

2009 DRAFTING REQUEST

Bill

Received: 02/03/2010

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: David Hansen (608) 266-5670

By/Representing: John Stolzenberg,WLC

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact: Leg. Council
Rep. Zigmunt's office

Addl. Drafters:

Subject: Environment - water quality

Extra Copies:

Submit via email: YES

Requester's email: Sen.Hansen@legis.wisconsin.gov

Carbon copy (CC:) to: John.Stolzenberg@legis.wisconsin.gov
larry.konopacki@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Controlling nonpoint source pollution in areas with carbonate bedrock

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	btradewe 02/22/2010	csicilia 02/23/2010	jfrantze 02/24/2010	_____			S&L
/P2	btradewe 03/01/2010	csicilia 03/02/2010	rschlue 03/02/2010	_____	sbasford 03/02/2010		S&L
/1	btradewe	csicilia	rschlue	_____	cduerst	lparisi	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/10/2010	03/11/2010	03/11/2010	_____	03/11/2010	03/11/2010	

FE Sent For: "1" @ intro. 3/18/10

<END>

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1 vs 3/11
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/P1	btradewe 02/22/2010 btradewe	csicilia 02/23/2010	jfrantze 02/24/2010				
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Handwritten notes:
p2 40 3/2 10


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Instructions:

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Pre Topic:

No specific pre topic given

Topic:

Controlling nonpoint source pollution in areas with carbonate bedrock and shallow soils

Instructions:

See attached

Drafting History:

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/?	btradewe			_____			

FE Sent For:

<END>

Tradewell, Becky

From: Stolzenberg, John
Sent: Wednesday, February 03, 2010 3:31 PM
To: Kite, Robin; Tradewell, Becky
Cc: Konopacki, Larry
Subject: FW: Memo from Larry Konopacki and John Stolzenberg, Leg Council

Attachments: 03hansen_zigmunt_lak_jes

Becky and Robin,

We've received the go ahead from Sen. Hansen's and Rep. Zigmunt's staffs to submit the attached memo to you as drafting instructions for a bill. Sen. Hansen is the lead requester.

We'd suggest that, after you've had a chance to review these instructions, we sit down and discuss your questions and comments on them.

John

John Stolzenberg,
Legislative Council
266-2988

From: Young, Tracey
Sent: Wednesday, February 03, 2010 11:31 AM
To: Wagnitz, John; Ferus, Jay
Cc: Konopacki, Larry; Stolzenberg, John
Subject: Memo from Larry Konopacki and John Stolzenberg, Leg Council



03hansen_zigmunt_
lak_jes.doc (...)

Tracey Young
Legislative Council Staff
1 East Main St., Suite 401
Madison, WI 53701
608-266-7676
tracey.young@legis.wisconsin.gov



WISCONSIN LEGISLATIVE COUNCIL

*Terry C. Anderson, Director
Laura D. Rose, Deputy Director*

TO: SENATOR DAVE HANSEN AND REPRESENTATIVE TED ZIGMUNT
FROM: Larry Konopacki, Staff Attorney and John Stolzenberg, Chief of Research Services
RE: Karst Legislation – Revised Drafting Instructions
DATE: February 3, 2010

Below are drafting instructions, prepared at your direction, for legislation that would seek to regulate nonpoint pollution in areas that may be susceptible to groundwater contamination because of the presence of carbonate bedrock and shallow soils. These instructions reflect changes requested by your staff during our January 29, 2010 meeting.

REVISED DRAFTING INSTRUCTIONS

Working within the existing nonpoint pollution and soil and water conservation programs under chs. 281 and 92, Stats., provide for the following:

Identification of Target Areas

1. Require the Department of Natural Resources (DNR) to designate parts of counties as Carbonate Bedrock Areas based on currently available information if they generally exhibit soil depth and bedrock characteristics that may make them susceptible to groundwater contamination from nonpoint pollution resulting from landspreading of any type of waste material. At a minimum, require DNR to designate parts of counties as Carbonate Bedrock Areas if they have carbonate bedrock less than 50 feet from the land surface based on soil and bedrock mapping done by the Wisconsin Geological and Natural History Survey and other applicable surveys identified by DNR.

2. Require DNR to promulgate rules establishing a Contamination Vulnerability Ranking for Carbonate Bedrock Areas to evaluate the relative vulnerability to contamination from landspreading activities based on factors such as bedrock features and depth and other characteristics of top soil.

