



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

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| 2003 Wisconsin Act 88 [2003 Senate Bill 29] | Immunity for Solid Waste Used in Public Works Projects |
| 2003 Acts: www.legis.state.wi.us/2003/data/acts/ | Act Memos: www.legis.state.wi.us/lc/act_memo/act_memo.htm |

2003 Wisconsin Act 88 amends the provisions in current law which grant immunity from liability and exempt from solid waste regulations the use in public works projects of certain solid wastes identified by the Department of Natural Resources (DNR).

Current Law

Under current law, the DNR may characterize a solid waste for beneficial use in public works projects by rule, memorandum of understanding between itself and other state agencies or local governmental units, or on a case-by-case basis. The DNR must compile and maintain a list of these solid wastes, referred to as “special wastes.” Only listed special wastes may be required by contracting agencies to be used in a public works project. A special waste, when used in a public works project, is not subject to regulation as solid waste under the solid waste facilities law, ch. 289, Stats.

Currently, a person is immune from liability for the use of a special waste on a public works project or for damages resulting from the person’s actions or omissions relating to that use if all of the following apply: those acts or omissions occurred while performing work under a contract for a public works project, the contract required or permitted the use of the special waste, and the acts or omissions conformed to the contract provisions. Current law does not apply this immunity to acts or omissions that involve reckless, wanton, or intentional misconduct or that result in the death or injury of an individual.

Act 88

Act 88 identifies the types of solid waste that the DNR may designate as a special waste for purposes of these immunity and regulatory exemption provisions to include the following types of solid waste for which the DNR has granted a waiver or exemption from regulation under ch. 289, Stats.:

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents.

- Solid waste used in a project developed for research purposes to evaluate the potential for the recycling of high-volume industrial waste.
- Solid waste that need not be disposed of at a licensed solid waste disposal facility in order to encourage the development of improved methods of solid waste disposal.
- High-volume industrial waste managed at specified facilities for the purpose of allowing the recycling of the waste.
- Solid waste for which the DNR determines regulation under ch. 289 is not warranted in light of the potential hazard to public health or the environment.

Act 88 repeals the specification in the immunity law of how the DNR may characterize a special waste as being suitable for beneficial use in public works projects. The Act establishes that the DNR's list of special wastes that are suitable for use in public works projects must specify the types of public works projects in which a special waste may be used. The Act also specifies that this list may include conditions under which a special waste may be used in the public works project in order for the ch. 289 exemption and immunity to apply. Act 88 establishes that this list is not a rule under the definition of "rule" in s. 227.01 (13), Stats.

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