

2005 DRAFTING REQUEST

Bill

Received: **02/15/2005**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Mark Patronsky**

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

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - water quality**

Extra Copies:

Submit via email: **YES**

Requester's email: **mark.patronsky@legis.state.wi.us**

Carbon copy (CC:) to: **john.stolzenberg@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

Management and disposal of septage and municipal sewage sludge

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>
/?							
/P2	btradewe 04/04/2005	csicilia 04/20/2005	jfrantze 04/21/2005	_____	mbarman 04/21/2005		S&L
/1	btradewe 05/10/2005	csicilia 05/11/2005	jfrantze 05/11/2005	_____	sbasford 05/11/2005	mbarman 05/18/2005	S&L

FE Sent For:

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/P2	btradewe 04/04/2005	csicilia 04/20/2005	jfrantze 04/21/2005		mbarman 04/21/2005		S&L

FE Sent For:

Handwritten notes and signatures:

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Jo pg 5/11
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FE Sent For:			4/21		4/21		<END>

1 **AN ACT** *to repeal* 281.48 (3) (d) 1. to 4., 281.48 (4m) (b) 2. and 281.48 (4s) (a) 4. and
2 (b); *to renumber* 200.59 (5); *to renumber and amend* 145.245 (3) and 281.49 (1)
3 (a); *to amend* 20.143 (3) (de), 20.370 (3) (ma), 20.370 (4) (bL), 20.370 (4) (mq),
4 29.601 (3) (b), 30.202 (3), 30.2022 (1), 70.375 (4) (o), 94.73 (2) (bg) 2. and (d),
5 145.10 (1) (c), 145.245 (9) (a), 160.27 (5), 281.17 (3), 281.48 (title), 281.48 (2) (b)
6 to (g), 281.48 (2m), 281.48 (3) (d) (intro.), 281.48 (3) (e), 281.48 (4g), 281.48 (4m)
7 (title) and (a), 281.48 (4m) (b) (intro.), 281.48 (4m) (b) 1., 281.48 (4m) (c), 281.48
8 (4s) (a) (intro.), 281.48 (5) (a) 4., 281.49 (5) (c) 4., 281.58 (8) (b) 1., 281.77 (1) (b),
9 283.87 (1), 299.95, 348.15 (3) (bv) and 895.48 (2) (c) 2.; and *to create* 66.0821 (5)
10 (c), (d) and (e), 145.20 (2) (i), 145.20 (6), 145.245 (11) (f), 196.85 (1m) (c), 200.59
11 (5) (b), (c) and (d), 281.41 (3), 281.48 (2) (bm), 281.48 (4m) (d), 281.48 (4s) (c),
12 281.48 (5p), 281.49 (1) (a), 281.49 (10), (11) and (12), 281.58 (1) (cv), 281.58 (7)
13 (b) 7., 281.58 (12) (a) 5. and 283.82 of the statutes; **relating to:** the management and
14 disposal of septage and municipal sewage sludge and granting rule-making
15 authority.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the joint legislative council's special committee on septage disposal. The bill draft has the following key provisions.

Septage disposal fees

The current statutes regulate the disposal fees that a municipal sewage system may charge a licensed disposer (septage hauler), to dispose septage at the system's facilities. This bill draft makes the following changes to this statute:

- Establishes that the septage disposal fees charged by a municipal sewage system must be reasonable and specifies that a municipal sewage system must base these fees on the specified actual costs related to the disposal of the septage.
- Establishes a 3-stage process for a licensed disposer to obtain a review of a disputed septage disposal fee by the municipal sewage system, staff at the public service commission (PSC), and then the PSC and specifies the allocation of the PSC's expenses in the 3rd stage.
- Requires each municipal sewage system to notify each licensed disposer disposing septage in the system of any increase in a disposal fee applicable to the licensed disposer at least 60 days prior to imposing the increased disposal fee.

Local assistance program

This bill draft creates 2 local assistance programs, to be administered by the department of commerce. The programs will provide cost-sharing grants to counties for up to 70% of the local cost of conducting an inventory of existing private sewage systems, and for developing a recordkeeping system for information about private sewage systems in each county.