3. Direct DNR to take into account in its rankings all of the following:

- a. Areas that the DNR has declared as an area of special eligibility for compensation for well contamination under s. 281.75 (2) (e) in Carbonate Bedrock Areas.

- b. Areas that DNR has established as special well casing pipe depth areas under ch. NR 812 in Carbonate Bedrock Areas.
- c. Other factors as identified by DNR.

4. Direct DNR to identify by rule types of land uses that may occur within Carbonate Bedrock Areas that are unlikely to receive landspread wastes.

5. Require a County Land Conservation Committee (CLCC) to apply the Contamination Vulnerability Ranking system to the land within a Carbonate Bedrock Area identified in a. and b., on which landspreading of waste may occur (i.e., land not identified under No. 4). Require the Department of Agriculture, Trade, and Consumer Protection (DATCP), in cooperation with CLCCs, the federal Natural Resources Conservation Service (NRCS), UW-Madison Department of Soil Sciences, and DNR to identify these lands by ranking, on the nutrient management application restrictions map that DATCP publishes on its website.

- a. Require the CLCC in each of the counties of Brown, Calumet, Door, Kewaunee, and Manitowoc (the northeast counties) to complete the Contamination Vulnerability Ranking analysis and require these counties to be subject to the regulations described above if these counties are identified containing any Carbonate Bedrock Areas.
- b. Allow additional counties with identified Carbonate Bedrock Areas to opt in to the Contamination Vulnerability Ranking review, by their CLCC and regulation via a county board resolution.

6. Allow landowners to appeal to the CLCC, based on site-specific information, on the categorization of their land by the CLCC under the Contamination Vulnerability Ranking system.

7. Make all decisions of CLCC's under Nos. 5 and 6 subject to review by the state Land and Water Conservation Board.

8. Provide broad standing for individuals, organizations, affected counties, and state agencies, etc., to challenge decisions of the CLCCs, the Land and Water Conservation Board, and the DNR with respect to these requirements.

REGULATION

1. Require DNR to determine which levels of identified vulnerability under the Contamination Vulnerability Ranking require regulation of nonpoint sources from landspreading activities in addition to the regulation under current law in order to prevent or minimize nonpoint-related contamination of groundwater.
2. Require DNR, in consultation with DATCP, to draft performance standards and prohibitions that apply to those areas of elevated vulnerability that prevent or minimize nonpoint-related contamination, from landspreading activities, of groundwater in those areas.
3. Require DATCP to promulgate nutrient management rules consistent with DNR's performance standards and prohibitions, including appropriate best management practices for

agricultural-related regulated activities. Direct DATCP to require compliance with these rules in nutrient management plans prepared for lands identified as being vulnerable under DNR's Contamination Vulnerability Ranking system.

4. Require DNR to include all potential nonpoint sources from landspreading activities under such regulation, regardless of whether a particular source is exempt from certain nonpoint-related requirements under current law, including agricultural waste spreading, septage spreading, POTW sludge spreading, industrial waste spreading, and any other potential nonpoint source from landspreading activities.
5. If nutrients are being spread on agricultural land subject to DNR's Contamination Vulnerability Ranking, and a nutrient management plan is required for that land, direct DATCP to require that the nutrient management plan cover the landspreading of all types of nutrients on the land.
6. Provide civil enforcement authority to the DNR in addition to county law enforcement and allow the district attorney to initiate enforcement action upon his or her own initiative or upon the request of County conservation staff.
7. Allow DNR and DATCP to direct cost-share dollars under the nonpoint program to projects in Carbonate Bedrock Areas affecting areas identified as relatively vulnerable under the Contamination Vulnerability Ranking system.
8. Make cost-sharing requirements in ch. 281, Stats., inapplicable in an area identified as being of heightened vulnerability under DNR's Contamination Vulnerability Ranking or if an area in a Carbonate Bedrock Area exhibits specific indices of groundwater contamination affecting public health as determined by DNR, such as if the area includes a well that is contaminated at a level that exceeds a preventive action limit for the contaminant.

