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DATE: May 21, 2021

TO: Members of the Solid Waste Management Board

FROM: Diane Meulemans 

RE: Waupaca County Code of Ordinances Chapter 18, Nuclear Waste Exploration

Waupaca County adopted Chapter 18, Nuclear Waste Exploration on December 17, 1985. Members of the Committee have previously discussed the repeal of this Chapter and voted not to repeal the ordinance. It is my understanding that the Committee acted in order to protect the interests of the County on this subject.

The current ordinance requests any entity intending to explore within the County to develop a plan and to meet with designated representatives of the County.

The reason why I am requesting the Solid Waste Committee recommend the County Board repeal this ordinance is based on the County Board's inability to act on this issue. By statute, Wisconsin Counties may only act where the state has delegated its authority to act or on matters that the State has not acted on, regulated, or legislated within the State's borders. In other words, when the State has determined an issue or matter is of statewide concern, the State Legislature enacts laws and regulations governing that issue. When the State has in fact enacted laws and regulations, the County has no authority to act and cannot enact its own ordinance on the issue. This is called administrative home rule and mandates what a County can or cannot do. Any ordinance enacted without legal authority to do so is "ultra vires," a legal term that means "without authority" which has the legal effect of being void on its face. An ordinance that is void on its face is plainly unenforceable and will have no effect within the County.

The State has existing, extensive statutory scheme and administrative code regulations governing nuclear waste repository exploration, and decommissioning and disposal of high level radioactive and transuranic waste and low-level radioactive waste. Due to the extensive statutory scheme, Waupaca County is without authority to enact an ordinance on this issue.

Nuclear Waste Site Exploration is regulated by state statute, Wis. Stat. § 293.25, (first enacted in 1983) and administrative rule, Wisconsin Administrative Code NR 133 Nuclear Waste Site Exploration (first effective date June 1, 1985). The Department of Natural Resources (DNR) is the state regulatory agency tasked with managing this issue on behalf of the entire state. There is a two-step process where applicant must post a bond for a license to explore and then the DNR must approve the drilling plan.

Please review the applicable section of NR 133, including the presentation of the drilling plan and a required public hearing in the affected county:

NR 133.09 Preliminary project description approval.

(1) Any explorer who holds a valid exploration license and intends to conduct radioactive waste site exploration in this state shall submit 15 copies of the preliminary project description to the department for each county in which drilling is expected to occur. The preliminary project description shall include, at a minimum, the identification of affected parcels, the proposed number and anticipated depth and diameter of the drillholes, the proposed methods of construction and termination, a description of site access, documentation that the explorer has applied for or intends to apply for necessary approvals and permits required under other applicable state laws and rules and local ordinances and the projected date of commencement of exploration. If the explorer is the federal department of energy or an agent or employee of the federal department of energy, the preliminary project description must include evidence that the Public Service Commission has certified that the explorer has complied with any requirement imposed by the radioactive waste review board under s. 196.497, Stats., or any agreement entered into under that section. The preliminary project description shall be submitted to the department at least 120 days prior to the proposed date of commencement of exploration and shall be considered as submitted on the date of its receipt by the department. Upon receipt, the department shall provide copies of the preliminary project description to the Public Service Commission and the Wisconsin geological and natural history survey. The explorer shall also submit a copy of the preliminary project description to the county clerk of the county, within which the radioactive waste site exploration is to take place.

(2) Each preliminary project description shall be accompanied by a fee of \$1500 which shall cover the cost to the department of evaluating the preliminary project description and preparing for and conducting the hearing under s. 293.25 (2) (c), Stats. After issuance of a decision under sub. (6) the department may revise the fee to reflect actual costs incurred.

(3) Upon receipt of a complete preliminary project description, the department shall determine, under s. NR 150.20, whether a statement under s. 1.11, Stats., is required for the proposed exploration. In making this determination the department shall limit its consideration of environmental effects to those impacts associated with the proposed radioactive waste site exploration. The department may require the explorer to submit additional information concerning the proposed exploration. If it is determined that a statement under s. 1.11, Stats., is required, the explorer shall reimburse the department for the preparation of an Environmental Impact Statement under s. NR 150.40.

(4) Within 15 business days after completing the process required to comply with s. 1.11, Stats., the department shall schedule the hearing under s. 293.25 (2) (c), Stats. Notice of the hearing shall be published in the official newspaper designated under s.

985.04 or 985.05, Stats., or if none exists, in a newspaper likely to give notice in the area of the proposed activity.

(5) The hearing conducted under s. 293.25 (2) (c), Stats., shall be held in the county where the radioactive waste site exploration is proposed to occur.

(6) Within 60 business days of the close of the hearing record, the department shall issue or deny approvals authorizing drilling on the individual parcels identified in the preliminary project description. Each approval or denial shall be made in findings of fact, conclusions of law and an order setting forth reasons with clarity and in detail. The department may modify the explorer's preliminary project description in order to meet the requirements of ch. 293, Stats., and as modified grant the approval or may impose conditions on the approval as appropriate.

The current regulation is in fact more detailed and is more inclusive than the County's ordinance on the same topic, including requiring a public hearing. Waupaca County's elected officials and staff would be permitted to speak as members of the public should a hearing be held on an exploration plan pending DNR approval. I have included the entire Wis. Admin. Code Chap. NR 133 for your review [Attachment A]. I also provide for your review the applicable statute on which this regulation is based (Wis. Stat. § 293.25) [Attachment B] and the statute section which describes the duties of the Department of Natural Resources (Wis. Stat. § 293.15) [Attachment C] to include the duty to issue exploration licenses (Wis. Stat. §293.15(7)).

In addition, I provide for your review selected statutes and administrative code regulations related to the disposal of low-level radioactive waste, which is not mentioned in Waupaca's Code, but is also heavily regulated by the State of Wisconsin. Please see Environmental Health, Subchapter III, Wis. Stat. §§ 254.31 through 254.45 (sections enacted 1977 through 1999) [Attachment D] and select sections of Wis. Admin. Code DHS 157 (effective August 1, 2002) [Attachment E-1, E-2, E-3]. Finally, I provide for your review the statute which mandates "State policy regarding the long-term disposal of high-level radioactive waste and transuranic waste," which is Wis. Stat. § 196.497 (enacted in 1981) [Attachment F]. This statute makes any decision on the location within the state to be selected for long-term disposal of high-level radioactive waste a legislative act requiring the approval of the Governor of Wisconsin.

Due to the extensive, existing State of Wisconsin statutes and administrative code chapters that address this topic and are managed, monitored, permitted and enforced by the state agencies, namely the Department of Health Services and the Department of Natural Resources, it is my legal opinion that the Code Chapter 18, Nuclear Waste Exploration be repealed in its entirety.

Chapter NR 133

RADIOACTIVE WASTE SITE EXPLORATION

NR 133.01	Purpose.	NR 133.08	Denials.
NR 133.02	Applicability.	NR 133.09	Preliminary project description approval.
NR 133.03	Definitions.	NR 133.095	Modifications.
NR 133.04	Application for an exploration license.	NR 133.10	Notice procedures.
NR 133.05	Issuance.	NR 133.11	Reports.
NR 133.06	Renewals.	NR 133.12	Inspections.
NR 133.07	License revocation or suspension.		

NR 133.01 Purpose. The purpose of this chapter is to establish a licensing procedure and minimum standards for radioactive waste site exploration in this state.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85.

NR 133.02 Applicability. The provisions of this chapter are applicable to all radioactive waste site exploration as defined in s. 293.25 (1) (c), Stats.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

NR 133.03 Definitions. In this chapter:

(1) "Abandonment" means filling or sealing a drillhole in accordance with the procedures specified under s. NR 133.05.

(2) "Concrete grout" means a mixture consisting of 94 pounds of type A portland cement and an equal or lesser volume of dry sand combined with approximately 6 gallons of water.

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

(4) "Driller" means a person who performs core, rotary, percussion or other drilling involved in radioactive waste site exploration.

(5) "Drilling site" means the area disturbed by radioactive waste site exploration including the drillhole.

(6) "Explorer" means any person who engages in radioactive waste site exploration.

(7) "Exploration license" means the license required under s. 293.21 (2), Stats., as a condition of engaging in radioactive waste site exploration.

(8) "License year" means the period of time commencing on July 1 of any year and ending on the following June 30.

(9) "Neat cement grout" means a mixture consisting of 94 pounds of type A portland cement and approximately 6 gallons of water.

(10) "Parcel" means an identified section, fractional section or government lot.

(11) "Radioactive waste" means high-level radioactive waste and transuranic waste, as defined in s. 196.497 (1) (c) and (d), Stats.

(12) "Radioactive waste disposal site" means any site or facility for the long-term storage or disposal of radioactive waste including any underground storage area and related facilities.

(13) "Radioactive waste site exploration" means the on-site geologic examination from the surface of an area by core, rotary, percussion or other drilling for the purpose of determining the subsurface and geologic characteristics of an area in order to establish whether the area is suitable for a radioactive waste disposal site and includes associated activities such as clearing and preparing sites or constructing roads for drilling. For the purposes of this definition, geologic examination does not include construction of drillholes for the purpose of collecting soil samples or monitoring or sampling groundwater in unconsolidated deposits.

(14) "Termination" means permanent abandonment of drillholes and reclamation and revegetation of drilling sites.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; correction in (7) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526; correction in (11) made under s. 13.92 (4) (b) 7., Stats., Register March 2011 No. 663.

NR 133.04 Application for an exploration license.

(1) No person may engage in radioactive waste site exploration without securing an exploration license.

(2) Any person wishing to engage in radioactive waste site exploration shall file an application for an exploration license with the department upon forms prepared and furnished by the department. The application shall be accompanied by the following:

(a) A fee of \$300 for the exploration license.

(b) 1. A bond payable to the department in the amount of \$5,000 conditioned on faithful performance of the provisions of this chapter.

a. The bond shall be issued by a surety company licensed to do business in Wisconsin. If the surety company's license to do business is revoked or suspended, the explorer, within 30 days after receiving written notice from the department, shall substitute surety underwritten by a surety company licensed to do business in Wisconsin. Upon failure of the explorer to make a substitution of surety, the department shall suspend the explorer's exploration license until substitution has been made.

b. Each bond shall provide that the bond may not be canceled by the surety, except after 90 days written notice to the department by registered or certified mail. Not less than 30 days prior to the expiration of the 90 day notice of cancellation, the explorer shall deliver to the department a replacement bond in the absence of which all radioactive waste site exploration being conducted in this state by the explorer shall cease.

c. The department may require that the amount of the bond be increased at any time, if the department determines that the explorer's current level of activity makes it likely that the bond may be inadequate to fund the termination of all holes drilled for which the explorer is responsible.

d. One year after the issuance of the last certificate of completion, and provided that the explorer is not holding an exploration license, the department shall release the bond if the department determines that the explorer has complied with provisions of this chapter.

2. Notwithstanding subd. 1. the department may waive the bond requirement for an explorer who is authorized to engage in radioactive waste site exploration by a federal agency if the federal agency provides sufficient guarantees that the explorer or the federal agency will comply with the requirements of the department relating to termination.

(c) A certificate of insurance certifying that the explorer has in force a liability insurance policy issued by an insurance company authorized to do business in this state covering all radioactive waste site exploration of the explorer in this state and affording personal injury and property damage protection in a total

amount deemed adequate by the department but not less than \$50,000.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85.

NR 133.05 Issuance. Upon satisfactory completion of all conditions contained in this chapter, the department shall issue an exploration license to the explorer and shall provide copies of the license and license application to the radioactive waste review board and the Wisconsin geological and natural history survey. Licenses shall be issued within 10 business days after the department receives a complete application unless the application is for the immediately forthcoming license year. If the application is for the immediately forthcoming license year, the license shall be issued either within 10 business days after the department receives a complete application or on the following July 1, whichever is later. The issuance of an exploration license is subject to the following conditions:

(1) Immediately following completion of drilling, radioactive waste site exploration drillholes shall be abandoned as follows:

(a) *Permanent abandonment.* 1. 'Filling material.' All drillholes shall be filled from the bottom of the hole upward to the ground surface with concrete grout, neat cement grout or other material approved by the department.

2. 'Filling procedure restrictions.' a. Filling material shall be applied through a conductor pipe, except that when practical a dump bailer may be used. When concrete is placed under water by a conductor pipe, the bottom end of the conductor pipe shall be submerged in the concrete at all times.

b. Upon removal of all or part of the casing from an unconsolidated formation that may not stand open (such as sand or gravel) upon abandonment of a drillhole, the casing shall be removed concurrently with the filling of the drillhole, and the bottom end of the casing shall be kept below the surface of the fill material throughout the abandonment operation.

3. 'Flowing drillhole.' Prior to permanently abandoning a drillhole which penetrates an aquifer under artesian pressure such that groundwater flows at the ground surface, the explorer shall obtain approval of the abandonment procedures from the department.

(b) *Temporary abandonment.* If the explorer wants to temporarily retain a drillhole for further evaluation, the casing shall be left in place, and the upper terminal of the casing shall be sealed with a watertight threaded or welded cap.

(2) The explorer shall comply with minimum standards for radioactive waste site exploration activities and reclamation of drilling sites as contained in s. 293.13 (2) (b) and (c), Stats., where applicable.

(3) The fee for drilling the first 20 drillholes or less in any license year shall be \$100 per drillhole and the fee for drilling each subsequent drillhole in that same license year shall be \$50 per drillhole. All fees shall be paid to the department upon submission of the temporary abandonment report, if temporary abandonment occurs, or the permanent abandonment report if temporary abandonment does not occur. For the purpose of determining the appropriate fee, drillholes shall be assigned to the license year in which drilling on that particular hole ceases and the drillhole is initially abandoned either temporarily or permanently. Within 30 business days after receipt of the abandonment report, the department may adjust the fee to accurately reflect the actual costs incurred by the department in administering this chapter, including costs associated with monitoring or verification activities conducted by the department or other state agencies as a condition of the approval issued under s. NR 133.09 (6), provided that these activities are not funded through other available means.

(4) The explorer must comply with other conditions which the department deems necessary to safeguard the natural resources of this state during and after radioactive waste site exploration.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

NR 133.06 Renewals. (1) An explorer may renew an exploration license by filing an annual renewal application with the department upon forms prepared and furnished by the department. The renewal application shall be accompanied by the following:

(a) A fee of \$150.00.

(b) A bond in accordance with s. NR 133.04 (2) (b) unless the bond requirement is waived in accordance with s. NR 133.04 (2) (b) 2.

(c) A certificate of insurance in accordance with s. NR 133.04 (2) (c).

(2) Renewal licenses shall be for a period commencing on the date of issuance and terminating on the following June 30. Renewal applications shall be reviewed and licenses issued under the same time limitations specified in s. NR 133.05.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; corrections in (1) (b) and (c) made under s. 13.92 (4) (b) 7., Stats., Register March 2011 No. 663.

NR 133.07 License revocation or suspension.

(1) After a due process hearing, the department may revoke or suspend an exploration license if it is determined that:

(a) Statutes or rules of the department or any condition in the exploration license or approval under s. NR 133.09 (6) have not been complied with; or

(b) The explorer has failed to increase bond amounts to adequate levels as provided in s. NR 133.04 (2) (b) 1. c.

(2) The department shall notify the radioactive waste review board upon the revocation or suspension of any exploration license.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register March 2011 No. 663.

NR 133.08 Denials. (1) The department shall deny an exploration license if the department finds:

(a) The radioactive waste site exploration activity may not comply with the minimum standards in s. 293.13 (2) (b) 1. to 12. and (c) 1. to 8., Stats., where applicable.

(b) The explorer is in violation of ch. 293, Stats., or any provision of this chapter.