Maintenance of private sewage systems

Under current law, the department of commerce has promulgated rules that establish a maintenance program for new private sewage systems in counties that participate in the Wisconsin fund grant program for private sewage system replacement. One of the conditions for a county to participate in the Wisconsin fund grant program is that the county must adopt and enforce the maintenance program. Under its general authority to regulate private sewage systems, the department of commerce has promulgated rules that set forth maintenance requirements for all private sewage systems. This bill draft moves the county maintenance program out of the Wisconsin fund grant program and into the general department of commerce duties, and makes all counties responsible for adoption and enforcement of the maintenance program.

Clean Water Fund loans

The current statutes create the clean water fund program, which provides financial assistance to municipalities for the cost of planning, design, and construction of wastewater treatment facilities, and other surface water and groundwater pollution abatement facilities. The program includes various forms of financial assistance, including market interest rate or below market interest rate loans. This bill draft modifies the clean water fund program to provide zero percent interest rate loans for any portion

of a treatment work project that relates to facilities for receiving and capacity for treating septage. This will reduce some of the potential risk incurred by the municipality in providing facilities and capacity for septage disposal, in case the anticipated amount of septage is not received, and will provide an incentive for the municipality to provide these facilities and capacity.

Sewage treatment plant planning

Facilities plans are prepared for each sewage disposal plant. There is not currently a specific requirement to address the issues related to septage disposal, although these issues could be included in the plans under current law. This bill draft creates a specific requirement to address septage disposal needs in these plans.

Septage and sewage sludge disposal regulations

The disposal of septage on land is regulated under the current statutes. The department of natural resources (DNR) has adopted administrative rules to implement the statutes. This bill draft makes a number of technical changes to these statutes, and makes several minor substantive changes, such as changing the disposal site license to a site approval, restricting the current exemption from the requirement for a disposal site approval, and clarifying the legal effect of an application for site approval. In addition, this bill draft provides that local units of government may not prohibit the land disposal of septage or sewage sludge, and places limits on the authority of local units of government to regulate the land disposal of sewage sludge.

Septage servicing and septage land disposal license fees

The bill draft authorizes the DNR to establish fees for licenses to service private sewage systems in lieu of the current statutorily specified fees. The bill draft also repeals the current fees for licenses for septage land disposal sites.

Enforcement

The bill draft removes a conflict between 2 current statutes and clarifies that the attorney general enforces violations of septage servicing and disposal violations referred by the DNR. The bill draft does not affect the authority of DNR to enforce lesser violations of these regulations via issuance of citations.

Deletion of statutory cross-references

The current statutes include many provisions that cross-reference all of the environmental statutes. Fourteen of these provisions includes an exception for the septage disposal statute. The exceptions for the

septage disposal statute resulted from the renumbering of environmental statutes in the 1995 session of the legislature. The septage disposal statute was not included among the environmental statutes prior to the renumbering, but was moved so as to be grouped with those statutes as part of the renumbering. The exceptions were created as part of the renumbering to avoid making substantive changes in the process of renumbering. This bill draft deletes these exceptions. A detailed explanation of the consequence of each amendment is included in the bill draft.

1 **SECTION 1.** 20.143 (3) (de) of the statutes is amended to read:

2 20.143 (3) (de) As a continuing appropriation, the amounts in the schedule for financial
3 assistance under the private sewage system replacement and rehabilitation program and for
4 local assistance for inventories and recordkeeping under s. 145.245.

NOTE: The appropriation for the Wisconsin fund grant program for private sewage system replacement and rehabilitation is modified to allow the department of commerce to fund a local assistance program for inventorying existing private sewage systems and establishing maintenance recordkeeping. The local assistance programs are established in s. 145.20 (6) (a) and (b), as created by this bill draft.

5 **SECTION 2.** 20.370 (3) (ma) of the statutes is amended to read:

6 20.370 (3) (ma) *General program operations — state funds.* From the general fund,
7 the amounts in the schedule for regulatory and enforcement operations under chs. 30, 31 and
8 280 to 299, except s. ~~281.48~~, and ss. 44.47, 59.692, 59.693, 61.351, 61.354, 62.231, 62.234
9 and 87.30, for reimbursement of the conservation fund for expenses incurred for actions taken
10 under s. 166.04; for review of environmental impact requirements under ss. 1.11 and 23.40;
11 and for enforcement of the treaty-based, off-reservation rights to fish, hunt and gather held
12 by members of federally recognized American Indian tribes or bands.

