

1999 DRAFTING REQUEST

Bill

Received: **09/18/98**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Etzler**

This file may be shown to any legislator: **NO**

Drafter: **traderc**

May Contact: **DNR**

Alt. Drafters:

Subject: **Environment - air quality**

Extra Copies: **DNR**

Topic:

DOA:.....Etzler - Asbestos citations and fees

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>
/1	traderc 10/26/98	ptellez 10/27/98	martykr 10/28/98	_____	lrb_docadmin 10/28/98		
/2	traderc 01/29/99	ygeller 01/29/99	ismith 01/29/99	_____	gretskl 01/29/99		

FE Sent For:

<END>

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1?	traderc		<i>Jm 10/27</i>	<i>Lp 10/28</i>			

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For: Natural Resources

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/?	traderc			_____			

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<END>

Statutory Language Proposals

Division: Air and Waste

Subprograms: Air Management

Issue/Topic: Asbestos Citations

Proposed Change: The Department proposes to amend Wis. Stat. s. 285.69 (3) to eliminate the statutorily-imposed cap on inspection fees for non-residential asbestos demolition and renovation projects and allow the fees to be set by rule. Additionally, the Department proposes to establish a citation program so that all asbestos rule violations, especially those that may not be significant enough to warrant referral to the Department of Justice (DOJ) can be addressed quickly and with appropriate penalties that will not only discipline current wrongdoing, but deter future Wis. Admin. Code. Ch. NR 447 violations.

With respect to citations, the Department proposes the following language:

Wis. Stat. s. 285.89 is created to read:

- 285.89 Asbestos citations.** (1) The department may follow the procedures for the issuance of a citation under ss.23.50 to 23.99 to collect forfeiture of a violation of subs. [asbestos/NR 410 and 447].
- (2) Notwithstanding s. 23.66 (4), the department shall promulgate rules that specify the violations subject to citation. The rules shall specify the criteria for the violations based on the frequency and health and environmental risks, for each offense under subs. (2) to (5).
- (3) Any rule established under sub. (1) and (2) shall be approved by the Attorney General prior to being promulgated under Ch. 285.

Explanatory Note: The current asbestos abatement project inspection fees do not provide sufficient revenue to effectively operate the asbestos inspection program. These fees should be increased to allow the program to be financially self-supporting, as intended.

There are about 2000 asbestos abatement projects per year in Wisconsin. Compliance with the asbestos abatement regulations has been extremely poor, partially because of a lack of DNR staff presence at abatement sites and a low chance of state enforcement action against abatement contractors who violate the applicable administrative rules. The Department suspects that a major reason for a lack of compliance by abatement contractors is that asbestos abatement projects are typically very labor intensive, and reduced compliance equates to less staff time and more profit for the abatement contractor. In other words, if a contractor complies with the regulations and the contractor's competitors do not, the contractor is at an economic disadvantage. Some contractors evidently take the position that it is better to risk a chance inspection and a referral to DOJ than it is to strictly comply with all of NR 447. However, other compliance problems relate to bad work habits or inattention to detail on the part of contractors.

According to Department staff estimates, at least 30% of asbestos abatement projects involve significant violations that could have adverse public health consequences. Roughly, this equates to about 600 violations per year; yet only about 12 cases are referred to DOJ annually. Referring a case to DOJ is very time-consuming, and, with only a limited number of field staff and DOJ resources, only the most flagrant violations result in real enforcement, with the remaining cases resulting in a less severe Letter of Noncompliance (LON) or Notice of Violation (NOV).

Consequently, the Department proposes to institute citations as an interim enforcement step to quickly respond to some—not all—abatement violations. This change would speed the enforcement process, increase compliance, reduce the risk to the environment and public health, and maintain the referral option for the most significant violations.

Desired Effective Date: Upon Publication.

Contact Person: Eric Ebersberger, MB/5, 266-0818; John Melby, AM/7, 264-8884



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0236/1

RCT:.....

KSA

DOA:.....Etzler - Asbestos citations and fees

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

SDN
10-26

D NOTE

do not give
citations.

1 AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

AIR QUALITY

Current law authorizes the department of natural resources (DNR) to establish, by rule, fees for inspecting nonresidential asbestos demolition and renovation projects regulated by DNR. The fees may not exceed \$200 per project. This bill eliminates the \$200 limit on fees for inspecting nonresidential asbestos demolition and renovation projects.