PUBLIC/LOCAL INVOLVEMENT

1. Require DNR to convene a Carbonate Bedrock Advisory Committee to provide input into the promulgation of the rules above. Require that the membership of this committee include representation from industry, agriculture, local government, environmental, and other interests that could be affected by these rules. Also require that the DNR take into account the regional distribution of committee members to ensure that sufficient membership on the committee is from areas thought to be susceptible to groundwater contamination because of carbonate bedrock features.
2. Require DNR and its Carbonate Bedrock Advisory Committee to review the recommendations of the Final Report of the Northeast Wisconsin Karst Task Force, February 9, 2007, and direct DNR to incorporate the recommendations in this report in its rules, where appropriate.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

LAK:JES:ksm:ty

Tradewell, Becky

From: Stolzenberg, John
Sent: Monday, February 08, 2010 1:18 PM
To: Tradewell, Becky
Cc: Konopacki, Larry
Subject: RE: Change in Hansen/Zigmunt drafting instructions on karst legislation

Becky,

I missed the second reference to soil in the second sentence in # 1. Thus, the changes in #1 are as follows: the reference to soil depth should be removed from the first sentence, and the reference to soil mapping in the second sentence should be removed.

John

From: Tradewell, Becky
Sent: Monday, February 08, 2010 11:50 AM
To: Stolzenberg, John
Subject: RE: Change in Hansen/Zigmunt drafting instructions on karst legislation

John,

Does this mean that the second sentence of item # 1 should be eliminated or just the reference to soil depth in the first sentence?

Becky

From: Stolzenberg, John
Sent: Friday, February 05, 2010 4:59 PM
To: Tradewell, Becky
Cc: Konopacki, Larry; Wagnitz, John; Ferus, Jay
Subject: Change in Hansen/Zigmunt drafting instructions on karst legislation

Becky,

Here's the change in the drafting instructions from Sen. Hansen and Rep. Zigmunt for the karst legislation, dated February 3, 2010, that I had mentioned to you:

- In item #1 on page 1 of the instructions, delete soil depth from the characteristics that DNR must use to designate Carbonate Bedrock Areas. Soil depth will continue to be used under items #2 and 5 in establishing and applying the Contamination Vulnerability Ranking. Sen. Hansen requested this change, as soil depth can vary considerably over small distances, as well as over time. Thus, they do not want to use it as a factor in DNR's large-scale Carbonate Bedrock Area designations.

Let me know if you have any questions on this change.

John

02/10/2010

John Stolzenberg
Legislative Council
266-2988

2/19/2010 Meeting with Harry Konepadi and John Stetzenberg -
Legislative Council Staff concerning drafting instructions dated 2/13/2010
281.65(7) seems like an OK starting place for the review provisions on p. 2.
Regarding # 7 on page 2 - draft should require review by CCC
before review by Land and Water Conservation Board.

Regarding # 3 under Regulation - (p. 2) - makes sense to
amend 281.65(3)(k)

6 - (p. 3) - can do by providing citation authority.

8 - word "or" should be eliminated after "Contaminant
Vulnerability Ranking"

Wanted Wed, 7/24, if possible

LRB Number: -4264 101

Nonsubmittal Form

LPSes: DO NOT FORWARD THIS DRAFT FOR SUBMITTAL, UNLESS INSTRUCTED TO DO SO BY THE DRAFTING ATTORNEY.

| 1 | Return everything to the primary drafting attorney.

After you have completed typing this draft, return the camera-ready copy to the primary drafting attorney, along with the drafting file. Also, forward the electronic file to the primary drafting attorney for the task of drafting.

OR

| 2 | Return only the camera-ready copy to the primary drafting attorney.

After you have completed typing this draft, clip this form to the camera-ready copy and return these materials to the primary drafting attorney. Place the drafting file in the HOLD basket in the LPS room. Forward the electronic file to Typing — lrb_lps, so that the electronic file can be viewed by all LPSes.

When the attorney finishes reviewing the draft, the attorney will bring the camera-ready copy back to the LPS room. If the attorney has found any typos or minor corrections, correct the draft as indicated and print out a new camera-ready copy. Take the final camera-ready copy, retrieve the drafting file from the HOLD basket in the LPS room, discard this form, place the camera-ready copy and the drafting file in the PA submit basket, and forward the electronic file to the PAs for submitting. (If, after reviewing the draft, the attorney decides to redraft it, give the attorney the drafting file and forward the electronic file to the attorney for drafting.)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4264/P1

RCT./:....