(2) Within 10 business days from the date of application, the department shall furnish the explorer in writing the reasons for the denial.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

NR 133.09 Preliminary project description approval. (1) Any explorer who holds a valid exploration license and intends to conduct radioactive waste site exploration in this state shall submit 15 copies of the preliminary project description to the department for each county in which drilling is expected to occur. The preliminary project description shall include, at a minimum, the identification of affected parcels, the proposed number and anticipated depth and diameter of the drillholes, the proposed methods of construction and termination, a description of site access, documentation that the explorer has applied for or intends to apply for necessary approvals and permits required under other applicable state laws and rules and local ordinances and the projected date of commencement of exploration.

If the explorer is the federal department of energy or an agent or employee of the federal department of energy, the preliminary project description must include evidence that the Public Service

Commission has certified that the explorer has complied with any requirement imposed by the radioactive waste review board under s. 196.497, Stats., or any agreement entered into under that section. The preliminary project description shall be submitted to the department at least 120 days prior to the proposed date of commencement of exploration and shall be considered as submitted on the date of its receipt by the department. Upon receipt, the department shall provide copies of the preliminary project description to the Public Service Commission and the Wisconsin geological and natural history survey. The explorer shall also submit a copy of the preliminary project description to the county clerk of the county, within which the radioactive waste site exploration is to take place.

(2) Each preliminary project description shall be accompanied by a fee of \$1500 which shall cover the cost to the department of evaluating the preliminary project description and preparing for and conducting the hearing under s. 293.25 (2) (c), Stats. After issuance of a decision under sub. (6) the department may revise the fee to reflect actual costs incurred.

(3) Upon receipt of a complete preliminary project description, the department shall determine, under s. NR 150.20, whether a statement under s. 1.11, Stats., is required for the proposed exploration. In making this determination the department shall limit its consideration of environmental effects to those impacts associated with the proposed radioactive waste site exploration. The department may require the explorer to submit additional information concerning the proposed exploration. If it is determined that a statement under s. 1.11, Stats., is required, the explorer shall reimburse the department for the preparation of an Environmental Impact Statement under s. NR 150.40.

(4) Within 15 business days after completing the process required to comply with s. 1.11, Stats., the department shall schedule the hearing under s. 293.25 (2) (c), Stats. Notice of the hearing shall be published in the official newspaper designated under s. 985.04 or 985.05, Stats., or if none exists, in a newspaper likely to give notice in the area of the proposed activity.

(5) The hearing conducted under s. 293.25 (2) (c), Stats., shall be held in the county where the radioactive waste site exploration is proposed to occur.

(6) Within 60 business days of the close of the hearing record, the department shall issue or deny approvals authorizing drilling on the individual parcels identified in the preliminary project description. Each approval or denial shall be made in findings of fact, conclusions of law and an order setting forth reasons with clarity and in detail. The department may modify the explorer's preliminary project description in order to meet the requirements of ch. 293, Stats., and as modified grant the approval or may impose conditions on the approval as appropriate.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; corrections in (2) and (4) and (5) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526; corrections in (1) and (3) made under s. 13.92 (4) (b) 7., Stats., Register March 2011 No. 663; correction in (1) made under s. 13.92 (4) (b) 6., Stats., Register March 2019 No. 759.

NR 133.095 Modifications. (1) The explorer may at any time seek modification of the preliminary project description, as approved by the department under s. NR 133.09 (6). All requests for modifications shall be made in writing to the department and shall fully document the need for the modification. The department shall approve or deny requests for modifications within 15 business days after receiving the modification request unless the modification involves conducting exploration on a parcel not identified in the preliminary project description, in which case, the limitations under sub. (2) (b) shall apply.

(2) (a) If a modification request is for approval to drill on a parcel not identified in the preliminary project description, the department shall provide notice of the modification request in the same manner as the hearing notice under s. NR 133.09 (4) within 15 business days after receipt of the modification request. If 5 or

more interested persons do not request a hearing in writing within 20 business days of notice, no hearing is required on the modification. The notice shall include a statement to this effect.

(b) The department shall approve or deny requests for modifications under sub. (1) within 35 business days after publication of the notice under sub. (1) if no hearing is requested or within 20 business days after the close of the hearing record if a hearing is held.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85.

NR 133.10 Notice procedures. (1) If a specific parcel is approved by the department under s. NR 133.09 (6), the explorer shall notify the department by registered or certified mail of the explorer's intent to drill on that parcel at least 10 days in advance of the commencement of exploration. The explorer shall provide a copy of the notice of intent to drill to the county clerk of each county in which drilling is proposed to occur as specified in the notice. The notice of intent to drill shall indicate the legal description of the affected parcel, the number of drillholes expected to be constructed and the date that exploration is expected to begin. The 10 day notice of intent to drill shall be considered as given on the date of its receipt by the department. The department shall transmit copies of the notice of intent to drill to the Public Service Commission and the Wisconsin geological and natural history survey.

(2) The explorer shall notify the department prior to the actual commencement of drilling on an approved parcel. This notice may be oral or written and shall be made to the department's regional office in Rhinelander.

(3) The explorer shall notify the department at least 24 hours in advance of permanently abandoning a drillhole. The 24 hour requirement may be reduced by the department. This notice may be oral or written and shall be made to the department's regional office in Rhinelander.

(4) If a drillhole penetrates an aquifer under artesian pressure such that groundwater flows at the ground surface, the explorer shall contact the department and seek approval of the method of containing such flow and the procedures for permanently abandoning the drillhole.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; correction made under s. 13.93 (2m) (b) 1., Stats., Register, October, 1999, No. 526; correction in (1), (2), (3) made under s. 13.92 (4) (b) 6., Stats., Register March 2019 No. 759.

NR 133.11 Reports. (1) Within 10 days after completion of temporary or permanent abandonment of a drillhole the explorer shall file an exploration abandonment report with the department on forms supplied by the department and signed by an authorized representative of the explorer attesting to the accuracy of the information contained therein.

(2) All abandonment reports shall be submitted to the department's regional office in Rhinelander.

(3) Following permanent abandonment of the drillhole, and regrading and revegetation of the drilling site, the explorer shall notify the department of completion of termination of each drilling site. This notification shall be made in writing and sent to the department's regional office in Rhinelander.

(4) The department shall notify the explorer in writing of the satisfactory or unsatisfactory completion of termination. If termination is unsatisfactory, the department shall inform the explorer of all necessary corrective measures. Following implementation of corrective measures, the explorer shall file written notice with the department's regional office in Rhinelander specifying what measures were taken and stating that termination is complete. Failure of the explorer to comply with the department's corrective measures may result in license revocation or suspension in accordance with s. NR 133.07. Upon satisfactory completion of termination of a drilling site, the department shall issue a certificate of completion. No temporarily abandoned drilling site

will receive a certificate of completion until permanently abandoned in accordance with the provisions of this chapter.

Note: The address and telephone number of the department's regional office in Rhinelander are:

Department of Natural Resources
Northern Region Headquarters
107 Sutliff
P.O. Box 818
Rhinelander, WI 54501
Telephone: (715) 365-8900

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; correction in (2), (3), (4) made under s. 13.92 (4) (b) 6., Stats., Register March 2019 No. 759.

NR 133.12 Inspections. (1) Any duly authorized officer,

employee or representative of the department may enter and inspect any property, premises or place on or at which any radioactive waste site exploration is being performed at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and ch. 293, Stats.

(2) No explorer may refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection and who presents appropriate credentials.

(3) No person may obstruct, hamper or interfere with any such inspection.

History: Cr. Register, May, 1985, No. 353, eff. 6-1-85; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1999, No. 526.

(13) Monitor environmental changes concurrently with the permit holder under s. 293.45 (3) or 293.49 (7), and for such additional period of time after the full bond is released under s. 293.63 (3) as is necessary for the site to return to a state of environmental stability. The department may conduct independent studies to monitor environmental changes.

History: 1995 a. 227 s. 748, 749, 754, 994; 2007 a. 20 s. 9121 (6) (a); 2017 a. 134.

SUBCHAPTER III

EXPLORATION

293.21 Exploration. (1) **DEFINITIONS.** In this section:

(a) “Driller” means a person who performs core, rotary, percussion or other drilling involved in exploration for nonferrous metallic minerals.

(b) “Parcel” means an identified section, fractional section or government lot.

(c) “Termination” means filling of drillholes and reclamation and revegetation of drilling sites.

(2) **LICENSE.** All persons intending to engage in exploration, or who contract for the services of drillers for purposes of exploration, shall be licensed by the department. Exploration licenses shall be issued annually by the department, and shall be applied for on forms provided by the department. The department shall provide copies of the application form for an exploration license to the state geologist upon issuance of the license. The department shall, by rule, establish an annual license fee plus a schedule of additional fees based on the number of holes drilled. The level of fees shall reflect the department’s actual cost in administering this section. The fees set under this subsection may be adjusted for persons to reflect the payment of fees for the same services to meet other requirements.

(3) **BOND.** (a) Applications for licenses shall be accompanied by a bond in the amount of \$5,000 conditioned on faithful performance of the requirements of the department relating to termination.

(b) The department may require that the amount of the bond be increased at any time, if the department determines that a licensee’s current level of activity makes it likely that the bond would be inadequate to fund the termination of all holes drilled for which the licensee is responsible.

(c) The department shall, by rule, establish a procedure for release of exploration sites from bond coverage.

(4) **NOTICE PROCEDURE.** (a) Commencement of drilling on a parcel shall be preceded by notice from the licensee to the department of intent to drill, given at least 10 days in advance of the commencement of drilling, and identifying the particular parcel. The department shall transmit a copy of the notice of intent to drill to the state geologist.

(b) The department shall, by rule, establish notification and inspection procedures applicable to the various stages of drilling and termination and procedures for the proper termination of drillholes.

(5) **LICENSE REVOCATION.** The department may revoke or suspend an exploration license issued under this section if it determines, after hearing, that:

(a) Statutes or rules of the department have not been complied with; or

(b) There has been a failure to increase bond amounts to adequate levels as specified by the department.

(6) **EXEMPTION.** This section does not apply to operators engaged in exploration activities on lands included in a mining and reclamation plan, if the plan contains provisions relating to termination of the exploration activities.

History: 1977 c. 421; 1995 a. 227 s. 755; Stats. 1995 s. 293.21; 2013 a. 1.

Cross-reference: See also ch. NR 130, Wis. adm. code.

293.25 Radioactive waste site exploration (1) **DEFINITIONS.** In this section and for the purposes of determining the applicability of ss. 293.13, 293.15 (1) to (12), 293.21, 293.81, 293.87, 293.89, 293.93 and 293.95:

(a) “Person” includes any person operating under a contract or under the direction of a federal agency.

(b) “Radioactive waste” means any of the following:

1. Fuel that is withdrawn from a nuclear reactor after irradiation and which is packaged and prepared for disposal.

2. Highly radioactive waste resulting from reprocessing irradiated nuclear fuel including both the liquid waste which is produced directly in reprocessing and any solid material into which the liquid waste is transformed.

3. Waste material containing alpha-emitting radioactive elements having an atomic number greater than 92 in concentrations greater than 10 nanocuries per gram.

(c) “Radioactive waste site exploration” means the on-site geologic examination from the surface of an area by core, rotary, percussion or other drilling for the purpose of determining the subsurface and geologic characteristics of an area in order to establish whether the area is suitable for a radioactive waste disposal site and includes associated activities such as clearing and preparing sites or constructing roads for drilling.

(d) “Radioactive waste disposal site” means any site or facility for the long-term storage or disposal of radioactive waste including any underground storage area and related facilities.

(2) **EXPLORATION LICENSE AND RELATED PROVISIONS.** (a) **Applicability.** Except as provided under par. (b), ss. 293.21 and 293.81 and rules promulgated under those sections apply to radioactive waste site exploration, to activities related to radioactive waste site exploration and to persons engaging in or intending to engage in radioactive waste site exploration or related activities in the same manner as those sections and rules are applicable to nonferrous metallic mineral exploration, to activities related to nonferrous metallic mineral exploration and to persons engaging in or intending to engage in nonferrous metallic mineral exploration or related activities.

(b) **Exception.** Notwithstanding par. (a) and s. 293.21 (3), the department may waive the bond requirement for a person who is authorized to engage in radioactive waste site exploration by a federal agency if the federal agency provides sufficient guarantees that the person or the federal agency will comply with the requirements of the department relating to termination. Notwithstanding par. (a) and s. 293.21 (3), the department may require a bond in an amount in excess of the amount specified under s. 293.21 (3) (a) to ensure that sufficient funds are available to comply with termination requirements or to abate or remedy any environmental pollution or danger to public health, safety or welfare resulting from radioactive waste site exploration.

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

(3) **APPROVAL REQUIRED PRIOR TO DRILLING.** No person may engage in radioactive waste site exploration by drilling on a parcel unless notice is provided as required under sub. (2) and s. 293.21

(4) (a) and unless the department issues a written approval authorizing drilling on that parcel. If the person seeking this approval is the federal department of energy or an agent or employee of the federal department of energy, the department may not issue the approval unless the public service commission certifies that the federal department of energy and its agents or employees have complied with any requirement imposed by the public service commission under s. 196.497 or any agreement entered into under that section.

(4) **REGULATION OF EXPLORATION AND RELATED PROVISIONS.** Sections 293.13, 293.15 (1) to (12), 293.85, 293.87 and 293.89 and rules promulgated under those sections apply to radioactive waste site exploration, to activities related to radioactive waste site exploration and to persons engaging in or intending to engage

in radioactive waste site exploration or related activities in the same manner as those sections and rules are applicable to nonferrous metallic mineral exploration, to activities related to nonferrous metallic mineral exploration and to persons engaging in or intending to engage in nonferrous metallic mineral exploration or related activities.

(5) **GROUNDWATER REGULATIONS.** A person engaging in radioactive waste site exploration shall comply with any restrictions or prohibitions concerning the pollution or contamination of groundwater under this chapter, subch. II of ch. 281 or ch. 283 or any rule or order promulgated under those chapters or that subchapter.

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

(7) **IMPACT ON PUBLIC SERVICE COMMISSION.** Nothing in this section limits the power or authority of the public service commission to impose more stringent requirements for the negotiation and approval of agreements under s. 196.497.

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

History: 1983 a. 27; 1989 a. 31; 1991 a. 25; 1995 a. 27; 1995 a. 227 s. 756; Stats. 1995 s. 293.25; 2013 a. 1.

Cross-reference: See also ch. NR 133, Wis. adm. code.

293.26 Bulk sampling. (1) In this section, “approval” means any permit, license, certification, contract, or other authorization that the department issues, or any other action by the department, that is required to engage in bulk sampling.

(1m) No person may engage in bulk sampling except as provided in a bulk sampling license issued by the department under sub. (4) or (14m) and any approval required by the department to engage in bulk sampling identified under sub. (4) or sub. (4m). A person who intends to engage in bulk sampling shall file a bulk sampling plan with the department. The collection of data under a bulk sampling plan may include sampling and analysis related to geophysical, geochemical, groundwater, and surface water conditions, as well as any other data or studies necessary to prepare an application for a mining permit, including the mining plan, reclamation plan, mining waste site feasibility study and plan of operation, or any other approval required for the proposed mining.

(2) A person shall include all of the following in a bulk sampling plan:

(a) A description and map of the bulk sampling site, including the number of acres in the site, the number of acres of land that will be disturbed, if any, associated with each bulk sampling location, and the locations and types of sampling or studies to be conducted at each bulk sampling location.

(b) A description of the methods to be used for the bulk sampling.

(c) A site-specific plan for controlling surface erosion that conforms to requirements under ss. 281.33 (3) and 283.33 and that identifies how impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.

(d) A revegetation plan for each area where bulk sampling will be performed that describes how adverse impacts to the environment will be avoided or minimized to the extent practicable and how the site will be revegetated and stabilized and that identifies how adverse impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.

