of emissions of an air contaminant or which results in the emission of an air contaminant not previously emitted or which results in the violation of an ambient air increment. In determining if a change in the physical size or method of operation of an attainment area major source is a modification, an increase in the potential amount of emissions of an air contaminant occurs only if there is an increase in the net amount of emissions of the air contaminant.

(21) "Nonattainment area" means an area identified by the department in a document prepared under s. 144.371 (2) where the concentration in the atmosphere of an air contaminant exceeds an ambient air quality standard.

(22) "Nonattainment area major source construction or new operation permit" means a permit under s. 144.391 (1) (b).

(22m) "Operation permit", unless otherwise qualified, means any permit under s. 144.391

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(1) (b) 2, (bm) or (c), (2) (b) 2, (bm) or (c) or (3) (b) 2, (bm) or (c).

**(23)** "Stationary source" means an air contaminant source which directly or indirectly is capable of emitting an air contaminant only from a fixed location. A stationary source includes an air contaminant source which is capable of being transported to a different location. A stationary source may consist of one or more pieces of process equipment, each of which is capable of emitting an air contaminant. A stationary source does not include a motor vehicle or equipment which is capable of emitting an air contaminant while moving.

**History:** 1971 c. 125, 130, 211; 1977 c. 377; 1979 c. 34, 221. The social and economic roots of judge-made air pollution policy in Wisconsin. Laitos, 58 MLR 465.

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

(a) Promulgate rules implementing and consistent with ss. 144.30 to 144.426 and 144.96.

(b) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of ss. 144.30 to 144.426 and 144.96.

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

(d) Collect and disseminate information and conduct educational and training programs relating to the purposes of ss. 144.30 to 144.426 and 144.96.

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

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

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

(h) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source, device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall relieve any person from compliance with ss. 144.30 to 144.426 or rules pursuant thereto, or any other provision of law.

(i) Prepare and adopt minimum standards for the emission of mercury compounds or metallic mercury into the air.

(k) Specify the best available control technology on an individual case-by-case basis considering energy, economic and environmental impacts and other costs related to the source.

(m) Coordinate the reporting requirements under ss. 144.394 and 144.96 in order to minimize duplicative reporting requirements.

(p) Promulgate by rule the actions or events which constitute the reconstruction of a major source. The department shall submit the notice required under s. 227.018 regarding rules under this paragraph by January 1, 1984.

(2) The department may:

(a) Hold hearings relating to any aspect of the administration of ss. 144.30 to 144.426 and 144.96 and, in connection therewith, compel the attendance of witnesses and the production of evidence.

(b) Issue orders to effectuate the purposes of ss. 144.30 to 144.426 and 144.96 and enforce the same by all appropriate administrative and judicial proceedings.

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

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

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

(f) Examine any records relating to emissions which cause or contribute to air contamination.

**History:** 1971 c. 125 s. 522 (2); 1979 c. 34 ss. 979h, 979j, 980p, 980t, 984ng, 2102 (39) (g); 1979 c. 175; 1979 c. 221 ss. 627fd to 627fm, 2202 (39).

**144.32 Federal aid.** Subdivisions of this state and interlocal agencies may make application for, receive, administer and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control if first submitted to and approved by the department. The department shall approve any such application if it is consistent with the purposes of ss. 144.30 to 144.426 and any other applicable requirements of law.

**History:** 1979 c. 34.

**144.33 Confidentiality of records. (1)**

~~RECORDS~~ Except as provided under sub. (2), any records or other information furnished to or obtained by the department in the administration of ss. 144.30 to 144.426 and 144.96 are public records subject to s. 19.21.

~~(2) CONFIDENTIAL RECORDS~~ Any records or information, except emission data, received by the department and certified by the owner or operator to relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of the owner or operator are only for the confidential use of the department in the administration of ss. 144.30 to 144.426 and 144.96, unless the owner or operator expressly agrees to their publication or availability to the general public. Nothing in this subsection prevents the use of the records or information by the department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, if the analyses or summaries do not identify a specific owner or operator.

~~History: 1971 c. 125 s. 522 (2); 1979 c. 34; 1979 c. 221 s. 2202 (39).~~

mandatory operation permit requirements for existing sources, the costs, paperwork, delays and other burdens, if any, incurred by permit applicants in order to comply with the mandatory operation permit requirements for existing sources and the benefits to the citizens of the state in reduced air pollution and more effective management of the state's air resource. The air pollution control council shall report the results of this study to the legislature by July 1, 1988.

~~(3) STUDY OF ENFORCEMENT~~ The air pollution control council, with the cooperation and assistance of the department, shall conduct a study to identify any mechanism to minimize conflicting enforcement of the air pollution control permit program by the department and the federal environmental protection agency. The study shall include an examination of the enforcement of provisions in state law which are not required by the federal clean air act. The air pollution control council shall report the results of this study to the legislature and the natural resources board.

~~History: 1979 c. 221 ss. 627gb, 627gm; 1979 c. 355.~~

**144.355 Air resource allocation council.**

~~(1) GENERAL DUTIES~~ The air resource allocation council shall advise the department on the allocation of the available air resource in attainment areas.

~~(2) STAFF~~ The department of natural resources shall provide adequate staff for the air resource allocation council to meet its responsibilities under subs. (3) to (5).

~~(3) RECOMMENDATIONS~~ The air resource allocation council shall prepare recommendations for the allocation of the available air resource in attainment areas among possible future sources considering ambient air quality standards, ambient air increments and emission limitations. These recommendations may include:

~~(a) Formulas for the reservation of certain amounts of the available air resource for future development.~~

~~(b) Factors to be considered in allocating the available air resource.~~

~~(c) Methods to determine the amount by which a source reduces or has the potential to reduce the amount of the available air resource.~~

~~(d) Methods to be used in establishing emission reduction options to apportion the available air resource.~~

~~(e) Methods for the continuing evaluation of policies related to the allocation of the air resource and public participation in this process.~~

~~(f) Identification of the air resources which the department should allocate.~~

**144.35 Air pollution control council. (1)**

~~GENERAL DUTIES~~ The air pollution control council shall advise the natural resources board on proposed and existing rules and any matters pertaining to air pollution.

~~(2) STUDY OF MANDATORY OPERATION PERMIT REQUIREMENTS FOR EXISTING SOURCES~~ The air pollution control council with the cooperation and assistance of the department shall conduct a study on the requirement of mandatory operation permits for existing sources. The study shall describe the implementation of the

**(4) CONSIDERATIONS.** In preparing its recommendations, the air resource allocation council shall consider:

- (a) Present and future development needs.
- (b) Priorities for certain types of development.
- (c) Compatibility of certain types of development with existing uses.
- (d) The possibility and the impact of stricter or more relaxed air quality standards, ambient air increment and emission limitations.

**(5) REPORT.** The air resource allocation council shall report its recommendations to the natural resources board by January 1, 1984.

**(6) SUNSET.** This section is effective until January 2, 1984.

History: 1979 c. 221.

NOTE: Chapter 221, laws of 1979, repeals this section effective January 2, 1984.

**144.371 Identification of nonattainment areas.**

**(1) PROCEDURES AND CRITERIA.** The department shall promulgate by rule procedures and criteria to identify a nonattainment area and to reclassify a nonattainment area as an attainment area. The department shall submit the notice required under s. 227.018 regarding rules under this subsection by July 1, 1982.

**(2) DOCUMENTS.** The department shall issue documents from time to time which define or list specific nonattainment areas based upon the procedures and criteria promulgated under sub. (1). Notwithstanding s. 227.01 (9) or (10), documents issued under this subsection are not rules.

**(3) REVIEW.** The documents issued under sub. (2) may be reviewed under ss. 227.064 and 227.15.

**(4) PROCEDURES.** For any document issued under sub. (2) after April 30, 1980, the department shall hold a public hearing and follow the procedures in this subsection. The department shall give notice of the public hearing, and shall take any steps it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed document. The notice shall be given at least 30 days prior to the date set for the hearing. The notice shall include a statement of the time and place at which the hearing is to be held and either a text of the proposed document or a description of how a copy of the document may be obtained from the department at no charge. The department shall hold a public hearing at the time and place designated in the notice of hearing, and shall afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposal under consideration. The presiding officer may limit oral presentations if it appears that the length of the

hearing otherwise would be unduly increased by reason of repetition. The department shall afford each interested person opportunity to present facts, views or arguments in writing whether or not he or she has had an opportunity to present them orally. At the beginning of each hearing the department shall present a summary of the factual information on which the document is based. The department or its duly authorized representative may administer oaths or affirmations and may continue or postpone the hearing to such time and place as it determines. The department shall keep minutes or a record of the hearing in such manner as it determines to be desirable and feasible. The department shall receive written comments on the document for at least 10 days after the close of the hearing. The department may not issue documents under this section earlier than 30 days after the close of the hearing.

History: 1979 c. 221.

**144.372 Best available retrofit technology.**

**(1) CASE BY CASE SPECIFICATION.** If visibility in an area is identified as an important value of the area under section 169A of the federal clean air act, the department shall specify on a case by case basis the best available retrofit technology for any existing major source located in the area and identified under section 169A of the federal clean air act.

**(2) CONSIDERATIONS.** In specifying the best available retrofit technology, the department shall consider:

- (a) The cost of compliance.
- (b) The existing pollution control technology in use at the source.
- (c) The remaining useful life of the source.
- (d) The degree of improvement in visibility which may be anticipated to result from the use of various retrofit technologies.
- (e) The energy and nonair quality environmental impacts of compliance.

History: 1979 c. 221.

**144.373 Air resource allocation.**

**(1) DETERMINATION.** The department, after considering the recommendations submitted under s. 144.355, 1979 stats., shall promulgate by rule procedures and criteria to determine the allocation of the available air resource in an attainment area.

**(2) ALLOCATION.** The department, after considering the recommendations submitted under s. 144.355, 1979 stats., shall promulgate by rule air resource allocation standards to allocate the available air resource in attainment areas among sources receiving a construction or new operation permit or an elective operation permit for an existing source after the effective

~~date of this rule, other air contaminant sources and possible future air contaminant sources. The air resource allocation standards may allow for emission reduction options. The application of air resource allocation standards may not result in a violation of an ambient air quality standard or an ambient air increment.~~

**(3) DOCUMENTS.** ~~The department shall maintain records indicating how much of the available air resource has been allocated in attainment areas. The department shall make these records available for public inspection.~~

*History:* 1979 c. 221

**144.374 Mandatory operation permit dates.** **(1) OPERATION PERMIT REQUIREMENT DATE.** ~~The department shall promulgate by rule a schedule of the dates when a mandatory operation permit is required for various categories of existing sources. The department shall submit the notice required under s. 227.018 regarding rules under this subsection by October 1, 1982. The department may not require a mandatory operation permit for any existing source prior to January 1, 1983. The department shall require a mandatory operation permit for all existing sources after July 1, 1986.~~

**(2) OPERATION PERMIT APPLICATION DATE.** ~~The department shall promulgate by rule a schedule of the dates when a mandatory operation permit application is required to be submitted for various categories of existing sources. The department shall submit the notice required under s. 227.018 regarding rules under this subsection by October 1, 1982.~~

*History:* 1979 c. 221

**144.375 Air pollution control; standards and determinations.** **(1) AMBIENT AIR QUALITY STANDARDS.** **(a) Similar to federal standard.** If an ambient air quality standard is promulgated under section 109 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive than the federal standard except as provided under sub. (6).

**(b) Standard to protect health or welfare.** If an ambient air quality standard for any air contaminant is not promulgated under section 109 of the federal clean air act, the department may promulgate an ambient air quality standard if the department finds that the standard is needed to provide adequate protection for public health or welfare.

**(2) AMBIENT AIR INCREMENT.** The department shall promulgate by rule ambient air increments for various air contaminants in attainment areas. The ambient air increments shall be consistent with and not more restrictive, either

in terms of the concentration or the contaminants to which they apply, than ambient air increments under the federal clean air act except as provided under sub. (6).

**(3) CAUSE OR EXACERBATION OF AMBIENT AIR QUALITY STANDARD OR INCREMENT.** The department shall promulgate rules to define what constitutes the cause or exacerbation of a violation of an ambient air quality standard or ambient air increment.

**(4) STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES.** **(a) Similar to federal standard.** If a standard of performance for new stationary sources is promulgated under section 111 of the federal clean air act, the department shall promulgate by rule a similar emission standard but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (6).

**(b) Standard to protect public health or welfare.** If a standard of performance for any air contaminant for new stationary sources is not promulgated under section 111 of the federal clean air act, the department may promulgate an emission standard of performance for new stationary sources if the department finds the standard is needed to provide adequate protection for public health or welfare.

**(c) Restrictive standard.** The department may impose a more restrictive emission standard of performance for a new stationary source than the standard promulgated under par. (a) or (b) on a case-by-case basis if a more restrictive emission standard is needed to meet the applicable lowest achievable emission rate under s. 144.393 (2) (b) or to install the best available control technology under s. 144.393 (3) (a).

**(5) EMISSION STANDARDS FOR HAZARDOUS AIR CONTAMINANTS.** **(a) Similar to federal standard.** If an emission standard for a hazardous air contaminant is promulgated under section 112 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (6).

**(b) Standard to protect public health or welfare.** If an emission standard for a hazardous air contaminant is not promulgated under section 112 of the federal clean air act, the department may promulgate an emission standard for the hazardous air contaminant if the department finds the standard is needed to provide adequate protection for public health or welfare.

**(c) Restrictive standard.** The department may impose a more restrictive emission standard for a hazardous air contaminant than the

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standard promulgated under par. (a) or (b) on a case-by-case basis if a more restrictive standard is needed to meet the applicable lowest achievable emission rate under s. 144.393 (2) (b) or to install the best available control technology under s. 144.393 (3) (a).

**(6) IMPACT OF CHANGE IN FEDERAL STANDARDS.** (a) If the ambient air increment, the ambient air quality standard, the standards of performance for new stationary sources or the emission standards for hazardous air contaminants under the federal clean air act are relaxed, the department shall alter the corresponding state standards unless it finds that the relaxed standards would not provide adequate protection for public health and welfare.

(b) Paragraph (a) applies to state standards of performance for new stationary sources and emission standards for hazardous air contaminants in effect on April 30, 1980 if the relaxation in the corresponding federal standards occurs after April 30, 1980.

(c) Paragraph (a) applies to ambient air quality standards in effect on April 30, 1980.

**History:** 1979 c. 34; 1979 c. 221 ss. 627fd, 627fg, 627gx

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

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

(b) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules of the department require reporting shall make reports containing such information as the department requires concerning location, size and heights of contaminant outlets, processes employed, fuels used and the nature and time periods of duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

**144.391 Air pollution control permits. (1)**

**NONATTAINMENT AREA MAJOR SOURCE PERMITS** (a) **Nonattainment area major source.** A stationary source is a nonattainment area major source if:

1. The source is located in a nonattainment area or may affect significantly the air quality in a nonattainment area; and

2. The source, considering air pollution control equipment, is capable of emitting an air contaminant for which the area is classified as a nonattainment area in the following amounts:

a. One hundred tons per year or more of sulfur oxides, particulate matter, carbon monoxide, nitrogen oxides or volatile organic compounds; or

b. An amount specified by rule by the department of any other air contaminant.

(ae) **Nonattainment area new major source.** A nonattainment area major source is a new source if, at the time application is made for an air pollution control permit, the department determines that when the source will commence operation following construction, reconstruction or replacement, it will be located in a nonattainment area or may affect significantly the air quality in a nonattainment area, and if:

1. Construction. Construction of the source commences after April 30, 1980;

2. Reconstruction. Reconstruction of the source commences after April 30, 1980; or

3. Replacement. Replacement of the source commences after April 30, 1980.

(am) **Nonattainment area modified major source.** A nonattainment area major source is a modified source if, at the time application is made for an air pollution control permit, the department determines that when the source will commence operation following modification, it will be located in a nonattainment area or may affect significantly the air quality in a nonattainment area, and if modification of the source commences after July 29, 1979.

(as) **Nonattainment area existing major source.** A nonattainment area major source is an existing source if it is not a new source and it is not a modified source.

(b) **Nonattainment area major source construction or new operation permit.** 1. Construction permit. No person may commence construction, reconstruction or replacement or commence modification of a nonattainment area major source unless the person has a permit from the department.

2. New operation permit. No person may operate a nonattainment area new major source or operate a nonattainment area modified major source unless the person has a permit from the department.

(bm) **Mandatory operation permit for existing nonattainment area major source.** No person may operate a nonattainment area existing major source after the operation permit requirement date specified under s. 144.374 (1) unless the person has an operation permit from the department.

(c) **Elective operation permit for nonattainment area existing major source.** A person may

exacerbating a violation of an ambient air quality standard for the air contaminant for which the area is nonattainment;

2. The source is located in an ozone nonattainment area, the source is exceeding an emission limitation for volatile organic compounds, this excess is likely to be significant or recurring and the excess is causing or exacerbating a violation of an ozone ambient air quality standard; or

3. The source is located in a nonattainment area, there is no emission limitation applicable to the source for an air contaminant for which the area is nonattainment, the source is causing or exacerbating a violation of an ambient air quality standard for the air contaminant for which the area is nonattainment and the violation is likely to be significant or recurring; or

(b) *Source likely to violate hazardous air contaminant standard.* The department determines that the source is likely to be in significant or recurring violation of a hazardous air contaminant emission limitation.

(2) **ONE YEAR MORATORIUM ON SUSPENSION OR REVOCATION.** (a) The department may not suspend or revoke a mandatory operation permit for an existing source for one year after the issuance of that permit based upon failure of the source at the time of permit issuance to comply with ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections.

(b) Notwithstanding par. (a), the department may take any other action necessary to enforce ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections which apply to the source after issuance of a permit under this section.

*History:* 1979 c. 221, 355

**144.394 Permit conditions.** The department may prescribe conditions for an air pollution control permit to ensure compliance with ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections if the condition is one of the following and if the condition is applicable to the source:

(1) Final inspection and release of the project for permanent operation upon completion of construction, reconstruction, replacement or modification.

(2) Variances, orders or compliance schedules.

(3) Requirements necessary to assure compliance with s. 144.393.

(4) Reasonable construction and applicable operating conditions, emission control equipment maintenance requirements and emergency episode plans.

(5) Emission reduction options.

(6) Documentation of the allocation of the available air resource.

(7) The terms of any election by the permit applicant to meet more stringent emission limitations or to limit hourly, daily or annual emissions beyond what is otherwise required or to obtain an emission reduction option.

(8) Other requirements specified by rule by the department.

*History:* 1979 c. 34, 221

**144.395 Alteration, suspension and revocation of permits.** (1) **ALTERATION.** The department, after providing written notice to the permit holder and to the persons listed under s. 144.392 (5) (a) 2 to 5, may alter an air pollution control permit if there is or was:

(a) *Violation.* A significant or recurring violation of any condition of the permit;

(b) *Change in rules.* 1. A change in any applicable emission limitation, ambient air quality standard or ambient air quality increment that requires either a temporary or permanent reduction or elimination of the permitted emission or allows a temporary or permanent increase of the permitted emission; or

2. A change in any applicable rule promulgated under ss. 144.30 to 144.426 or 144.96;

(c) *Election.* An election by the permit holder to meet more stringent emission limitations, to limit hourly, daily or annual emissions beyond what is otherwise required or to obtain an emission reduction option;

(d) *Misrepresentation or failure to disclose.* Any misrepresentation or failure to disclose fully all relevant facts when obtaining the permit; or

(e) *Reconstruction, replacement or modification.* A reconstruction, replacement or modification of the stationary source.

(2) **SUSPENSION OR REVOCATION.** The department, after providing written notice to the permit holder and to the persons listed under s. 144.392 (5) (a) 2 to 5, may suspend or revoke an air pollution control permit, part of that permit or the conditions of that permit if there is or was:

(a) *Violation.* A significant or recurring violation of any condition of the permit which causes or exacerbates a violation of any ambient air quality standard or ambient air increment or which causes air pollution;

(b) *Misrepresentation or deliberate failure to disclose.* Any misrepresentation or a deliberate failure to disclose fully all relevant facts when obtaining the permit; or

(c) *Failure to pay fees.* Failure to pay the required fee.