Wed, 2/24, if possible

cjs



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAV
x/1/2/1

Gen Cat

1 AN ACT...; relating to: control of nonpoint source water pollution in certain areas
2 with carbonate bedrock and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

3 SECTION 1. 23.50 (1) of the statutes is amended to read:
4 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
5 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,
6 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.163 (5), 281.48 (2)
7 to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64
8 (2), subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
9 administrative rules promulgated thereunder, violations specified under s. 280.98
10 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal,

1 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),
 2 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances
 3 enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

History: 1975 c. 365; 1977 c. 29, 305; 1977 c. 449 ss. 44, 497; 1979 c. 32 s. 92 (17); 1979 c. 34 ss. 703b, 2102 (39) (f); 1981 c. 390; 1985 a. 36; 1987 a. 27; 1987 a. 200 s. 4; 1989 a. 79, 284, 335, 359; 1991 a. 39, 97; 1993 a. 16, 243, 344, 349, 491; 1995 a. 27, 216, 227, 290; 1997 a. 35; 1999 a. 9; 2001 a. 56; 2003 a. 139, 276; 2005 a. 360.

4 **SECTION 2.** 23.65 (1) of the statutes is amended to read:

5 23.65 (1) When it appears to the district attorney that a violation of s. 90.21,
 6 134.60, 281.163 [✓](5), 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4),
 7 287.07, 287.08, 287.81 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169, or
 8 350, or any administrative rule promulgated pursuant thereto, a violation specified
 9 under s. 285.86, or a violation of ch. 951, if the animal involved is a captive wild
 10 animal, has been committed the district attorney may proceed by complaint and
 11 summons.

History: 1975 c. 365; 1979 c. 175; 1981 c. 390; 1989 a. 284, ^Λ385, 359; 1991 a. 97; 1993 a. 16, 243, 344, 491; 1995 a. 227, 290; 1997 a. 35; 1999 a. 9; 2001 a. 56.

12 **SECTION 3.** 92.04 (2) (m) of the statutes is created to read:

13 92.04 (2) (m) *Review of carbonate bedrock area determinations.* The board shall
 14 review and affirm or reverse decisions of county land conservation committees under
 15 s. 281.163 (4) [✓](a) when review is requested under s. 281.163 (4) [✓](c). Under this
 16 paragraph, the board may conduct an informal hearing that is not a contested case
 17 under ch. 227. [✓]eb

18 **SECTION 4.** 92.05 (3) (k) of the statutes is amended to read:

19 92.05 (3) (k) *Nutrient management rules.* The department shall promulgate
 20 rules to improve agricultural nutrient management in this state. The rules shall be
 21 consistent with rules promulgated under s. 281.16 (3) and, for lands to which the
 22 rules promulgated under s. 281.163 (5) [✓](b) apply, with those rules and shall include
 23 incentives, educational and outreach provisions and compliance requirements.

History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1987 a. 27; 1991 a. 309; 1995 a. 227; 1997 a. 27; 1999 a. 9; 2009 a. 28.



1 **SECTION 5.** 92.05 (3) (L) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 **92.05 (3) (L) *Technical assistance; performance standards.*** The department
4 shall provide technical assistance to county land conservation committees and local
5 units of government for the development of ordinances that implement standards
6 adopted under s. 92.07 (2), 92.15 (2) or (3) or 281.16 (3) and, for lands to which the
7 rules promulgated under s. 281.163 (5) (b) apply, that implement the standards in
8 those rules. The department's technical assistance shall include preparing model
9 ordinances, providing data concerning the standards and reviewing draft ordinances
10 to determine whether the draft ordinances comply with applicable statutes and
11 rules.

12 **History:** 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1987 a. 27; 1991 a. 309; 1995 a. 227; 1997 a. 27; 1999 a. 9; 2009 a. 28.

12 **SECTION 6.** 92.07 (2) of the statutes is amended to read:

13 **92.07 (2) STANDARDS.** Each land conservation committee may develop and
14 adopt standards and specifications for management practices to control erosion,
15 sedimentation and nonpoint source water pollution. The standards and
16 specifications for agricultural facilities and practices that are constructed or begun
17 on or after October 14, 1997, and, if cost-sharing is available to the owner or operator
18 under s. 92.14 or 281.65 or from any other source or if, as determined under s. 281.16
19 (5) (b), the agricultural facilities or practices are located on land that is categorized
20 under s. 281.163 (4) in a category with heightened vulnerability to groundwater
21 contamination and the land is in an area with characteristics that indicate a level
22 of groundwater contamination that affects public health, for agricultural facilities
23 and practices that are constructed or begun before that date shall be consistent with
24 the performance standards, prohibitions, conservation practices and technical

1 standards under s. 281.16 (3). The land conservation committee shall use the rules
2 promulgated under s. 281.16 (3) (e) to determine whether cost-sharing is available.