(e) The estimated time for completing the bulk sampling and revegetation of the bulk sampling locations.

(f) A description of any known adverse environmental impacts that are likely to be caused by the bulk sampling and how those impacts will be avoided or minimized to the extent practicable.

(g) A description of any adverse effects, as defined in s. 44.31 (1), that the bulk sampling might have on any historic property, as defined in s. 44.31 (3), that is a listed property, as defined in s. 44.31 (4), that is on the Wisconsin inventory of historic places, as defined in s. 44.31 (12), or that is on the list of locally designated historic places under s. 44.45; or any scenic or recreational areas; and plans to avoid or minimize those adverse effects to the extent practicable.

(3) The department shall protect as confidential any information, other than effluent data, contained in a bulk sampling plan and in any application for an approval that is required before the bulk sampling may be implemented, upon a showing that the information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), and any information relating to the location, quality, or quantity of a nonferrous metallic mineral deposit, to production or sales figures, or to processes or production unique to the applicant or that would tend to adversely affect the competitive position of the applicant if made public.

(4) Within 14 days of receipt of a complete bulk sampling plan under sub. (2), the department shall identify for the applicant, in writing, all approvals that are required before the bulk sampling may be implemented, any waivers, exemptions, or exceptions to those approvals that are potentially available, and any information that the department needs to issue the approvals or to issue a decision on any waiver, exemption, or exception. If no approvals are required, the department shall notify the applicant that no approvals are required and issue a bulk sampling license to the applicant.

(4m) (ag) An applicant shall file a revised bulk sampling plan if there are any significant changes to the information provided in the previous bulk sampling plan under sub. (2).

(ar) If the revised bulk sampling plan is filed before the department approves or denies any waiver, exemption, or exception under sub. (12), issues any approval under sub. (13) or (14), or issues a bulk sampling license under sub. (14m), within 14 days of receiving the revised bulk sampling plan, the department shall notify the applicant, in writing, of any changes to the information provided to the applicant under sub. (4).

(b) If the revised bulk sampling plan is filed after the department approves or denies any waiver, exemption, or exception under sub. (12), issues any approval under sub. (13) or (14), or issues a bulk sampling license under sub. (14m), within 14 days of receiving the revised bulk sampling plan, the department shall identify for the applicant, in writing, any modifications to existing approvals or additional approvals that the department requires.

(5) If a storm water discharge permit under s. 283.33 (1) (a) or a water quality certification under rules promulgated under subch. II of ch. 281 to implement 33 USC 1341 (a) is required before bulk sampling may be implemented, the person filing the bulk sampling plan may apply for and be issued the permit or certification.

(6) The department shall act on any required construction site erosion control and storm water management approval, notwithstanding any authorization by the department of a local program to administer construction site erosion control and storm water management requirements.

(7) An applicant shall submit all of the following at the same time:

(a) Applications for individual approvals identified under sub. (4) or (4m) (ar).

(b) Applications for coverage under general permits or registration permits identified under sub. (4) or (4m) (ar).

(c) Applications for waivers, exemptions, or exceptions identified under sub. (4) or (4m) (ar).

(d) A bond, as provided in sub. (9).

(8) (a) Notwithstanding any provision in ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291 or in a rule promulgated under those chapters that is applicable to an approval identified under

classify exploration, prospecting and mining activities according to type of minerals involved and stage of progression in the operation.

(b) Minimum standards for exploration, bulk sampling, prospecting, and mining shall include the following:

1. Grading and stabilization of excavation, sides and benches.
2. Grading and stabilization of deposits of refuse.
3. Stabilization of merchantable by-products.
4. Adequate diversion and drainage of water from the exploration, bulk sampling, prospecting, or mining site.
5. Backfilling.
6. Adequate covering of all pollutant-bearing minerals or materials.
7. Removal and stockpiling, or other measures to protect topsoils prior to exploration, bulk sampling, prospecting, or mining.
8. Adequate vegetative cover.
9. Water impoundment.
10. Adequate screening of the prospecting or mining site.
11. Identification and prevention of pollution as defined in s. 281.01 (10) resulting from leaching of waste materials.
12. Identification and prevention of significant environmental pollution.

(c) Minimum standards for reclamation of exploration and bulk sampling sites, where appropriate, and for prospecting and mining sites shall conform to s. 293.01 (23) and include provision for the following:

1. Disposal of all toxic and hazardous wastes, refuse, tailings and other solid waste in solid or hazardous waste disposal facilities licensed under ch. 289 or 291 or otherwise in an environmentally sound manner.
2. Sealing off tunnels, shafts or other underground openings, and prevention of seepage in amounts which may be expected to create a safety, health or environmental hazard, unless the applicant can demonstrate alternative uses of tunnels, shafts or other openings which do not endanger public health and safety and which conform to applicable environmental protection laws and rules.
3. Management, impoundment or treatment of all underground or surface runoff waters from open pits or underground prospecting or mining sites so as to prevent soil erosion, flooding, damage to agricultural lands or livestock, wild animals, pollution of surface or subsurface waters or damage to public health or safety.
4. Removal of all surface structures, unless they are converted to an alternate use.
5. Prevention or reclamation of substantial surface subsidence.
6. Preservation of topsoil for purposes of future use in reclamation.
7. Revegetation to stabilize disturbed soils and prevent air and water pollution, with the objective of reestablishing a variety of populations of plants and animals indigenous to the area immediately prior to exploration, bulk sampling, prospecting, or mining.
8. Minimization of disturbance to wetlands.

(d) The minimum standards adopted under this subsection shall also provide that if any of the following situations may reasonably be expected to occur during or subsequent to prospecting or mining, the prospecting or mining permit shall be denied:

1. Landslides or substantial deposition from the proposed operation in stream or lake beds which cannot be feasibly prevented.
2. Significant surface subsidence which cannot be reclaimed because of the geologic characteristics present at the proposed site.
3. Hazards resulting in irreparable damage to any of the following, which cannot be prevented under the requirements of this

chapter, avoided to the extent applicable by removal from the area of hazard or mitigated by purchase or by obtaining the consent of the owner:

- a. Dwelling houses.
 - b. Public buildings.
 - c. Schools.
 - d. Churches.
 - e. Cemeteries.
 - f. Commercial or institutional buildings.
 - g. Public roads.
 - h. Other public property designated by the department by rule.
4. Irreparable environmental damage to lake or stream bodies despite adherence to the requirements of this chapter. This subdivision does not apply to an activity which the department has authorized pursuant to statute, except that the destruction or filling in of a lake bed shall not be authorized notwithstanding any other provision of law.

History: 1995 a. 227 s. 746, 747, 994; 1997 a. 35; 2017 a. 134.

Cross-reference: See also ch. NR 182, Wis. adm. code.

The DNR is not authorized by this section to issue a rule banning all sulfide mining. The requirement to adopt standards for a mining permit application process is inconsistent with a ban. Rusk County Citizen Action Group, Inc. v. DNR, 203 Wis. 2d 1, 552 N.W.2d 110 (Ct. App. 1996), 95–3125.

293.15 Department powers. The department may:

- (1) Hold hearings relating to any aspect of the administration of this chapter and, in connection therewith, compel the attendance of witnesses and production of evidence.
- (2) Cooperate or contract with the geological and natural history survey to secure necessary scientific, technical, administrative and operations services, including research, projects and laboratory facilities.
- (3) Issue orders directing particular prospectors or operators to comply with the provisions and purposes of this chapter.
- (4) Supervise and provide for such educational programs as appear necessary to carry out the purposes of this chapter.
- (5) At its own expense, with the staff, equipment and material under its control, or by contract with others, take such actions as are necessary for the reclamation of abandoned project sites.
- (6) Issue prospecting and mining permits.
- (7) Issue exploration licenses.
- (7m) Issue licenses and approvals necessary for bulk sampling.
- (8) Promulgate rules regulating the production, storage and disposal of radioactive waste from exploration, bulk sampling, prospecting, or mining after seeking comments from the department of health services. At a minimum, rules promulgated under this subsection shall achieve the margin of safety provided in applicable federal statutes and regulations. If the department promulgates rules under this subsection, the department shall investigate the need for standards more restrictive than the applicable federal statutes and regulations.
- (9) Promulgate rules by which the department may grant an exemption, modification or variance, either making a requirement more or less restrictive, from any rule promulgated under chs. 289 to 292 and this chapter, if the exemption, modification or variance does not result in the violation of any federal or state environmental law or endanger public health, safety or welfare or the environment.
- (10) Promulgate rules with respect to minimizing, segregating, backfilling and marketing of mining waste.
- (11) Notwithstanding chs. 289 and 291, promulgate rules establishing groundwater quality standards or groundwater quantity standards, or both, for any prospecting or mining activity, including standards for any mining waste site.
- (12) Require all persons under its jurisdiction to submit such informational reports as the department deems necessary for performing its duties under this chapter.

(a) Establish building inspection requirements and procedures to protect students and employees from asbestos hazards in schools.

(b) Regulate asbestos abatement activities in schools.

(c) Establish requirements for the maintenance of asbestos-containing material in schools which contain asbestos-containing material.

(d) Establish priorities for asbestos abatement activities in schools which contain asbestos-containing materials.

(e) Require a management plan for asbestos-containing material in every school which contains asbestos-containing material.

(2m) No requirement under sub. (2) may be stricter than any requirement under 15 USC 2641 to 2654.

(3) A school district and any school which is not a public school may apply to the department for a variance to any standard adopted under this section under the provisions of s. 101.055 (4) (a) to (c).

(4) Any person who intentionally violates any rule promulgated under this section shall forfeit not less than \$100 nor more than \$1,000 for each violation. Each violation constitutes a separate offense and each day of continued violation is a separate offense.

History: 1987 a. 396; 1993 a. 27 s. 364, 366; Stats. 1993 s. 254.21.

254.22 Indoor air quality. The department shall do all of the following:

(1) Investigate illness or disease outbreaks suspected of being caused by poor indoor air quality. The department shall promote or require control measures if indoor air quality is established to be the cause of illness or disease outbreaks.

(2) Assist local health departments in the adoption of regulations that establish standards for indoor air quality in public buildings to protect the occupants from adverse health effects due to exposure to chemical or biological contaminants.

(3) Provide training and technical support to local health departments for conducting indoor air quality testing and investigations.

(4) Assist the department of safety and professional services with the enforcement of s. 101.123.

History: 1993 a. 27; 1995 a. 27 ss. 6331, 9116 (5); 2011 a. 32.

254.30 Enforcement; penalties. **(1) ENFORCEMENT.** (a) The department may enter, at any reasonable time, a dwelling or premises undergoing any lead hazard reduction to determine if all persons engaged in lead hazard reduction have been appropriately certified if required under s. 254.176.

(b) The department may report any violation of ss. 254.11 to 254.178 or rules promulgated, or orders issued, under those sections to the district attorney of the county in which the dwelling is located. The district attorney shall enforce ss. 254.11 to 254.178 and rules promulgated, and orders issued, under those sections. If a circuit court determines that an owner of a rented or leased dwelling or premises has failed to comply with an order issued under ss. 254.11 to 254.178, the circuit court may order the occupants of the affected dwelling or premises to withhold rent in escrow until the owner of the dwelling or premises complies with the order.

(c) Sections 254.11 to 254.178 do not limit the ability of the department to require abatement of human health hazards involving lead under s. 254.59.

(2) PENALTIES. (a) *Civil penalty.* Any person who violates ss. 254.11 to 254.178 or rules promulgated, or orders issued, under those sections may be required to forfeit not less than \$100 nor more than \$5,000 per violation. Each day of continued violation constitutes a separate offense.

(b) *Criminal penalty.* Any person who knowingly violates any provision of ss. 254.11 to 254.178 or any rule promulgated, or order issued, under those sections shall be fined not less than \$100

nor more than \$5,000 per violation. The court may place the person on probation under s. 973.09 for a period not to exceed 2 years.

History: 1979 c. 221; 1987 a. 332; 1993 a. 27 s. 439; Stats. 1993 s. 254.30; 1993 a. 450; 2015 a. 55.

SUBCHAPTER III

RADIATION PROTECTION

254.31 Definitions. In this subchapter:

(1) “By-product material” means any of the following:

(a) Radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(b) The tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

(2) “Decommissioning” means conducting final operational activities at a nuclear facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material and to carry out any other activities necessary to prepare the site for postoperational care.

(2m) “General license” means a license, under requirements prescribed by the department by rule, to possess, use, transfer or acquire by-product material or devices or equipment utilizing by-product material without the filing of a license application by a person or issuance of licensing confirmation by the department.

(3g) “Ionizing radiation” means all radiations capable of producing ions directly or indirectly in their passage through matter, including all of the following:

(a) Electromagnetic radiations, including X-rays and gamma rays.

(b) Particulate radiations, including electrons, beta particles, protons, neutrons, alpha particles and other nuclear particles.

(3p) “Nonionizing radiation” means electromagnetic radiation, other than ionizing radiation, and any sonic, ultrasonic or infrasonic wave.

(4) “Nuclear facility” means any reactor plant, any equipment or device used for the separation of the isotopes of uranium or plutonium, the processing or utilizing of radioactive material or handling, processing or packaging waste; any premises, structure, excavation or place of storage or disposition of waste or by-product material; or any equipment used for or in connection with the transportation of such material.

(4p) “Radiation” means both ionizing and nonionizing radiation.

(5) “Radiation generating equipment” means a system, manufactured product or device or component part of such a product or device that, during operation, is capable of generating or emitting ionizing radiation without the use of radioactive material. “Radiation generating equipment” does not include a device that emits nonionizing radiation.

(6) “Radiation installation” is any location or facility where radiation generating equipment is used or where radioactive material is produced, transported, stored, disposed of or used for any purpose.

(9) “Radiation source” means radiation generating equipment or radioactive material.

(9m) “Radioactive material” includes any solid, liquid or gaseous substance which emits ionizing radiation spontaneously, including accelerator-produced material, by-product material, naturally occurring material, source material and special nuclear material.

(10) “Source material” means uranium, thorium, any combination thereof in any physical or chemical form, or ores that contain by weight 0.05 percent or more of uranium, thorium, or any

combination thereof. “Source material” does not include special nuclear material.

(11) “Special nuclear material” means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the nuclear regulatory commission determines to be special nuclear material; or any material artificially enriched by any of the foregoing. Special nuclear material does not include source material.

(11g) “Specific license” means a license, under requirements prescribed by the department by rule, to possess, use, manufacture, produce, transfer or acquire radioactive material or devices or equipment utilizing radioactive material.

(11m) “Transuranic” means a radioactive material having an atomic number that is greater than 92.

(12) “X-ray tube” means any electron tube that is contained in a device and that is specifically designed for the conversion of electrical energy into X-ray energy.

History: 1977 c. 29; 1985 a. 29; 1993 a. 27 ss. 227, 477; Stats. 1993 s. 254.31; 1993 a. 491; 1999 a. 9; 2001 a. 16.

254.33 Public policy. Since radiations and their sources can be instrumental in the improvement of the health and welfare of the public if properly utilized, and may be destructive or detrimental to life or health if carelessly or excessively employed or may detrimentally affect the environment of the state if improperly utilized, it is hereby declared to be the public policy of this state to encourage the constructive uses of radiation and to prohibit and prevent exposure to radiation in amounts which are or may be detrimental to health. It is further the policy for the department to advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies and with affected groups, political subdivisions and industries; and, in general, to conform as nearly as possible to nationally accepted standards in the promulgation and enforcement of rules.

History: 1985 a. 29; 1993 a. 27 s. 225; Stats. 1993 s. 254.33; 1995 a. 27 ss. 6332, 9116 (5); 1999 a. 9.