**(3) HEARINGS ON ALTERATION, SUSPENSION AND REVOCATION.** Any decision of the department under this section is effective unless the permit holder seeks a hearing on the decision under s. 144.403 (1). If the permit holder files a petition with the department within the time limit specified under s. 144.403 (1) (a), the air pollution control permit remains unaltered and in effect until 10 days after service of the decision issued under s. 144.403 (1) on the matter or a later date established by court order.

History: 1979 c. 34, 221

**144.396 Permit duration. (1) CONSTRUCTION OR MODIFICATION.** A construction or modification permit is valid for 18 months from the date of issuance of the permit unless the permit is revoked or suspended. The department may extend the term of the permit for the purposes of commencing construction, reconstruction, replacement or modification.

**(2) OPERATION.** An operation permit continues to be valid following the date of issuance unless revoked or suspended and does not need to be renewed.

History: 1979 c. 34, 221

**144.397 Operation permit review. (1) DEPARTMENT TO REVIEW OPERATION PERMITS.** At least once every 5 years and not more than once every 2 years, the department shall review the operation permit under this section. The department may use information received in public comments or at the public hearing as the basis to initiate a proceeding under s. 144.395 to alter, suspend or revoke the permit.

**(2) NOTICE; NEWSPAPER NOTICE.** (a) *Distribution of notice required.* The department shall distribute a notice of the permit review, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing to the permit holder and to the persons listed under s. 144.392 (5) (a) 2 to 5. The notice shall indicate the date by which comments are to be submitted to the department.

(b) *Newspaper notice.* Before reviewing an air pollution control permit the department shall publish a class 1 notice under ch. 985 announcing the opportunity for written public comment and the opportunity to request a public hearing on the permit review.

**(3) PUBLIC COMMENT.** The department shall receive public comment on the permit review for a 30-day period beginning when the department gives notice under sub. (2) (b).

**(4) PUBLIC HEARING.** (a) *Hearing permitted.* The department may hold a public hearing on the permit if requested by a person, any affected state or the U.S. environmental protection agency within 30 days after the department

gives notice under sub. (2) (b). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it deems that there is a significant public interest in holding the hearing.

(b) *Procedure.* The department shall promulgate by rule procedures for conducting public hearings under this subsection. Hearings under this subsection are not contested cases under s. 227.01 (2).

History: 1979 c. 34, 221

**144.398 Failure to adopt rule or issue permit or exemption.** The failure to adopt a rule or issue an air pollution control permit or the exemption or granting of an exemption from an air pollution control permit requirement does not relieve any person from compliance with any emission limitation or with any other provision of law.

History: 1979 c. 34

**144.399 Fees. (1) DEPARTMENT MAY PRESCRIBE.** The department may by rule prescribe and provide for the payment and collection of reasonable fees for:

(a) *Application.* Reviewing and acting upon any application for an air pollution control permit; and

(b) *Implementation and enforcement.* Implementing and enforcing the conditions of any air pollution control permit but these fees may not include any court costs or other costs associated with an enforcement action.

**(2) ENVIRONMENTAL IMPACT FEE CREDIT.** The portion of any fees relating to air quality analysis assessed by the department under s. 23.40 (2) for the preparation of an environmental impact statement may be credited towards the payment of any fees assessed under sub. (1).

**(3) EXEMPTIONS.** (a) *Application fee.* Notwithstanding sub. (1) (a), the department may not charge a fee for reviewing and acting upon any application for a mandatory operation permit for an existing source.

(b) *Implementation and enforcement fee.* Notwithstanding sub. (1) (b), the department may not charge an annual fee for implementing and enforcing an air pollution control permit greater than \$200 for a minor source or greater than \$500 for a major source.

**(4) INFORMATION ON FEES.** In promulgating rules under sub. (1), the department shall provide information on the costs upon which the proposed fees are based.

History: 1979 c. 34, 221

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**144.40 Machinery use.** The department may not require the use of machinery, devices or equipment from a particular supplier or produced by a particular manufacturer, if the required performance standards may be met by machinery, devices or equipment otherwise available.

History: 1979 c. 34.

**144.401 County program.** Instead of state review of plans and specifications, the department may authorize counties which are administering approved air pollution control programs to review and approve plans, specifications and permits of air contaminant sources being constructed, modified or operated within the jurisdiction of these counties.

History: 1979 c. 34.

**144.402 Petition for alteration.** A person holding an air pollution control permit may file a petition with the department for alteration of the permit. The department shall promulgate by rule procedures for the alteration of an air pollution control permit under this section.

History: 1979 c. 34.

**144.403 Hearings on certain air pollution actions.** (1) PERMIT HOLDER; PERMIT APPLICANT; ORDER RECIPIENT. Any permit, part of a permit, order, decision or determination by the department under ss. 144.391 to 144.402 shall become effective unless the permit holder or applicant or the order recipient seeks a hearing on the action in the following manner:

(a) *Petition.* The person seeking a hearing shall file a petition with the department within 30 days after the date of the action sought to be reviewed. The petition shall set forth specifically the issue sought to be reviewed, the interest of the petitioner, the reasons why a hearing is warranted and the relief desired. Upon receipt of the petition, the department shall hold a hearing after at least 10 days' notice.

(b) *Hearing.* The hearing shall be a contested case under ch. 227. At the beginning of the hearing the petitioner shall present evidence in support of the allegations made in the petition. Following the hearing the department's action may be affirmed, modified or withdrawn.

(2) OTHER PERSONS. Any person who is not entitled to seek a hearing under sub. (1) (intro.) and who meets the requirements of s. 227.064 (1) may seek review under sub. (1) of any permit, part of a permit, order, decision or determination by the department under ss. 144.391 to 144.402.

(3) MINING HEARING. Subsections (1) and (2) do not apply if a hearing on the matter is

conducted as a part of a hearing under s. 144.836.

History: 1979 c. 34, 221.

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

(a) Provides by ordinance for requirements compatible with, or stricter or more extensive than those imposed by ss. 144.30 to 144.426 and rules issued thereunder. Such ordinances shall supersede any existing local ordinances;

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

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

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

(e) Is approved by the department as adequate to meet the requirements of ss. 144.30 to 144.426 and any applicable rules pursuant thereto.

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

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

(4) (a) If the department has reason to believe that a program in force pursuant to this section is inadequate to prevent and control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of ss. 144.30 to 144.426, the department shall, on due notice, conduct a hearing on the matter.

(b) If, after such hearing, the department determines that a program is inadequate to prevent and control air pollution in the county to

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(b) *Prohibition.* Except as permitted or authorized by rule of the department, no person may tamper with air pollution control equipment.

(c) *Ineligibility for motor vehicle registration.* Except as permitted or authorized by rule of the department, if any person tampers with the air pollution control equipment of a motor vehicle, that vehicle is ineligible for motor vehicle registration until the air pollution control equipment is replaced, repaired or restored to good working order.

(d) *Suspension or cancellation of motor vehicle registration.* Except as permitted or authorized by the rule of the department, if the owner of a motor vehicle tampers with or causes or knowingly permits any person to tamper with the air pollution control equipment, the motor vehicle registration for that vehicle may be suspended or canceled in addition to any other penalty provided by law.

*History:* 1971 c. 164 s. 81; 1977 c. 29 s. 1654 (7) (b); 1979 c. 34 s. 2102 (39) (g); 1979 c. 274.

**144.423 Violations: enforcement.** (1) (a) If the department has reason to believe that a violation of ss. 144.30 to 144.426 or 144.96 or any rule promulgated or special order, plan approval or permit issued under those sections has occurred, it may:

1. Cause written notice to be served upon the alleged violator. The notice shall specify the alleged violation, and contain the findings of fact on which the charge of violation is based. The notice may include an order that necessary corrective action be taken within a reasonable time. This order shall become effective unless, no later than 30 days after the date the notice and order are served, the person named in the notice and order requests in writing a hearing before the department. Upon such request, the department shall after due notice hold a hearing. Instead of an order, the department may require that the alleged violator appear before the department for a hearing at a time and place specified in the notice and answer the charges complained of; or

2. Initiate action under s. 144.426.

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

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

*History:* 1971 c. 125 s. 522 (2); 1977 c. 377; 1979 c. 34 s. 980h; 1979 c. 221 s. 2202 (39).

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

(2) In the absence of a generalized condition of air pollution of the type referred to in sub. (1), if the secretary finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to human health or safety, he or she may order the persons responsible for the operations in question to reduce or discontinue emissions immediately, without regard to s. 144.423. In such event, the requirements for hearing and affirmation, modification or setting aside of orders set forth in sub. (1) shall apply.

*History:* 1979 c. 34 ss. 983m, 2102 (39) (g); 1979 c. 176.

**144.426 Penalties for violations relating to air pollution.** Any person who violates ss. 144.30 to 144.426 or any rule promulgated, any permit issued or any special order issued under those sections shall forfeit not less than \$10 or more than \$25,000 for each violation. Each day of continued violation is a separate offense.

*History:* 1979 c. 34.

**SUBCHAPTER IV**

**SOLID WASTE, HAZARDOUS WASTE AND REFUSE**

**144.43 Solid waste; definitions.** As used in ss. 144.43 to 144.47 unless the context requires otherwise:

(1) "Closing" means the time at which a solid waste or hazardous waste treatment, storage or disposal facility ceases to accept wastes, and includes those actions taken by the owner or operator of the facility to prepare the site for long-term care and to make it suitable for other uses.

(2) "Hazardous substance" means any substance or combination of substances, including

**(5)** The department may hold hearings relating to any aspect of the administration of the system established under this section, including, but not limited to, the assessment of environmental fees against specific plants and, in connection therewith, may compel the attendance of witnesses and the production of evidence.

**History:** 1971 c. 125; 1973 c. 90; 1977 c. 29, 203, 377; 1979 c. 34 ss. 985n, 2102 (39) (a); 1979 c. 221 ss. 634, 2202 (39).

**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. 987g.

**144.975 Hearings; procedure, review.** The department shall hold a public hearing relating to alleged or potential environmental pollution upon the verified complaint of 6 or more citizens filed with the department. The complaint shall state the name and address of a person within the state authorized to receive service of answer and other papers in behalf of complainants. The department may order the complainants to file security for costs in a sum deemed to be adequate but not to exceed \$100 within 20 days after the service upon them of a copy of such order and all proceedings on the part of such complainants shall be stayed until security is filed. The department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to the last known post office address at least 20 days prior to the time set for the hearing which shall be held not later than 90 days from the filing of the complaint. The respondent shall file a verified answer to the complaint with the department

and serve a copy on the person so designated by the complainants not later than 5 days prior to the date set for the hearing, unless the time for answering is extended by the department for cause shown. For purposes of any hearing under this chapter, the secretary may issue subpoenas and administer oaths. Within 90 days after the closing of the hearing, the department shall make and file its findings of fact, conclusions of law and order, which shall be subject to review under ch. 227. If the department determines that any complaint has been filed maliciously or in bad faith it shall so find, and the person complained against shall be entitled to recover expenses on the hearing in a civil action. Any situation, project or activity which upon continuance or implementation would cause, beyond reasonable doubt, a degree of pollution that normally would require clean up action if it already existed, shall be considered potential environmental pollution.

**History:** 1979 c. 176; 1979 c. 221 s. 633.

**144.98 Enforcement; duty of department of justice; expenses.** The attorney general shall enforce this chapter and all rules, orders, licenses, plan approvals and permits of the department. The circuit court of Dane county or any other county where a violation has occurred in whole or in part has jurisdiction to enforce this chapter or the rule, order, license, plan approval or permit by injunctive and other relief appropriate for enforcement. For purposes of this proceeding where this chapter or the rule, order, license, plan approval or permit prohibits in whole or in part any pollution, a violation is deemed a public nuisance. The expenses incurred by the department of justice in assisting with the administration of this chapter shall be charged to the appropriation made by s. 20.370 (2) (ma).

**History:** 1975 c. 39 s. 734; 1979 c. 34 s. 985g; 1979 c. 221.

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

**144.99 Penalties.** Any person who violates this chapter, except ss. 144.30 to 144.426 and 144.96 (1), or any rule promulgated or any plan approval, license or special order issued under this chapter, except under those sections, shall forfeit not less than \$10 nor more than \$5,000, for each violation. Each day of continued violation is a separate offense. While the order is suspended, stayed or enjoined, this penalty shall not accrue.

**History:** 1979 c. 34 s. 987m; 1979 c. 221.

## CHAPTER 144

## WATER, SEWAGE, REFUSE, MINING, OIL AND GAS AND AIR POLLUTION

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## SUBCHAPTER I

## DEFINITIONS

**144.01 Definitions.** In this chapter, unless the context requires otherwise:

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

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

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

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

(4m) "Hazardous substance" means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department.

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

(6) "Municipality" means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district.

(7) "Nonprofit-sharing corporation" means a nonstock corporation organized under ch. 181 or corresponding prior general corporation laws.

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

(9) "Owner" means the state, county, town, town sanitary district, city, village, metropolitan sewage district, corporation, firm, company, institution or individual owning or

operating any water supply, sewerage or water system or sewage and refuse disposal plant.

(9m) "Person" means an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.

(10) "Pollution" includes contaminating or rendering unclean or impure the waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

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

(12) "Secretary" means the secretary of natural resources.

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

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

(15) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 147, or source, special nuclear or by product material as defined under s. 140.52.

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

(18) "Wastewater" means all sewage.

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

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

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

**History:** 1971 c. 185 s. 7; 1975 c. 197; 1979 c. 34 ss. 972dg to 972e, 978k; 1979 c. 221; 1981 c. 374; 1983 a. 36; 189; 1987 a. 403

**144.266 WATER, SEWAGE, REFUSE, MINING AND AIR POLLUTION**

91-92 Wis. Stats. 2694

trol building sites, placement of structures and land uses; preserve ground cover and scenic beauty; and promote sound economic growth.

(2) **STATE CONSTRUCTION SITE EROSION CONTROL AND STORM WATER MANAGEMENT PLAN.** The department shall promulgate by rule a state construction site erosion control and storm water management plan. This state plan is applicable to construction activities contracted for or conducted by any agency, as defined under s. 227.01 (1) but also including the office of district attorney, unless that agency enters into a memorandum of understanding with the department in which that agency agrees to regulate activities related to construction site erosion control and storm water management. The department shall coordinate the activities of agencies, as defined under s. 227.01 (1), in construction site erosion control and storm water management and make recommendations to these agencies concerning activities related to construction site erosion control and storm water management.

(3) **STANDARDS** (a) 1. Except as restricted under subd. 2, the department shall establish by rule minimum standards for activities related to construction site erosion control and storm water management.

2. The department, in cooperation with the department of transportation, shall establish by rule minimum standards for activities related to construction site erosion control and storm water management if those activities concern street, highway, road or bridge construction, enlargement, relocation or reconstruction.

3. Minimum standards established under this paragraph are applicable to the state construction site erosion control and storm water management plan. The department shall encourage a county, city or village to comply with these minimum standards for any construction site erosion control and storm water management zoning ordinance enacted under s. 59.974, 61.354 or 62.234.

4. The department shall identify low cost practices which would enable a person to comply with these minimum standards.

(b) The minimum standards for construction site erosion control shall provide for the regulation of any construction activity which:

1. Involves the grading, removal of protective ground cover or vegetation, excavation, land filling or other land disturbing activity which affects an area of 4,000 square feet or more.

2. Involves the excavation or filling or a combination of excavation and filling which affects 400 cubic yards or more of dirt, sand or other excavation or fill material.

3. Involves street, highway, road or bridge construction, enlargement, relocation or reconstruction.

4. Involves the laying, repairing, replacing or enlarging of an underground pipe or facility for a distance of 300 feet or more.

5. Requires a subdivision plat approval or a certified survey.

(c) The minimum standards for storm water management shall provide for the regulation of any construction activity which:

1. Is a residential development with a gross aggregate area of 5 acres or more.

2. Is a residential development with a gross aggregate area of 3 acres or more with at least 1.5 acres of impervious surfaces.

3. Is a development other than a residential development with a gross aggregate area of 3 acres or more.

4. Is likely to result in storm water runoff which exceeds the safe capacity of the existing drainage facilities or receiving body of water, which causes undue channel erosion, which increases water pollution by scouring or the transportation of particulate matter or which endangers downstream property.

(4) **MODEL ORDINANCES; STATE PLAN; DISTRIBUTION.** The department shall prepare a model construction site erosion control and storm water management zoning ordinance in the form of an administrative rule. The model ordinance shall be based upon the state construction site erosion control and storm water management plan. The model ordinance is subject to s. 227.19 and other provisions of ch. 227 in the same manner as other administrative rules. Following the promulgation of the model ordinance as a rule, the department shall distribute a copy of the model ordinance to any county, city or village which submits a request. The department shall distribute a copy of the state plan to any agency which submits a request.

(5) **COOPERATION.** The department, the municipalities and all state agencies shall cooperate to accomplish the objective of this section. To that end, the department shall consult with the governing bodies of municipalities to secure voluntary uniformity of regulations, so far as practicable, shall prepare model construction site erosion control and storm water management zoning ordinances, shall extend assistance to municipalities under this section, shall prepare a state construction site erosion control and storm water management plan, shall encourage uniformity through the implementation of this plan and the utilization of memoranda of understanding which are substantially similar to the plan and shall extend assistance to agencies under this section.

History: 1983 a. 416; Stats 1983 s. 144.265; 1983 a. 538 s. 150; Stats 1983 s. 144.266; 1985 a. 182 s. 57; 1987 a. 27; 1989 a. 31

**144.27 Limitation.** Nothing in this subchapter affects ss. 196.01 to 196.79 or ch. 31.

History: 1979 c. 221 s. 624; Stats 1979 s. 144.27

**SUBCHAPTER III****AIR POLLUTION**

**144.30 Air pollution; definitions.** As used in ss. 144.30 to 144.426 unless the context requires otherwise:

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

(2) "Air contaminant source", or "source" if not otherwise modified, means any facility, building, structure, installation, equipment, vehicle or action that emits or may emit an air contaminant directly, indirectly or in combination with another facility, building, structure, installation, equipment, vehicle or action.

(3) "Air pollution control permit" means any permit required or allowed under s. 144.391.

(3m) "Allocation of the available air resource" means either:

(a) The apportionment among air contaminant sources of the difference between an ambient air quality standard and the concentration in the atmosphere of the corresponding air contaminant in existence at the time the rule promulgated under s. 144.373 becomes effective; or

(b) The apportionment among air contaminant sources of the difference between an ambient air increment and the baseline concentration if a baseline concentration is established.

**(3r)** "Architectural coating" means a coating applied to a stationary structure, including a parking lot, and its appurtenances or to a mobile home.

**(4)** "Allowable emission" means the emission rate calculated using the maximum rated capacity of the origin of, or the equipment emitting an air contaminant based on the most stringent applicable emission limitation and accounting for any enforceable permit conditions which limit operating rate, or hours of operation, or both.

**(5)** "Ambient air increment" means the maximum allowable concentration of an air contaminant above the base line concentration.

**(6)** "Ambient air quality standard" means a level of air quality which will protect public health with an adequate margin of safety or may be necessary to protect public welfare from anticipated adverse effects.

**(7)** "Attainment area" means an area which is not a nonattainment area.

**(8)** "Base line concentration" means concentration in the atmosphere of an air contaminant which exists in an area at the time of the first application to the U.S. environmental protection agency for a prevention of significant deterioration permit under 42 USC 7475 or the first application for an air pollution control permit under s. 144.391 for a major source located in an attainment area, whichever occurs first, less any contribution from stationary sources identified in 42 USC 7479 (4).

**(9)** "Best available control technology" means an emission limitation for an air contaminant based on the maximum degree of reduction achievable as specified by the department on an individual case-by-case basis taking into account energy, economic and environmental impacts and other costs related to the source.

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

**(11)** "Emission limitation" or "emission standard" means a requirement which limits the quantity, rate or concentration of emissions of air contaminants on a continuous basis. An emission limitation or emission standard includes a requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

**(12)** "Emission reduction option" means:

(a) An offsetting of greater emissions from a stationary source against lower emissions from the same or another stationary source.

(b) A reduction in emissions from a stationary source which is reserved as a credit against future emissions from the same or another stationary source.

(c) Other arrangements for emission reduction, trade-off, credit or offset permitted by rule by the department.