NOTE: This appropriation is the general fund appropriation to DNR for the regulatory and enforcement responsibilities of the agency under all of the environmental statutes within its jurisdiction. There is no apparent reason for maintaining the exception for septage regulation in the cross-reference to s. 281.48.

The exemption for septage disposal in this statute was created as the result of the renumbering of environmental statutes in the 1995 session of the legislature. Prior to that time, most of the environmental statutes under DNR jurisdiction were contained in 2 chapters of the statutes, chs. 144 and 147, 1993 stats. It was a simple matter then to refer to all environmental statutes by reference to these 2 chapters.

The septage disposal statute, although under DNR jurisdiction, was contained in s. 146.20, stats. The reason for this location of the septage disposal statute was that it was originally within department of health jurisdiction, as were all statutes in ch. 146. The responsibility for septage disposal regulation was transferred to the DNR in 1967 as part of the Kellett reorganization of the executive branch of state government.

The septage statute should have been moved to one of the chapters of statutes under DNR jurisdiction in 1967. When the environmental statutes were reorganized in the 1995 legislative session, the legislative council study committee that recommended the reorganization requested a bill draft that made no substantive changes in the statutes, and merely reorganized them. As a result, although the septage disposal statute was renumbered to place it within the other environmental statutes under DNR jurisdiction, the references to all environmental statutes excluded septage disposal, because the septage disposal statute was not included within those statutes prior to the reorganization.

This bill draft makes the same amendment in all of the other statutes that contain an exemption for the septage disposal statute.

1 **SECTION 3.** 20.370 (4) (bL) of the statutes is amended to read:

2 20.370 (4) (bL) *Wastewater management -- fees.* From the general fund, all moneys
3 received under s. 281.17 (3) for the certification of operators of water systems, wastewater
4 treatment plants and septage servicing vehicles and under s. 281.48 (4s) (a) and ~~(b)~~ (c) for
5 wastewater management activities.

NOTE: The appropriation for the DNR's wastewater management activities funded by license and certification fees is modified to reflect the authority granted under this bill draft in s. 281.48 (4s) (c) to the DNR to establish septage servicing license fees by rule in lieu of the current statutorily specified fees, and the repeal of the fees for licenses for septage land disposal sites by this bill draft in its treatment of s. 281.48 (4s) (a) 4. and (b).

6 **SECTION 4.** 20.370 (4) (mq) of the statutes is amended to read:

1 20.370 (4) (mq) *General program operations — environmental fund.* From the
2 environmental fund, the amounts in the schedule for administration of environmental
3 activities under chs. 160, 281 and 283, ~~except s. 281.48.~~

NOTE: This appropriation is the segregated fund appropriation to DNR, from the environmental fund, for the administration of environmental activities under the groundwater statutes and the statutes related to water and sewage. The septage regulatory program is also an environmental statute related to water and sewage. This amendment brings this appropriation into conformance with legislative intent. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

4 **SECTION 5.** 29.601 (3) (b) of the statutes is amended to read:

5 29.601 (3) (b) Paragraph (a) does not apply to authorized drainage and sewage from
6 municipalities and industrial or other wastes discharged from mines or commercial or
7 industrial or ore processing plants or operations, through treatment and disposal facilities
8 installed and operated in accordance with plans submitted to and approved by the department
9 under chs. 281, 285 or 289 to 299, ~~except s. 281.48,~~ or in compliance with orders of the
10 department. Any order is subject to modification by subsequent orders.

NOTE: Section 29.601 (3) (a), stats., provides that no person may deposit “deleterious substances” in waters of the state. Deleterious substances consist of any waste material, and waters of the state include all lakes and streams. Section 29.601 (3) (b), stats., provides an exception to this prohibition for drainage and sewage that is treated and disposed according to an approval by the DNR. This amendment eliminates the exception for septage disposal, thus treating septage disposal in the same manner as other approved drainage and sewage treatment. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

11 **SECTION 6.** 30.202 (3) of the statutes is amended to read:

1 30.202 (3) EXEMPTION FROM STATUTES AND RULES. Dredge spoil disposal activities
2 authorized under sub. (2) are exempt from any prohibition, restriction, requirement, permit,
3 license, approval, authorization, fee, notice, hearing, procedure or penalty specified under s.
4 29.601, 30.01 to 30.20, 30.21 to 30.99, 59.692 or 87.30 or chs. 281 to 285 or 289 to 299, ~~except~~
5 ~~s. 281.48~~, or specified in any rule promulgated, order issued or ordinance adopted under those
6 sections or chapters.