Under current law, the department of justice (DOJ) generally is responsible for taking actions in court to enforce environmental laws. If a violation of an environmental law is punishable by a forfeiture (a civil monetary penalty), DOJ may start a civil action to collect the forfeiture. This bill authorizes DNR to issue a citation (similar to a traffic ticket) if it determines that a person has violated certain of DNR's rules related to asbestos abatement and management. The bill requires DNR to promulgate rules, which must be approved by DOJ, specifying the violations for which citations may be issued. Under the bill, the same procedures are used for the issuance of a citation and the collection of a forfeiture as are used for hunting and fishing violations.

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

1 **SECTION 1.** 23.50 (1) of the statutes is amended to read:

2 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
3 court to recover forfeitures, penalty assessments, jail assessments, applicable
4 weapons assessments, applicable environmental assessments, applicable wild
5 animal protection assessments, applicable natural resources assessments,
6 applicable fishing shelter removal assessments, applicable snowmobile registration
7 restitution payments and applicable natural resources restitution payments for
8 violations of ss. 77.09, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5), 283.33, 285.57
9 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2), subch. VI of ch.
10 77, this chapter and chs. 26 to 31 and of ch. 350, and any administrative rules
11 promulgated thereunder, ^{violations specified under s. 285.86,} violations of rules of the Kickapoo reserve management
12 board under s. 41.41 (7) (k) or violations of local ordinances enacted by any local
13 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.

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

15 23.65 (1) When it appears to the district attorney that a violation of s. 134.60,
16 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81
17 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31 or 350, or any administrative
18 rule promulgated pursuant thereto, ^{or a violation specified under s. 285.86} has been committed the district attorney may
19 proceed by complaint and summons.

History: 1975 c. 365; 1979 c. 175; 1981 c. 390; 1989 a. 284, 335, 359; 1991 a. 97; 1993 a. 16, 243, 344, 491; 1995 a. 227, 290; 1997 a. 35.

20 **SECTION 3.** 23.65 (3) of the statutes is amended to read:

21 23.65 (3) If a district attorney refuses or is unavailable to issue a complaint,
22 a circuit judge, after conducting a hearing, may permit the filing of a complaint if he
23 or she finds there is probable cause to believe that the person charged has committed

1 a violation of s. 287.07, 287.08 or 287.81, this chapter or ch. 26, 27, 28, 29, 30, 31 or
2 ~~350.~~ ^{or a violation specified under s. 285.86} The district attorney shall be informed of the hearing and may attend.

3 History: 1975 c. 365; 1979 c. 175; 1981 c. 390; 1989 a. 284, 335, 359; 1991 a. 97; 1993 a. 16, 243, 344, 491; 1995 a. 227, 290; 1997 a. 35.

3 **SECTION 4. 285.69 (3) of the statutes is amended to read:**

4 **285.69 (3) ASBESTOS INSPECTION FEES.** The department may promulgate rules
5 for the payment and collection of fees for inspecting nonresidential asbestos
6 demolition and renovation projects regulated by the department. ~~The fees under this~~
7 ~~subsection may not exceed \$200 per project.~~ The fees collected under this subsection
8 shall be credited to the appropriation under s. 20.370 (2) (bi) for the direct and
9 indirect costs of conducting inspections of nonresidential asbestos demolition and
10 inspection projects regulated by the department.

11 History: 1979 c. 34, 221; 1987 a. 27; 1989 a. 56; 1991 a. 39, 269; 1993 a. 16; 1995 a. 27; 1995 a. 227 ss. 495 to 499; Stats. 1995 s. 285.69; 1997 a. 27, 35.

11 **SECTION 5. 285.86 of the statutes is created to read:**

12 **285.86 Asbestos citations. (1)** The department may follow the procedures
13 for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture from a
14 person who commits a violation specified under sub. (2).

15 **(2)** The department shall promulgate rules that specify violations of rules
16 relating to asbestos abatement and management that are promulgated under ss.
17 285.11, 285.13, 285.17 and 285.27 to which sub. (1) applies. In a rule promulgated
18 under this subsection, the department may limit the applicability of sub. (1) based
19 on the frequency of violation and on health and environmental risks caused by the
20 violation.

21 **(3)** The department shall submit any proposed rules under sub. (2) to the
22 department of justice. The department may not promulgate a rule under sub. (2)
23 unless the rule is approved by the department of justice.