**(13)** "Existing source" means a stationary source that is not a new source or a modified source.

**(14)** "Federal clean air act" means the federal clean air act, 42 USC 7401 to 7671q, and regulations issued by the federal environmental protection agency under that act.

**(14m)** "Growth accommodation" means the amount of volatile organic compounds specified in s. 144.40 (1) (a).

**(15)** "Lowest achievable emission rate" means the rate of emission which reflects the more stringent of the following:

(a) The most stringent emission limitation which is contained in the air pollution regulatory program of any state for this class or category of source, unless an applicant for a permit demonstrates that these limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by the class or category of source.

**(16)** "Major source" means a stationary source that is capable of emitting an air contaminant in an amount in excess of an amount specified by the department by rule under s. 144.31 (1) (r).

**(19e)** "Minor source" means a stationary source that is not a major source.

**(20)** "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of emissions of an air contaminant or that results in the emission of an air contaminant not previously emitted, subject to rules promulgated under s. 144.31 (1) (s).

**(20e)** "Modified source" means a stationary source on which modification commences after November 15, 1992.

**(20s)** "New source" means a stationary source on which construction, reconstruction or replacement commences after November 15, 1992.

**(21)** "Nonattainment area" means an area identified by the department in a document prepared under s. 144.371 (2) where the concentration in the atmosphere of an air contaminant exceeds an ambient air quality standard.

**(22r)** "Reasonably available control technology" means that control technology which provides the lowest emission rate that a particular source is capable of achieving by the application of control technology that is reasonably available considering technological and economic feasibility.

**(22rm)** "Regulated pollutant" means any of the following, except for carbon monoxide:

- (a) A volatile organic compound
- (b) An oxide of nitrogen
- (c) A pollutant regulated under 42 USC 7411 or 7412

(d) A pollutant for which a national primary ambient air quality standard has been promulgated under 42 USC 7409.

**(22s)** "Replenishment implementation period" means the period between August 1, 1987, and December 31 of the year by which the department requires full compliance with rules required to be promulgated under s. 144.40 (3).

**(23)** "Stationary source" means any facility, building, structure or installation that directly or indirectly emits or may emit an air contaminant only from a fixed location. A stationary source includes an air contaminant source that is capable of being transported to a different location. A stationary source may consist of one or more pieces of process equipment, each of which is capable of emitting an air contaminant. A stationary source does not include a motor vehicle or equipment which is capable of emitting an air contaminant while moving.

**(24)** "Volatile organic compound" means an organic compound which participates in an atmospheric photochemical reaction, as determined by the department by rule.

**(25)** "Volatile organic compound accommodation area" means Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington and Waukesha counties and any other county specified by the department by rule in response to a finding by the federal environmental protection agency that the county is to be included in the volatile organic compound accommodation area.

**History:** 1971 c. 125, 130, 211; 1977 c. 377; 1979 c. 34, 221; 1987 a. 27, 399; 1989 a. 31; 1991 a. 269, 302

The social and economic roots of judge-made air pollution policy in Wisconsin. Laitos, 58 MLR 465

Cleaning the Air: Wisconsin's Air Quality Laws Burke Wis. Law. Aug 1992

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

(a) Promulgate rules implementing and consistent with ss. 144.30 to 144.426 and 144.96.

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(b) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of ss. 144.30 to 144.426 and 144.96.

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

(d) Collect and disseminate information and conduct educational and training programs relating to the purposes of ss. 144.30 to 144.426 and 144.96.

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

(f) Prepare and develop one or more comprehensive plans for the prevention, abatement and control of air pollution in this state. The department thereafter shall be responsible for the revision and implementation of the plans. The rules or control strategies submitted to the federal environmental protection agency under the federal clean air act for control of atmospheric ozone shall conform with the federal clean air act unless, based on the recommendation of the natural resources board or the head of the department, as defined in s. 15.01 (8), of any other department, as defined in s. 15.01 (5), that promulgates a rule or establishes a control strategy, the governor determines that measures beyond those required by the federal clean air act meet any of the following criteria:

1. The measures are part of an interstate ozone control strategy implementation agreement under sub. (4) signed by the governor of this state and of the state of Illinois.
2. The measures are necessary in order to comply with the percentage reductions specified in 42 USC 7511a (b) (1) (A) or (c) (2) (B).

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

(h) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source, device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall relieve any person from compliance with ss. 144.30 to 144.426 or rules pursuant thereto, or any other provision of law.

(i) Prepare and adopt minimum standards for the emission of mercury compounds or metallic mercury into the air.

(k) Specify the best available control technology on an individual case-by-case basis considering energy, economic and environmental impacts and other costs related to the source.

(m) Coordinate the reporting requirements under ss. 144.394 and 144.96 in order to minimize duplicative reporting requirements.

(n) Prepare an annual report which states the total nitrogen oxide and sulfur dioxide emissions from all stationary sources in this state. This report may be combined with other reports published by the department.

(o) If federal legislation is enacted that establishes sulfur dioxide or nitrogen oxide controls for the purpose of reducing acid deposition, prepare a report, in consultation with the public service commission, this state's electric utilities, industries and environmental groups, recommending ways to coordinate state law with federal law. The department, after holding a public hearing on the report, shall submit the report to the governor and the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), within 6 months after the enactment of the federal legislation.

(p) Promulgate by rule the actions or events which constitute the reconstruction of a major source.

(q) Promulgate by rule the actions or events which constitute the shutdown of a facility.

(r) Promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source and that may limit the classification of a major source to specified categories of stationary sources and to specific air contaminants.

(s) Promulgate rules, consistent with the federal clean air act, that modify the meaning of the term "modification" as it relates to specified categories of stationary sources, to specific air contaminants and to amounts of emissions or increases in emissions.

(2) The department may:

- (a) Hold hearings relating to any aspect of the administration of ss. 144.30 to 144.426 and 144.96 and, in connection therewith, compel the attendance of witnesses and the production of evidence.
- (b) Issue orders to effectuate the purposes of ss. 144.30 to 144.426 and 144.96 and enforce the same by all appropriate administrative and judicial proceedings.
- (c) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.
- (d) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere and make recommendations to appropriate public and private bodies with respect thereto.
- (e) Advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.
- (f) Examine any records relating to emissions which cause or contribute to air contamination.
- (g) Establish by rule, consistent with the federal clean air act, the amount of offsetting emissions reductions required under s. 144.393 (2) (a).

(3) (a) In this subsection, "solid waste treatment" has the meaning given in s. 144.43 (7r).

(b) The department shall, by rule, establish a program for the certification of persons participating in or responsible for the operation of solid waste treatment facilities that burn solid waste. The certification requirements shall take effect on January 1, 1993. The department shall do all of the following:

1. Identify those persons or positions involved in the operation of a solid waste treatment facility who are required to obtain certification.
2. Establish the requirements for and term of initial certification and requirements for recertification upon expiration of that term. At a minimum, the department shall require applicants to complete a program of training and pass an examination in order to receive initial certification.
3. Establish different levels of certification and requirements for certification for different sizes or types of facilities, as the department determines is appropriate.
4. Impose fees for the operator training and certification program.
5. Require that there be one or more certified operators on the site of a solid waste treatment facility at all times during the facility's hours of operation.

(bm) The program under par. (b) does not apply with respect to any of the following:

1. A facility described in s. 159.07 (7) (bg).

- 2. A solid waste treatment facility for the treatment of hazardous waste.
- 3. A solid waste treatment facility for high volume industrial waste as defined in s. 144.44 (7).
- 4. A solid waste treatment facility of a type exempted from the program by the department by rule.
- (c) The training required under par. (b) 2 may be conducted by the department or by another person with the approval of the department.
- (d) The department may suspend or revoke a solid waste treatment facility's operating license if persons at the facility fail to obtain certification required under par. (b) 1 or for failure to have a certified operator on the site as required under par. (b) 5.
- (e) The department may suspend or revoke an operator's certification for failure to comply with ss. 144.30 to 144.426, rules promulgated under those sections or conditions of operation made applicable to a solid waste treatment facility by the department.
- (4) After May 14, 1992, the governor may enter into an agreement with the governor of the state of Illinois, that may also include the governors of the states of Indiana and Michigan, that specifies measures for the control of atmospheric ozone that are necessary in order to implement an interstate ozone control strategy to bring an area designated under 42 USC 7407 (d) as an ozone nonattainment area into attainment with the ambient air quality standard for ozone if the area includes portions of this state and the state of Illinois.

**History:** 1971 c. 125 s. 522 (2); 1979 c. 34 ss. 979h, 979j, 980p, 980r, 984ng, 2102 (39) (g); 1979 c. 175; 1979 c. 221 ss. 627fd to 627fm, 2202 (39). **Stats.** 1979 s. 144.31; 1985 a. 182 s. 57; 1985 a. 296; 1987 a. 27, 186; 1989 a. 56, 335; 1991 a. 300, 302.

**144.32 Federal aid.** Subdivisions of this state and interlocal agencies may make application for, receive, administer and expend any federal aid for the control of air pollution or the development and administration of programs related to air pollution control if first submitted to and approved by the department. The department shall approve any such application if it is consistent with the purposes of ss. 144.30 to 144.426 and any other applicable requirements of law.

**History:** 1979 c. 34.

**144.33 Confidentiality of records.** (1) Except as provided in sub. (2), the department shall make any record, report or other information obtained in the administration of ss. 144.30 to 144.426 and 144.96 available to the public.

(2) The department shall keep confidential any part of a record, report or other information obtained in the administration of ss. 144.30 to 144.426 and 144.96, other than emission data or an air pollution control permit, upon a showing satisfactory to the department by any person that the part of a record, report or other information would, if made public, divulge a method or process that is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.

(3) Subsection (2) does not prevent the disclosure of any information to a representative of the department for the purpose of administering ss. 144.30 to 144.426 and 144.96 or to an officer, employee or authorized representative of the federal government for the purpose of administering the federal clean air act. When the department provides information that is confidential under sub. (2) to the federal government, the department shall also provide a copy of the application for confidential status.

**History:** 1971 c. 125 s. 522 (2); 1979 c. 34; 1979 c. 221 s. 2202 (39); 1981 c. 335 s. 26; 1991 a. 302.

**144.34 Inspections.** Any duly authorized officer, employee or representative of the department may enter and inspect

any property, premise or place on or at which an air contaminant source is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with ss. 144.30 to 144.426 and 144.96 and rules promulgated or permits issued under those sections. No person may refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials. No person may obstruct, hamper or interfere with any such inspection. The department, if requested, shall furnish to the owner or operator of the premises a report setting forth all facts found which relate to compliance status.

**History:** 1971 c. 125 s. 522 (2); 1979 c. 34; 1979 c. 221 s. 2202 (39); 1991 a. 302.

**144.36 Small business stationary source technical and environmental compliance assistance program.** (1) **DEFINITION.** In this section, "small business stationary source" means a stationary source designated under sub. (2) (a) or, except as provided in sub. (2) (b), a stationary source that satisfies all of the following criteria:

- (a) Is owned or operated by a person that employs 100 or fewer individuals.
- (b) Is a small business concern, as determined under 15 USC 632 (a).
- (c) Is not a major stationary source, as defined in rules promulgated by the department.
- (d) Does not emit 50 tons or more per year of any regulated pollutant.
- (e) Emits a total of less than 75 tons per year of all regulated pollutants.

(2) **DESIGNATIONS AND EXCLUSIONS.** (a) In response to a petition by a stationary source, the department may, by rule, designate as a small business stationary source any stationary source that does not meet the criteria of sub. (1) (c), (d) or (e) but that does not emit a total of more than 100 tons per year of all regulated pollutants.

(b) The department may, by rule, after consultation with the administrators of the federal environmental protection agency and the federal small business administration, exclude from the definition of small business stationary source any category or subcategory of stationary source that the department determines to have sufficient technical and financial capabilities to meet the requirements of the federal clean air act without the assistance provided under this section.

(3) **ASSISTANCE PROGRAM.** The department shall, in cooperation with the small business ombudsman clearinghouse under s. 560.03 (9), develop and administer a small business stationary source technical and environmental compliance assistance program. The program shall include all of the following:

(a) Mechanisms to develop, collect and coordinate information concerning methods and technologies that small business stationary sources can use to comply with the federal clean air act and programs to encourage lawful cooperation among small business stationary sources or other persons to further compliance with the federal clean air act.

(b) Mechanisms for providing small business stationary sources with information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution and with other assistance in pollution prevention and accidental release detection and prevention.

(c) A compliance assistance program that assists small business stationary sources in determining applicable requirements under ss. 144.30 to 144.426 and 144.96 and in receiving air pollution control permits in a timely and efficient manner.

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(d) Mechanisms to ensure that small business stationary sources receive notice of their rights under the federal clean air act and state laws implementing the federal clean air act in a manner and form that assures reasonably adequate time for small business stationary sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under the federal clean air act.

(e) Mechanisms for referring small business stationary sources to qualified auditors to determine compliance with the federal clean air act and state laws implementing the federal clean air act and other mechanisms for informing small business stationary sources of their obligations under the federal clean air act and state laws.

(f) Procedures for consideration of a request from a small business stationary source for alteration of any required work practice or technological method of compliance with ss. 144.30 to 144.426 or of the schedule of measures that must be taken to implement a required work practice or method of compliance before an applicable compliance date, based on the technological and financial capability of the small business stationary source.

(4) GRANTING ALTERATIONS. The department may not grant an alteration under sub. (3) (f) unless the alteration complies with the requirements of the federal clean air act and any applicable plan under s. 144.31 (1) (f). If those applicable requirements are set forth in federal regulations, the department may only grant alterations authorized in those regulations.

History: 1991 a 302.

**144.371 Identification of nonattainment areas. (1) PROCEDURES AND CRITERIA.** The department shall promulgate by rule procedures and criteria to identify a nonattainment area and to reclassify a nonattainment area as an attainment area.

(2) DOCUMENTS. The department shall issue documents from time to time which define or list specific nonattainment areas based upon the procedures and criteria promulgated under sub. (1). Notwithstanding ss. 227.01 (13) and 227.10 (1), documents issued under this subsection are not rules.

(3) REVIEW. The documents issued under sub. (2) may be reviewed under ss. 227.42 and 227.52.

(4) PROCEDURES. (a) For any document issued under sub. (2), the department shall hold a public hearing and follow the procedures in this subsection.

(b) The department shall give notice of the public hearing, and shall take any steps it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed document. The notice shall be given at least 30 days prior to the date set for the hearing. The notice shall include a statement of the time and place at which the hearing is to be held and either a text of the proposed document or a description of how a copy of the document may be obtained from the department at no charge.

(c) The department shall hold a public hearing at the time and place designated in the notice of hearing, and shall afford all interested persons or their representatives an opportunity to present facts, views or arguments relative to the proposal under consideration. The presiding officer may limit oral presentations if it appears that the length of the hearing otherwise would be unduly increased by reason of repetition. The department shall afford each interested person opportunity to present facts, views or arguments in writing whether or not he or she has had an opportunity to present them orally.

(d) At the beginning of each hearing the department shall present a summary of the factual information on which the document is based. The department or its duly authorized representative may administer oaths or affirmations and may

continue or postpone the hearing to such time and place as it determines. The department shall keep minutes or a record of the hearing in such manner as it determines to be desirable and feasible.

(e) The department shall receive written comments on the document for at least 10 days after the close of the hearing. The department may not issue documents under this section earlier than 30 days after the close of the hearing.

History: 1979 c. 221; 1981 c. 314 s. 146; 1985 a. 182 s. 57; 1989 a. 56.

**144.3712 Employe trip reduction program. (1) AREAS.**

(a) The department shall issue documents that describe the areas of the state in which employe trip reduction programs are required by 42 USC 7511a (d) (1) (B).

(b) The department may, by rule, determine areas of the state, other than areas described under par. (a), in which the department will require employe trip reduction programs. The department may not require an employe trip reduction program in an area unless that requirement is authorized under s. 144.31 (1) (f).

(c) Notwithstanding ss. 227.01 (13) and 227.10 (1), a document issued under par. (a) is not a rule. A document issued under par. (a) may be reviewed under ss. 227.42 and 227.52.

(2) REQUIREMENTS. The department shall promulgate by rule requirements for employers who are located in areas described under sub. (1) (a) or (b) to implement programs to reduce work-related trips and miles traveled by employes. The department shall develop the rules in accordance with the guidance issued by the administrator of the federal environmental protection agency under 42 USC 7408 (f). The rules shall require that each employer who employs 100 or more persons in an area described under sub. (1) (a) or (b) increase average passenger occupancy per vehicle in commuting trips between home and workplace during peak travel periods by not less than 25% above the average passenger occupancy per vehicle for all such trips in the area as of November 15, 1992, or any later date specified by the federal environmental protection agency.

(3) COMPLIANCE PLANS. If an employer is located in an area that is described before November 15, 1993, by the department under sub. (1) (a) or (b) and is subject to the rules promulgated under sub. (2), the employer shall submit to the department, no later than November 15, 1994, a plan that demonstrates that the employer will comply with the rules no later than November 15, 1996.

History: 1991 a 302.

**144.3714 Clean fuel fleet program. (1) DEFINITIONS.** In this section:

(a) "Clean alternative fuel" has the meaning given in 42 USC 7581 (2).

(b) "Clean-fuel vehicle" has the meaning given in 42 USC 7581 (7).

(c) "Covered fleet" has the meaning given in 42 USC 7581 (5).

(2) AREAS. (a) The department shall issue documents that describe the areas of the state in which clean-fuel vehicle programs are required under 42 USC 7511a (c) (4) (A).

(b) The department may, by rule, determine areas of the state, other than areas described under par. (a), in which the department will require clean-fuel vehicle programs. The department may not require a clean-fuel vehicle program in an area unless that requirement is authorized under s. 144.31 (1) (f).

(c) Notwithstanding ss. 227.01 (13) and 227.10 (1) a document issued under par. (a) is not a rule. A document

issued under par. (a) may be reviewed under ss. 227.42 and 227.52.

**(3) REQUIREMENTS.** The department shall promulgate by rule requirements for the use of clean-fuel vehicles and clean alternative fuels by operators of covered fleets in areas identified under sub. (2) (a) or (b). The rules shall be in accordance with the requirements applicable to covered fleets under 42 USC 7586 and regulations promulgated under that provision.

History: 1991 a. 302

**144.3716 Reformulated gasoline.** **(1) DEFINITIONS.** In this section, "reformulated gasoline" means gasoline formulated to reduce emissions of volatile organic compounds and toxic air pollutants as provided in 42 USC 7545 (k) (1) to (3).

**(2) AREAS.** (a) The department shall issue documents that describe the areas of the state in which the use of reformulated gasoline is required under 42 USC 7545 (k) (5).

(am) The department shall issue documents that describe areas of the state, other than areas described under par. (a) or (b), in which the use of reformulated gasoline is required, if the governor designates the areas in an application under 42 USC 7545 (k) (6) that is approved by the administrator of the federal environmental protection agency.

(b) The department may, by rule, determine areas of the state, other than areas described under par. (a) or (am), in which the department will require the use of reformulated gasoline. The department may not require the use of reformulated gasoline in an area unless that requirement is authorized under s. 144.31 (1) (f).

(c) Notwithstanding ss. 227.01 (13) and 227.10 (1), a document issued under par. (a) or (am) is not a rule. A document issued under par. (a) may be reviewed under ss. 227.42 and 227.52.

**(3) PROHIBITIONS.** (a) Except as provided in par. (b), beginning on January 1, 1995, no person may sell gasoline in an area described under sub. (2) (a), (am) or (b) unless the gasoline satisfies the minimum specifications for reformulated gasoline under s. 168.04.

(b) The secretary, with the approval of the administrator of the federal environmental protection agency, may grant temporary waivers from the prohibition under par. (a) if fuel that satisfies the minimum specifications for reformulated gasoline is unavailable.

History: 1991 a. 302

**144.372 Best available retrofit technology.** **(1) CASE-BY-CASE SPECIFICATION.** If visibility in an area is identified as an important value of the area under section 169A of the federal clean air act, the department shall specify on a case-by-case basis the best available retrofit technology for any existing major source located in the area and identified under section 169A of the federal clean air act.

**(2) CONSIDERATIONS.** In specifying the best available retrofit technology, the department shall consider:

- (a) The cost of compliance.
- (b) The existing pollution control technology in use at the source.
- (c) The remaining useful life of the source.
- (d) The degree of improvement in visibility which may be anticipated to result from the use of various retrofit technologies.
- (e) The energy and nonair quality environmental impacts of compliance.