3 History: 1981 c. 346; 1983 a. 410 s. 2200 (2); 1985 a. 332 s. 251 (8); 1991 a. 309; 1993 a. 16; 1995 a. 201; 1997 a. 27; 1999 a. 9; 2009 a. 28.

3 **SECTION 7.** 92.14 (3) (em) of the statutes is created to read:

4 92.14 (3) (em) Grants to farmers for implementing land and water resource
5 management projects on lands categorized under s. 281.163 (4) undertaken to
6 comply with the requirements under s. 281.163 (5) (b).

7 **SECTION 8.** 92.15 (2) of the statutes is amended to read:

8 92.15 (2) Notwithstanding ss. 92.11 and 92.17, a local governmental unit may
9 enact regulations of livestock operations that are consistent with and do not exceed
10 the performance standards, prohibitions, conservation practices and technical
11 standards under s. 281.16 (3) and, for livestock operations on lands to which the rules
12 promulgated under s. 281.163 (5) (b) apply, the prohibitions and performance
13 standards in those rules.

14 History: 1997 a. 27; 1999 a. 9.

14 **SECTION 9.** 92.15 (3) (a) of the statutes is amended to read:

15 92.15 (3) (a) Notwithstanding ss. 92.11 and 92.17, a local governmental unit
16 may enact regulations of livestock operations that exceed the performance
17 standards, prohibitions, conservation practices and technical standards under s.
18 281.16 (3) and, for livestock operations on lands to which the rules promulgated
19 under s. 281.163 (5) (b) apply, the prohibitions and performance standards in those
20 rules only if the local governmental unit demonstrates to the satisfaction of the
21 department of agriculture, trade and consumer protection or the department of
22 natural resources that the regulations are necessary to achieve water quality
23 standards under s. 281.15.

24 History: 1997 a. 27; 1999 a. 9.

24 **SECTION 10.** 92.15 (4) of the statutes is amended to read:

1 92.15 (4) A local governmental unit may not apply a regulation under sub. (2)
2 or (3) to a livestock operation that exists on October 14, 1997, unless the local
3 governmental unit determines, using the rules promulgated under s. 281.16 (3) (e),
4 that cost-sharing is available to the owner or operator of the livestock operation
5 under s. 92.14 or 281.65 or from any other source or, as determined under s. 281.16
6 (5) (b), the livestock operation is located on land that is categorized under s. 281.163
7 (4) in a category with heightened vulnerability to groundwater contamination and
8 the land is in an area with characteristics that indicate a level of groundwater
9 contamination that affects public health.

History: 1997 a. 27; 1999 a. 9.

10 **SECTION 11.** 93.90 (2) (a) of the statutes is amended to read:

11 93.90 (2) (a) For the purposes of this section, the department shall promulgate
12 rules specifying standards for siting and expanding livestock facilities. In
13 promulgating the rules, the department may incorporate by cross-reference
14 provisions contained in rules promulgated under ss. 92.05 (3) (c) and (k), 92.14 (8),
15 92.16, and 281.16 (3) and ch. 283 and, for lands to which the rules promulgated under
16 s. 281.163 (5) (b) apply, in those rules. The department may not promulgate rules
17 under this paragraph that conflict with rules promulgated under s. 92.05 (3) (c) or
18 (k), 92.14 (8), 92.16, or 281.16 (3) or ch. 283 or, for lands to which the rules
19 promulgated under s. 281.163 (5) (b) apply, with those rules.

History: 2003 a. 235.

20 **SECTION 12.** 281.16 (3) (e) of the statutes, as affected by 2009 Wisconsin Act 28,
21 is amended to read:

22 281.16 (3) (e) An Except as provided in sub. (5) (a), an owner or operator of an
23 agricultural facility or practice that is in existence before October 14, 1997, may not
24 be required by this state or a municipality to comply with the performance standards,

1 prohibitions, conservation practices or technical standards under this subsection
2 unless cost-sharing is available, under s. 92.14 or 281.65 or from any other source,
3 to the owner or operator. For the purposes of this paragraph, sub. (4) and ss. 92.07
4 (2), 92.15 (4) and 823.08 (3) (c) 2., the department of natural resources shall
5 promulgate rules that specify criteria for determining whether cost-sharing is
6 available under s. 281.65 and the department of agriculture, trade and consumer
7 protection shall promulgate rules that specify criteria for determining whether
8 cost-sharing is available under s. 92.14 or from any other source. The rules may not
9 allow a determination that cost-sharing is available to meet local regulations under
10 s. 92.07 (2) or 92.15 that are consistent with or that exceed the performance
11 standards, prohibitions, conservation practices or technical standards under this
12 subsection unless the cost-sharing is at least 70% of the cost of compliance or is from
13 70% to 90% of the cost of compliance in cases of economic hardship, as defined in the
14 rules.