Cross-reference: See also ch. DHS 157, Wis. adm. code.

254.335 Agreements with the U.S. nuclear regulatory commission transition. (1) The governor may, on behalf of the state, enter into agreements with the U.S. nuclear regulatory commission, as provided in 42 USC 2021 (b), to discontinue certain federal licensing and related regulatory authority with respect to by-product material, source material and special nuclear material and to assume state regulatory authority.

(2) Any person who, on the effective date of an agreement specified under sub. (1), possesses a license issued by the U.S. nuclear regulatory commission that is subject to the agreement is considered to possess a specific license issued under s. 254.365 (1) (a) or to fulfill requirements specified for a general license under s. 254.365 (1) (b). The specific license expires 90 days after the date of receipt by the person from the department of a notice of expiration of the license or on the date of expiration that was specified in the license issued by the U.S. nuclear regulatory commission, whichever is earlier.

History: 1999 a. 9.

254.34 Powers and duties. (1) The department is the state radiation control agency and shall do all of the following:

(a) Promulgate and enforce rules, including registration and licensing of sources of ionizing radiation, as may be necessary to prohibit and prevent unnecessary radiation exposure. The rules may incorporate by reference the recommended standards of nationally recognized bodies in the field of radiation protection and other fields of atomic energy, under the procedure established by s. 227.21 (2). The rules for by-product material, source material and special nuclear material shall be in accordance with the requirements of 42 USC 2021 (o) and shall otherwise be compatible with the requirements under 42 USC 2011 to 2114 and regulations adopted under 42 USC 2011 to 2114.

(am) A rule identical to a rule specified under par. (a) may be promulgated by a state agency other than the department and an ordinance identical to a rule specified under par. (a) may be enacted by a local governmental unit, but no rule may be promulgated or ordinance may be enacted that differs from a rule under par. (a) and relates to the same subject area except as provided under ss. 293.15 (8), 293.25, and 323.13 (2) (f).

(b) Administer this subchapter and the rules promulgated under this subchapter.

(c) Develop comprehensive policies and programs for the evaluation, determination and reduction of hazards associated with the use of radiation that are compatible with requirements of the U.S. nuclear regulatory commission for the regulation of by-product material, source material and special nuclear material. The department shall maintain all of the following records:

1. Files of all license applications, issuances, denials, transfers, renewals, modifications, suspensions and revocations under s. 254.365.

2. Files of all registrants under s. 254.35 and any related administrative or judicial action.

(d) Advise, consult and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions and industries.

(e) Encourage, participate in or conduct studies, investigations, training, research and demonstrations relating to the control of radiation hazards, the measurement of radiation, the effects on health of exposure to radiation and related problems as it deems necessary or advisable for the discharge of its duties under this subchapter.

(f) Collect and disseminate health education information relating to radiation protection as it deems proper.

(g) Review and approve plans and specifications for radiation sources submitted pursuant to rules promulgated under this subchapter; and inspect radiation sources, their shielding and immediate surroundings and records concerning their operation for the determination of any possible radiation hazard.

(h) With respect to radon and with the department serving as the lead agency, do all of the following:

1. Develop and disseminate current radon information to the news media, builders, realtors and the general public.

2. Coordinate a program of measuring radon gas accumulation, including use of the radon canister counting system, in educational institutions, nursing homes, low-income housing, public buildings, homes, private industries and public service organizations.

3. Work with staff of local health departments to perform home surveys and diagnostic measurements and develop mitigation strategies for homes with elevated radon gas levels.

4. Develop training materials and conduct training of staff of local health departments, building contractors and others in radon diagnosis and mitigation methods.

5. Develop standards of performance for the regional radon centers and, from the appropriation account under s. 20.435 (1) (ed), distribute funds based on compliance with the standards to provide radon protection information dissemination from the regional radon centers.

(2) The department may:

(a) Enter, at all reasonable times, any private or public property for the purpose of investigating conditions relating to radiation control.

(b) Accept and utilize grants or other funds or gifts from the federal government and from other sources, public or private, for carrying out its functions under this subchapter. The studies, investigations, training and demonstration may be conducted independently, by contract, or in cooperation with any person or any public or private agency, including any political subdivision of the state.

(c) Develop requirements for qualification, certification, training, and experience of an individual who does any of the following:

1. Operates radiation generating equipment.
2. Utilizes, stores, transfers, transports, or possesses radioactive materials.
3. Acts as a radiation safety consultant to any person who possesses a license or registration issued by the department under this subchapter.

(d) Recognize certification by another state or by a nationally recognized certifying organization of an individual to perform acts under par. (c) 1. to 3. if the standards for the other state's certification or the organization's certification are substantially equivalent to the standards of the department for certification of individuals under par. (c).

History: 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 399; 1989 a. 31; 1993 a. 27 s. 228; Stats. 1993 s. 254.34; 1995 a. 27 ss. 6333, 6334, 9116 (5); 1997 a. 27; 1999 a. 9 ss. 2456 to 2462, 2475; 2001 a. 16; 2009 a. 28, 42.

Cross-reference: See also ch. DHS 157, Wis. adm. code.

254.35 Registration of ionizing radiation installations.

(1) **APPLICATION.** For every site in this state that has an ionizing radiation installation that is not exempted by this section or the rules of the department, the person in control of the installation, including installations in sites that are administered by a state agency or in an institution under the jurisdiction of a state agency, shall, prior to operation, register the ionizing radiation installation with the department. No ionizing radiation installation may be operated thereafter unless the site has been duly registered by January 1 of each year and a notice of the registration is possessed by the person in control. The application for registration shall be made on forms provided by the department which shall be devised to obtain any information that is considered necessary for evaluation of hazards. Multiple radiation sources at a single radiation installation and under the control of one person shall be listed on a single registration form. Registration fees shall be levied in accordance with sub. (3). Registration alone does not imply approval of manufacture, storage, use, handling, operation or disposal of the radiation installation or radioactive materials, but serves merely to inform the department of the location and character of radiation sources. Persons engaged in manufacturing, demonstration, sale, testing or repair of radiation sources are not required to list such sources on the registration form.

(2) **AMENDED REGISTRATION.** If the person in control increases the number of sources, source strength, rated output or energy of radiation produced in any installation, he or she shall notify the department of the increase prior to operation on the revised basis. The department shall record the change in the registration. No registration is transferable from one premises to another or from one person to another. If the person in control intends to transfer control of ownership of the radiation installation to another person, at least 15 days before the final transfer the registrant shall notify the department of the transfer and the intended transferee shall file under sub. (1) an application for registration. If any installation is discontinued, the person in control shall notify the department within 30 days of the discontinuance.

(3) **REGISTRATION FEES.** (a) An annual registration fee under pars. (b) to (fm) shall be levied for each site registration under this section. An additional penalty fee of \$25, regardless of the number of X-ray tubes or generally licensed devices, shall be required for each registration whenever the annual fee for renewal is not paid prior to expiration of the registration. No additional fee may be required for recording changes in the registration information.

(b) For a site having an ionizing radiation installation serving physicians and clinics, osteopaths and clinics, chiropractors or hospitals that possesses radioactive materials in any quantity, the fee shall be at least \$36 for each site and at least \$44 for each X-ray tube.

(c) For a podiatric or veterinary site having an ionizing radiation installation, the fee shall be at least \$36 for each site and at least \$44 for each X-ray tube.

(d) For a dental site having an ionizing radiation installation, the fee shall be at least \$36 for each site and at least \$30 for each X-ray tube.

(f) For an industrial, school, research project or other site having an ionizing radiation installation, the fee shall be at least \$36 for each site and at least \$44 for each X-ray tube.

(fm) For any site that has generally licensed devices that are not exempted by the department, the fee shall be at least \$100 for each site and at least \$50 for each device that contains at least 370 MBq or 10 mCi of cesium-137; 37 MBq or 1.0 mCi of cobalt-60; 3.7 MBq or 0.1 mCi of strontium-90; or 37 MBq or 1.0 mCi of a transuranic.

(g) The fees under this subsection shall be as stated unless the department promulgates rules to increase the annual registration fee for a site having an ionizing radiation installation, for an X-ray tube or for generally licensed devices that are not exempted by the department.

(4) **EXEMPTIONS.** After initial registration under sub. (1), the department may exempt from annual registration any source of radiation that the department finds to be without undue radiation hazard.

History: 1977 c. 29; 1979 c. 221; 1985 a. 29; 1989 a. 359; 1993 a. 27 s. 229; Stats. 1993 s. 254.35; 1995 a. 27 ss. 6335, 9116 (5); 1999 a. 9.

254.365 Licensing of radioactive material. (1) **LICENSE REQUIRED.** No person may possess, use, manufacture, transport, store, transfer or dispose of radioactive material or a device or item of equipment that uses radioactive material or may operate a site that uses radioactive material that is not under the authority of the U.S. nuclear regulatory commission unless one of the following applies:

- (a) The person has a specific license issued by the department.
- (b) The person meets general license requirements.
- (c) The person possesses a license issued by another state or by the U.S. nuclear regulatory commission that is reciprocally recognized by the department.
- (d) The person is exempted from licensure under sub. (7).

(2) **APPLICATION.** Application for a license under sub. (1) (a) or for reciprocal recognition under sub. (1) (c) shall be made on forms provided by the department.

(3) **MODIFICATION OR TERMINATION OF LICENSE.** Within 30 days after any change to the information on a license issued under this section, the licensee shall inform the department of the change and the department shall record the changed information. Within 30 days after termination of an activity licensed under this section, the person in control of the activity shall notify the department. The department may require that the person in control submit to the department for approval a plan for decommissioning the activity.

(4) **RULES.** The department shall promulgate rules for all of the following:

(a) The issuance, modification, suspension, termination and revocation of specific licenses under sub. (1) (a) under the standards specified in s. 254.34 (1) (a).

(b) The requirements for a general license under sub. (1) (b).

(5) **FEES AND CHARGES.** (a) The department may assess fees, the amounts of which are prescribed by the department by rule, for any of the following:

1. Issuance of an initial or renewal specific license under sub. (1) (a).
2. Annual license maintenance.
3. Issuance of a license amendment.
4. Termination of a license.

5. Issuance of reciprocal recognition of a license for radioactive materials of another state or the U.S. nuclear regulatory commission.

(b) The department may assess a late payment charge of 25 percent of the specific license renewal fee, in addition to the fee under par. (a) for renewal of a specific license, if payment for renewal of a specific license is not made within 30 days after the license expiration date.

(6) DENIAL, SUSPENSION OR REVOCATION OF LICENSURE. The department may, after a hearing under ch. 227, refuse to issue a license or suspend or revoke a license for failure by the licensee to comply with this subchapter, rules promulgated by the department under this subchapter or any condition of the license.

(7) EXEMPTION. The department may exempt from licensing requirements of this section radioactive material that the department finds is without undue radiation hazard.

History: 1999 a. 9.

254.37 Enforcement. (1) NOTIFICATION OF VIOLATION AND ORDER OF ABATEMENT. Whenever the department finds, upon inspection and examination, that a source of radiation as constructed, operated or maintained results in a violation of this subchapter or of any rules promulgated under this subchapter, the department shall do all of the following:

(a) Notify the person in control that is causing, allowing or permitting the violation as to the nature of the violation.

(b) Order that, prior to a specified time, the person in control shall cease and abate causing, allowing or permitting the violation and take such action as may be necessary to have the source of radiation constructed, operated, or maintained in compliance with this subchapter and rules promulgated under this subchapter.

(2) ORDERS. The department shall issue and enforce such orders or modifications of previously issued orders as may be required in connection with proceedings under this subchapter. The orders shall be subject to review by the department upon petition of the persons affected. Whenever the department finds that a condition exists that constitutes an immediate threat to health due to violation of this subchapter or any rule or order promulgated under this subchapter, it may issue an order reciting the existence of the threat and the findings pertaining to the threat. The department may summarily cause the abatement of the violation.

(3) RULES. The department shall promulgate and enforce the rules pertaining to ionizing radiation.

(4) JURISDICTION. The circuit court of Dane county shall have jurisdiction to enforce the orders by injunctive and other appropriate relief.

History: 1993 a. 27 s. 231; Stats. 1993 s. 254.37; 1995 a. 27 ss. 6336 to 6338, 9116 (5); 1997 a. 27; 1999 a. 9.

254.38 Emergency authority. (1) IMPOUNDING MATERIALS. The department may impound or order the sequestration of sources of radiation in the possession of any person who is not equipped to observe or who fails to observe safety standards to protect health that are established in rules promulgated by the department.

(2) EMERGENCY ORDERS. If the department finds that an emergency exists concerning a matter subject to regulation under this subchapter that requires immediate action to protect the public health or safety, the department may issue an emergency order without notice or hearing that recites the existence of the emergency and requires such action as is necessary to mitigate the emergency. Any person to whom the order is issued shall immediately comply with the order. A person to whom an emergency order is issued shall be afforded a hearing within 30 days after receipt by the department of a written request for the hearing. An emergency order is effective upon issuance and remains in effect for up to 90 days after issuance, except that the order may be revoked or modified based on the results of the hearing.

History: 1985 a. 29; 1993 a. 27 s. 232; Stats. 1993 s. 254.38; 1995 a. 27 ss. 6339, 9116 (5); 1999 a. 9.

254.39 Exceptions. (1) Nothing in this subchapter may be interpreted as limiting intentional exposure of persons to radiation for the purpose of analysis, diagnosis, therapy, and medical, chiropractic or dental research as authorized by law.

(2) This subchapter does not apply to on-site activities of any nuclear reactor plant licensed by the U.S. nuclear regulatory commission.

History: 1977 c. 29; 1991 a. 178; 1993 a. 27 s. 233; Stats. 1993 s. 254.39; 1999 a. 9.

254.41 Radiation monitoring of nuclear power plants.

The department shall take environmental samples to test for radiation emission in any area of the state within 20 miles of a nuclear power plant. The department shall charge the owners of each nuclear power plant in the state an annual fee of \$30,000 per plant, commencing in fiscal year 1983–84, to finance radiation monitoring under this section. The department may change this annual fee by rule.

History: 1979 c. 221; 1983 a. 27; 1993 a. 27 s. 235; Stats. 1993 s. 254.41.

Cross-reference: See also ch. DHS 158, Wis. adm. code.

254.45 Penalties. (1) GENERAL. (a) Any person who violates this subchapter or a rule promulgated under this subchapter or a condition of a license or registration issued by the department under this subchapter may be required to forfeit not less than \$100 nor more than \$100,000. Each day of continued violation constitutes a separate offense.

(b) The amount of the forfeiture assessed under par. (a) shall be determined by considering all of the following:

1. The willfulness of the violation.

2. The person's previous violations, if any, of this subchapter, rules promulgated under this subchapter or conditions of a license or registration issued by the department under this subchapter.

3. The potential danger or actual or potential injury to the environment or to public health caused by the violation.

4. The actual or potential costs of the damage or injury caused by the violation.

(2) ASSESSMENT OF FORFEITURES; NOTICE. The department may directly assess forfeitures provided for in sub. (1). If the department determines that a forfeiture should be assessed for a particular violation, the department shall send a notice of assessment to the person. The notice shall specify the amount of the forfeiture assessed and the violation and the statute or rule alleged to have been violated and shall inform the person of the right to hearing under sub. (3).

(3) HEARING. A person upon whom a forfeiture is imposed may contest the action by sending, within 10 days after receipt of notice of a contested action, a written request for hearing under s. 227.44 to the division of hearings and appeals created under s. 15.103 (1). The administrator of the division may designate a hearing examiner to preside over the case and recommend a decision to the administrator under s. 227.46. The decision of the administrator of the division shall be the final administrative decision. The division shall commence the hearing within 30 days of receipt of the request for hearing and shall issue a final decision within 15 days after the close of the hearing. Proceedings before the division are governed by ch. 227.