24 **SECTION 6. 299.95 of the statutes is amended to read:**

1 **299.95 Enforcement; duty of department of justice; expenses.** The
2 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
3 ss. 281.48, 285.57, 285.59 and 299.64, and all rules, special orders, licenses, plan
4 approvals and permits of the department, except those promulgated or issued under
5 ~~ss. 281.48, 285.57, 285.59 and 299.64~~ *and except as provided in s. 285.86* The circuit court for Dane county or for any
6 other county where a violation occurred in whole or in part has jurisdiction to enforce
7 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan
8 approval or permit by injunctive and other relief appropriate for enforcement. For
9 purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this chapter or
10 the rule, special order, license, plan approval or permit prohibits in whole or in part
11 any pollution, a violation is considered a public nuisance. The department of natural
12 resources may enter into agreements with the department of justice to assist with
13 the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid
14 to the department of justice under these agreements shall be credited to the
15 appropriation account under s. 20.455 (1) (k).

History: 1975 c. 39 s. 734; 1979 c. 34 s. 985g; 1979 c. 221; Stats. 1979 s. 144.98; 1981 c. 374; 1989 a. 284; 1993 a. 243; 1995 a. 27; 1995 a. 227 s. 829; Stats. 1995 a. 299.95; 1995 a. 290 s. 12; 1997 a. 35.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0236/1dn

RCT.....

KSN

I assume, based on the proposed language provided to me, that the intent is to authorize the issuance of citations for only certain violations of the asbestos rules. Please let me know if this assumption is incorrect.

Rebecca C. Tradewell
Assistant Chief Counsel
266-7290

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FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0236/1dn
RCT:ksh:km

October 28, 1998

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Rebecca C. Tradewell
Assistant Chief Counsel
266-7290

1/29 Per John Etzler, rather than remove limit
on asbestos fee, change cap to \$210.

RET



State of Wisconsin
1999 - 2000 LEGISLATURE

SO ON

LRB-0236/2

RCT:ksh:km

redraft
run

JLg & F

DOA:.....Etzler - Asbestos citations and fees

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

do not gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

ENVIRONMENT

AIR QUALITY

Current law authorizes the department of natural resources (DNR) to establish, by rule, fees for inspecting nonresidential asbestos demolition and renovation projects regulated by DNR. The fees may not exceed \$200 per project. This bill ~~eliminates~~ ^{raises} the \$200 limit on fees for inspecting nonresidential asbestos demolition and renovation projects ^{to \$210}.

Under current law, the department of justice (DOJ) generally is responsible for taking actions in court to enforce environmental laws. If a violation of an environmental law is punishable by a forfeiture (a civil monetary penalty), DOJ may start a civil action to collect the forfeiture. This bill authorizes DNR to issue a citation (similar to a traffic ticket) if it determines that a person has violated certain of DNR's rules related to asbestos abatement and management. The bill requires DNR to promulgate rules, which must be approved by DOJ, specifying the violations for which citations may be issued. Under the bill, the same procedures are used for the issuance of a citation and the collection of a forfeiture as are used for hunting and fishing violations.

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9 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2), subch. VI of ch.
10 77, this chapter and chs. 26 to 31 and of ch. 350, and any administrative rules
11 promulgated thereunder, violations specified under s. 285.86, violations of rules of
12 the Kickapoo reserve management board under s. 41.41 (7) (k) or violations of local
13 ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or
14 30.77.

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

16 23.65 (1) When it appears to the district attorney that a violation of s. 134.60,
17 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81
18 or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31 or 350, or any administrative
19 rule promulgated pursuant thereto, or a violation specified under s. 285.86 has been
20 committed the district attorney may proceed by complaint and summons.

21 **SECTION 3.** 23.65 (3) of the statutes is amended to read:

22 23.65 (3) If a district attorney refuses or is unavailable to issue a complaint,
23 a circuit judge, after conducting a hearing, may permit the filing of a complaint if he
24 or she finds there is probable cause to believe that the person charged has committed
25 a violation of s. 287.07, 287.08 or 287.81, this chapter or ch. 26, 27, 28, 29, 30, 31 or

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2 of the hearing and may attend.

3 **SECTION 4.** 285.69 (3) of the statutes is amended to read:

4 285.69 (3) ASBESTOS INSPECTION FEES. The department may promulgate rules
5 for the payment and collection of fees for inspecting nonresidential asbestos
6 demolition and renovation projects regulated by the department. ^{stat. ↓} ~~The fees under this~~
7 ~~subsection may not exceed \$200~~ ^{stat. ↓} ~~per project.~~ ^{\$210} ~~per project.~~ ^{stat. ↓} The fees collected under this subsection
8 shall be credited to the appropriation under s. 20.370 (2) (bi) for the direct and
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18 under this subsection, the department may limit the applicability of sub. (1) based
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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0236/2
RCT:ksh:ijs

DOA:.....Etzler - Asbestos citations and fees

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

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