History: 1979 c. 221.

**144.373 Air resource allocation.** **(1) DETERMINATION.** The department, after considering the recommendations submit-

ted under s. 144.355, 1979 stats., shall promulgate by rule procedures and criteria to determine the allocation of the available air resource in an attainment area.

**(2) ALLOCATION.** The department, after considering the recommendations submitted under s. 144.355, 1979 stats., shall promulgate by rule air resource allocation standards to allocate the available air resource in attainment areas among sources receiving a construction permit or operation permit or an elective operation permit for an existing source after the effective date of this rule, other air contaminant sources and possible future air contaminant sources. The air resource allocation standards may allow for emission reduction options. The application of air resource allocation standards may not result in a violation of an ambient air quality standard or an ambient air increment.

**(3) DOCUMENTS.** The department shall maintain records indicating how much of the available air resource has been allocated in attainment areas. The department shall make these records available for public inspection.

History: 1979 c. 221; 1991 a. 302

**144.374 Operation permit dates.** **(1) OPERATION PERMIT REQUIREMENT DATE.** The department shall promulgate by rule a schedule of the dates when an operation permit is required for various categories of stationary sources.

**(2) OPERATION PERMIT APPLICATION DATE.** (a) The department shall promulgate by rule a schedule of the dates when an operation permit application is required to be submitted for various categories of existing sources.

(b) A person who is required to obtain a construction permit shall submit an application for an operation permit with the application for the construction permit.

History: 1979 c. 221; 1985 a. 182 s. 57; 1989 a. 56; 1991 a. 302

**144.375 Air pollution control: standards and determinations.** **(1) AMBIENT AIR QUALITY STANDARDS.** (a) *Similar to federal standard.* If an ambient air quality standard is promulgated under section 109 of the federal clean air act, the department shall promulgate by rule a similar standard but this standard may not be more restrictive than the federal standard except as provided under sub. (6).

(b) *Standard to protect health or welfare.* If an ambient air quality standard for any air contaminant is not promulgated under section 109 of the federal clean air act, the department may promulgate an ambient air quality standard if the department finds that the standard is needed to provide adequate protection for public health or welfare.

**(2) AMBIENT AIR INCREMENT.** The department shall promulgate by rule ambient air increments for various air contaminants in attainment areas. The ambient air increments shall be consistent with and not more restrictive, either in terms of the concentration or the contaminants to which they apply, than ambient air increments under the federal clean air act except as provided under sub. (6).

**(3) CAUSE OR EXACERBATION OF AMBIENT AIR QUALITY STANDARD OR INCREMENT.** The department shall promulgate rules to define what constitutes the cause or exacerbation of a violation of an ambient air quality standard or ambient air increment.

**(4) STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES.** (a) *Similar to federal standard.* If a standard of performance for new stationary sources is promulgated under section 111 of the federal clean air act, the department shall promulgate by rule a similar emission standard but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (6).

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- ~~b. Motor vehicle inspection and maintenance programs.~~
- ~~c. The establishment of stricter nitrogen oxide emission standards for new motor vehicles.~~
- ~~3. To investigate the possible effects on sulfur dioxide emissions resulting from implementing nitrogen oxide controls.~~
- ~~4. To investigate the interaction between sulfur dioxide emissions and nitrogen oxide emissions from stationary sources and the potential for permitting a stationary source an increased level of either type of emission in exchange for reducing the other type, if this state imposes limits on both types of emissions.~~
- ~~(c) The department, in consultation with the commission, shall prepare a report, which shall include all of the following:~~
  - ~~1. A summary of the results of research on the environmental effects of nitrogen oxide emissions.~~
  - ~~2. A summary of the results of the study under pars. (a) and (b).~~
  - ~~3. Recommendations for achieving nitrogen oxide emission reductions through annual emission rates or total annual emission limits.~~
- ~~(d) The department shall hold a public hearing on the report.~~
- ~~(e) The department shall submit the report required under this subsection to the governor and the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3), before January 1, 1989.~~

**History:** 1985 a. 296; 1987 a. 186.

**144.391 Air pollution control permits. (1) NEW OR MODIFIED SOURCES.** (a) *Construction permit.* 1. Except as provided in sub. (6), no person may commence construction, reconstruction, replacement or modification of a stationary source unless the person has a construction permit from the department.

2. A construction permit may authorize the initial operation of a stationary source for a period specified in the permit to allow testing of the stationary source's equipment and monitoring of the emissions associated with the equipment.

(b) *Operation permit.* Except as provided in par. (a) 2 or sub. (6), no person may operate a new source or a modified source unless the person has an operation permit from the department.

(2) **EXISTING SOURCES.** (a) *Operation permit requirement.* Except as provided in sub. (6) or s. 144.3925 (7), no person may operate an existing source after the operation permit requirement date specified under s. 144.374 (1) unless the person has an operation permit from the department.

(b) *Elective operation permit.* A person may apply for an operation permit for one or more points of emission from an existing source for which an operation permit is not required. No person may operate a stationary source under an emission reduction option program unless the person has an operation permit from the department. If a person elects to apply for an operation permit under this paragraph, the election may not be withdrawn and the stationary source may not be operated without the operation permit beginning on the date that the operation permit is first issued.

(3m) **GENERAL OPERATION PERMITS.** The department may, by rule, specify types of stationary sources that may obtain general operation permits. A general operation permit may cover numerous similar stationary sources. A general operation permit shall require any stationary source that is covered by the general operation permit to comply with ss. 144.392 to 144.399. The department shall issue a general operation permit using the procedures and criteria in ss. 144.3925 to 144.399.

**(4m) PERMIT FLEXIBILITY.** The department shall allow a person to make a change to an existing source that has an operation permit, or for which the person has submitted a timely and complete application for an operation permit, for which the department would otherwise first require an operation permit revision, without first requiring a revision of the operation permit if the change is not a modification, as defined by the department by rule, and the change will not cause the existing source to exceed the emissions allowable under the operation permit, whether expressed as an emission rate or in terms of total emissions. Except in the case of an emergency, a person shall notify the department and, for permits required under the federal clean air act, the administrator of the federal environmental protection agency in writing at least 21 days before the date on which the person proposes to make a change to an existing source under this subsection. A person may not make a proposed change to an existing source if the department informs the person before the end of that 21-day period that the proposed change is not a change authorized under this subsection. The department shall promulgate rules establishing a shorter time for advance notification of changes under this subsection in case of emergency.

**(5) EXEMPTION FROM ADDITIONAL PERMIT REQUIREMENTS FOR APPROVED RELOCATED SOURCES.** (a) *Approved relocated source.* A source is an approved relocated source if all of the following requirements are met:

1. The source is to be relocated within an attainment area.
2. The source is a stationary source capable of being transported to a different location.
3. The source received an air pollution control permit for the relevant air contaminant prior to relocation.
4. The owner or operator of the source provides written notice to the department at least 20 days prior to relocation and the department does not object to the relocation.
5. The source in its new location meets all applicable emission limitations and any visibility requirements in the department's rules and does not violate an ambient air increment or ambient air quality standard.

6. The source is not an affected source as defined in 42 USC 7651a (1).

(b) *Exempt from additional permits.* Notwithstanding subs. (1) and (2), no additional permit is required if a source is an approved relocated source.

**(6) EXEMPTION BY RULE.** Notwithstanding the other provisions of this section the department may, by rule, exempt types of stationary sources from any requirement of this section if the potential emissions from the sources do not present a significant hazard to public health, safety or welfare or to the environment.

**(7) COMPLIANCE.** A person who obtains a permit under this section shall comply with all terms and conditions of the permit.

**History:** 1979 c. 34, 221; 1991 a. 302.

**144.392 Construction permit application and review. (1m)**  
**APPLICANT NOTICE REQUIRED.** A person who is required to obtain or who seeks a construction permit shall apply to the department for a permit to construct, reconstruct, replace or modify the stationary source.

**(2) PLANS, SPECIFICATIONS AND OTHER INFORMATION.** Within 20 days after receipt of the application the department shall indicate the plans, specifications and any other information necessary to determine if the proposed construction, reconstruction, replacement or modification will meet the requirements of ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections.

**(3) ANALYSIS.** The department shall prepare an analysis regarding the effect of the proposed construction, reconstruction, replacement or modification on ambient air quality and a preliminary determination on the approvability of the construction permit application, within the following time periods after the receipt of the plans, specifications and other information:

(a) *Major source construction permits.* For construction permits for major sources, within 120 days.

(b) *Minor source construction permits.* For construction permits for minor sources, within 30 days.

**(4) DISTRIBUTION AND AVAILABILITY OF ANALYSIS, PRELIMINARY DETERMINATION AND MATERIALS.** (a) *Distribution and publicity.* The department shall distribute and publicize the analysis and preliminary determination as soon as they are prepared.

(b) *Availability.* The department shall make available for public inspection in each area where the stationary source would be constructed, reconstructed, replaced or modified the following:

1. A copy of materials submitted by the permit applicant;

2. A copy of the department's analysis and preliminary determination; and

3. A copy or summary of other materials, if any, considered by the department in making its preliminary determination.

**(5) NOTICE; ANNOUNCEMENT; NEWSPAPER NOTICE.** (a) *Distribution of notice required.* The department shall distribute a notice of the proposed construction, reconstruction, replacement or modification, a notice of the department's analysis and preliminary determination, a notice of the opportunity for public comment and a notice of the opportunity to request a public hearing to:

1. The applicant;

2. Appropriate federal, local and state agencies including agencies in other states which may be affected;

3. Regional and county planning agencies located in the area which may be affected;

4. Public libraries located in or near the area which may be affected;

5. Any person or group who requests this notice.

(b) *Announcement required.* The department shall circulate an announcement sheet containing a brief description of the proposed construction, reconstruction, replacement or modification, a brief description of the administrative procedures to be followed, the date by which comments are to be submitted to the department and the location where the department's analysis and preliminary determination are available for review to:

1. Local and regional governments which have jurisdiction over the area that may be affected;

2. Local and regional news media in the area that may be affected;

3. Persons and groups who have demonstrated an interest and have requested this type of information.

(c) *Newspaper notice.* The department shall publish a class 1 notice under ch 985 announcing the opportunity for written public comment and the opportunity to request a public hearing on the analysis and preliminary determination.

**(6) PUBLIC COMMENT.** The department shall receive public comments on the proposed construction, reconstruction, replacement or modification and on the analysis and preliminary determination for a 30-day period beginning when the department gives notice under sub. (5) (c).

**(7) PUBLIC HEARING.** (a) *Hearing permitted.* The department may hold a public hearing on the construction permit

application if requested by a person, any affected state or the U.S. environmental protection agency within 30 days after the department gives notice under sub. (5) (c). A request for a public hearing shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The department shall hold the public hearing within 60 days after the deadline for requesting a hearing if it deems that there is a significant public interest in holding a hearing.

(b) *Procedure.* The department shall promulgate by rule procedures for conducting public hearings under this subsection. Hearings under this subsection are not contested cases under s. 227.01 (3).

**(8) DEPARTMENT DETERMINATION; ISSUANCE** (a) *Criteria, considerations.* The department may approve the construction permit application and issue a construction permit according to the criteria established under s. 144.393 after consideration of the comments received under subs. (6) and (7) and after consideration of the environmental impact as required under s. 1.11.

(b) *Time limits.* The department shall act on a construction permit application within 60 days after the close of the public comment period or the public hearing, whichever is later, unless compliance with s. 1.11 requires a longer time. For a major source that is located in an attainment area, the department shall complete its responsibilities under s. 1.11 within one year.

**(9) MINING HEARING.** If a hearing on the construction permit is conducted as a part of a hearing under s. 144.836, the notice, comment and hearing provisions in that section supersede the provisions of subs. (4) to (8).

**History:** 1979 c 34, 221; 1985 a. 182 s. 57; 1991 a. 302

**144.3925 Operation permit; application, review and effect.**

(1) *APPLICANT NOTICE REQUIRED.* A person who is required to obtain an operation permit for a stationary source shall apply to the department for the permit on or before the operation permit application date specified under s. 144.374.

(2) *The department shall specify by rule the content of applications under this subsection.* If required by the federal clean air act, the department shall provide a copy of the complete application to the federal environmental protection agency. The department may not accept an application submitted to the department before November 15, 1992, as an application under this subsection.

(2) *PLANS, SPECIFICATIONS AND OTHER INFORMATION.* Within 20 days after receipt of the application the department shall indicate any additional information required under sub. (1) necessary to determine if the source, upon issuance of the permit, will meet the requirements of ss. 144.30 to 144.426 and 144.96 and rules promulgated under those sections.

(3) *REVIEW; NOTICE; PUBLICATION.* (a) The department shall review an application for an operation permit. Upon completion of that review, the department shall prepare a preliminary determination of whether it may approve the application and a public notice. The public notice shall include all of the following:

1. A brief description of the stationary source.

2. The department's preliminary determination of whether it may approve the application.

3. Notice of the opportunity for public comment and the date by which comments must be submitted to the department.

4. Notice of the opportunity to request a public hearing.

5. Any other information that the department determines is necessary to inform the public about the application.

(b) The department shall provide the notice prepared under par. (a) to all of the following:

~~application and any additional information requested by the department in a timely manner.~~

~~(9) EFFECT OF PERMIT. (a) Except as provided in par. (b), the issuance of an operation permit, including an operation permit that contains a compliance schedule, does not preclude enforcement actions based on violations of ss. 144.30 to 144.426 that occur before, on or after the date that the operation permit is issued. The inclusion of a compliance schedule in an operation permit does not preclude enforcement actions based on violations of ss. 144.30 to 144.426 to which the compliance schedule relates, whether or not the source is violating the compliance schedule.~~

~~(b) Unless precluded by the administrator of the federal environmental protection agency under 42 USC 7661c (f), compliance with all emission limitations included in an operation permit is considered to be compliance with all emission limitations established under ss. 144.30 to 144.426 and emission limitations under the federal clean air act that are applicable to the stationary source as of the date of issuance of the operation permit if the permit includes the applicable emission limitations of the department, in acting on the application for the operation permit, determines in writing that the emission limitations do not apply to the stationary source and the operation permit includes that determination.~~

~~History: 1979 c. 221; 1985 a. 182 s. 57; 1991 a. 302~~

**144.393 Criteria for permit approval. (1) REQUIREMENTS FOR ALL SOURCES.** The department may approve the application for a permit required or allowed under s. 144.391 if it finds:

(a) *Source will meet requirements.* The stationary source will meet all applicable emission limitations and other requirements promulgated under ss. 144.30 to 144.426, standards of performance for new stationary sources under s. 144.375 (4) and emission standards for hazardous air contaminants under s. 144.375 (5);

(b) *Source will not violate or exacerbate violation of air quality standard or ambient air increment.* The source will not cause or exacerbate a violation of any ambient air quality standard or ambient air increment under s. 144.375 (1) or (2);

(c) *Other permits approvable if source is operating under an emission reduction option.* If the source is operating or seeks to operate under an emission reduction option, the required permit applications for other sources participating in that emission reduction option are approvable; and

(d) *Source will not preclude construction or operation of other source.* The stationary source will not degrade the air quality in an area sufficiently to prevent the construction, reconstruction, replacement, modification or operation of another stationary source if the department received plans, specifications and other information under s. 144.392 (2) for the other stationary source prior to commencing its analysis under s. 144.392 (3) for the former stationary source. This paragraph does not apply to an existing source required to have [a] an operation permit.

**(2) REQUIREMENTS FOR PERMITS FOR NEW OR MODIFIED MAJOR SOURCES IN NONATTAINMENT AREAS.** The department may approve the application for a construction permit or operation permit for a major source that is a new source or modified source and is located in a nonattainment area if the department finds that the major source meets the requirements under sub. (1) and it finds that all of the following conditions are met:

(a) *Emission offsets.* By the time the major source is to commence operation, sufficient offsetting emissions reductions have been obtained so that total allowable emissions from the major source and from other air contaminant

sources in the area designated by the department will be sufficiently less than the total emissions allowed prior to the application for the construction permit or operation permit, so that reasonable further progress toward the attainment and maintenance of any ambient air quality standard will be achieved.

(b) *Lowest achievable emission rate.* The emission from the major source will be at the lowest achievable emission rate.

(c) *Applicant's other major sources meet or are on schedule to meet requirements.* All other major sources that are located in this state and that are owned or operated by the permit applicant or by any entity controlling, controlled by or under common control with the permit applicant, as determined under s. 180.1140 (6), meet or are on schedule to meet the requirements of ss. 144.30 to 144.426 and 144.96 and rules promulgated under those sections and are in compliance with or are on schedule to come into compliance with all applicable emission limitations and emission standards under the federal clean air act.

(d) *Analysis of alternatives.* Based on an analysis of alternative sites, sizes, production processes and environmental control techniques for any major source that is located in an area designated under 42 USC 7407 (d), that the benefits of the construction or modification of the major source significantly outweigh the environmental and social costs imposed as a result of the major source's location, construction or modification.

**(3) REQUIREMENTS FOR PERMITS FOR NEW OR MODIFIED MAJOR SOURCES IN ATTAINMENT AREAS.** The department may approve the application for a construction permit or operation permit for a major source that is a new source or a modified source and is located in an attainment area if the department finds that the major source meets the requirements under sub. (1) and it finds:

(a) *Best available control technology.* The source will be subject to the best available control technology for each applicable air contaminant;

(b) *Effects on air quality analyzed.* The effects on air quality as a result of the source and growth associated with the source were analyzed;

(c) *No adverse effect on air quality related values.* The source will not adversely affect the air quality related values of any federal mandatory class I prevention of significant deterioration area; and

(d) *Monitoring.* The permit applicant agrees to conduct monitoring specified by the department as necessary to determine the effects of the source on air quality.

**(4) EXEMPTION FROM REQUIREMENTS.** The department may waive a requirement under sub. (2) or (3) if:

(a) *Not applicable.* The requirement is not applicable to the source; or

(b) *Not necessary.* The requirement is not necessary to ensure that the source will have no adverse effect on air quality if the construction and operation or modification and operation of the source would result in an allowable emission of less than an amount specified by rule by the department.

**(5) CONDITIONAL PERMIT.** The department may issue a conditional air pollution control permit even if it finds that the source, as proposed, does not meet the requirements under subs. (1) to (3). If the department issues a conditional permit, it shall prescribe reasonable permit conditions to assure that the source will meet the requirements under subs. (1) to (3) if it is constructed, reconstructed, replaced, modified or operated in accordance with those conditions.

**(6) EXEMPTION FROM REQUIREMENTS FOR MODIFICATIONS.** The department may waive a requirement under subs. (1) to (3) if the application is for the modification of a source, the

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source already has an air pollution control permit and the source already meets the requirements as a condition of that permit.

**(7) USE OF VOLATILE ORGANIC COMPOUND GROWTH ACCOMMODATION.** (a) Subject to the conditions and restrictions specified in this subsection, the department shall grant use of the growth accommodation as a means for a stationary source to comply with either sub. (1) (b) or (2) (a), or both subs. (1) (b) and (2) (a).

(b) Upon application by a source, the department shall certify to the applicant a growth accommodation credit in the amount requested subject to all of the following conditions:

1. The applicant demonstrates to the satisfaction of the department that it is unable, through reasonable means which could include installation of the best available control technology, to eliminate its need for a growth accommodation credit by reducing emissions of volatile organic compounds from any stationary sources that it owns or operates in the volatile organic compound accommodation area. If the department determines that an applicant could, through reasonable means, reduce the amount of growth accommodation credit applied for by reducing emissions of volatile organic compounds from any stationary sources that it owns or operates in the volatile organic compound accommodation area, the department shall certify to the applicant a growth accommodation credit equal to the amount requested by the applicant minus the amount by which the department finds the source could, through reasonable means, reduce emissions from other stationary sources that it owns or operates in the volatile organic compound accommodation area.

2. Except as provided in s. 144.399 (5) (d), the applicant is in compliance or is complying with an approved schedule to be in compliance with ss. 144.30 to 144.426 and 144.96 with respect to all stationary sources that it owns or operates and has paid the fees required under s. 144.399 (5).