15 History: 1997 a. 27; 1999 a. 9; 2009 a. 28.

15 **SECTION 13.** 281.16 (4) of the statutes is amended to read:

16 281.16 (4) APPLICATION TO ANIMAL FEEDING OPERATIONS. If the department issues
17 a notice of discharge under ch. 283 for an animal feeding operation, the performance
18 standards, prohibitions, conservation practices and technical standards under sub.
19 (3) apply to the animal feeding operation, except that if the animal feeding operation
20 is in existence before October 14, 1997, the performance standards, prohibitions,
21 conservation practices and technical standards only apply if the department
22 determines that cost-sharing is available to the owner or operator of the animal



1 feeding operation under s. 92.14 or 281.65 or from any other source or if sub. (5) (a)
2 applies.

3 History: 1997 a. 27; 1999 a. 9; 2009 a. 28.

3 SECTION 14. 281.16 (5) of the statutes is created to read:

4 281.16 (5) APPLICATION IN CARBONATE BEDROCK AREAS. (a) Subsections (3) ^(e) and
5 (4) do not apply to ~~land~~ ^{that} if the land is categorized under s. 281.163 (4) in a category
6 with heightened vulnerability to groundwater contamination ~~and~~ ^{if} the land is in an
7 area with characteristics that indicate a level of groundwater contamination that
8 affects public health.

9 (b) The department shall promulgate rules that do all of the following for the
10 purposes of par. (a) and ss. 92.07 (2), 92.15 (4), and 823.08 (3) (c):

11 1. Designate the categories under s. 281.136 (3) (a) that ~~are of~~ ^{have} heightened
12 vulnerability to groundwater contamination. ¹⁶³

13 2. Specify the characteristics that indicate levels of groundwater
14 contamination that affect public health, such as the existence in an area of a well in
15 which the concentration of contaminants exceeds a preventive action limit, as
16 defined in s. 160.01 (6).

17 SECTION 15. 281.163 of the statutes is created to read:

18 281.163 Water quality protection; carbonate bedrock areas. (1)

19 DEFINITIONS. In this section:

20 (a) "Covered county" means Brown County, Calumet County, Door County,
21 Kewaunee County, Manitowoc County, and any other county that, by resolution of
22 its county board, opts to have this section apply in the county.

23 (b) "Land spreading" means spreading animal waste, septage, sewage sludge,
24 or any other type of solid waste on the surface of the land or incorporating animal

an agricultural facility or practice or animal feeding operation that is located on

1 waste, septage, sewage sludge, or any other type of solid waste into the surface layers
2 of the soil.

3 (c) "Potentially susceptible area" means an area identified by the department
4 under sub. (2).

5 (d) "Septage" has the meaning given in s. 281.48 (1) (d).

6 (2) IDENTIFICATION OF POTENTIALLY SUSCEPTIBLE AREAS. Using information
7 available to it, the department shall identify areas in this state that exhibit
8 carbonate bedrock characteristics that may cause the areas to be susceptible to
9 groundwater contamination from land spreading. At a minimum, the department
10 shall identify an area under this ^{subsection} ~~paragraph~~ if the area has carbonate bedrock less
11 than 50 feet from the surface of the land, as shown by bedrock maps produced by the
12 geological and natural history survey and other maps identified by the department.

13 (3) RULES FOR VULNERABILITY RANKING OF LAND IN POTENTIALLY SUSCEPTIBLE
14 AREAS. (a) The department shall promulgate rules for ranking the land in potentially
15 susceptible areas by categories according to relative vulnerability to groundwater
16 contamination from land spreading, based on factors that include all of the following:

- 17 1. Bedrock features.
- 18 2. Depth and other characteristics of top soil.
- 19 3. Whether the department has declared the land to be an area of special
20 eligibility for compensation for well contamination under s. 281.75 (2) (e).
- 21 4. Whether the department has established the land as a special well casing
22 pipe depth area under ch. NR 812, Wis. Adm. Code.

23 (b) In the rules under par. (a), the department shall identify types of uses of land
24 that minimize the likelihood of land spreading on the land.