NOTE: Section 30.202 relates to dredge disposal in and near the Mississippi, St. Croix, and Black Rivers by the U.S. corps of engineers. The statute authorizes DNR to enter into a memorandum of understanding with the U.S. corps of engineers regarding dredge spoil disposal. The memorandum of understanding must relate to sites where dredge spoils may be deposited and standards and conditions for using an approved site. Dredge spoil activities pursuant to a memorandum of understanding are exempt from any license, permit, or other requirement under environmental statutes. An exception is provided for septage disposal site approval. This exception serves no purpose, because dredge spoil disposal does not involve septage disposal, and the exception is therefore eliminated. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

7 SECTION 7. 30.2022 (1) of the statutes is amended to read:

8 30.2022 (1) Activities affecting waters of the state, as defined in s. 281.01 (18), that are
9 carried out under the direction and supervision of the department of transportation in
10 connection with highway, bridge, or other transportation project design, location,
11 construction, reconstruction, maintenance, and repair are not subject to the prohibitions or
12 permit or approval requirements specified under s. 29.601, 30.11, 30.12, 30.123, 30.19,
13 30.195, 30.20, 59.692, 61.351, 62.231, or 87.30 or chs. 281 to 285 or 289 to 299, ~~except s.~~
14 ~~281.48~~. However, at the earliest practical time prior to the commencement of these activities,
15 the department of transportation shall notify the department of the location, nature, and extent
16 of the proposed work that may affect the waters of the state.

NOTE: Section 30.2022, stats., sets forth procedures for department of transportation (DOT) activities related to highway, bridge, and other transportation project design that affects navigable waters. The statute provides that such DOT activities are not subject to permit or approval requirements under environmental statutes. The regulation of septage disposal is not any different in concept from the other cited environmental statutes, and the exception is therefore eliminated. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

1 **SECTION 8.** 66.0821 (5) (c), (d) and (e) of the statutes are created to read:

2 66.0821 (5) (c) For purposes of this subsection, a user of a service includes a licensed
3 disposer, as defined in s. 281.49 (1) (b), who disposes septage at a municipal sewage system
4 under a disposal plan under s. 281.49 (5) and initiates under s. 281.49 (11) (d) a review under
5 par. (a) of a disputed septage disposal fee by the public service commission.

6 (d) If the public service commission determines in a proceeding under par. (a) that a
7 septage disposal fee is unreasonable, the commission shall determine and fix under par. (a) a
8 reasonable fee that conforms with s. 281.49 (5) (c) 4.

9 (e) Notwithstanding par. (a), the public service commission shall bill under s. 196.85
10 (1) any expense of the commission attributable to a proceeding under par. (a) that is initiated
11 under s. 281.49 (11) (d) as follows:

12 1. If the commission determines in the proceeding that one or more septage disposal
13 fees are unreasonable and determines and fixes by order reasonable septage disposal fees that,
14 when combined with any other applicable septage disposal fees, total an amount that is at least
15 15% lower than the total amount of septage disposal fees established by the municipal sewage
16 system for the quantity and type of septage specified in s. 281.49 (11) (b), the municipal
17 sewage system that is a party to the dispute shall pay the entire amount of the assessment.

1 2. If the commission determines in the proceeding that one or more of the septage
2 disposal fees are unreasonable and determines and fixes by order reasonable fees that, when
3 combined with any other applicable septage disposal fees, total an amount that is not at least
4 15% lower than the total amount of septage disposal fees established by the municipal sewage
5 system for the quantity and type of septage specified in s. 281.49 (11) (b), the licensed disposer
6 that is a party to the dispute shall pay the entire amount of the assessment.

7 3. If the commission determines in the proceeding that the septage disposal fees are
8 reasonable, the licensed disposer that is a party to the dispute shall pay the entire amount of
9 the assessment.

10 4. If the commission terminates the proceeding before making a final determination on
11 the reasonableness of the septage disposal fees, the municipal sewage system and the licensed
12 disposer that are parties to the dispute shall each pay 50% of the assessment, unless the
13 municipal sewage system and the licensed disposer agree to a different allocation of the
14 assessment.