(4) FORFEITURE PAYMENT AND DISPOSITION. (a) A person against whom the department has assessed a forfeiture shall pay the forfeiture to the department within 10 days after receipt of the notice under sub. (2) or, if the person contests the assessment, within 10 days after receipt of the final decision after exhaustion of administrative review. If the person petitions for judicial review under ch. 227, the person shall pay the forfeiture within 10 days after receipt of the final judicial decision.

(b) The department shall remit all forfeitures paid to the secretary of administration for deposit in the school fund.

(5) ENFORCEMENT. The attorney general may bring an action in the name of the state to collect any forfeiture imposed under this section if the forfeiture has not been paid as required under sub.

(4). The only issue to be contested in an action under this subsection is whether the forfeiture has been paid.

History: 1993 a. 27 s. 234; Stats. 1993 s. 254.45; 1995 a. 27 ss. 6340, 9116 (5); 1999 a. 9; 2003 a. 33.

SUBCHAPTER IV

RECREATIONAL SANITATION

254.46 Beaches. The department or a local health department shall close or restrict swimming, diving and recreational bathing if a human health hazard exists in any area used for those purposes on a body of water and on associated land and shall require the posting of the area.

History: 1993 a. 27.

SUBCHAPTER V

ANIMAL–BORNE AND VECTOR–BORNE DISEASE CONTROL

254.50 Definition. In this subchapter, “vector” means a carrier, including an arthropod or an insect, that transfers an infective agent from one host to another.

History: 1993 a. 27.

254.51 Powers and duties. (1) The state epidemiologist for communicable disease shall take those measures that are necessary for the prevention, surveillance and control of human disease outbreaks associated with animal–borne and vector–borne transmission.

(2) The department shall enter into memoranda of understanding with the department of agriculture, trade and consumer protection, the department of safety and professional services, and the department of natural resources regarding the investigation and control of animal–borne and vector–borne disease.

(3) The department shall promulgate rules that establish measures for prevention, surveillance and control of human disease that is associated with animal–borne and vector–borne disease transmission.

(4) The local health department shall enforce rules that are promulgated under sub. (3).

(5) The local board of health may adopt regulations and recommend enactment of ordinances that set forth requirements for animal–borne and vector–borne disease control to assure a safe level of sanitation, human health hazard control or health protection for the community, including the following:

(a) The control of rats, stray animals, noise and rabies and other diseases.

(b) The control of wildlife, including the keeping of dangerous wild animals, disease transmission and human health hazard control and eradication.

(c) Pest control, including community sanitation, rodent and vector control, resident responsibilities and the health impact of pesticide use.

History: 1993 a. 27; 1995 a. 27 ss. 6341, 9116 (5); 2011 a. 32.

Cross-reference: See also ch. DHS 145, Wis. adm. code.

254.52 Lyme disease; treatment, information and research. (1) The department shall perform research relating to Lyme disease in humans.

(2) The department, in consultation with the department of public instruction, the department of natural resources and the department of agriculture, trade and consumer protection, shall do all of the following:

(a) Monitor the spread and incidence of Lyme disease.

(b) Investigate suspected and confirmed cases of Lyme disease.

(c) Review materials, activities and epidemiologic investigations prepared or conducted in other states in which Lyme disease is endemic and recommend a statewide strategy for dealing with Lyme disease.

(d) Develop, update and disseminate information for use by clinicians, laboratory technicians and local health departments that diagnose or treat Lyme disease or investigate cases or suspected cases of Lyme disease.

(e) Develop and distribute information through offices of physicians and local health departments and by newsletters, public presentations or other releases of information. That information shall include all of the following:

1. A description of Lyme disease.

2. Means of identifying whether or not individuals may be at risk of contracting Lyme disease.

3. Measures that individuals may take to protect themselves from contracting Lyme disease.

4. Locations for procuring additional information or obtaining testing services.

(f) Conduct research on the serological prevalence of Lyme disease.

History: 1989 a. 31; 1993 a. 27 s. 49; Stats. 1993 s. 254.52; 1995 a. 27 s. 9145 (1); 1997 a. 27.

SUBCHAPTER VI

HUMAN HEALTH HAZARDS

254.55 Definitions. In this subchapter:

(1) “Dwelling” means any structure, all or part of which is designed or used for human habitation.

(2) “Owner” means any of the following:

(a) A person who has legal title to a dwelling.

(b) A person who has charge, care, or control of a dwelling or unit of a dwelling as an agent of or as personal representative, trustee, or guardian of the estate of a person under par. (a).

History: 1993 a. 27; 2001 a. 102.

254.56 Public places. The owner and occupant and everyone in charge of a public building, as defined in s. 101.01 (12), shall keep the building clean and sanitary.

History: 1971 c. 185 s. 7; 1993 a. 27 s. 352; Stats. 1993 s. 254.56; 1995 a. 27.

254.57 Smoke. The common council of any city or the board of any village may regulate or prohibit the emission of dense smoke into the open air within its limits and one mile from its limits.

History: 1993 a. 27 s. 357; Stats. 1993 s. 254.57.

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

254.58 Powers of villages, cities and towns. Section 95.72 may not be construed as depriving any city or village from enacting any ordinance prohibiting the rendering of dead animals within the boundaries specified in s. 66.0415, as nullifying any existing law or ordinance prohibiting the rendering of dead animals within the area or as prohibiting any city or village from licensing, revoking the license, and regulating the business of rendering and transporting dead animals under sanitary conditions no less stringent than provided under s. 95.72 and the rules of the department of agriculture, trade and consumer protection. Any licensing and regulation by a city or village is supplementary to the provisions of this section and the rules of the department and may not be construed as excusing or justifying any failure or neglect to comply with this section and the rules of the department. Section 95.72 shall be expressly construed as modifying the powers granted to towns and any city, village or town may take

ing nominal tomographic section thickness, filtration and the technique factors as defined in s. DHS 157.84.

(86) "CT gantry" means the tube housing assemblies, beam-limiting devices, detectors and the supporting structures and frames that hold these components.

(87) "CT number" or "CTN" means the number used to represent the x-ray attenuation associated with each elemental area of the CT image as expressed in the following equation:

$$CTN = \frac{k (\mu_x - \mu_w)}{\mu_w}$$

where:

K = a constant, a normal value of 1,000 when the Hounsfield scale of CTN is used;

μ_x = linear attenuation coefficient of the material of interest;

μ_w = linear attenuation coefficient of water.

(87m) "Cumulative air kerma" means the total air kerma accrued from the beginning of an examination or procedure and includes all contributions from fluoroscopic and radiographic irradiation.

(88) "Curie" or "Ci" means 3.7×10^{10} disintegrations per second = 3.7×10^{10} becquerels = 2.22×10^{12} disintegrations per minute.

(89) "Dead-man switch" means a switch so constructed that a circuit closing contact may be maintained only by continuous pressure on the switch by the operator.

(90) "Declared pregnant woman" means a woman who has voluntarily informed the licensee or registrant, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(91) "Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license; or release of the property under restricted conditions and termination of the license.

(92) "Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

(93) "Deep dose equivalent" or "H_d" means the dose equivalent at a tissue depth of one centimeter (1000 mg/cm²) and applies to external whole body exposure.

(94) "Deliberate misconduct" means an intentional act or omission that the person knows would cause any of the following:

(a) A licensee, registrant or applicant to be in violation of any requirement under this chapter, any order of the department, or any term, condition or limitation of any license or registration issued by the department under this chapter.

(b) A violation of a requirement, procedure, instruction, contract, purchase order or policy of a licensee, registrant, applicant, or contractor or subcontractor of a licensee, registrant or applicant.

(95) "Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the face piece only when a negative pressure is created inside the facepiece by inhalation.

(96) "Dentist" means an individual licensed under ch. 447, Stats., to practice dentistry.

(97) "Department" means the department of health services.

(98) "Depleted uranium" means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(99) "Derived air concentration" or "DAC" means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI.

Note: For purposes of this chapter, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, column 3, of ch. DHS 157 Appendix E.

(100) "Derived air concentration-hour" or "DAC-hour" means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

(101) "Detector" means a device which in the presence of radiation provides, by either direct or indirect means, a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

(101m) "Deuterium" means deuterium and any deuterium compounds, including heavy water, in which the ratio of deuterium atoms to hydrogen atoms exceeds 1:5000.

(102) "Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

(103) "Diagnostic x-ray imaging system" means an assemblage of components for the generation, emission and reception of x-rays and the transformation, storage and visual display of the resultant x-ray image.

(103m) "DICOM" means digital imaging and communications in medicine.

(103r) "Discrete source" means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

(104) "Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus.

Note: Sorbent exhaustion refers to the inability of an absorbent material to absorb any more of the material for which it was designed.

(105) "Disposal" means the isolation of radioactive wastes from the environment inhabited by man and containing his food-chains by emplacement in a land disposal facility.

(106) "Disposal site" means that portion of a land disposal facility which is used for the disposal of waste. It consists of disposal units and a buffer zone.

(107) "Disposal unit" means a discrete portion of a disposal site into which waste is placed for disposal.

(108) "Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of that site or, in the case of structures, in similar materials using adequate measurement technology, survey and statistical techniques.

(108m) "Diversion" means the unauthorized movement of category 1 or category 2 quantity of radioactive material that is subject to subch. XV to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

(109) "Dose equivalent" or "H_T" means the product of the absorbed dose in tissue, quality factor and all other necessary

(385) "Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

(386) "Tomographic plane" means that geometric plane which is identified as corresponding to the output tomogram.

(387) "Tomographic section" means the volume of an object whose x-ray attenuation properties are imaged in a tomogram.

(388) "Total effective dose equivalent" or "TEDE" means the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(389) "Total organ dose equivalent" or "TODE" means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose.

(390) "Transport index" or "TI" means the dimensionless number, rounded up to the next tenth, placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number is determined by multiplying the maximum radiation level in millisievert (mSv) per hour at one meter (3.3 feet) from the external surface of the package by 100, which is equivalent to the maximum radiation level in millirem per hour at one meter (3.3 ft).

(391) "Transuranic waste" means waste containing elements having an atomic number greater than 92, a half-life greater than 5 years and in quantities greater than 3.7 kBq/gm (100 nCi/gm).

(392) "Treatment site" means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

(392m) "Tribal official" means the highest ranking individual that represents Tribal leadership, such as the Chief, President, or Tribal Council leadership.

(393) "Tritium neutron generator target source" means a tritium target source used within a neutron generator tube to produce neutrons for use in well logging applications.

(393m) "Trustworthiness and reliability" means the characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

(394) "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage, filament transformers and other appropriate elements which are contained within the tube housing.

(395) "Tube" means an x-ray tube, unless otherwise specified.

(396) "Type A package" means a packaging that, together with its radioactive contents limited to A₁ or A₂ as appropriate, meets the requirements of 49 CFR 173.410 and 173.412 and is designed to retain the integrity of containment and shielding required under normal conditions of transport as demonstrated by the tests set forth in 49 CFR 173.465 or 173.466, as appropriate.

(397) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A₁ for special form radioactive material or A₂ for normal form radioactive material, where A₁ and A₂ are given in ch. DHS 157 Appendix O or may be determined by procedures described in ch. DHS 157 Appendix O.

(398) "Type B package" means a packaging that, together with its radioactive contents, is designed to retain the integrity of containment and shielding required by 49 CFR 173 when subjected to the normal conditions of transport and hypothetical accident test conditions set forth in 10 CFR 71.

Note: A Type B package design is designated as B(U) or B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval. No distinction is made in how packages with these designations may be used in domestic transportation. To determine their distinction for inter-

national transportation, refer to 49 CFR Part 173. A Type B package approved prior to September 6, 1983 was designated only as Type B.

(399) "Type B quantity" means a quantity of radioactive material greater than a type A quantity.

(400) "Type of use" means use of radioactive material as specified in s. DHS 157.63 (1) or (2), 157.64 (1), 157.65 (1), 157.66 (1) or 157.67 (1).

(401) "Underwater irradiator" means an irradiator in which the sources always remain shielded under water and humans do not have access to the sealed sources or the space subject to irradiation without entering the pool.

(402) "Underwater radiography" means industrial radiography performed when the radiographic exposure device and related equipment are beneath the surface of the water.

(402g) "Unescorted access" means solitary access to a category 1 or category 2 quantity of radioactive material or the devices that contain the material.

(402m) "Unirradiated uranium" means uranium containing not more than 2×10^3 Bq of plutonium per gram of uranium-235, not more than 9×10^6 Bq of fission products per gram of uranium-235, and not more than 5×10^{-3} g of uranium-236 per gram of uranium-235.

(403) "Unit dosage" means a quantity of radioactive material that meets all the following criteria:

(a) Is obtained or prepared under the requirements in s. DHS 157.63 (1) or (2) or 157.64 (1).

(b) Is to be administered as a single dosage to a patient or human research subject without any further manipulation of the dosage after it is initially prepared, except to adjust the dosage to patient needs.

(404) "Unrefined and unprocessed ore" means ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining the ore from its natural state. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

(405) "Unrestricted area" or "uncontrolled area" means an area, access to which is neither limited nor controlled by the licensee or registrant.

(406) "Uranium sinker bar" means a weight containing depleted uranium used to pull a logging tool down toward the bottom of a well.

(407) "Useful beam" means the radiation which passes through the tube housing port and the aperture of the beam-limiting device when the exposure switch or timer is activated.

(408) "User seal check" means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(409) "Variable-aperture beam-limiting device" means a beam-limiting device that has capacity for stepless adjustment of the x-ray field size at a given SID.

(410) "Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 5 Gy (500 rad) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates.

(411) "Virtual source" means a point from which radiation appears to originate.

(412) "Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

(413) "Waste" means those low-level radioactive wastes containing source, special nuclear, or byproduct material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, "low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transu-

ranic waste, spent nuclear fuel, or byproduct material as defined in sub. (50) (b) to (e).

(414) "Waste handling licensee" mean a person licensed to receive and store radioactive residue prior to disposal and a person licensed to dispose of radioactive residue.

(415) "Wedge filter" means a filter which effects continuous change in transmission over all or a part of the useful beam.

(416) "Week" means 7 consecutive days starting on Sunday.

(417) "Weighting factor" or " w_T " for an organ or tissue means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

Organ Dose Weighting Factors

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 ^{a/}
Whole Body	1.00 ^{b/}

^{a/} 0.30 results from 0.06 for each of 5 "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

^{b/} For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The department shall approve the use of other weighting factors for external exposure on a case-by-case basis until such time as specific guidance is issued.

(418) "Well" means a drilled hole in which well logging may be performed.

(419) "Well logging" means all operations involving the lowering and raising of measuring devices or tools which may contain sources of radiation into wells or cavities for the purpose of obtaining information about the well or adjacent formations which may be used in oil, gas, mineral, groundwater or geological exploration.

(419m) "Well logging assistant" means any individual who, under the personal supervision of a well logging supervisor, handles sources of radiation that are not in logging tools or shipping containers or who performs surveys required by s. DHS 157.55.

(420) "Well logging supervisor" means any individual who uses sources of radiation or provides personal supervision of the use of sources of radiation at the well site and who is responsible for assuring compliance with the requirements of this chapter.

(421) "Well logging tool" means a device used subsurface to perform well logging.

(422) "Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow or legs above the knee.

(423) "Wipe sample" means a piece of material used to wipe over the area of a surface or device to collect radioactive contamination.

(426) "Worker" means an individual engaged in work under a license or registration issued by the department and controlled by a licensee or registrant, but does not include the licensee or registrant.

(427) "Working level" or "WL" means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of $1.3E+5$ MeV of potential alpha particle energy. The short-lived radon daughters are for radon-222: polonium-218, lead-214, bismuth-214 and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212.