3. Except as provided in subd. 8, the growth accommodation reported for the current year under s. 144.40 (2) (b) 1, after reduction by the amount of the proposed growth accommodation credit and any growth accommodation credits issued since the date of the report, is greater than 2,500 tons.

4. If the growth accommodation reported for the current year under s. 144.40 (2) (b) 1, less a reduction by the amount of any growth accommodation credits issued since the date of the report under s. 144.40 (2) (b) 1, is greater than 3,000 tons, the department may certify to the applicant no more than the amount of the growth accommodation reported for the current year under s. 144.40 (2) (b) 1, less the sum of 2,750 tons and any growth accommodation credits issued since the date of the report under s. 144.40 (2) (b).

5. If the growth accommodation reported for the current year under s. 144.40 (2) (b) 1, after reduction by the amount of any growth accommodation credits issued since the date of the report under s. 144.40 (2) (b) 1, is greater than 2,500 tons but less than or equal to 3,000 tons, the department may certify no more than 250 tons to the applicant in that year.

6. The applicant agrees to forfeit any unused growth accommodation credits that the department determines the applicant does not need, as provided under sub. (8).

7. The applicant agrees not to sell or transfer any amount of the growth accommodation credit to any person other than the department.

8. If the growth accommodation reported for the current year under s. 144.40 (2) (b) 1, after reduction by the amount of the proposed growth accommodation credit and any growth accommodation credits issued since the date of the

report, would be 2,500 tons or less, the department may certify to the applicant a growth accommodation credit in the amount determined under this section if, because of facility shutdowns or replenishment activities under s. 144.40 that have occurred, the growth accommodation for the next succeeding year after reduction by the amount of the growth accommodation credit will be greater than 2,500 tons.

9. An applicant shall inform the department of the date or dates when it will need to use any given amount of the growth accommodation credit. The department shall certify to the applicant the proper amount of the growth accommodation credit on the date which the applicant states it will need it and shall reserve the proper amount of the growth accommodation credit for certification to the applicant upon the date needed, except for any amount which is forfeited under sub. (8). The department may use reserved growth accommodation credits to certify temporary growth accommodation credits which expire on or before the date when they are certified to the source which reserved them.

10. Upon request by an applicant, the department may certify to the applicant a growth accommodation credit which expires upon a date designated in the permit. The applicant shall sign a statement to acknowledge the expiration date of the permit. Growth accommodation credits issued under this subdivision may be certified from growth accommodation credits reserved by another source under subd. 9.

(c) Nothing in this subsection grants the recipient of a growth accommodation credit a property right to emit volatile organic compounds.

(d) Notwithstanding pars. (a) and (b) (intro.), the department may not grant use of the growth accommodation under this subsection for an air pollution control permit application submitted after July 1, 1992, as long as the growth accommodation area is designated under 42 USC 7407 as an ozone nonattainment area.

**(8) FORFEITURE OF GROWTH ACCOMMODATION CREDITS.** Within 4 years after the department certifies, under sub. (7), a growth accommodation credit to an applicant or reserves for the future use of an applicant a growth accommodation credit, and at least every 4 years thereafter, the department shall determine whether the certified or reserved growth accommodation credit is reasonably necessary for the applicant's current use and future plans. If the department determines that any amount of the certified or reserved growth accommodation credit is not reasonably necessary for the applicant's current use and if the applicant cannot demonstrate to the satisfaction of the department that any amount of the certified or reserved growth accommodation credit is reasonably necessary for the applicant's future plans, the applicant shall forfeit an amount of the growth accommodation credit, as determined by the department. The department shall deposit the forfeited amount of the growth accommodation credit in the growth accommodation replenishment.

**(9) RESTRICTION ON EMISSION REDUCTION OPTION PROGRAMS.** (a) No emissions of volatile organic compounds may be used in an emission reduction option program if:

1. The program involves a grantee of emissions of volatile organic compounds that is different than the grantor of emissions of volatile organic compounds; and

2. The emissions of volatile organic compounds specified in the program are from a recorded source.

(b) In this subsection, "recorded source" means a stationary source in the volatile organic compound accommodation area owned or operated by any person who owns or operates on May 17, 1988, a stationary source whose actual 1980 emissions of volatile organic compounds are recorded as zero

in the 1982 plan approved by the U.S. environmental protection agency under 42 USC 7502 (a).

**(10) REQUIREMENTS FOR MEDICAL WASTE INCINERATORS.** (a) In this subsection, "medical waste incinerator" has the meaning given in s. 159.07 (7) (c) 1. cr.

(b) In addition to the requirements under subs. (1) to (3), the department may approve an application submitted after May 14, 1992, for a permit required or allowed under s. 144.391 for the construction of a medical waste incinerator or for the modification of a medical waste incinerator that expands the capacity of the medical waste incinerator only if it finds that the new or modified medical waste incinerator will be needed and that the site of the medical waste incinerator is appropriate.

(c) The department shall consider all of the following in evaluating the need for the proposed medical waste incinerator:

1. An approximate service area for the proposed medical waste incinerator that encompasses all sources of waste that could potentially be burned in the medical waste incinerator. The department shall delineate the service area based on the economics of waste collection, transportation and treatment.

2. The quantity of waste that could potentially be burned in the proposed medical waste incinerator and that is generated within the anticipated service area.

3. The remaining capacity or design capacity of other solid waste facilities, if those facilities are located within the anticipated service area of the proposed medical waste incinerator and are currently providing or are expected to provide solid waste management for any sources of solid waste that could potentially be burned in the medical waste incinerator.

4. The quantity of waste having the potential to be burned in the medical waste incinerator that may be managed in an effective recycling program created under s. 159.11.

5. The potential for reducing the quantity of waste having the potential to be burned in the medical waste incinerator by reducing the amount of waste that is generated within the anticipated service area and the potential for using alternative technologies for disposing of the waste.

(d) The department may not determine that the site of a proposed medical waste incinerator is appropriate if the medical waste incinerator or the transportation of solid waste to the medical waste incinerator will have an adverse effect that is both substantial and unreasonable on any of the following:

1. Existing recreational land uses.  
2. Land or surface water that has any of the characteristics under s. 23.27 (2).

3. Scenic vistas of statewide significance.  
4. Residential property.

5. Schools, churches, hospitals, nursing homes or day care facilities.

6. Projected land uses identified in any municipal master plan or official map that is in effect at least 15 months prior to the submission to the department of the permit application, if the land uses are expected to occur during the site life of the medical waste incinerator and any expansions of the medical waste incinerator.

(e) The department shall promulgate rules for making the findings under par. (b).

*History:* 1979 c. 34, 221; 1981 c. 314 s. 146; 1985 a. 182 s. 57; 1987 a. 27, 399; 1989 a. 56; 1991 a. 300, 302.

**144.3935 Criteria for operation permits for existing sources.** (1) ISSUANCE TO SOURCES NOT IN COMPLIANCE; FEDERAL OBJECTION.

(a) Notwithstanding s. 144.393, the department may issue an operation permit for an existing source that does not comply with the requirements in the operation

permit, in the federal clean air act, in an implementation plan under s. 144.31 (1) (f) or in s. 144.393 when the operation permit is issued if the operation permit includes all of the following:

1. A compliance schedule that sets forth a series of remedial measures that the owner or operator of the existing source must take to comply with the requirements with which the existing source is in violation when the operation permit is issued.

2. A requirement that, at least once every 6 months, the owner or operator of the existing source submit reports to the department concerning the progress in meeting the compliance schedule and the requirements with which the existing source is in violation when the operation permit is issued.

(b) Notwithstanding par. (a) and s. 144.393, the department may not issue an operation permit to an existing source if the federal environmental protection agency objects to the issuance of the operation permit as provided in s. 144.3925 (5m) unless the department revises the operation permit to meet the objection.

**(2) ONE-YEAR MORATORIUM ON REVOCATION.** (a) The department may not revoke an operation permit for an existing source for one year after the issuance of that permit based upon failure of the existing source at the time of permit issuance to comply with ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections.

(b) Notwithstanding par. (a), the department may take any other action necessary to enforce an operation permit and ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections which apply to the existing source after issuance of an operation permit under this section.

*History:* 1979 c. 221, 355; 1991 a. 302.

**144.394 Permit conditions.** The department may prescribe conditions for an air pollution control permit to ensure compliance with ss. 144.30 to 144.426 and 144.96 and rules promulgated under these sections and to ensure compliance with the federal clean air act if each condition is one of the following and if each condition is applicable to the source:

(1) Final inspection and release of the project for permanent operation upon completion of construction, reconstruction, replacement or modification.

(2) Variances, orders or compliance schedules.

(3) Requirements necessary to assure compliance with s. 144.393.

(4) Reasonable construction and applicable operating conditions, emission control equipment maintenance requirements and emergency episode plans.

(5) Emission reduction options.

(6) Documentation of the allocation of the available air resource.

(7) The terms of any election by the permit applicant to meet more stringent emission limitations or to limit hourly, daily or annual emissions beyond what is otherwise required or to obtain an emission reduction option.

(7m) The terms for use of growth accommodation credits under s. 144.393 (7) or (8), including the dates that the source expects to use the credits.

(8) Requirements concerning entry and inspection as provided in s. 144.34.

(9) Monitoring, record-keeping, reporting and compliance certification requirements.

(10) Requirements to submit compliance plans and schedules and progress reports.

(11) Conditions necessary to implement 42 USC 7651 to 7651o and regulations under 42 USC 7651 to 7651o concerning acid deposition control.

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(12) Other conditions applicable to the source under the federal clean air act.

(13) Other requirements specified by rule by the department.

History: 1979 c. 34, 221; 1987 a. 27; 1991 a. 302

**144.395 Alteration, suspension and revocation of permits.** (1) **ALTERATION.** The department, after providing written notice to the permit holder and to the persons listed under s. 144.392 (5) (a) 2 to 5, may alter an air pollution control permit if there is or was:

(a) **Violation.** A significant or recurring violation of any condition of the permit;

(b) **Change in rules.** A change in any applicable emission limitation, ambient air quality standard or ambient air quality increment that requires either a temporary or permanent reduction or elimination of the permitted emission or allows a temporary or permanent increase of the permitted emission; or

2. A change in any applicable rule promulgated under ss. 144.30 to 144.426 or 144.96;

(c) **Election.** An election by the permit holder to meet more stringent emission limitations, to limit hourly, daily or annual emissions beyond what is otherwise required or to obtain an emission reduction option;

(d) **Misrepresentation or failure to disclose.** Any misrepresentation or failure to disclose fully all relevant facts when obtaining the permit; or

(e) **Reconstruction, replacement or modification.** A reconstruction, replacement or modification of the stationary source.

(f) **Local request.** A request for changes in the air pollution control permit of a medical waste incinerator, as defined in s. 159.07 (7) (c) 1. cr., that has a capacity of 5 tons or more per day made by the governing body of a city, village or town in which the medical waste incinerator is located if the department determines that the changes are reasonable to protect the public health and the environment.

(2) **SUSPENSION OR REVOCATION.** The department, after providing written notice to the permit holder and to the persons listed under s. 144.392 (5) (a) 2 to 5, may suspend or revoke an air pollution control permit, part of that permit or the conditions of that permit if there is or was:

(a) **Violation.** A significant or recurring violation of any condition of the permit which causes or exacerbates a violation of any ambient air quality standard or ambient air increment or which causes air pollution;

(b) **Misrepresentation or deliberate failure to disclose.** Any misrepresentation or a deliberate failure to disclose fully all relevant facts when obtaining the permit; or

(c) **Failure to pay fees.** Failure to pay the required fee.

(3) **HEARINGS ON ALTERATION, SUSPENSION AND REVOCATION.** Any decision of the department under this section is effective unless the permit holder seeks a hearing on the decision under s. 144.403 (1). If the permit holder files a petition with the department within the time limit specified under s. 144.403 (1) (a), the air pollution control permit remains unaltered and in effect until 10 days after service of the decision issued under s. 144.403 (1) on the matter or a later date established by court order.

NOTE: This section is repealed and recreated eff. 7-1-93 by 1991 Wis. Act 302 to read:

144.395 PERMIT REVISION, SUSPENSION AND REVOCATION. The department shall promulgate rules establishing criteria and procedures for revising, suspending and revoking air pollution control permits.

History: 1979 c. 34, 221; 1989 a. 335; 1991 a. 302

**144.396 Permit duration and renewal.** (1) **CONSTRUCTION.** Unless otherwise specified in the permit, a construction

permit is valid for 18 months from the date of issuance of the permit unless the permit is revoked or suspended. The department may extend the term of the construction permit for the purposes of commencing or completing construction, reconstruction, replacement or modification. Unless otherwise specified in a construction permit, the department may only extend the term of the permit for up to 18 additional months beyond the original 18-month period. If construction, reconstruction, replacement or modification is not completed within the term specified in the permit or any extension granted by the department, the applicant shall apply for a new construction permit.

(2) **OPERATION.** The department shall specify the term of an operation permit in the operation permit. The term of an operation permit issued under s. 144.3925 or renewed under sub. (3) may not exceed 5 years from the date of issuance or renewal.

(3) **RENEWAL.** (a) A permittee shall apply for renewal of an operation permit at least 12 months before the operation permit expires. The permittee shall include any new or revised information needed to process the application for renewal.

(b) The department shall follow the procedures in s. 144.3925 in renewing an operation permit for a new source, a modified source or an existing source.

History: 1979 c. 34, 221; 1991 a. 302

**144.398 Failure to adopt rule or issue permit or exemption.** The failure to adopt a rule or issue an air pollution control permit or the exemption or granting of an exemption from an air pollution control permit requirement does not relieve any person from compliance with any emission limitation or with any other provision of law.

History: 1979 c. 34

**144.399 Fees.** (1) **RULE MAKING.** The department may promulgate rules for the payment and collection of reasonable fees for all of the following:

(a) **Application for permit.** Reviewing and acting upon any application for a construction permit.

(c) **Request for exemption.** Reviewing and acting upon any request for an exemption from the requirement to obtain an air pollution control permit.

(2) **FEES FOR PERSONS REQUIRED TO HAVE OPERATION PERMITS.** (a) The department shall promulgate rules for the payment and collection of fees by the owner or operator of a stationary source for which an operation permit is required. The rules shall provide all of the following:

1. That fees collected in a year are based on actual emissions of all regulated pollutants and any other air contaminant specified by the department in the rules in the preceding year.

2. Except as provided under par. (c), that the fees collected in 1993 are \$18 per ton of each regulated pollutant.

2g. Except as provided under par. (c), that the fees collected in 1994 are \$25 per ton increased by the percentage by which the consumer price index, as defined in 42 USC 7661a (b) (3) (B) (v), for 1993 exceeds the consumer price index for 1989.

2r. That the fees collected in each year after 1994 are calculated by increasing the fees collected in the preceding year by the percentage by which the consumer price index, as defined in 42 USC 7661a (b) (3) (B) (v), increased in the preceding year.

3. That fees are not based on emissions by an air contaminant source in excess of 4,000 tons per year of each regulated pollutant, except that, subject to par. (am), this limitation does not apply to a major utility, as defined in s. 144.385 (2).

## CHAPTER 285

### AIR POLLUTION

	<b>SUBCHAPTER I</b> <b>DEFINITIONS</b>		<b>SUBCHAPTER VI</b> <b>WASTE INCINERATORS; OZONE DEPLETING SUBSTANCES; EMISSION LIMITS AND OTHER REQUIREMENTS</b>
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#### SUBCHAPTER IV

#### VOLATILE ORGANIC COMPOUNDS AND MOBILE SOURCES; EMISSION LIMITS AND STANDARDS

##### **285.30 Motor vehicle emissions limitations; inspections.** **(1)** DEFINITIONS. As used in this section, unless the context requires otherwise:

(a) "Federal act" means the federal clean air act, [42 USC 7401](#) et seq., and regulations issued by the federal environmental protection agency under that act.

(b) "Motor vehicle" has the meaning designated under s. [340.01](#) (35).

**(2)** **LIMITATIONS.** The department shall adopt rules specifying emissions limitations for all motor vehicles not exempted under sub. (5). The limitations may be different for each size, type and year of vehicle engine affected and may not be more stringent than those required by federal law at the time of the vehicle's manufacture. The limitations shall be adopted and periodically revised upon consideration of the following factors:

(a) The emissions reductions necessary to achieve federally mandated ambient air quality standards by any deadline established by the federal act and to maintain those standards after any deadline established by the federal act.

(b) The emissions levels attainable by reasonable preventive maintenance practices relating to installed emission control equipment and devices for each model year, size and type of motor vehicle affected.

(c) The requirements for eligibility for a manufacturer's warranty under section 7541 (b) of the federal act.

(d) The requirements of the federal act.

**(3)** **COUNTIES WHERE INSPECTIONS REQUIRED.** If the department finds that air quality within a county will not meet one or more applicable primary or secondary ambient air quality standards by any deadline established by the federal act, or that these standards will not be maintained in the county after any deadline established by the federal act and that inspection of emissions from motor vehicles in any part of the county is required by federal law to

attain or maintain these standards, the department shall certify this finding to the department of transportation.

**(4) TERMINATION.** If the department finds that air quality within a county specified in a certification under sub. (3) has attained all applicable ambient air quality standards and that these standards will be maintained in the county or that control of motor vehicle emissions is no longer required by federal law for attainment and maintenance of these standards, the department shall notify the department of transportation that the county is withdrawn from the certification under sub. (3).

**(5) EXEMPTIONS.** Emissions limitations promulgated under sub. (2) do not apply to the following motor vehicles:

- (a) A motor vehicle of a model year of 1995 or earlier.
- (b) A motor vehicle of a model year of 2006 or earlier that has a gross vehicle weight rating exceeding 8,500 pounds, as determined by the manufacturer of the vehicle, and a motor vehicle of a model year of 2007 or later that has a gross vehicle weight rating exceeding 14,000 pounds, as determined by the manufacturer of the vehicle.
- (c) A motor vehicle exempt from registration under s. 341.05, except that a motor vehicle owned by the United States is not exempt unless it comes under par. (a), (b), (d), (e), (f), (g), (h), (j), or (k).
- (d) A motor vehicle of a model year of 2006 or earlier that is powered by diesel fuel.
- (e) A new motor vehicle not previously registered in any state.
- (f) A motor vehicle for which inspection, in the judgment of the department, is not a cost effective method for attaining and maintaining air quality.
- (g) A moped as defined in s. 340.01 (29m).
- (h) A motorcycle as defined in s. 340.01 (32).
- (i) A farm truck as defined in s. 340.01 (18) (a).
- (j) An off-road utility vehicle as defined in s. 340.01 (38m).
- (k) A low-speed vehicle, as defined in s. 340.01 (27h).
- (L) A lightweight utility vehicle as defined in s. 346.94 (21)

(a) 2.

**(6) TAMPERING WITH POLLUTION CONTROL SYSTEM OR MECHANISM.** (a) *Definitions.* As used in this subsection:

1. "Air pollution control equipment" means any equipment or feature which constitutes an operational element of the air pollution control system or mechanism of a motor vehicle.

3. "Tamper" means to dismantle, to remove without replacing with an identical or comparable tested replacement device or to cause to be inoperative any air pollution control equipment.

(b) *Prohibition.* Except as permitted or authorized by rule of the department, no person may fail to maintain in good working order or may tamper with air pollution control equipment.

(c) *Ineligibility for motor vehicle registration.* Except as permitted or authorized by rule of the department, if any person tampers with the air pollution control equipment of a motor vehicle, that vehicle is ineligible for motor vehicle registration until the air pollution control equipment is replaced, repaired or restored to good working order.

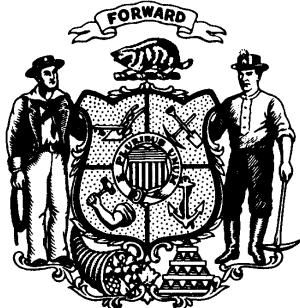
(d) *Suspension or cancellation of motor vehicle registration.* Except as permitted or authorized by rule of the department, if the owner of a motor vehicle tampers with or causes or knowingly permits any person to tamper with the air pollution control equipment, the motor vehicle registration for that vehicle may be suspended or canceled in addition to any other penalty provided by law.

(e) *Rule making.* The department shall promulgate rules that specify the requirements for the inspection of motor vehicles for the occurrence of tampering with air pollution control equipment.