1 (4) CATEGORIZING POTENTIALLY SUSCEPTIBLE LAND (a) The county land
2 conservation committee in a covered county shall categorize all land in potentially
3 susceptible areas in the covered county, except for land that is in a land use identified
4 under sub. (3) (b), according to the rules under sub. (3) (a).

5 (b) 1. The owner of land categorized under par. (a), the department of natural
6 resources, the department of agriculture, trade and consumer protection, an
7 organization, or any other person may request a county land conservation committee
8 to review the categorization based on site-specific information showing the
9 categorization to be inconsistent with the rules under sub. (2). 3

10 2. A county land conservation committee receiving a request under subd. 1.
11 shall conduct an informal hearing on the request. Section 68.11 (2) does not apply
12 to the hearing. The county land conservation committee shall provide reasonable
13 notice of the hearing to the person requesting the review and, if not the person
14 requesting the review, to the owner of the land, the department of natural resources,
15 and the department of agriculture, trade and consumer protection.

16 (c) The owner of land categorized under par. (a), the department of natural
17 resources, the department of agriculture, trade and consumer protection, an
18 organization, or any other person may may obtain a review of the decision of a county
19 land conservation committee under par. (b) by filing a written request with the land
20 and water conservation board within 60 days after the day on which the county land
21 conservation committee issues the decision.

22 (d) The owner of land categorized under par. (a), the department of natural
23 resources, the department of agriculture, trade and consumer protection, the county
24 in which the land is located, an organization, or any other person may request a
25 contested case hearing under ch. 227 to review the decision of the land and water

1 conservation board under par. (c) by filing a written request with the department of
2 natural resources within 60 days after receiving an adverse decision of the land and
3 water conservation board.

4 (5) REGULATION. The department of natural resources, in consultation with the
5 department of agriculture, trade and consumer protection, shall promulgate rules
6 that do all of the following:

7 (a) Identify the categories under sub. (3) (a) of potentially susceptible land for
8 which regulation of land spreading activities, in addition to regulation under s.
9 281.16, is needed to prevent or minimize nonpoint source pollution of groundwater.

10 (b) Prescribe performance standards and prohibitions to prevent or minimize
11 nonpoint source pollution of groundwater from land spreading on land in the
12 categories identified under subd. 1. par. (a)

13 (6) ENFORCEMENT. (a) The department may follow the procedures for the
14 issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of
15 rules promulgated under sub. (5).

16 (b) A county land conservation committee may request the district attorney of
17 the county to exercise the district attorney's authority to proceed under s. 23.65
18 against a person for a violation of rules promulgated under sub. (5).

Insert
19
10-18

19 SECTION 16. 281.65 (4c) (am) 1. a. of the statutes is amended to read:

20 281.65 (4c) (am) 1. a. The need for compliance with performance standards
21 established by the department under s. ss. 281.16 (2) and (3) and 281.163 (5).

History: 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 109; 2003 a. 33; 2007 a. 20; 2009 a. 28.

22 SECTION 17. 823.08 (3) (c) 1. of the statutes is amended to read:

23 823.08 (3) (c) 1. Subject to subd. 2., if a court requests the department of
24 agriculture, trade and consumer protection or the department of natural resources

1 for suggestions under par. (b) 2. a., the department of agriculture, trade and
 2 consumer protection or the department of natural resources shall advise the court
 3 concerning the relevant provisions of the performance standards, prohibitions,
 4 conservation practices and technical standards under s. 281.16 (3) and, for lands to
 5 which the rules promulgated under s. 281.163 (5) (b) apply, the prohibitions and
 6 performance standards in those rules.

History: 1981 c. 123; 1995 a. 149; 1997 a. 27; 1999 a. 9; 2009 a. 28.

7 **SECTION 18.** 823.08 (3) (c) 2. of the statutes is renumbered 823.08 (3) (c)2. X
 8 (intro.) and amended to read:

9 823.08 (3) (c) 2. (intro.) If the agricultural use or agricultural practice alleged
 10 to be a nuisance was begun before October 14, 1997, a department may advise the
 11 court under subd. 1. only if the one of the following applies:

12 a. The department determines that cost-sharing is available to the defendant
 13 under s. 92.14 or 281.65 or from any other source.

History: 1981 c. 123; 1995 a. 149; 1997 a. 27; 1999 a. 9; 2009 a. 28.