(428) "Working level month" or "WLM" means an exposure to one working level for 170 hours. Two thousand working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

(429) "Written directive" means an authorized user's written order for the administration of radioactive material or radiation from radioactive material or a radiation machine to a specific patient or human research subject.

(429m) "X-ray control" means a device which controls input power to the x-ray high-voltage generator or the x-ray tube. It includes equipment such as timers, phototimers, automatic brightness stabilizers, and similar devices, which control the technique factors on an x-ray exposure.

(430) "X-ray equipment" means an x-ray system, subsystem or component thereof that is one of the following:

- Mobile x-ray equipment.
- Portable x-ray equipment.
- Stationary x-ray equipment.

(431) "X-ray exposure control" means a device, switch, button or other similar means by which an operator initiates or terminates the radiation exposure. An x-ray exposure control may include such associated equipment as timers and back-up timers.

(432) "X-ray field" means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(433) "X-ray high-voltage generator" means a device that transforms electrical energy from the potential supplied by an x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for an x-ray tube or tubes, high-voltage switches, electrical protective devices and other appropriate elements.

(434) "X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device and the necessary supporting structures. Additional components, which function with the system, are considered integral parts of the system.

(435) "X-ray table" means a patient support device with its patient support structure (tabletop) interposed between the patient and the image receptor during radiography or fluoroscopy. An x-ray table includes any stretcher equipped with a radiolucent panel and any table equipped with a cassette tray, cassette tunnel, image intensifier or spot-film device beneath the tabletop.

(436) "X-ray tube" means any electron tube designed to be used primarily for the production of x-rays.

(437) "Year" means the period beginning on January 1st used to determine compliance with the provisions of this chapter. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

History: CR 01-108: cr. Register July 2002 No. 559, eff. 8-1-02; CR 06-021: am. (1), (2), (13), (46), (98), (140), (141), (198) (a), (c), (199) (b), (200) (intro.), (c), (201), (210) (a) (intro.), (224), (225), (296), (326), (327), (334), (353), (376) (b), (390), (398), (418), (419) and (428); cr. (17m), (32m), (57g), (57r), (75m), (82m), (84m), (87m), (101m), (103m), (124m), (143m), (150m), (185m), (185r), (197m), (210) (a) S., (247m), (251m), (264m), (279m), (295m), (371m), (402m) and (419m); r. and recr. (32), (68), (198) (d) and (267); r. (210) (d), (e), (424) and (425) Register October 2006 No. 610, eff. 11-1-06; correction in (97) made under s. 13.92 (4) (b) 6., Stats., Register January 2009 No. 637; CR 09-062: am. (5), (6), (32m) (a), (33) (a), (50) (intro.), (a), (191), (200) (intro.), (222), (374) (c), (d), (382), (388), (402m), (407) and (413), cr. (50) (c) to (e), (75r), (103r), (221m), (264r) and (429m) Register April 2010 No. 652, eff. 5-1-10; CR 16-078: cr. (6m), (12m), (25m), (36m), (56g), (56r), (77m), r. and recr. (84m), cr. (108m), (109m), (124g), (139m), (143g), (150g), (166m), (189m), (193m), r. and recr. (198), am. (200) (c), (208), cr. (215m), (219m), am. (221m), cr. (228m), (230m), (318m), (319g), (319r), (331g), (331r), (374m), (392m), (393m), (402g), am. (404), (419m) Register January 2018 No. 745, eff. 2-1-18; correction in (25m) made under s. 13.92 (4) (b) 7., Stats., and

transportation regulations 49 CFR 172.403 and 172.436 to 172.440.

(d) A licensee or registrant shall perform the monitoring required by par. (b) as soon as practicable after receipt of the package, but not later than 3 hours after the package is received at the licensee's or registrant's facility if it is received during the licensee's or registrant's normal working hours or if there is evidence of degradation of package integrity, such as a package that is crushed, wet or damaged. If a package is received after working hours and has no evidence of degradation of package integrity, the package shall be monitored no later than 3 hours from the beginning of the next working day.

(e) A licensee or registrant shall immediately notify the final delivery carrier and, by telephone and either telegram or facsimile, the department under either of the following conditions:

1. Removable radioactive surface contamination exceeds the limits of s. DHS 157.94 (1) (i).
2. External radiation levels exceed the limits of s. DHS 157.94 (1) (j).

Note: The Department may be reached during normal business hours of 7:45 am to 4:30 pm, Monday through Friday, except state holidays, at 608-267-4797. The facsimile transmission number is 608-267-3695.

(f) A licensee or registrant shall do all the following:

1. Establish, maintain and retain written procedures for safely opening packages in which radioactive material is received.

2. Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

(g) A licensee or registrant transferring special form sources in vehicles owned or operated by the licensee or registrant to and from a work site is exempt from the contamination monitoring requirements of par. (b), but is not exempt from the monitoring requirement in par. (b) for measuring radiation levels that ensures that the source is still properly lodged in its shield.

History: CR 01-108: cr. Register July 2002 No. 559, eff. 8-1-02; CR 06-021: am. (6) (e) 2. Register October 2006 No. 610, eff. 11-1-06; CR 09-062: am. (6) (e) 1. Register April 2010 No. 652, eff. 5-1-10; correction in (2) (e), (5) (a), (b) made under s. 35.17, Stats., Register January 2018 No. 745.

DHS 157.30 Waste management. (1) GENERAL REQUIREMENTS. (a) A licensee or registrant disposing of licensed or registered material may use any of the following methods:

1. Transfer to an authorized recipient as provided in sub. (6) or in subch. II, or to the U.S. department of energy.
2. Decay while in storage.
3. Release in effluents within the limits in s. DHS 157.23 (1).
4. Dispose of as authorized under sub. (2), (3), (4), (5) or (8).

(b) A person shall be specifically licensed or registered to receive waste containing licensed or registered material from other persons for any of the following:

1. Treatment prior to disposal.
2. Treatment or disposal by incineration.
3. Decay while in storage.
4. Disposal at a land disposal facility authorized to receive radioactive waste.
5. Storage until transferred to a storage or disposal facility authorized to receive the waste.

(2) METHOD FOR OBTAINING APPROVAL OF PROPOSED DISPOSAL PROCEDURES. A licensee or registrant or applicant for a license or registration may apply to the department for approval of proposed procedures, not otherwise authorized in this chapter, to dispose of licensed or registered material generated in the licensee's or registrant's operations. Each application shall be in writing and shall include all of the following:

(a) A description of the waste containing licensed or registered material to be disposed of, including the physical and chemical properties that have an effect on risk evaluation and the proposed manner and conditions of waste disposal.

(b) An analysis and evaluation of information on the nature of the environment.

(c) The nature and location of other potentially affected facilities.

(d) Analyses and procedures to ensure that doses are maintained ALARA and within the dose limits in this chapter.

(3) DISPOSAL BY RELEASE INTO SANITARY SEWERAGE. (a) A licensee or registrant may discharge licensed or registered material into sanitary sewerage if each of the following conditions is satisfied:

1. The material is readily soluble, or is readily dispersible biological material, in water.

2. The quantity of licensed or registered radioactive material that the licensee or registrant releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee or registrant does not exceed the concentration listed in Table III of ch. DHS 157 Appendix E.

3. If more than one radionuclide is released, all the following conditions shall also be satisfied:

a. A licensee or registrant shall determine the fraction of the limit in Table III of ch. DHS 157 Appendix E represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in Table III of ch. DHS 157 Appendix E.

b. The sum of the fractions for each radionuclide required by subd. 3. a. does not exceed unity.

c. The total quantity of licensed or registered radioactive material that the licensee or registrant releases into the sanitary sewerage in a year does not exceed 185 GBq (5 Ci) of hydrogen-3, 37 GBq (1 Ci) of carbon-14 and 37 GBq (1 Ci) of all other radioactive materials combined.

(b) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in par. (a).

(4) TREATMENT OR DISPOSAL BY INCINERATION. A licensee or registrant may treat or dispose of licensed or registered material by incineration only in the form and concentration specified in sub. (5) or as specifically approved by the department under sub. (2).

(5) DISPOSAL OF SPECIFIC WASTES. (a) A licensee or registrant may dispose of all of the following licensed or registered material as if the material were not radioactive:

1. 1.85 kBq (0.05 μ Ci) or less of hydrogen-3, iodine-125 or carbon-14 per gram of medium used for liquid scintillation counting.

2. 1.85 kBq (0.05 μ Ci) or less of hydrogen-3, iodine-125 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

(b) A licensee or registrant may not dispose of tissue under par. (a) 2. in a manner that would permit its use either as food for humans or as animal feed.

(c) A licensee or registrant shall maintain records under s. DHS 157.31 (9).

(6) TRANSFER FOR DISPOSAL AND MANIFESTS. (a) The requirements of this subsection and Appendix G are designed to control transfers of low-level radioactive waste by any waste generator, waste collector or waste processor licensee who ships low level waste either directly, or indirectly through a waste collector or waste processor, to a licensed low level waste land disposal facility; establish a shipping manifest tracking system and supplement existing requirements concerning transfers and record keeping for those wastes.

(b) Any licensee shipping radioactive waste or byproduct material as defined in s. DHS 157.03 (50) (c) to (e) intended for ultimate disposal at a licensed land disposal facility shall document the information required in ch. DHS 157 Appendix G, Sec-

tion I and transfer this recorded information to the intended consignee in accordance with the requirements of ch. DHS 157 Appendix G.

(c) Each shipment manifest shall include a certification by the waste generator as specified in ch. DHS 157 Appendix G, Section II.

(d) Each person involved in the transfer of waste for disposal or in the disposal of waste, including the waste generator, waste collector, waste processor and disposal facility operator, shall comply with the requirements specified in ch. DHS 157 Appendix G, Section III.

(7) COMPLIANCE WITH ENVIRONMENTAL AND HEALTH PROTECTION REGULATIONS. Nothing in subs. (1) to (6) relieves a licensee or registrant from complying with other applicable federal, state and local regulations governing any other toxic or hazardous properties of materials that may be disposed of according to subs. (1) to (6).

(8) DISPOSAL OF CERTAIN BYPRODUCT MATERIAL. (a) Licensed byproduct material as defined in s. DHS 157.03 (50) (c) to (e) may be disposed of under 10 CFR 61 or equivalent agreement state regulations, even though it is not defined as low level radioactive waste. Any licensed byproduct material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed by the NRC under 10 CFR 61 or an agreement state with equivalent regulations shall meet the requirements of sub. (6).

(b) A licensee may dispose of byproduct material as defined in s. DHS 157.03 (50) (c) to (e) at a disposal facility authorized to dispose of such material under federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under 42 USC 2014 (e).

History: CR 01-108: cr. Register July 2002 No. 559, eff. 8-1-02; CR 09-062: am. (1) (a) 4. and (6) (b), cr. (8) Register April 2010 No. 652, eff. 5-1-10; correction in (3) (a) 2., (5) (a) 3. a., (6) (b) to (d) made under s. 35.17, Stats., Register January 2018 No. 745.

DHS 157.31 Records. **(1) GENERAL PROVISIONS.** (a) A licensee or registrant shall use the SI units becquerel, gray, sievert and coulomb per kilogram followed by the special units curie, rad, rem and roentgen, or the special units curie, rad, rem and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this subchapter.

(b) A licensee or registrant shall make a clear distinction among the quantities entered on the records required by this subchapter, such as total effective dose equivalent, shallow dose equivalent, lens dose equivalent, deep dose equivalent or committed effective dose equivalent.

(2) RECORDS OF RADIATION PROTECTION PROGRAMS. (a) A licensee or registrant shall maintain records of the radiation protection program, including all of the following:

1. The provisions of the program.
2. Audits and other reviews of program content and implementation.

(b) A licensee or registrant shall retain the records required by par. (a) 1. until the department terminates each pertinent license or registration requiring the record. A licensee or registrant shall retain the records required by par. (a) 2. for 3 years after the record is made.

(3) RECORDS OF SURVEYS. (a) A licensee or registrant shall maintain records showing the results of surveys and calibrations required by ss. DHS 157.25 (1) and 157.29 (6). A licensee or registrant shall retain these records for 3 years after the record is made.

(b) A licensee or registrant shall retain each of the following records until the department terminates each pertinent license or registration requiring the record:

1. Records of the results of surveys to determine the dose from external sources of radiation used, in the absence of or in combina-

tion with individual monitoring data, in the assessment of individual dose equivalents.

2. Records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose.

3. Records showing the results of air sampling, surveys and bioassays required under s. DHS 157.27 (3) (a) 3. a. and b.

4. Records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment.

(4) RECORDS OF TESTS FOR LEAKAGE OR CONTAMINATION OF SEALED SOURCES. Records of tests for leakage or contamination of sealed sources required by s. DHS 157.24 shall be kept in units of becquerel or microcurie and maintained for inspection by the department for 5 years after the records are created.

(5) RECORDS OF PRIOR OCCUPATIONAL DOSE. A licensee or registrant shall retain the records of prior occupational dose and exposure history as specified in s. DHS 157.22 (5) on the department's occupational radiation exposure form or equivalent until the department terminates each pertinent license or registration requiring this record. A licensee or registrant shall retain records used in preparing the occupational radiation exposure form or equivalent for 3 years after the record is created.

(6) RECORDS OF PLANNED SPECIAL EXPOSURES. (a) For each use of the provisions of s. DHS 157.22 (6) for planned special exposures, a licensee or registrant shall maintain records that describe all of the following:

1. The exceptional circumstances requiring the use of a planned special exposure.
2. The name of the management official who authorized the planned special exposure and a copy of the signed authorization.
3. What actions were necessary.
4. Why the actions were necessary.
5. What precautions were taken to assure that doses were maintained ALARA.
6. What individual and collective doses were expected to result.
7. The doses actually received in the planned special exposure.

(b) A licensee or registrant shall retain the records until the department terminates each pertinent license or registration requiring these records.

(7) RECORDS OF INDIVIDUAL MONITORING RESULTS. (a) A licensee or registrant shall maintain records of doses received by all individuals for whom monitoring is required under s. DHS 157.25 (2) and records of doses received during planned special exposures, accidents and emergency conditions. Assessments of dose equivalent and records made using units in effect before August 1, 2002, need not be changed. These records shall include all of the following, when applicable:

1. The deep dose equivalent to the whole body, lens dose equivalent, shallow dose equivalent to the skin and shallow dose equivalent to the extremities.

2. The estimated intake of radionuclides.

Note: See DHS 157.22 (2) for occupational exposure limits.

3. The committed effective dose equivalent assigned to the intake of radionuclides.

4. The specific information used to calculate the committed effective dose equivalent under s. DHS 157.22 (4) (c).

5. The total effective dose equivalent when required by s. DHS 157.22 (2).

6. The total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose.

(b) A licensee or registrant shall make entries of the records specified in par. (a) at intervals not to exceed one year.

to comply with the department's rules and licensing requirements and the applicant's operating and emergency procedures.

5. Means by which the applicant will demonstrate the well logging assistant's knowledge and understanding of and ability to comply with the applicant's operating and emergency procedures.

(c) The applicant submits to the department written operating and emergency procedures as described in s. DHS 157.53 (2) or an outline or summary of the procedures that includes the important radiation safety aspects of the procedures.

(d) The applicant establishes and submits to the department the applicant's program for annual inspections of the job performance of each well logging supervisor to ensure that the department's rules, license requirements, and the applicant's operating and emergency procedures are followed. The applicant's inspection records shall be retained for 3 years after each annual internal inspection.

(e) The applicant submits a description of its overall organizational structure as it applies to the radiation safety responsibilities in wire-line services or subsurface tracer studies, including specified delegations of authority and responsibility.