**History:** 1971 c. 164 s. 81; 1977 c. 29 s. 1654 (7) (b); 1979 c. 34 s. 2102 (39) (g); 1979 c. 274; 1981 c. 390; 1983 a. 243; 1987 a. 27; 1991 a. 39; 1993 a. 288; 1995 a. 137; 1995 a. 227 s. 507; Stats. 1995 s. 285.30; 1997 a. 27; 2003 a. 192; 2007 a. 20, 33; 2009 a. 157, 311.

**Cross-reference:** See also ch. [NR 485](#), Wis. adm. code.

# State of Wisconsin



**2011 Assembly Bill 467**

Date of enactment: **April 2, 2012**  
Date of publication\*: **April 16, 2012**

## 2011 WISCONSIN ACT 171

**AN ACT to create** 285.60 (3m) and 285.63 (3m) of the statutes; **relating to:** consideration of certain greenhouse gas emissions in determining requirements applicable to a stationary source of air pollution.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 285.60 (3m) of the statutes is created to read:

**285.60 (3m)** CONSIDERATION OF CERTAIN GREENHOUSE GAS EMISSIONS. Unless required under the federal clean air act, in determining whether a person is required to obtain a construction permit or an operation permit for a stationary source under this section based on emissions of greenhouse gases resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms, the department may only consider carbon dioxide emissions consistent with [40 CFR 51.166](#) (b)

(48) and the definition of "subject to regulation" in [40 CFR 70.2](#).

**SECTION 2.** 285.63 (3m) of the statutes is created to read:

**285.63 (3m)** CONSIDERATION OF CERTAIN GREENHOUSE GAS EMISSIONS. Unless required under the federal clean air act, in determining whether a major source is subject to best available control technology under sub. (3) (a) for greenhouse gas emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms, the department may only consider carbon dioxide emissions consistent with [40 CFR 51.166](#) (b) (48) and the definition of "subject to regulation" in [40 CFR 70.2](#).

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\* Section 991.11, WISCONSIN STATUTES 2009–10 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial 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 may not be more than 10 working days after the date of enactment].

Date of enactment: **April 2, 2012**

**2011 Senate Bill 518** Date of publication\*: **April 16, 2012**

\* Section 991.11, WISCONSIN STATUTES 2009-10 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial 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 may not be more than 10 working days after the date of enactment].

# 2011 WISCONSIN ACT 196

**AN ACT to create** 285.31 (5) of the statutes; **relating to:** gasoline vapor recovery requirements and granting rule-making authority.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

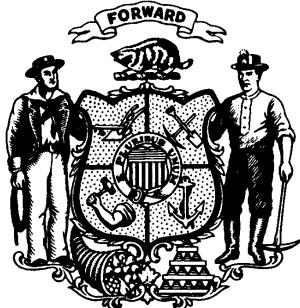
**SECTION 1.** 285.31 (5) of the statutes is created to read:

285.31 (5) TERMINATION OF REQUIREMENTS. (a) The rules promulgated under sub. (3) cease to apply on the effective date of the waiver of the requirement for vapor control systems specified by the federal environmental protection agency in a regulation promulgated under 42 USC 7521 (a) (6). Beginning on that day, persons owning or operating retail stations are not required to maintain vapor control systems described in sub. (3) (a).

(b) The department may promulgate by rule requirements for capping and closing vapor control systems described in sub. (3) (a).

(c) The rules promulgated under sub. (3) (a) do not apply to a retail station the construction of which begins after the effective date of this paragraph .... [LRB inserts date].

# State of Wisconsin



**2013 Senate Bill 371**

Date of enactment: **December 13, 2013**  
Date of publication\*: **December 14, 2013**

## 2013 WISCONSIN ACT 91

**AN ACT to create** 285.27 (3m) of the statutes; **relating to:** nitrogen oxide emission standards for certain simple cycle combustion turbines.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 285.27 (3m) of the statutes is created to read:

**285.27 (3m) EXEMPTION FROM STANDARDS FOR CERTAIN COMBUSTION TURBINES.** (a) In this subsection, "combustion turbine" means a simple cycle combustion turbine.

(b) The performance standards promulgated by the department under NR 428.04 (2) (g) 1. a. and 2. a., Wis. Adm. Code, do not apply to a combustion turbine that undergoes a modification on or after February 1, 2001 if all of the following apply:

1. The department and the federal environmental protection agency find that the owner or operator of the combustion turbine has satisfactorily demonstrated that equipping the turbine with a dry low nitrogen oxide combustion system is not technologically or economically feasible or a dry low nitrogen oxide combustion system

is not commercially available from the manufacturer of the combustion turbine.

2. The federal environmental protection agency concurs, in writing, with the department's finding under subd. 1.

3. The owner or operator of the combustion turbine controls nitrogen oxide emissions during operation of the combustion turbine by injecting water into the combustion turbine according to the manufacturer's specifications.

4. The concentration of nitrogen oxide emitted from the combustion turbine does not exceed 25 parts per million dry volume, corrected to 15 percent oxygen, on a 30 day rolling average basis during combustion of gaseous fuels and does not exceed 65 parts per million dry volume, corrected to 15 percent oxygen, on a 30 day rolling average basis during combustion of distillate fuels.

(c) The department shall determine whether a combustion turbine undergoes a modification under par. (b) in accordance with NR 428.04 (1), Wis. Adm. Code.

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\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

## Chapter Trans 131

### MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM (MVIP)

Trans 131.01	Purpose and scope.
Trans 131.02	Definitions.
Trans 131.03	Emission inspection and reinspection.
Trans 131.04	Waiver of compliance.
Trans 131.05	Waiver emission equipment inspection.
Trans 131.06	Inspection compliance.
Trans 131.07	Voluntary inspections.
Trans 131.08	Letter of temporary exemption from emission inspection requirements.

Trans 131.09	Temporary operating permits.
Trans 131.10	Reciprocity.
Trans 131.11	Audits of inspection facilities.
Trans 131.12	Equipment specifications and quality control.
Trans 131.13	Licensing of inspectors.
Trans 131.14	Remote sensing.
Trans 131.15	Performance monitoring of repair facilities.
Trans 131.16	Automotive emission repair technician training.
Trans 131.17	Notification of inspection requirements.

**Note:** Chapter Trans 131 as it existed on June 30, 1993 was repealed and a new ch. Trans 131 was created effective July 1, 1993.

**Trans 131.01 Purpose and scope.** (1) STATUTORY AUTHORITY. As authorized by ss. 110.06, 110.20 (9) and 227.11 (2) (a), Stats., the purpose of this chapter is to establish the department's administrative interpretation of s. 110.20, Stats., relating to a motor vehicle emissions inspection program.

(2) APPLICABILITY. This chapter applies to all nonexempt vehicles customarily kept in those counties certified by the department of natural resources under s. 110.20 (5) (a), Stats. It also applies to all nonexempt vehicles customarily kept in any county whose board of supervisors has adopted a resolution under s. 110.20 (5) (b), Stats., requesting the department establish an inspection and maintenance program, and applies to any nonexempt vehicle which a person presents for a voluntary inspection at an inspection station pursuant to s. 110.20 (7), Stats., and s. Trans 131.07. For purposes of determining where a vehicle is customarily kept, the county of domicile as indicated by the vehicle owner and contained in the department's title data base shall be used. In the absence of an indicated county of domicile, the owner or lessee's post office address shall be used to determine county of domicile. The department may determine whether the vehicle domicile location is consistent with the owner or lessee's post office address or with other information that indicates the customary location of the vehicle. The department may change a vehicle domicile location in department title records to make it consistent with the results of its determination, and may require the vehicle to undergo emission inspection as required in this chapter. If the vehicle owner or lessee disputes the department's determination, the vehicle owner or lessee may present evidence satisfactory to the department of the correct vehicle domicile location. The department decision as to correct vehicle domicile location shall be the final decision of the department.

**Note:** Forms used in this chapter are MV 2016, substitute renewal notice; MV 2470, vehicle inspection report; MV 2472, application for letter of temporary exemption from emission test requirements; MV 2588, exchanged engine certificate; MV 2594, quality assurance inspection report. Copies can be obtained from the Wisconsin Department of Transportation, Dealer and Agent Section, P. O. Box 7909, Madison, WI 53707-7909.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; CR 07-114: am. (2) Register June 2008 No. 630, eff. 7-1-08; CR 10-088: am. (2) Register December 2010 No. 660, eff. 1-1-11.

**Trans 131.02 Definitions.** Words and phrases defined in s. 110.20, Stats., have the same meaning in this chapter unless a different definition is specified. In this chapter:

(1) "Air pollution control equipment" or "emission equipment" means any equipment or feature which constitutes an operational element, device or mechanism which is part of the air pollution control system on a motor vehicle.

(1m) "Authorized inspection facility" means a self-service inspection facility, or a private inspection facility, or an inspection station or facility operated by the department, or by a contractor

or subcontractor authorized by the department to perform emission inspections.

(2) "CO" means carbon monoxide.

(3m) "Collector vehicle" means a nonexempt vehicle with a collector special interest vehicle registration under s. 341.266, Stats.

(6) "Contractor" means a person with whom the department has a contract that provides for the operation of one or more inspection stations or for the performance of emission inspection at an authorized inspection facility other than an inspection station or for the performance of a service related to the Wisconsin vehicle emission inspection program.

(6m) "DLC" means data link connector on a vehicle equipped with an OBD II system.

(6r) "DTC" means diagnostic trouble code stored by a vehicle's OBD II system.

(7) "Department" means the Wisconsin department of transportation.

(8) "Electronic reporting," "electronically reported" or "reported electronically" means reported directly to the department or its contractor electronically in a format specified by the department.

(9) "Emission limitations" means the maximum vehicle emission concentrations in s. NR 485.04.

**Note:** Chapter NR 485 may be obtained from the Wisconsin Department of Natural Resources, Bureau of Air Management, P.O. Box 7921, Madison, WI 53707.

(10) "Emission inspection" means the OBD II inspection.

(12) "Exempt vehicles" means all vehicles other than nonexempt vehicles which are identified in s. 285.30 (5), Stats., and s. NR 485.04 (10).

(13) "Exhaust emission" or "exhaust gas" means the combination of substances emitted into the atmosphere from the tailpipe or tailpipes of a motor vehicle.

(15) "Federal rule" means 40 CFR part 51, subpart S, inspection/maintenance program requirements; final rule.

**Note:** All references made to the Federal Rule in this document are to 40 CFR Part 51, Subpart S Inspection/Maintenance Program Requirements; Final Rule dated November 5, 1992, as amended through January 1, 2001.

(17) "GPM" means grams per mile.

(18) "GVWR" means gross vehicle weight rating and has the same meaning as provided in s. 340.01 (19r), Stats.

(19) "Government vehicle" means a motor vehicle both owned by this state or by any county, municipality, or federally-recognized Indian tribe or band and registered under s. 341.26 (2m), Stats., or a vehicle owned or leased by the United States.

(20) "HC" means hydrocarbon.

(20m) "Hobbyist vehicle" means a nonexempt vehicle with a hobbyist registration under s. 341.268, Stats.

(21) "Homemade vehicle" has the same meaning as provided in s. 341.268, Stats.

**(22)** "Inspection" means the mandatory vehicle emission inspection required by s. 110.20, Stats., consisting of an OBD II inspection.

**(23)** "Inspection report" has the same meaning as provided in sub. (54).

**(24)** "Inspection station" means an inspection facility operated by a party under contract with the department for the purpose of conducting vehicle emission inspections required by s. 110.20, Stats.

**(25)** "Inspector" means the individual who performs the vehicle emission inspection for the contractor or subcontractor.

**(26)** "MIL" means malfunction indicator lamp.

**(28)** "Master automotive technician" means a person possessing the highest level of any nationally recognized certification organization for automotive emission-related diagnosis and repair.

**(29)** "Model year" means the date of manufacture of the original vehicle within the annual production period of the vehicle as designated by the manufacturer, or if a reconstructed or home-made vehicle, the first year of titling. If the manufacturer does not designate a production period, the term "model year" means the calendar year of manufacture. Determination of model year shall be as indicated in the VIN or on the vehicle's registration documents.

**(31)** "New vehicle" means a motor vehicle to which the legal title has never been transferred to an ultimate retail purchaser as defined in s. Trans 139.02.

**(34)** "OBD II" means the on-board diagnostic system installed on 1996 and newer vehicles by the manufacturer that meets the regulations promulgated by the USEPA under 42 USC 7401-7671q.

**(34m)** "OBD inspection" or "OBD II inspection" means an emissions related inspection in which the vehicle's on-board computer is accessed to evaluate the status of the vehicle's emission control system.

**(35)** "Performance monitoring" means the system of evaluating automotive repair facilities' performance by collecting and reporting the repair data as recorded on the vehicle inspection report or as reported electronically, upon performance of the repair.

**(36)** "Person" means an individual, corporation, association, firm, partnership, joint stock company, public or municipal corporation, political subdivision, the state or any agency thereof, and the federal government.

**(37)** "Proper" or "properly" means meeting original manufacturer's equipment standards or the equivalent.

**(37m)** "Readiness monitors" means the tests performed internally by a vehicle's OBD II system that determine if an emission component is ready to be checked by the on-board vehicle computer.

**(38)** "Recognized automotive emission repair technician" means a person who has received and has proof of formal training in both diagnosis and repair of automotive engines and related systems.

**(39)** "Recognized repair facility" means a franchised new car dealer or other business with a Wisconsin sales tax number that performs emission repairs as a regular part of its business activities and employs at least one recognized automotive emission repair technician.

**(40)** "Reconstructed vehicle" has the same meaning as provided in s. 341.268 (1) (d), Stats.

**(41)** "Registration" has the same meaning as provided in s. 344.01 (2) (e), Stats.

**(42)** "Remote sensing test" means the test conducted under s. Trans 131.14.

**(44)** "Tamper" or "tampering" has the same meaning as in s. 285.30 (6) (a) 3., Stats.

**(45)** "Technical assistance center" means either a separate contractor facility or a portion of an inspection station which, under the direction of a master automotive technician, is equipped to perform both emission inspections and complete diagnostic evaluations of nonexempt vehicles.

**(48)** "Truck" has the same meaning as "motor truck" as provided in s. 340.01 (34), Stats.

**(50)** "USEPA" means the United States Environmental Protection Agency.

**(50m)** "USEPA technical guidance" means the USEPA publication "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," dated June, 2001, which is incorporated herein by reference. Any alternative inspection procedures or changes in procedural details shall be approved by the USEPA administrator prior to use.

**Note:** Copies are on file with the Legislative Reference Bureau and the Attorney General's office. These procedures are available in published form from the Wisconsin Department of Transportation, Bureau of Field Services, P. O. Box 7909, Room 253, Madison, WI 53707-7909 and can be accessed on the internet at <http://www.e-pa.gov/otaq/regs/im/obd/r01015.pdf>.

**(51)** "Van" means a motor vehicle constructed on a truck chassis, or indicated as a truck on the manufacturer's statement of origin, with a completely enclosed driver and cargo compartment useable as a cargo carrying vehicle or as a passenger vehicle depending upon equipment.

**(52)** "Vehicle" or "motor vehicle" has the same meaning as provided in s. 340.01 (35), Stats.

**(53)** "Vehicle inspection notice" means a document mailed to vehicle owners as a result of failing a remote sensing test indicating that the nonexempt vehicle has been inspected in accordance with the provisions of s. Trans 131.14 and, if necessary, shall be presented at an inspection station or other authorized inspection facility for inspection under s. 110.20 (6) (a) 4., Stats.

**(54)** "Vehicle inspection report" means a serially numbered document issued at an inspection station or authorized inspection facility or technical assistance center or by an inspector designated by the department to perform the functions of a technical assistance center at the time of vehicle inspection, indicating that the vehicle has been inspected in accordance with the provisions of this chapter, and may include data reported electronically.

**(55)** "VIN" means a unique vehicle identification number as defined in s. 340.01 (23r), Stats.

**(56)** "Voluntary inspection" means the voluntary presentation of a nonexempt vehicle for an emission inspection.

**(56m)** "Waiver" means a conditional one-cycle exemption from emission inspection that may be granted to a vehicle owner or lessee.

**(57)** "Waiver emission equipment inspection" means a visual inspection conducted to determine the presence and proper connection of selected emission equipment on vehicles presented for waiver determination under s. Trans 131.04.

**(58)** "Waiver investigator" means the department employee or designated contractor representative who approves or disapproves applications for waivers.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; emerg. revise eff. 12-4-95; am. (intro.), renum. (1) to (4), (6) to (10), (14) to (16), (18) to (22), (24), (26) to (28) and (34) to (42) to be (2), (3), (6) to (10), (12), (13), (16), (19) to (25), (29) to (32), (36), (37), (41), (43), (44), (48), (51), (52), (54), (56), (58), respectively, and am. (6), (8) to (10), (12), (19), (22), (23), (25), (29), (32), (43), (44), (51), (52), (54), (56), (58), cr. (1), (3m), (4), (14), (15), (18), (20m), (27), (28), (34), (35), (38), (39), (40), (42), (45), (47), (49), (50), (50m), (53), (55) and (57), r. (5), (12), (13), (23), (25), (29), (30), r. and recr. (11), (17), (33), Register, April, 1996, No. 484, eff. 5-1-96; correction in (44) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1996, No. 488; correction made to delete duplicative subsection and correction in (12) and (20m) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1999, No. 520; cr. (6m), (26), (34), (37m), am. (11), (22), (32), (50m) and (58), Register, May, 2001, No. 545, eff. 6-1-01; CR 07-114; cr. (1m) and (56m), r. (3), (4), (11), (14), (16), (27), (30), (32), (33), (43), (47) and (49), am. (6), (6r), (10), (22), (25), (34) to (35), (50m), (53) and (54), r. and recr. (8) Register June 2008 No. 630, eff. 7-1-08; CR 10-088: am. (1m), (6), (10), (34m), (50m), (54) and (56m) Register December 2010 No. 660, eff. 1-1-11.

**Trans 131.03 Emission inspection and reinspection.** **(1)** **GENERAL.** (a) All nonexempt vehicles that are customarily kept in counties certified under s. 110.20 (5) (a), Stats., or in a county whose county board adopts a resolution under s. 110.20 (5) (b), Stats., shall be inspected as provided in this chapter. Penalty for failure to comply with this section consists of either denial of registration renewal or suspension of vehicle registration as set forth in s. 341.63 (1) (e), Stats.

**Note:** The 6 counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha were certified by the department of natural resources in a letter to the department dated August 21, 1981. Sheboygan County was certified by the department of natural resources in a letter to the department dated April 20, 1992.

(b) Nothing in this chapter waives an expired registration because of failure to pass inspection requirements by the registration deadline.

(c) A vehicle is first subject to the requirements of this chapter when the vehicle is 4 model years old.

(d) For purposes of calculating the number of model years of vehicle age under ss. 110.20 (13) and 285.30 (5), Stats., a model year shall be considered synonymous with a calendar year. Not satisfying the inspection requirements of this chapter prior to the date of registration expiration shall not extend vehicle age.

**Note:** For example, a 2004 model year vehicle shall be considered as being more than 4 model years old commencing January 1, 2008.

**(2)** **WHEN INSPECTION REQUIRED.** Nonexempt vehicles subject to an inspection shall have the inspection completed as provided in this chapter when any of the following apply:

(a) No more than 180 days prior to renewal of annual registration. This requirement applies when the vehicle is 4 model years old and every 2 years thereafter.

(b) Within 45 days of an ownership change registration issuance for vehicles more than 5 model years old at the time of ownership change, unless the vehicle passed inspection within 180 days prior to such ownership change registration, or

**Note:** For example, a 2004 model year vehicle shall be considered as being more than 4 model years old commencing January 1, 2008.

(c) Within 45 days of notification of failing a remote sensing test, as required by s. 110.20 (9) (g), Stats.

(d) Within 45 days of collector or hobbyist registration issuance.

**(3)** **DOCUMENT REQUIREMENTS.** Each vehicle presented for inspection at an inspection station or at an authorized inspection facility shall be accompanied by at least one of the following documents which identifies the vehicle by make, model year, VIN, and license plate number:

(a) A current Wisconsin vehicle license renewal notice.

(b) A current Wisconsin certificate of registration.

(c) A current Wisconsin certificate of title.

(d) A vehicle inspection report if a reinspection, unless repair performance data has, upon performance of the repair, been reported electronically.