14 **SECTION 19.** 823.08 (3) (c) 2. b. of the statutes is created to read:

15 823.08 (3) (c) 2. b. As determined under s. 281.16 (5) (b), the agricultural use
 16 or practice is located on land that is categorized under s. 281.163 (4) in a category
 17 with heightened vulnerability to groundwater contamination and the land is in an
 18 area with characteristics that indicate a level of groundwater contamination that
 19 affects public health.

20 **SECTION 20. Nonstatutory provisions.**

21 (1) ADVISORY COMMITTEE. The department of natural resources shall appoint a
 22 committee to advise it on the rules required under section 281.163 of the statutes,
 23 as created by this act. The department shall include representatives of industry,
 24 agriculture, local government, environmental groups, and of others with interests

create subrule
 "X" (to use on p. 12)

281.16(5) and
 REMOVE PERSONS
 2 9

1 that could be affected by the rules and shall ensure that an adequate number of
2 members are from areas thought to be susceptible to groundwater contamination
3 because of carbonate bedrock features.

4 (2) TASK FORCE REPORT. The department of natural resources and the advisory
5 committee under subsection (1) shall review the recommendations in the Final
6 Report of the Northeast Wisconsin Karst Task Force, February 9, 2007, before the
7 department promulgates the rules required under section 281.163 of the statutes, as
8 created by this act. The department shall incorporate recommendations in the report
9 in the rules required under section 281.163 of the statutes, as created by this act, as
10 appropriate.

11 (END)

use autoreb "X" from page 11

Insert 4-6

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✓
Section #. 92.14 (6) (i) 2. of the statutes is amended to read:

92.14 (6) (i) 2. Conduct all land management and pollutant management activities in substantial accordance with the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 and with plans approved under this section, under s. 92.15, 1985 stats., and under ss. 92.10 and 281.65, or to repay the cost-sharing funds.

History: 1987 a. 27, 297; 1989 a. 56; 1991 a. 39, 309; 1993 a. 16, 166, 213; 1995 a. 27, 225, 227; 1997 a. 27; 1999 a. 9, 185; 2001 a. 16; 2009 a. 28.

if applicable
and under s. 281.163 (5)(b)

Section #. 281.65 (4) (e) of the statutes is amended to read:

281.65 (4) (e) Promulgate rules, in consultation with the department of agriculture, trade and consumer protection, as are necessary for the proper execution and administration of the program under this section. Before promulgating rules under this paragraph, the department shall submit the rules to the land and water conservation board for review under sub. (3) (at). The rules shall include standards and specifications concerning best management practices which are required for eligibility for cost-sharing grants under this section. The standards and specifications shall be consistent with the performance standards, prohibitions, conservation practices and technical standards under s. 281.16 ^{and under s. 281.163(5)(b); where applicable}. The department may waive the standards and specifications in exceptional cases. The rules shall specify which best management practices are cost-effective best management practices. Only persons involved in the administration of the program under this section, persons who are grant recipients or applicants and persons who receive notices of intent to issue orders under s. 281.20 (1) (b) are subject to the rules promulgated under this paragraph. Any rule promulgated under this paragraph which relates or pertains to agricultural practices relating to animal waste handling and treatment is subject to s. 13.565.

History: 1977 c. 418; 1979 c. 34, 221; 1979 c. 355 s. 241; 1981 c. 20; 1981 c. 346 s. 38; 1983 a. 27; 1983 a. 189 s. 329 (16); 1983 a. 416; 1985 a. 29; 1987 a. 27; 1989 a. 31, 336, 366; 1991 a. 39, 309; 1993 a. 16, 166, 213, 246, 491; 1995 a. 27, 201, 225; 1995 a. 227 s. 428; Stats. 1995 s. 281.65; 1995 a. 404 s. 204; 1997 a. 27, 209, 237; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 16, 109; 2003 a. 33; 2007 a. 20; 2009 a. 28.

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2/26/10 Per John Stenzenberg

Add DATCP mapping requirements on p. 2, item 5, of instructions.

✓ P. 4, lines 3 - Probably should add reference to the new standards

P. 5, line 6 - Add reference to groundwater standards? (perhaps add a note)

✓ P. 7, lines 5-6 & 8-13 - Is there a problem with saying sub (4) does not apply - does that undo the general requirement in sub. (4)?

✓ P. 9, lines 3-4: John & Larry think this might not be a sufficiently bright line. Instead might say precludes land spreading.

✓ lines 14-19 - Require public notice of request.

RST