(f) If an applicant wants to perform leak testing of sealed sources, the applicant identifies the manufacturers and the model numbers of the leak test kits to be used. If the applicant wants to analyze its own wipe samples, the applicant establishes procedures to be followed and submits a description of these procedures to the department. The description shall include all the following:

1. Instruments to be used.
2. Methods of performing the analysis.
3. Pertinent experience of the person who will analyze the wipe samples.

(9) **ISSUANCE OF SPECIFIC LICENSES.** (a) If the department determines that an application meets the applicable requirements, the department shall issue a specific license within 180 days of filing of a complete application authorizing the proposed activity in such form and containing such conditions and limitations as the department deems appropriate or necessary.

(b) The department may incorporate in any license at the time of issuance or thereafter, any additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material subject to this section as the department deems appropriate or necessary.

(10) **SPECIFIC TERMS AND CONDITIONS OF LICENSES.** (a) A license issued under this section shall be subject to all the provisions of ss. 254.31 to 254.45, Stats., this chapter and orders of the department.

(b) 1. No license issued or granted under this section and no right to possess or utilize radioactive material granted by any license issued under this subsection may be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the department, after securing full information, finds that the transfer complies with the applicable provisions of the statutes, rules and orders of the department, and gives its consent in writing.

2. An application for transfer of license shall include all the following:

- a. The identity and technical and financial qualifications of the proposed transferee.
- b. Financial assurance for decommissioning information, as applicable, required by s. DHS 157.15.

(c) A person licensed by the department under this section shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

(e) A licensee shall notify the department in writing within 10 days following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 of the United States Code by or against any one of the following:

1. The licensee.
2. An entity defined in 11 USC 101(15) controlling the licensee or listing the license or licensee as property of the estate.
3. An affiliate defined in 11 USC 101(2) of the licensee.

Note: Title 11 of the U.S. Code deals with bankruptcy.

(f) The notification specified in par. (e) shall indicate the bankruptcy court in which the petition for bankruptcy was filed and the date of the filing of the petition.

(11) **EXPIRATION AND TERMINATION OF LICENSES AND DECOMMISSIONING OF SITES AND SEPARATE BUILDING OR OUTDOOR AREAS.** (a) Except as provided in sub. (12) (b), a specific license shall expire at the end of the specified day in the month and year stated in the license. If an application for license renewal has been filed at least 30 days prior to the expiration date stated in the existing license and the department denies the renewal application, the license shall expire on the date as stated in the determination of denial. If an application for license renewal is filed less than 30 days from the expiration date stated in the existing license, the department may deny the renewal application and the license shall expire on the expiration date stated in the license.

(b) A specific license revoked by the department expires at the end of the day on the date of the department's final determination, or on the expiration date stated in the determination, or as otherwise provided by department order.

(c) A specific license remains valid, with respect to possession of radioactive material, until the department notifies the licensee in writing that the license is terminated. While the license is valid, the licensee shall do all of the following:

1. Limit actions involving radioactive material to those related to decommissioning and other activities related to preparation for release for unrestricted use.

2. Continue to control entry to restricted areas until they are suitable for release for unrestricted use and the department notifies the licensee in writing that the license is terminated.

(d) A licensee shall do all of the following:

1. Notify the department within 60 days of any of the following:

- a. Expiration of the license pursuant to par. (a) or (b).
- b. The licensee's deciding to permanently cease principal activities at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with department requirements.

c. The absence of conduct of any principal activities under the license for a period of 24 months.

d. The absence of conduct of any principal activities for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with department requirements.

2. If any separate building or outdoor area contains stored radioactive material or residual radioactivity so that the building or outdoor area is unsuitable for release, do one of the following:

- a. Begin decommissioning its site, separate building or outdoor area if a decommissioning plan has been previously approved by the department.

b. Submit a decommissioning plan within 12 months if required by par. (f) and begin decommissioning upon approval of that plan.

(e) Concurrent with the notification required by par. (d), the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to s. DHS 157.15 in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance shall be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to par. (f) 4. Following approval of the decommissioning plan and

with the department's approval, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site.

(f) A licensee shall submit a decommissioning plan to the department if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site, separate building or outdoor area have not been previously approved by the department and the procedures and activities may adversely effect the health and safety of workers or the public. The procedures may not be carried out prior to the department's approval of the decommissioning plan. Examples of applicable procedures and activities include any of the following cases:

1. Procedures that would involve techniques not applied routinely during cleanup or maintenance operations.

2. Procedures by which workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation.

3. Procedures that could result in significantly greater airborne concentrations of radioactive materials than are present during operation.

4. Procedures that could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(g) The department may approve an alternate schedule for submittal of a decommissioning plan required pursuant to par. (d) if the department determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(h) The proposed decommissioning plan for the site or separate building or outdoor area shall include all of the following elements:

1. A description of the conditions of the site, separate building or outdoor area sufficient to evaluate the acceptability of the plan.

2. A description of planned decommissioning activities.

3. A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning.

4. A description of the planned final radiation survey.

5. An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning.

6. For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, a justification for the delay based on the criteria in par. (i).

(i) The department shall approve the proposed decommissioning plan if the information in the plan demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be ensured.

(j) Except as provided in par. (h), a licensee shall complete decommissioning of the site or separate building or outdoor area no later than 24 months following the initiation of decommissioning. When decommissioning involves the entire site, a licensee shall request license termination no later than 24 months following the initiation of decommissioning.

(k) The department may approve a request for an alternative schedule for completion of decommissioning of the site, separate building or outdoor area, and license termination if appropriate, if the department determines that the alternative is warranted after consideration of all the following:

1. Whether it is technically feasible to complete decommissioning within the allotted 24-month period.

2. Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period.

3. Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay.

4. Whether a significant reduction in radiation exposure to workers may be achieved by allowing short-lived radionuclides to decay.

5. Other site-specific factors which the department may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, court decisions, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(L) As the final step in decommissioning, a licensee shall do all the following:

1. Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed department form for disposition of radioactive materials or equivalent information.

Note: The form may be obtained by writing the Department at: Department of Health Services, Radiation Protection Section, PO Box 2659, Madison WI 53701-2659; or by downloading from the Department website at: <http://dhs.wisconsin.gov/radiation/Index.htm>.

2. Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in s. DHS 157.33.

3. Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels per 100 square centimeters, disintegrations per minute per 100 square centimeters or microcuries per 100 square centimeters — removable and fixed — for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete.

4. Specify the survey instruments used and certify that each instrument is properly calibrated and tested.

Note: Submit reports to the Department at: Department of Health Services, Radiation Protection Section, P.O. Box 2659, Madison WI 53701-2659.

(m) The department shall terminate a specific license, including an expired license, by written notice to the licensee when the department determines all of the following have occurred:

1. Radioactive material has been properly disposed of.

2. Reasonable effort has been made to eliminate residual radioactive contamination, if present.

3. The licensee has filed with the department sufficient information, including a radiation survey, to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in s. DHS 157.33.

4. The licensee has submitted records required under s. DHS 157.13 (18) (b) and (d) to the department.

(12) RENEWAL OF LICENSES. (a) An application for renewal of a specific license shall be filed under sub. (1).

(b) If a licensee, not less than 30 days prior to expiration of his or her existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, the license may not expire until final action by the department.

Note: A license renewal form may be obtained by writing the Department at: Department of Health Services, Radiation Protection Section, P.O. Box 2659, Madison WI 53701-2659; or by downloading from the Department website at: <http://dhs.wisconsin.gov/radiation/Index.htm>.

(13) AMENDMENT OF LICENSES AT REQUEST OF LICENSEE. An application for amendment of a license shall be filed under sub. (1) and shall specify the respects in which the licensee desires the license to be amended and the grounds for the amendment. The

the commission against a cooperative association involved in a proceeding under this section in the same manner as provided for public utilities under s. 196.85.

History: 1971 c. 125 s. 521; 1983 a. 53; 1991 a. 94.

Cross-reference: See also s. PSC 112.08, Wis. adm. code.

Although one utility was serving a farm, when the farm was annexed to a city and a large shopping center was built, the utility having an indeterminate permit to serve the city could not be barred from serving the area; the PSC should determine which utility should serve the area. *Adams–Marquette Electric Cooperative v. PSC 51 Wis. 2d 718, 188 N.W.2d 515 (1971)*.

The "premises of a person already receiving electrical service" refers to the premises to be served, not the person. *Adams–Marquette Electric Cooperative v. PSC 51 Wis. 2d 718, 188 N.W.2d 515 (1971)*.

The application of this section is discussed. A court's order to a utility violating this section to remove the offending line or sell it to the utility who should have provided the service was within the authority granted by sub. (5). *Barron Electric Cooperative v. PSC, 212 Wis. 2d 752, 569 N.W.2d 726 (Ct. App. 1997), 97–0420*.

196.496 Distributed generation facilities. (1) **DEFINITION.** In this section, "distributed generation facility" means a facility for the generation of electricity with a capacity of no more than 15 megawatts that is located near the point where the electricity will be used or is in a location that will support the functioning of the electric power distribution grid.

(2) **RULES.** The commission shall promulgate rules establishing standards for the connection of distributed generation facilities to electric distribution facilities. To the extent technically feasible and cost effective, the standards shall be uniform and shall promote the development of distributed generation facilities. The standards shall address engineering, electric reliability, and safety concerns and the methods for determining charges for interconnection.

History: 2001 a. 16.

Cross-reference: See also ch. PSC 119, Wis. adm. code.

196.497 State policy regarding the long-term disposal of high-level radioactive waste and transuranic waste.

(1) **DEFINITIONS.** As used in this section unless the context requires otherwise:

(b) "Federal department of energy" means the federal department of energy or any successor agency assigned responsibility for the long-term disposal of high-level radioactive waste and transuranic waste.

(c) "High-level radioactive waste" means:

1. Fuel that is withdrawn from a nuclear reactor after irradiation and which is packaged and prepared for disposal; or

2. Highly radioactive waste resulting from reprocessing irradiated nuclear fuel including both the liquid waste which is produced directly in reprocessing and any solid material into which the liquid waste is transformed.

(d) "Transuranic waste" means waste material containing alpha-emitting radioactive elements having an atomic number greater than 92 in concentrations greater than 10 nanocuries per gram.

(2) **COORDINATION.** (a) *Initial agency to be contacted.* The commission shall serve as the initial agency in this state to be contacted by the federal department of energy or any other federal agency on any matter related to the long-term disposal of high-level radioactive waste or transuranic waste.

(b) *Receipt of information.* The commission shall serve as the initial agency in this state to receive any report, study, document, information or notification of proposed plans from the federal department of energy or any other federal agency on any matter related to the long-term disposal of high-level radioactive waste or transuranic waste. Notification of proposed plans include notification of proposals to conduct field work, on-site evaluation, on-site testing or similar activities.

(c) *Dissemination of information.* The commission shall disseminate or arrange with the federal department of energy or other federal agency to disseminate information received under par. (b) to appropriate state agencies, local units of government, regional planning commissions, American Indian tribal governing bodies,

the general public, interested citizen groups and persons who have requested in writing to receive this information.

(d) *Response.* The commission shall respond to contacts under par. (a) and information received under par. (b) if a response is appropriate. The commission shall consult with appropriate state agencies, local units of government, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups in preparing this response.

(3) **ADVOCATE.** The commission shall serve as an advocate on behalf of the citizens of this state before the federal department of energy and other federal agencies on matters related to the long-term disposal of radioactive waste and transuranic waste.

(5) **REVIEW OF APPLICATIONS FOR FEDERAL FUNDS.** The commission shall review any application to the federal department of energy or other federal agency by a state agency, local unit of government or regional planning commission for funds for any program related to the long-term disposal of high-level radioactive waste or transuranic waste. If the commission finds that the application is not consistent with the commission's policy related to the long-term disposal of high-level radioactive waste or transuranic waste or that the application is not in the best interest of the state, the commission shall forward its findings to the governor, the joint committee on finance and the federal agency to which the application for funds is being made. If the commission finds that the application of a state agency is not consistent with the commission's policy related to the long-term disposal of high-level radioactive waste or transuranic waste or that the application of a state agency is not in the best interest of the state, the findings forwarded to the governor shall include a recommendation that the governor act under s. 16.54 (1) and stipulate conditions for the acceptance of the funds which are necessary to safeguard the interests of the state.

(6) **MONITOR FEDERAL ACTIVITY.** The commission shall monitor activity in congress and the federal government related to the long-term disposal of high-level radioactive waste and transuranic waste. The commission may advise the congressional delegation from this state of action which is needed to protect the interests of the state.

(7) **REQUEST ATTORNEY GENERAL TO INTERVENE.** If appropriate the commission shall request the attorney general to intervene in federal proceedings to protect the state's interests and present the state's point of view on matters related to the long-term disposal of high-level radioactive waste or transuranic waste.

(8) **NEGOTIATION OF AGREEMENTS.** (a) *Negotiations with the federal department of energy.* The commission shall serve as the agency in this state to negotiate written agreements and modifications to these agreements, with the federal department of energy on any matter related to the long-term disposal of high-level radioactive waste or transuranic waste.

(b) *Negotiations with other federal agencies.* The commission shall serve as the agency in this state to negotiate written agreements and modifications to these agreements, with any federal agency other than the federal department of energy on any matter related to the long-term disposal of high-level radioactive waste or transuranic waste.

(d) *Hearings.* The commission shall conduct public hearings on any proposed agreement or modification to an agreement negotiated under par. (a) or (b). The commission shall provide 30 days' notice of the date and location of hearings conducted under this paragraph. The commission shall prepare a written summary of testimony presented at hearings conducted under this paragraph and shall consider the need for modifications to the negotiated agreement as a result of the hearings.

(f) *Approval of agreements and modifications by the legislature and governor.* No agreement or modification to an agreement negotiated under par. (a) or (b) may take effect unless it is approved under sub. (10).

(g) *Technical revisions.* The commission may negotiate what in the commission's judgment are technical revisions to any agreement approved under sub. (10).

(i) *Review of technical revisions by the legislature and governor.* No technical revision to an agreement negotiated under par. (g) may take effect unless it is considered approved under sub. (11).

(9) AGREEMENTS WITH THE FEDERAL DEPARTMENT OF ENERGY. (a) *Separate agreements.* The commission may negotiate separate agreements with the federal department of energy concerning different stages of the process of evaluating and selecting a site for the long-term disposal of high-level radioactive waste or transuranic waste. The commission shall negotiate a separate agreement with the federal department of energy for the final stages of the selection of any site for the long-term disposal of high-level radioactive waste or transuranic waste.

(b) *Contents.* Any agreement negotiated by the commission with the federal department of energy under sub. (8) (a) shall include all of the following:

1. A general description of the roles of the state and the federal department of energy.

2. A compliance schedule which includes a list of significant events and stages which are expected to be reached as the federal department of energy assesses the suitability of the state for the long-term disposal of high-level radioactive waste or transuranic waste and a description of the actions to be taken by the federal department of energy and the state at each event and stage.

3. The criteria that the department of energy shall use in evaluating the suitability of any site in the state for the long-term disposal of high-level radioactive waste or transuranic waste.

4. A requirement that the federal department of energy shall comply with all federal laws, American Indian laws, state laws and local ordinances and shall respect state sovereignty consistent with the 10th amendment to the U.S. constitution and the U.S. constitution, regardless of the ownership of the land on which the activity takes place.

5. A requirement that the federal department of energy and any of its contractors or subcontractors shall provide the commission with all reports and documents the commission requests and any other relevant reports and documents in a timely manner and in accordance with any applicable law, regulation or rule. The requirement shall specify that the federal department of energy may not charge a fee for searching for or for supplying reports and documents requested by the commission. The requirement shall specify that the federal department of energy shall provide the commission with all reports and documents the commission requests and any other relevant reports and documents from contractors and subcontractors after the reports and documents are submitted to the federal department of energy regardless of whether the reports and documents have received the department of energy's final approval.