(e) A letter of temporary exemption issued by the department.

(f) A properly completed substitute renewal notice, form MVD 2016.

(g) A letter issued by the department notifying the vehicle owner that the vehicle requires inspection.

(h) A properly completed voluntary inspection request form, obtainable from the manager at each of the inspection stations or at other authorized inspection facilities as determined by the department.

**(4)** **SCOPE AND NATURE OF INSPECTION.** The vehicle emission inspection shall consist of an OBD II inspection which indicates whether the MIL is commanded on and, if so, the DTCs causing the command.

**(5)** **EMISSION STANDARDS.** (a) Vehicles that meet any of the following conditions shall fail the inspection:

1. The DLC is missing, has been tampered with, or is otherwise inoperable.

2. The MIL does not illuminate at all when the ignition key is turned to the "key on, engine off" position.

3. The MIL illuminates continuously or flashes when the vehicle is in the "key on, engine running" condition, even if no DTCs are present.

4. A scan tool indicates that any DTCs are present and that the vehicle's MIL status is commanded on.

(b) If the MIL is not commanded to be illuminated, the vehicle shall pass the OBD inspection, even if DTCs are present.

**(6)** **EMISSION INSPECTION.** (a) *General requirements.* 1. Vehicles shall be inspected in an as-received condition. Prior to inspection, the engine shall be operating at the manufacturer's recommended engine idle speed without excessive smoke, at normal operating temperature, not overheating, as indicated by gauge, warning light or boiling radiator, and with all accessories off.

2. The vehicle shall be nearly level when inspected in order to prevent abnormal fuel distribution.

4. Vehicles that are designed to operate with more than one type of fuel shall be inspected on the fuel in use at the time of inspection.

(d) *OBD inspection procedures.* 1. An OBD II inspection shall be performed on all model year 1996 and newer vehicles equipped with OBD II systems. The OBD inspection shall be performed according to the procedures specified in section 85.2222 of the federal rule.

2. If the vehicle's DLC cannot be located, or is located such that an inspector cannot reasonably access it during the course of a vehicle inspection, the vehicle shall receive a waiver equipment inspection as provided in s. Trans 131.05 and, pending the outcome of this inspection, be referred to a technical assistance center or other facility or inspector designated by the department to perform the functions of a technical assistance center for issuance of a technical waiver of compliance as provided in s. Trans 131.04 (1) (b).

3. The inspector shall connect the inspection system to the vehicle by connecting the vehicle's DLC to the OBD II inspection system. The inspection system shall determine what readiness monitors are supported by the vehicle's OBD II system, and perform a readiness evaluation or applicable readiness monitors in accordance with the USEPA technical guidance. If the readiness evaluation indicates that any on-board tests are not complete, the vehicle shall be rejected from inspection. Vehicles rejected because on-board tests are not complete shall be required to leave the inspection station, pursue a means of completing on-board tests, and return for inspection.

4. An exception is allowed for model year 1996 to model year 2000 vehicles, with 2 or fewer unset readiness monitors, and for model year 2001 and newer vehicles with no more than one unset readiness monitor. Vehicles from those model years which would otherwise pass the OBD inspection, but for the unset readiness monitors in question, may be issued a passing certificate without being required to operate the vehicle in such a way as to activate those particular readiness monitors. Vehicles from those model years with unset readiness monitors which also have DTCs stored resulting in the MIL to be commanded on shall fail the OBD inspection.

5. If the inspection computer system is not able to download the vehicle OBD II records, the OBD inspection shall be aborted, and the vehicle shall be reinspected with an OBD II inspection in a separate inspection facility inspection lane.

8. If the malfunction indicator status indicates that the MIL has been commanded to be illuminated, the inspection system shall record all DTCs resulting in MIL illumination in the vehicle inspection record.

10. Vehicles failing the OBD inspection may not be reregistered within the state of Wisconsin until such failing items have

been repaired or replaced if necessary as required by s. 285.30 (6), Stats.

**(10) REINSPECTIONS.** (a) Vehicles failing initial inspection may receive a reinspection at no additional charge under the following conditions:

1. The reinspection shall take place within 30 days of the initial inspection or the owner or lessee shall present satisfactory evidence that the repairs and adjustments which were performed on the vehicle could not have been made within 30 days of the initial inspection. Additionally, the vehicle shall have been repaired or adjusted according to s. 110.20, Stats., and this chapter.

2. The vehicle shall be accompanied by its previous vehicle inspection reports. Repair information, as completed by the person performing the repairs, shall be indicated in the space provided on the reports, unless it is reported electronically, upon performance of the repair. The completed repair section on the vehicle inspection report, or the data reported electronically, shall indicate all of the following:

a. The repairs performed as well as any recognized automotive emission repair technician recommended repairs not performed per owner's request.

b. The name, address and telephone number of the repair facility.

c. The name of the individual who performed the repairs.

d. If available, the appropriate identification number of the recognized repair facility and technician.

3. The vehicle is not prohibited from inspection pursuant to sub. (11).

(b) 2. A vehicle that fails the OBD inspection shall be reinspected after repair provided a readiness evaluation indicates that:

a. All applicable on-board tests are complete for the component for which the vehicle failed its prior inspection, and

b. All applicable on-board tests are complete except as allowed under sub. (6) (d).

**Note:** For example, a catalytic monitor must be ready after a catalyst is repaired.

(c) If the vehicle passes the reinspection, the contractor shall retain all previously-issued vehicle inspection reports and issue a vehicle inspection report indicating compliance. If the vehicle does not pass the reinspection, the contractor shall issue a vehicle inspection report indicating non-compliance. If the owner or lessee requests a waiver of compliance from emission limitations, the waiver investigator shall review the request and shall either approve or deny the request in accord with s. Trans 131.04. If approved, the waiver investigator shall retain all previously-issued vehicle inspection reports, except the latest on which the waiver is indicated as granted.

(d) The following limitations on the total number of inspections performed at no additional charge shall apply for each vehicle requiring compliance with this chapter:

1. A vehicle may receive no more than 2 reinspections. The reinspections shall occur within 30 days of initial inspection.

2. If the vehicle does not meet applicable emission inspection standards, the owner or lessee may apply for a waiver of compliance from these standards in accord with s. Trans 131.04.

(e) Nonexempt vehicles may be reinspected at any time according to the voluntary inspection procedure of s. Trans 131.07.

**(11) INSPECTION PROHIBITED.** The inspector shall refuse to perform any inspection required by this section for any vehicle if any of the following apply:

(b) The vehicle is carrying explosives or other hazardous material which is recognized as a safety hazard by the contractor.

(c) The vehicle is towing a trailer or another vehicle which is considered a safety hazard by the contractor.

(d) Gasoline, oil or other fluid leaks are considered a safety hazard by the contractor.

(e) The vehicle exhibits excessive idle speed, in the judgment of the contractor.

(f) The vehicle is emitting smoke in amounts greater than the limitations specified in s. NR 485.05.

(j) The vehicle is subject to a manufacturer's recall for emission problems and the recall repair has not been performed. Vehicles for which emission-related recall notices have been issued shall have the recall repairs completed prior to submitting the vehicle for inspection. The owners or lessees of these vehicles shall present proof of compliance with the recall notice at time of inspection, unless the emission-related recall notice has been issued within 45 days prior to submitting the vehicle for inspection. This paragraph applies to vehicles for which emission-related recall notices have been issued after January 1, 1995.

(k) The vehicle operator refuses to disclose the odometer reading to the inspector.

(L) The vehicle operator refuses to yield the driver's seat.

(m) Upon a reinspection, the vehicle operator fails to provide a properly completed repair form to the inspector, unless the repair information is reported electronically, upon performance of the repair.

(n) The vehicle exhibits any condition which is recognized as a safety hazard by the contractor, or any condition that appears to the contractor as making the vehicle unsafe for inspection.

(o) Vehicles shall be rejected from inspection if a scan of the vehicle's OBD II system reveals a "not ready" status for 3 or more readiness monitors on model year 1996 through model year 2000 vehicles, or for 2 or more readiness monitors on model year 2001 and newer vehicles, as provided in 40 CFR 85.2222 (c) (2).

**(12) RECONSTRUCTED AND HOMEMADE VEHICLES.** Any nonexempt vehicle registered as reconstructed or homemade under s. 341.268, Stats., shall be inspected for compliance with requirements applicable to the model year of the vehicle as indicated on the vehicle's registration documents, unless the owner both requests that the vehicle be inspected by engine year and provides a completed MV2588, exchanged engine certification form, to the waiver investigator. In addition, the vehicle owner shall locate the engine number on the engine for purposes of engine year verification by the waiver investigator.

**(13) VEHICLES WITH EXCHANGED ENGINES.** (a) A motor vehicle with an exchanged engine shall be subject to OBD II inspection compliance standards established in s. Trans 131.03 (5).

**(14) TRUCKS AND VANS.** All trucks and vans shall be inspected in accord with the standards applicable to the manufacturer's GVWR as indicated either in the vehicle's identification number or on the vehicle's doorpost. If there is no manufacturer's GVWR available, then the vehicle shall be inspected according to the registered GVWR as indicated on the vehicle's entry document described in sub. (3).

**(15) VEHICLE INSPECTION REPORT.** (a) The operator of each vehicle inspected shall receive a vehicle inspection report, MV 2470, at the conclusion of the inspection. The vehicle inspection report data may also be reported electronically. The inspection report, or the vehicle inspection report data reported electronically, shall indicate:

1. Inspection serial number.
2. Date of the inspection.
3. VIN.
4. Year, make and type of the vehicle.
5. Number of cylinders or engine displacement.
6. Transmission type.
7. Fuel type.
8. Present odometer reading in thousands of miles.
12. The results of any OBD inspection.
13. The final result.

14. Instructions indicating that the inspection report, together with the vehicle, shall be returned to any inspection station or other authorized inspection facility for reinspection to occur.

15. Space to indicate who repaired the vehicle, such as owner, repair facility or other private party.

16. Space to indicate the name, address and telephone number of the facility where repairs occurred.

17. Space to indicate the appropriate identification number of the recognized repair facility and technician, if available.

18. Space to indicate the cost of parts and labor for emission-related repair.

19. Space to indicate the emission-related repairs performed.

20. Space to indicate the emission-related repairs recommended, but not performed per owner's request.

21. Advisory diagnostic information for failing vehicles.

22. Vehicle license number, if available.

23. Inspection station or other authorized inspection facility number, and inspector number if the inspection is performed by an inspector.

24. Emission inspection start time and the time of final emissions result determination.

25. GVWR.

26. Inspection number, such as initial, first reinspection, or subsequent reinspection number.

28. A statement indicating the availability of emission warranty coverage as provided in section 207 of the Clean Air Act.

29. A statement certifying that the inspection is performed in accordance with applicable federal regulations.

30. The cause for any aborted or rejected inspection.

31. Other information as the department may reasonably require to enable it to determine compliance with this chapter, state laws, federal laws and regulations.

(b) Each operator of a vehicle failing the inspection shall receive an inspection report supplement containing repair, reinspection and waiver application instructions, as well as information on the possible causes of failure found during the inspection.

(c) Each operator of a vehicle failing the initial inspection shall receive a list of registered automotive emission repair facilities by area which includes information required under s. Trans 131.15. This listing may include other consumer information useful in obtaining vehicle emission repair service.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; am. (1) (a), (2) (intro.), (a), (b), (3) (intro.), (6) (a) 1., (7) (a) to (c), r. and recr. (2) (c), (6) (b), (c), cr. (2) (d), (6) (a) 4., r. (3) (f), (7) (d), (8), (9), renum. (3) (g) to be (f) to (h), (10) and (12) to be (12) and (14) and am. all, renum. (11) to be (13) and am. (b) and (c), renum. (8), (9) and (13) to be (10), (11) and (15) and r. and recr. Register, April, 1996, No. 484, eff. 5-1-96; correction in (1) (d) and (7) (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1999, No. 520; am. (2) (b), Register, August, 2000, No. 536, eff. 9-1-00; am. (4), (6) (b) 3., (7) (a) (intro.), (c), (9) (g), r. (6) (b) 8., (8) (g), (15) (a) 12., renum. (10) (b) to (10) (b) 1., cr. (6) (d), (10) (b) 2., (11) (o), Register, May, 2001, No. 545, eff. 6-1-01; CR 01-121: am. (2) (a), Register March 2002 No. 555, eff. 4-1-02; CR 07-114: am. (1) (a), (c), (2) (intro.) and (a), (3) (intro.), (d) and (h), (4), (6) (d) 1., 3., 5., 8. and 10., (10) (a) 2., (b) 2., (d) 2., (11) (m) to (o), (12), (13) (a), (14) and (15) (a) (intro.), 14. and 23., (b) and (c), r. and recr. (5), (6) (d) 2., r. (6) (a) 3., (b), Table 2 and (c), (d) 6., 7., and 9., (7) to (9), (10) (b) 1., (11) (a) and (g) to (i), (13) (b) to (d), (15) (a) 9. to 11. and 27. Register June 2008 No. 630, eff. 7-1-08; **CR 10-088: am. (title), (4), (6) (title), (a) 1., 2., 4., (d) 2., 3., 5., and 8., (10) (a) 3. and (d) 2., (11) (title), (n) and (o) and (15) (a) 1., 2., 12., 23., 24. and 29. Register December 2010 No. 660, eff. 1-1-11.**

**Trans 131.04 Waiver of compliance.** (1) **ELIGIBILITY.** A vehicle which fails the initial inspection, and which after repair or adjustment, or both, again fails the inspection, shall be eligible for a waiver of compliance valid until the next required inspection of the vehicle provided the following conditions are met:

(a) For all 1996 and newer model year vehicles which have not exceeded the terms of the manufacturer's emission performance or defect warranty coverage at the time of the scheduled emission inspection, the operator shall either present a written statement from a vehicle dealership or other manufacturer's designated agent declaring that the vehicle is not eligible for emission control

system warranty work, or present a dated invoice indicating that the vehicle has received eligible emission control system warranty work.

(b) The emission related repairs and adjustments made to the vehicle's emission control system, including cost for parts and labor, have been performed on the vehicle within 180 days prior to renewal of annual registration or within 180 days of vehicle ownership change registration and such repairs and adjustments are indicated in the space provided on the vehicle inspection report by the person performing the repairs, unless the repair information is reported electronically, upon performance of the repair. If the labor for vehicle repair is performed without charge or cost, only the cost of replacement parts shall be indicated. An itemized receipt indicating the parts, labor cost, and date of purchase shall be provided to the waiver investigator.

(c) 1. For all vehicles which have exceeded the terms of the manufacturer's emission performance or defect warranty coverage at the time of the scheduled emission inspection, the owner shall have emission related repairs performed on the vehicle at a recognized repair facility as defined in s. Trans 131.02 (39) or by a recognized automotive emission repair technician as defined in s. Trans 131.02 (38). The operator shall present a vehicle inspection report with the repair information section completed according to s. Trans 131.03 (13), unless it is reported electronically, upon performance of the repair. The statement shall contain the actual cost of emission related repairs performed on the vehicle including itemized costs for parts and labor. If the labor for vehicle repair is performed without charge or cost, only the cost of replacement parts shall be indicated. An itemized receipt indicating the parts, labor cost and date of repair shall be provided to the waiver investigator.

2. Proof of recognized automotive emission repair technician training shall consist of either ASE certification in level L1, or valid documentation indicating successful completion of a WISE-TECH course under s. Trans 131.16 or an equivalent program as determined by the department.

(d) The vehicle shall pass a waiver emission equipment inspection as described in s. Trans 131.05.

**(2) CRITERIA.** A vehicle which meets the eligibility requirements of sub. (1) may receive a waiver of compliance valid until the next required inspection of the vehicle if it meets any one of the following conditions:

(b) Technical difficulties in the manufacturer's design or construction of the vehicle or restrictions imposed by the department on the operation of vehicles registered under s. 341.14 (1m), Stats., prevent emission inspection of the vehicle.

(c) After repairs are performed by a recognized automotive emission technician, a complete, documented, physical and functional diagnosis and inspection performed at a technical assistance center by the master automotive technician or at another facility by an inspector designated by the department to perform the functions of a technical assistance center shows that no additional emission related repairs could produce a passing result.

(d) If the owner is in compliance with the requirements set forth in s. 110.20 (13), Stats., the department shall issue a waiver of compliance as required by s. 110.20 (13), Stats.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; emerg. am. (1) (intro.), (a) and (b), (2) (intro.), (a) and (b), r. and recr. (1) (c), cr. (1) (d) and (2) (c), eff. 12-4-95; am. (1) (intro.), (a), (b), (2) (intro.), (a), (b), r. and recr. (1) (c), cr. (1) (d), (2) (c), Register, April, 1996, No. 484, eff. 5-1-96; am. (1) (intro.), Register, May, 2001, No. 545, eff. 6-1-01; CR 01-121: am. (1) (b), Register March 2002 No. 555, eff. 4-1-02; CR 07-114: am. (1) (intro.), (a), (b) and (c) 1. and 2., r. (2) (a), cr. (2) (d) Register June 2008 No. 630, eff. 7-1-08; **CR 10-088: am. (2) (b) and (c) Register December 2010 No. 660, eff. 1-1-11.**

**Trans 131.05 Waiver emission equipment inspection.** (1) **PURPOSE.** When a vehicle owner or lessee requests a waiver of compliance from emission inspection standards, the emission equipment shall be inspected by the waiver investigator. This waiver emission equipment inspection is designed to detect

either tampering or disrepair on the vehicle. The waiver emission equipment inspection does not include removal or disassembly of parts except for removal of the fuel cap. The waiver investigator shall determine both the presence and proper connection, if originally equipped, of the following:

- (a) A properly sized fuel filler restrictor.
- (b) A properly connected catalytic converter.
- (c) A proper fuel cap.
- (d) A proper evaporative emission control canister system.
- (e) A properly connected positive crankcase ventilation system.
- (f) A proper exhaust gas recirculation system.
- (g) A proper air pump system.
- (h) A properly installed thermostatic air cleaner system.
- (i) A properly connected oxygen sensor.
- (j) An operational and non-active MIL or other emission service indicator light, regardless of whether the MIL or emission service indicator light is illuminated.

**(3) CONSEQUENCES.** Vehicles failing the waiver emission equipment inspection shall not receive a waiver of compliance or acceptance for voluntary inspection under s. Trans 131.07 until the failing emission equipment items are either repaired or replaced.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; emerg. am. (1) to (3), cr. (1) (i) and (j), eff. 12-4-95; am. (1), (2), (3), cr. (1) (i), (j), Register, April, 1996, No. 484, eff. 5-1-96; am. (1) (j), Register, May, 2001, No. 545, eff. 6-1-01; CR 07-114: r. (2), am. (3) Register June 2008 No. 630, eff. 7-1-08; CR 10-088: am. (1) (intro) and (j) and (3) Register December 2010 No. 660, eff. 1-1-11.

**Trans 131.06 Inspection compliance.** **(1) REGISTRATION ELIGIBILITY.** To be eligible for license plate renewal or ownership change registration, collector registration, or hobbyist registration, a vehicle shall comply with one of the following:

- (a) Either pass the emission inspection or receive a waiver of compliance from emission limitations.
- (b) Receive a temporary exemption according to s. Trans 131.08.

**(2) EVIDENCE.** Evidence of inspection compliance shall consist of one of the following:

- (a) A vehicle inspection report indicating either "passed" or on which the waiver investigator has indicated "waived."
- (b) An entry on the department's data records indicating the vehicle license number, VIN, inspection serial number, and the notation "passed" or "waived."

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; emerg. am. (1) (intro.) and (2), r. (1) (a), renum. (1) (b) and am., eff. 12-4-95; am. (1) (intro.), (2), r. (1) (a), renum. (1) (b) to be (a) and am., cr. (1) (b), Register, April, 1996, No. 484, eff. 5-1-96; CR 10-088: am. (2) (b) Register December 2010 No. 660, eff. 1-1-11.

**Trans 131.07 Voluntary inspections.** **(1) CRITERIA.** The contractor shall inspect any nonexempt vehicle presented for inspection at an inspection station or other authorized inspection facility provided:

(a) The vehicle operator provides a properly completed request for voluntary emission inspection form, obtainable from the manager at each of the emission inspection stations or at other authorized inspection facilities as determined by the department.