6. A requirement that, upon request by the commission, the federal department of energy shall provide the data, methods and underlying assumptions used in the preparation of reports and documents in accordance with any applicable law, regulation or rule.

7. A requirement that the federal department of energy shall notify the commission of any grants related to the long-term disposal of high-level radioactive waste and transuranic waste from the federal department of energy to any person in this state.

8. A requirement that the federal department of energy shall notify the commission in a timely manner of any proposed field work, on-site evaluation, on-site testing or similar activities it or any contractor or subcontractor intends to conduct and a requirement that the federal department of energy shall allow the commission to monitor these activities by designating a reasonable number of persons to observe the activities or by any other appropriate means.

9. A requirement that the federal department of energy shall provide the commission in a timely manner with a copy of any requests for proposals and final contracts issued by the federal department of energy relating to the evaluation, selection or construction of a site for the long-term disposal of high-level radioactive waste or transuranic waste in this state.

10. A provision that the federal department of energy shall agree to provide funds to be used to review the activities of the federal department of energy and its contractors and subcontractors which relate to assessing the suitability of the state for the long-term disposal of high-level radioactive waste or transuranic waste.

11. A process for resolving disputes between the commission and the federal department of energy including disputes concerning alleged violations of the written agreement and disputes concerning technical assessments made by the federal department of energy. The process for resolving disputes concerning technical assessments made by the federal department of energy may involve a process of scientific review and mediation.

12. A requirement that if the federal department of energy selects a site in the state for construction of a repository for the long-term disposal of high-level radioactive waste or transuranic waste, the federal department of energy shall prepare, prior to submission of an application to license or construct the repository, a repository plan which shall include descriptions of the federal department of energy's plans for construction of the repository, transportation of wastes to the repository, operation of the repository, closing of the repository and monitoring the repository after closure.

(c) *Objection to site selection.* Any agreement negotiated by the commission with the federal department of energy under sub. (8) (a) shall include a list of reasons for which the commission may object to the selection of a site within this state for the long-term disposal of high-level radioactive waste and transuranic waste. These reasons shall include the following:

1. The site or the transportation of waste to the site poses a danger to public health and safety or to the environment.

2. The federal department of energy fails to address to the satisfaction of the commission the potential socioeconomic effects of the site or of the transportation of waste to the site.

3. The federal department of energy violates any written agreement or revision approved under sub. (10) or (11).

4. If, in the judgment of the commission, the federal department of energy fails to comply with criteria, regulations or standards of other federal agencies concerning the long-term disposal of high-level radioactive waste or transuranic waste including criteria which excludes a proposed site from consideration because of previous mining or drilling of any type within the area which could be affected by the construction of the site or by the heat resulting from the disposal of high-level radioactive waste or transuranic waste at the site.

5. If, in the judgment of the commission, the federal department of energy fails to use generally accepted scientific and technical practices in evaluating the suitability of a site for the long-term disposal of high-level radioactive waste or transuranic waste.

(10) APPROVAL OF AGREEMENTS. (a) *Submission.* The commission shall submit any written agreement or modification to an agreement negotiated under sub. (8) (a) or (b), approved by the commission and approved by the federal department of energy or other federal agency to the speaker of the assembly and the president of the senate. The commission shall submit with the agreement or modification a written summary of the hearings held under sub. (8) (d).

(b) *Introduction of bill.* Upon request of the commission, the speaker of the assembly or the president of the senate shall introduce a bill to approve the agreement or modification to an agreement. The bill is not subject to s. 16.47 (2).

(c) *Legislative action required.* Within 120 days after the bill is introduced the appropriate committees in each house of the legislature shall authorize an extraordinary session of the legislature to commence within the 120 days and to extend until the legislature passes the bill or passes a joint resolution which disapproves of the agreement or modification and returns the agreement or modification to the commission for renegotiation. If the 120-day period extends beyond the date specified in s. 13.02 (1), the 120-day period is deemed to commence on the first day the succeeding legislature convenes, unless a bill or joint resolution is passed prior to that time.

(d) *Veto review.* Within 10 days after the bill passes the legislature, the chief clerk of the house of origin shall refer the bill to the governor for executive action. If the governor vetoes the bill, the appropriate committees in each house of the legislature shall schedule a veto review session.

(e) *Approval.* If the bill is enacted into law, the agreement or modification to the agreement is approved and shall take effect.

(11) REVIEW OF TECHNICAL REVISIONS. (a) *Submission.* The commission shall submit any technical revision to a written agreement negotiated under sub. (8) (g), approved by the commission and approved by the federal department of energy or other federal agency, to the presiding officer of each house of the legislature and to the governor.

(b) *Referral to standing committees.* Each presiding officer shall refer the technical revision to one standing committee within 7 working days after the day on which the revision is received unless the revision is received on or after November 1 of an even-numbered year. If a revision is received on or after November 1 of an even-numbered year, each presiding officer shall refer the revision to one standing committee within 7 days after the first day of the next regular session of the legislature. Each presiding officer shall cause a statement to appear in the journal of the appropriate house that a technical revision to an agreement approved under sub. (10) is submitted for review.

(c) *Standing committee review.* Either standing committee may object to the technical revision by taking action in executive session within 30 days after the revision is referred to the committee. If a standing committee objects to the revision, it shall submit a written notice of the objection to the presiding officer of that house of the legislature and the presiding officer shall cause the written notice of the objection to appear in the journal of the house.

(d) *Review by the governor.* The governor may object to the technical revision by taking action within 30 days after the revision is received unless the revision is received on or after November 1 of an even-numbered year. If the revision is received on or after November 1 of an even-numbered year, the governor may object to the revision by taking action within 30 days after the first day of the next regular session of the legislature. If the governor objects to the revision, the governor shall submit a written notice of the objection to the presiding officer of each house of the legislature and each presiding officer shall cause the written notice of the objection to appear in the journal of each house.

(e) *Objection.* A standing committee to which a revision is referred or the governor may object to a technical revision for any reason including a belief that the revision is so substantial that the revised agreement should be approved under sub. (10) rather than this subsection. If either standing committee to which a revision is referred or the governor objects to a technical revision within the 30-day review period, the revision may not take effect.

(f) *No objection.* If neither standing committee nor the governor objects to a technical revision within the 30-day review period, the revision is considered approved and shall take effect.

(11m) REVIEW OF FINAL SITE SELECTION AND SITE PLAN. (a) *Review by the commission.* If the federal department of energy selects a site in the state for construction of a repository for the long-term disposal of high-level radioactive or transuranic waste, the commission shall review the adequacy of the selected

site and of the site plan prepared by the federal department of energy under sub. (9) (b) 12. The review shall include a full scientific review of the adequacy of the selected site and of the site plan. The commission shall utilize recognized experts in conducting its scientific review. The commission shall conduct more than one public hearing on the site plan and shall make available to the public arguments and evidence for and against the site plan. The commission shall provide 30 days' notice of the date and location of the public hearings. The commission shall solicit comments from appropriate state agencies, local units of government, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups on the adequacy of the selected site and the site plan. The commission shall make these comments available to the public.

(b) *Recommendation to the legislature and the governor.* After completing this review, the commission shall submit a recommendation to the speaker of the assembly, the president of the senate and the governor on whether the state should accept the site selected by the federal department of energy and the site plan. The reasons for which the commission may recommend that the legislature and the governor object to the site selection or the site plan, or both, include those specified in sub. (9) (c). The recommendation to the speaker of the assembly and the president of the senate shall be accompanied by a request for the introduction of a bill to approve the site selected and the site plan or by a request for the introduction of a bill to disapprove the site or the site plan or both.

(c) *Introduction of legislation.* Upon request of the commission, the speaker of the assembly or the president of the senate shall introduce a bill reflecting the recommendation of the commission on whether to approve or disapprove the site selected by the federal department of energy and the site plan. The bill is not subject to s. 16.47 (2).

(d) *Legislative action required.* Within 120 days after the legislation is introduced under par. (c), the appropriate committees in each house of the legislature shall authorize an extraordinary session of the legislature to commence within the 120 days and to extend until the legislature passes a bill which approves the site selected by the federal department of energy and the site plan or the legislature passes a bill which disapproves the site or the site plan or both. If the 120-day period extends beyond the date specified under s. 13.02 (1), the 120-day period is deemed to commence on the first day the succeeding legislature convenes, unless a bill is passed prior to that time.

(e) *Veto review.* Within 10 days after the bill passes the legislature, the chief clerk of the house of origin shall refer the bill to the governor for executive action. If the governor vetoes the bill, the appropriate committees in each house of the legislature shall schedule a veto review session.

(f) *Transmittal of action by the legislature and the governor.* After the legislature takes action under par. (d) and after the governor takes any action under par. (e), the chief clerk of the house of origin shall notify the commission of the action taken and the commission shall send a report to the president of the United States, the members of the U.S. senate, the members of the U.S. house of representatives, the federal department of energy and other appropriate federal agencies. The report shall contain a summary of the review undertaken by the commission in accordance with par. (a), the recommendation made by the commission under par. (b), the action of the legislature under par. (d) and any action of the governor under par. (e).

(11s) ESCROWING OF CERTAIN PAYMENTS TO THE FEDERAL GOVERNMENT. (a) If the commission determines that the federal department of energy is not meeting its obligations under contracts entered into under 42 USC 10222 with state agencies or with persons in this state, the commission, subject to par. (ab), shall direct the state agencies or persons to pay to the commission, instead of the federal department of energy the fees due under 42 USC 10222 for the period during which those contractual obliga-

tions are not met. The commission shall deposit any funds received under this paragraph in the nuclear waste escrow fund.

(ab) The commission may only direct the state agencies or persons to make the payment to the commission under par. (a) if a federal court or the federal department of energy has authorized the commission to receive the payment of the fees due under 42 USC 10222.

(b) Upon a showing by the secretary of the federal department of energy that the federal department of energy is meeting its obligations under contracts entered into under 42 USC 10222, the commission shall pay to the secretary of the federal department of energy all funds contained in the nuclear waste escrow fund and shall cease accepting additional funds under par. (a).

(12) IMPLEMENTATION. The commission shall implement agreements, modifications and technical revisions approved under subs. (10) and (11). In implementing these agreements, modifications and revisions, the commission may solicit the views of appropriate state agencies, local units of government, regional planning commissions, American Indian tribal governing bodies, the general public and interested citizen groups.

(13) FUNDING. The commission shall attempt to finance all of its expenses under this section from moneys received from the federal department of energy and other federal agencies and from gifts and grants received from other persons.

(14) STATE AGENCIES TO COOPERATE. Other state agencies shall assist the commission in fulfilling its duties under this section to the fullest extent possible.

History: 1981 c. 62; 1985 a. 29; 1989 a. 31 ss. 107m, 713e; Stats. 1989 s. 36.50; 1991 a. 25; 1995 a. 27, ss. 1779 to 1799; Stats. s. 196.497; 1999 a. 196; 2009 a. 276.

Only the Radioactive Waste Review Board is authorized to negotiate agreements with the federal government regarding disposal of high-level nuclear waste. 80 Atty. Gen. 308.

196.499 Regulation of telecommunications carriers.

(1) SCOPE. Notwithstanding any other provisions of this chapter, a telecommunications carrier is not subject to regulation under this chapter, except for s. 196.025 (6), and except under each of the following provisions:

(a) A telecommunications carrier shall comply with the requirements of this section.

(b) A telecommunications carrier shall be treated under ss. 196.209, 196.218 (8) and 196.219 as a telecommunications provider.

(c) A telecommunications carrier shall be treated under s. 196.85 as a telecommunications utility.

(d) A telecommunications carrier shall be treated under s. 196.858 as an interexchange telecommunications utility.

(e) A telecommunications carrier may be assessed under s. 196.218 (3) as a telecommunications provider and shall respond, subject to the protection of the telecommunications carrier's competitive information, to all reasonable requests for information about its operations in this state from the commission necessary to administer the universal service fund. A telecommunications carrier may not be assessed in a manner that is inconsistent with this paragraph.

(f) For purposes of enforcing s. 196.209, 196.218 (3) or (8), 196.219, 196.85, or 196.858, or for purposes of approving or enforcing an interconnection agreement to which a telecommunications carrier is a party, a telecommunications carrier shall be subject to ss. 196.02 (3), 196.32, 196.33, 196.39, 196.395, 196.40, 196.41, 196.43, 196.44 (3), and 196.48 and be treated as a party to the agreement under ss. 196.199 and 196.26, as a public utility under ss. 196.02 (5) and (6), 196.14, 196.24, 196.44 (2), 196.66, and 196.85 (1), and as a telecommunications provider under ss. 196.25 (3) and 196.65 (3).

(2) TARIFFS. Every telecommunications carrier shall keep on file with the commission a tariff for each service, that contains all the rules, rates and classifications used by it in the provision of its telecommunications services, including limitations on liability

unless the commission waives any requirement. A tariff shall be effective when filed or on a date indicated by the carrier. The telecommunications carrier shall provide notice of price increases by publication in newspapers or by any other reasonable means and may provide notice of price decreases or of tariffed promotional rates. Tariffs may be filed for services offered on an interim basis, for special promotions, for discounts, including discounts intended to maintain customer relations, or for individual contracts between carriers and customers. A telecommunications carrier shall charge rates in accordance with its tariff.

(3) RATES. (a) Except as provided in this subsection, a telecommunications carrier may not charge different rates for residential basic message telecommunications services, business basic message telecommunications services, or single-line wide-area telecommunications service on routes of similar distances within the state, unless otherwise authorized by the commission.

(am) Paragraph (a) does not prohibit volume or term discounts, discounts in promotional offerings, differences in the rates for intralata and interlata services of similar distances, the provision of optional toll calling plans to selected exchanges or customers or the passing through of any state or local taxes in the specific geographic areas from which the taxes originate.

(b) Notwithstanding any other provision in this chapter, a telecommunications carrier may furnish services to its employees, officers, agents or pensioners at no charge or at rates that are lower than its tariff rates.

(c) A telecommunications carrier may contract to charge prices for services that are unique to a particular customer or group of customers if differences in the cost of providing a service or a service element justify a different price for a particular customer or group of customers or if market conditions require individual pricing.

(4) ABANDONMENT OF SERVICES. A telecommunications carrier shall provide written notice to the commission not less than 60 days before its abandonment of basic message telecommunications service to an exchange. The carrier shall also publish notice in a newspaper of general circulation within the exchange and provide any other notice required by the commission. A telecommunications carrier shall be subject to rules and procedures that the commission may establish for the continuance of basic message telecommunications service to an exchange if notice has been received that all providers of the service intend to abandon that service in the exchange. A rule or procedure may not regulate the price, terms or conditions of service other than as authorized in this section and may not discriminate in favor of or against any telecommunications provider.

(5) COMPLAINTS. (a) In this subsection, "complaint" means a complaint filed with the commission that any rate, toll, charge or schedule relating to the provision of telecommunications service violates sub. (2) or (3) (a).

(am) In any complaint proceeding, the person initiating the complaint has the burden of proving a violation of sub. (2) or (3) (a).

(b) If any business organization, body politic or 25 individuals file a complaint against a telecommunications carrier, the commission, with or without notice, may investigate the complaint as it considers necessary. The commission may not issue an order based on the investigation without allowing the telecommunications carrier an opportunity for a hearing.

(c) 1. Before holding a hearing under this subsection, the commission shall notify the telecommunications carrier complained of that a complaint has been made, and no sooner than 10 days after the notice has been given the commission may set a time and place for a hearing.

2. The commission shall give the telecommunications carrier which is the subject of a complaint and the complainant at least 10 days' notice of the time and place of a hearing and the subject of