(b) The vehicle is not prohibited from inspection under s. Trans 131.03 (11).

(c) The operator presents payment to the contractor of a monetary fee as determined by contract.

**(2) EFFECT.** The voluntary presentation of a vehicle for inspection in accordance with sub. (1) shall not impose any requirement upon a vehicle owner to comply with this chapter.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; emerg. am. eff. 12-4-95; am. Register, April, 1996, No. 484, eff. 5-1-96; CR 07-114: am. (1) (intro.), (a) and (2) Register June 2008 No. 630, eff. 7-1-08; CR 10-088: am. (1) (b) Register December 2010 No. 660, eff. 1-1-11.

**Trans 131.08 Letter of temporary exemption from emission inspection requirements.** **(1) ELIGIBILITY.** When a vehicle subject to the emission inspection requirements of this chapter is unavailable for an inspection due to either the vehicle's absence or inoperative condition, or the owner's or lessee's absence or incapacity, during the 180 day period prior to the license expiration date, or within 45 days of an ownership change registration or registration as a collector or hobbyist vehicle, and inspection is not available under s. Trans 131.10, the owner or lessee may request of the department a letter of temporary exemption from the requirements of this chapter.

**(2) APPLICATION.** The department shall provide an application form, MVD2472, on which the vehicle owner or lessee shall state their name, permanent address, temporary address, if used, and daytime telephone number. The vehicle owner or lessee shall identify the vehicle involved, provide the reason for requesting a letter of temporary exemption, certify that the vehicle is unavailable for emission inspection, and state the date when the vehicle will again be operated within a Wisconsin county subject to the emission inspection requirements of this chapter.

**(3) ISSUANCE.** Upon approval of the application by the department, a letter of temporary exemption shall be issued to the vehicle owner or lessee. Such approval letter shall allow the owner or lessee to proceed with vehicle registration renewal. As a condition of granting the letter of temporary exemption, the department shall require that the vehicle be inspected within 30 days of the date the applicant indicates that the vehicle will again be operated within a Wisconsin county subject to the emission inspection requirements of this chapter.

**(4) DURATION.** A letter of temporary exemption shall not be valid longer than the period of registration renewal.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; emerg. am. eff. 12-4-95; am. (1) to (3), Register, April, 1996, No. 484, eff. 5-1-96; CR 01-121: am. (1), Register March 2002 No. 555, eff. 4-1-02.

### Trans 131.09 Temporary operating permits.

**(1) GENERAL.** The department or its designated representative may issue a temporary operating permit, valid for not more than 30 days, to allow time for inspection and necessary repairs and adjustments of any vehicle subject to inspection under s. 110.20 (6), Stats. No temporary operating permit shall be issued for a vehicle with registration expired for more than 90 days.

**(2) APPLICATION.** The department shall provide an application form, MV2505, on which the vehicle owner or lessee shall state their name, permanent address, and daytime telephone number. The vehicle owner or lessee shall identify the vehicle involved, and provide the reason for requesting a temporary operating permit.

**(3) ISSUANCE.** Upon approval of the application, the department shall issue a temporary license plate to the vehicle owner or lessee. Such plate shall contain the date of expiration. The owner or lessee shall affix the temporary license plate to the vehicle in accord with the requirements of s. 341.09 (5), Stats.

**(4) TERM.** A temporary operating permit shall be valid for 30 days after issuance. The department may approve the application for a second or third temporary operating permit provided that application is made within 90 days of the vehicle's registration expiration date.

**History:** Emerg. cr. eff. 12-4-95; cr. Register, April, 1996, No. 484, eff. 5-1-96; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1999, No. 520; CR 07-114: am. (3) Register June 2008 No. 630, eff. 7-1-08.

**Trans 131.10 Reciprocity.** **(1) COMPLIANCE.** When a vehicle subject to the emission inspection requirements of this chapter is unavailable for an inspection due to the vehicle's absence from the Wisconsin inspection area during the 180 day period prior to the license expiration date, or within 45 days of an ownership change registration or registration as a collector or hobbyist vehicle, but is operating in another nonattainment area requiring vehicle emission inspections, the owner or lessee shall submit an

official vehicle inspection report, or the equivalent document, from that area indicating that the vehicle has passed the emission inspection in that area.

**(2) REGISTRATION ELIGIBILITY.** The submission of satisfactory evidence of emission inspection compliance from another nonattainment area shall allow the owner or lessee to proceed with vehicle registration renewal or to satisfy ownership change, collector, or hobbyist vehicle registration inspection requirements.

**(3) EXCEPTION.** When a vehicle operates in a nonattainment area which does not allow the inspection of vehicles from other nonattainment areas, the owner or lessee may apply for a temporary exemption under s. Trans 131.08.

**History:** Emerg. cr., eff. 12-4-95; cr. Register, April, 1996, No. 484, eff. 5-1-96; CR 01-121: am. (1), Register March 2002 No. 555, eff. 4-1-02.

### Trans 131.11 Audits of inspection facilities.

**(1) GENERAL.** Representatives of the department or its designated agent shall conduct audits of inspection equipment, procedures, personnel and records as follows:

(a) All contractor inspection functions, including those occurring at the inspection stations, other authorized inspection facilities, technical assistance centers or other facility by an inspector designated by the department to perform the functions of a technical assistance center, and vehicles used to conduct remote sensing, shall be audited on an unscheduled basis, at a minimum, according to the frequency established in the federal rule.

(b) Scheduled audits may be performed at any time.

(c) Either the department or its agent may conduct covert audits in order to satisfy the requirements of the federal rule.

(d) Audits shall be performed according to written procedures either established or approved by the department.

**(2) EQUIPMENT AUDITS.** (c) Equipment used to perform remote sensing tests shall be audited according to written procedures either established or approved by the department.

(d) Equipment used to perform OBD inspections shall be audited according to written procedures either established or approved by the department.

(e) If equipment fails to operate within contractually specified tolerance during an overt or covert audit, the department's quality assurance auditor shall immediately re-audit the failing equipment. If the equipment fails again, the department's quality assurance auditor shall require the station manager to close the affected lane or other authorized inspection facility or emission inspection operation until such time as the equipment is properly repaired and documentation of corrective actions is available for review by the department.

**(3) PENALTIES.** (a) Equipment failure shall result in the imposition of a penalty. Penalties are established in the penalty schedule section of the contract and may require that the contractor either incur liquidated damages or suspend or revoke inspector licenses, or both.

(b) Contractor employees, removed from inspection duties through either suspension or revocation of their inspection license as a result of a department audit, may appeal the contractor's suspension or revocation to the department's hearing officer. In the case of immediate suspension due to a department audit, a hearing shall occur within 14 calendar days of receipt of a written request by the employee. Failure to hold a hearing within 14 days when requested shall cause the suspension or revocation to lapse.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; renum. Trans 131.09 to be 131.11 and r. and recr., Register, April, 1996, No. 484, eff. 5-1-96; renum. (2) (d) to be (2) (e), cr. (2) (d), am. (3) (b), Register, May, 2001, No. 545, eff. 6-1-01; CR 07-114: am. (1) (a) and (2) (e), r. (2) (a) and (b) Register June 2008 No. 630, eff. 7-1-08; CR 10-088: am. (1) (intro.) and (a) and (2) (e) Register December 2010 No. 660, eff. 1-1-11.

### Trans 131.12 Equipment specifications and quality control.

**(1) GENERAL.** All equipment utilized for emission in-

spections shall be calibrated and maintained according to the standards established in the federal rule.

**(2) SPECIFICATIONS.** Equipment used to perform OBD inspections shall meet the most current version of each of the following SAE International standards: J1850, J1962, J1978, and J1979.

**(3) QUALITY CONTROL.** All equipment used in the emission inspection process shall be maintained according to all manufacturer specifications.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; renum. Trans 131.10 to be 131.12 and r. and recr., Register, April, 1996, No. 484, eff. 5-1-96; cr. (2) (d), Register, May, 2001, No. 545, eff. 6-1-01; CR 07-114: r. and recr. (2), am. (3) Register June 2008 No. 630, eff. 7-1-08; CR 10-088: am. (3) Register December 2010 No. 660, eff. 1-1-11.

### Trans 131.13 Licensing of inspectors.

**(1) TRAINING.** (a) All contractor employees and all employees of any authorized inspection facility subcontractor who perform any official inspection functions shall have a license issued by the contractor. No person may either receive a license or have a license renewed as an inspector unless the person demonstrates to the department, by training and examination, proficiency in all of the following:

1. Air pollution causes and effects.
2. Purpose, function and goals of the inspection program.
3. State inspection regulations.
4. Inspection procedures and rationale for their design.
5. Emission control devices, configuration and inspection.
6. Inspection equipment operation and maintenance.
7. Quality control procedures.
8. Public relations.
9. Safety and health issues related to the inspection process.

(b) Trainees shall both pass, by a minimum of 80% correct responses, a written test and demonstrate the ability, without the assistance of another person, to conduct a proper inspection as a condition of successfully completing a licensing examination administered by a party other than the contractor.

(c) An applicant for a vehicle emissions inspection license who fails an examination for inspector shall successfully complete the applicable vehicle emissions inspector training program prior to reexamination for license.

**(2) LICENSING.** Upon completion of training and all other licensing requirements, the contractor shall issue a photo identification badge containing the inspector's photograph, name, unique, non-transferable inspector number and the expiration date of the inspector's license. Training and licensing records for each employee so licensed shall be maintained both at the contractor's headquarters and at the employee's primary inspection station or other authorized inspection facility.

**(3) RENEWAL.** Licenses issued to vehicle emissions inspectors shall be valid for 2 years. Inspectors shall complete both refresher training and testing prior to license renewal.

**(4) AUDITING.** Representatives of the department or its designated agent shall conduct both overt and covert, scheduled and unscheduled audits.

**(5) PENALTIES.** (a) Failure of either the contractor or any of its employees or of any authorized inspection facility subcontractor or its employees to pass any portion of an overt or covert audit shall result in the imposition of a penalty. These penalties, established in the penalty schedule section of the contract, may require that the contractor either suspend or revoke inspector licenses or incur liquidated damages, or both.

(b) Contractor or subcontractor employees who are removed from inspection duties through either suspension or revocation of their inspection license as a result of a department audit may appeal the contractor's suspension or revocation to the department's hearing officer. In the case of immediate suspension due to a department audit, a hearing shall occur within 14 calendar days of the department's receipt of a written request by the

employee. Failure of the department to hold a hearing within 14 days when requested shall cause the suspension to lapse.

**(6) CHALLENGE MECHANISM.** (a) A motorist who alleges that either an incorrect inspection occurred or that fraud or abuse influenced the results of the inspection may contest the results of that inspection by notifying the department immediately after the inspection, or as soon as possible after discovering the problem.

(b) The department's quality assurance representative shall investigate the complaint. If the results of that investigation indicate that the inspection may have occurred incorrectly or that fraud or abuse may have influenced the results of the inspection, the department's quality assurance representative shall arrange for a reinspection at the technical assistance center or other facility by an inspector designated by the department to perform the functions of a technical assistance center at a time convenient to all parties.

(c) Results of the technical assistance center inspection or inspection by an inspector designated by the department to perform the functions of a technical assistance center shall supersede the results of the contested station lane or other authorized inspection facility inspection.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; r. and recr. Register, April, 1996, No. 484, eff. 5-1-96; am. (1) (intro.), (2), (5) (a) and (b), Register, May, 2001, No. 545, eff. 6-1-01; CR 07-114: am. (1) (a) and 6., (2), (5) (a) and (b) and (6) (c) Register June 2008 No. 630, eff. 7-1-08; CR 10-088: am. (1) (a) 4. and 6. and (6) (b) and (c) Register December 2010 No. 660, eff. 1-1-11.

**Trans 131.14 Remote sensing.** (1) **GENERAL.** The contractor shall use remote sensing to measure the in-use vehicle emissions in any county identified under s. 110.20 (5), Stats. Any nonexempt vehicle that has passed its last emission reinspection under s. Trans 131.03 (11), and fails the remote sensing test by exceeding the remote emission standards under sub. (4), shall have an emission inspection under s. 110.20 (9) (g), Stats. Penalty for failure to comply with this section consists of suspension of vehicle registration as set forth in s. 341.63 (1) (e), Stats.

(2) **WHEN INSPECTION REQUIRED.** (a) The owner or lessee of a nonexempt vehicle that fails the remote sensing test shall have an emission inspection within 45 days of notification of a remote sensing test failure.

(b) Vehicles that fail the remote sensing test, but are scheduled to receive an emission inspection required under s. 110.20 (6), Stats., within 90 days of remote sensing test failure, or for which temporary exemptions will expire within 30 days of remote sensing test failure, shall receive notification of the remote sensing test failure but are exempt from the inspection requirements of s. 110.20 (9) (g), Stats.

(c) Vehicles that have a valid emission inspection waiver at the time of remote sensing test failure are exempt from the inspection requirements of s. 110.20 (9) (g), Stats.

(3) **SCOPE AND NATURE OF REMOTE SENSING TEST.** The test shall consist of using an open-path infrared sensor to measure the concentration of one or more of the following pollutants present in the vehicle's exhaust:

- (a) Hydrocarbons.
- (b) Carbon monoxide.
- (c) Carbon dioxide.
- (d) Oxides of nitrogen.

(4) **EMISSION STANDARDS.** Vehicles that exceed the standards shown in Table 1 shall fail the remote sensing test:

TABLE 1

MODEL YEAR	GVWR	REMOTE SENSING STANDARD		
		HC(ppm)	CO(%)	NO <sub>x</sub> (%)
1996 and newer	All	400	2.0	Reserved

**Note:** Changes to these standards may occur either if the USEPA establishes remote sensing standards or if the department's program evaluation indicates that modifications should occur to identify more accurately gross polluting vehicles.

**(5) VEHICLE INSPECTION NOTICE.** The contractor shall mail a vehicle inspection notice to the owner or lessee of vehicles that fail a remote sensing test conducted under this section. The vehicle inspection notice shall be mailed to the owner's or lessee's address indicated on the department's registration database. The vehicle inspection notice shall include all of the following:

- (a) Remote sensing test serial number.
- (b) Date, location and time of the remote sensing test.
- (c) License plate number.
- (d) VIN.
- (e) Emission remote sensing test results and standards for the vehicle.

(f) Instructions indicating that the report, together with the vehicle, shall be brought to any inspection station or other authorized inspection facility to receive an inspection as required under s. Trans 131.14 (2), if required.

(g) Information describing the remote sensing test.

(h) Explanation of both the legal requirements and registration penalties for failure to comply with an inspection notice.

(i) Other information that the department may decide to include to improve understanding of the remote sensing test.

**(6) REMOTE SENSING EQUIPMENT SPECIFICATIONS AND MAINTENANCE.** (a) All equipment utilized for remote sensing emission measurement shall be calibrated and maintained according to the manufacturer's specifications or as superseded by contract.

(b) Remote sensing equipment, personnel and procedures shall be subject to periodic audits by the department under s. Trans 131.11.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; r. and recr. Register, April, 1996, No. 484, eff. 5-1-96; CR 07-114: am. (1), (2) (a), (4) and (5) (f) Register June 2008 No. 630, eff. 7-1-08; CR 10-088: am. (3) (title) and (5) (a), (b) and (e) Register December 2010 No. 660, eff. 1-1-11.

**Trans 131.15 Performance monitoring of repair facilities.** (1) **GENERAL.** The department, through its emission inspection contractor, shall both collect emission repair data and inform the public and automotive repair industry regarding repair efficacy.

**(2) DATA COLLECTION.** Whenever a nonexempt vehicle receives a reinspection, the contractor shall collect the following emission repair information from the vehicle inspection report as required by s. Trans 131.03 (11):

(a) The repairs performed.

(b) Any technician recommended repairs not performed, per owner's request.

(c) The name and address of the facility that performed the repairs.

(d) The name of the person who performed the repairs.

(e) The identification number, if available, of the recognized repair facility or recognized automotive emission repair technician, or both.

**(3) REPORTING.** (a) The contractor shall compile a report which includes the emission repair facility name, address, telephone number, number of vehicles submitted for reinspection, and percentages indicating the number of vehicles that have passed, failed, and received waivers after repair.

(b) Beginning in the third month of the vehicle emission inspection program, the contractor shall produce a summary report of the performance of local repair facilities that have repaired vehicles for reinspection. The report shall be provided to the motorist at the time of initial vehicle emission inspection failure. The report shall be updated on a quarterly basis.

(c) Repair facilities shall receive summary reports at least quarterly. Reports to the repair facility shall include all informa-

tion made available to the public and may include reports on individual technicians if so requested by the employing repair facility.

(d) The department may include additional statistics that convey information on the relative ability of repair facilities in providing effective emission repair.

**History:** Emerg. cr. eff. 12-4-95; cr. Register, April, 1996, No. 484, eff. 5-1-96; CR 10-088: am. (1) Register December 2010 No. 660, eff. 1-1-11.

**Trans 131.16 Automotive emission repair technician training.** (1) **GENERAL.** The department, in cooperation with community and technical colleges located in counties certified under s. 110.20 (5) (a), Stats., shall establish guidelines for assessing programs for automotive emission repair technician education and training available at both public and private facilities. The department shall designate programs that meet these guidelines as Wisconsin emission technician training, or WISETECH, programs. Any public or private facility offering automotive emission repair technician training may request WISETECH designation from the department.

(2) **CRITERIA.** To meet WISETECH standards, training courses shall, at a minimum, include instruction in:

- (a) Diagnosis and repair of malfunctions in computer controlled close-loop vehicles.
- (b) Application of emission control theory and diagnostic data to the diagnosis and repair of vehicles failing OBD inspection.
- (c) Utilization of diagnostic information on systematic or repeated failures observed in OBD inspection.
- (d) General training on the various subsystems related to engine emission control.

(3) **EQUIPMENT.** Both private and public facilities offering WISETECH designated automotive emission repair training courses shall have available, and maintain in good working condition, tools and equipment necessary for the proper diagnosis, adjustment and repair of all nonexempt vehicles. All equipment utilized in the training courses shall be maintained according to the manufacturer's specifications.

(4) **PROGRAM RECOGNITION.** Programs shall be designated as meeting WISETECH standards if in compliance with one of the following:

- (a) The department approves the course curricula, equipment and facility.

(b) The training facility presents documentation that the course meets National Automotive Technician Education Foundation, Inc., standards.

(5) **TECHNICIAN RECOGNITION.** (a) A person successfully completing all phases of a WISETECH training program shall achieve the designation of "recognized automotive emission repair technician" as defined in s. Trans 131.02 (38).

(b) A person who satisfactorily completes a WISETECH approved automotive emission training course shall receive from the organization providing the training, an identification card which states the technician's name, the name and location of the course, the date of completion and a WISETECH identification number.

(6) **REPORTING.** Both private and public facilities offering WISETECH automotive emission repair training courses shall supply the department with the names of the persons registered in their course, the percentage successfully passing the course and the names and WISETECH identification numbers of those passing.

(7) **SUPPLEMENTAL TRAINING.** The department may authorize periodic supplemental training as a requirement for a person to maintain the status of WISETECH automotive emission repair technician.

(8) **QUALITY ASSURANCE.** (a) WISETECH training programs are subject to periodic monitoring by the department or its representative to assure that courses continue to meet WISETECH standards.

(b) The department may use performance monitoring as described in s. Trans 131.15 to evaluate both the emission repair success of the technicians and the effectiveness of WISETECH designated courses.

**History:** Emerg. cr. eff. 12-4-95; cr. Register, April, 1996, No. 484, eff. 5-1-96; am. (2) (b) and (c), Register, May, 2001, No. 545, eff. 6-1-01; CR 07-114: am. (2) (b), (c) and (3) Register June 2008 No. 630, eff. 7-1-08.

**Trans 131.17 Notification of inspection requirements.** As part of the notification process for vehicle registration renewal under s. 341.08 (4m), Stats., or for inspection required due to ownership change registration under s. 110.20 (6) (a) 2., Stats., or for inspection required due to registration as a collector or hobbyist vehicle, the department shall include notification to vehicle owners whose vehicles either are or may be subject to the inspection requirements of this chapter.

**History:** Cr. Register, June, 1993, No. 450, eff. 7-1-93; emerg. renum. and am., eff. 12-4-95; renum. from Trans 131.15, Register, April, 1996, No. 484, eff. 5-1-96.