NOTE: Under existing s. 66.0821 (5), a “user of a service” of a municipal sewer system may file a complaint with the PSC that the rates, rules, and practices of the system are unreasonable or unjustly discriminatory. This statute applies to municipal sewer systems that are a municipal utility or a metropolitan sewerage district other than the Milwaukee metropolitan sewerage district (MMSD).

This provision establishes that the complaint process in s. 66.0821 (5) also applies to the rates for the disposal of septage by a licensed disposer at a municipal sewage system subject to sub. (5) if the licensed disposer has first sought review of the disputed rate by the municipal sewage system and by the PSC staff under the process specified in the bill draft.

This provision specifies the allocation of the PSC’s expenses under the formal complaint process. This allocation policy is intended to encourage settlement of a dispute over a septage disposal fee prior to the dispute reaching the PSC.

15 **SECTION 9.** 70.375 (4) (o) of the statutes is amended to read:

1 70.375 (4) (o) Actual and necessary reclamation and restoration costs associated with
2 a mine in this state, including payments for future reclamation and postmining costs which are
3 required by law or by department of natural resources order and fees and charges under chs.
4 281, 285 or 289 to 299, ~~except s. 281.48~~, not otherwise deductible under this section. Any
5 refunds of escrowed or reserve fund payments allowed as a deduction under this paragraph
6 shall be taxed as net proceeds at the average effective tax rate for the years the deduction was
7 taken.

NOTE: Section 70.375, stats., relates to the net proceeds occupation tax on mining of metallic minerals. The statute lists deductions that are allowable to a mining company in calculating the net proceeds of the mining operation. Section 70.375 (4) (o), stats., allows deduction for reclamation and restoration costs that are required under any of the environmental statutes. If septage disposal is part of the costs of reclamation or restoration of a metallic mine, there is no reason why those costs should not be deductible in the same manner as any other costs required under environmental statutes, and the exception for septage disposal is therefore deleted. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

8 **SECTION 10.** 94.73 (2) (bg) 2. and (d) of the statutes are amended to read:

9 94.73 (2) (bg) 2. Containment, removal, treatment or monitoring of environmental
10 contamination caused by the discharge if the containment, removal, treatment or monitoring
11 complies with chs. 281 to 285 and 289 to 299, ~~except s. 281.48~~.

12 (d) Soil or water removed from a discharge site as part of a corrective action may only
13 be spread on land if that spreading on land is in compliance with chs. 281 to 285 and 289 to
14 299, ~~except s. 281.48~~, and if the department has given its written authorization.

NOTE: Section 94.73 establishes the agricultural chemical cleanup program. The statute includes provisions regarding corrective action orders, which may require containment, removal, treatment, transportation, storage, land application, and disposal of contaminated materials, which must be in accordance with environmental statutes.

Agricultural chemical cleanup actions do not involve septage disposal, so this exemption serves no purpose. If septage disposal is part of any agricultural chemical cleanup activity in the future, it should be treated in the same manner as other environmental statutes. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

1 **SECTION 11.** 145.10 (1) (c) of the statutes is amended to read:

2 145.10 (1) (c) Falsified information on an inspection form under s. ~~145.245 (3)~~ 145.20
3 (5).

4 **SECTION 12.** 145.20 (2) (i) of the statutes is created to read:

5 145.20 (2) (i) Adopt and enforce the maintenance program under sub. (5).

NOTE: This provision adds to the list of county duties for the private sewage system regulatory program a reference to the maintenance program that is modified and expanded in the next SECTION of the bill draft.

6 **SECTION 13.** 145.20 (6) of the statutes is created to read:

7 145.20 (6) (a) The department shall develop a local assistance program to provide
8 support for each governmental unit that undertakes an inventory of private sewage systems
9 within the jurisdiction of the governmental unit. The local assistance program may support
10 research by a governmental unit that is necessary to locate existing private sewage systems,
11 conversion of existing inventories to be compatible with geographic information systems,
12 improvement of data management in governmental units that have completed inventories, and
13 development of mailing lists to contact owners of private sewage systems and other similar
14 projects related to the inventory.

15 (b) The department shall develop a local assistance program for each governmental unit
16 to develop systems to manage the local records related to the location, design, management
17 plan, inspection, maintenance, and servicing of private sewage systems, disposal of septage,

1 sites approved for the land application of septage, and other information associated with
2 private sewage systems and septage regulation and management. The department shall set
3 priorities for the development of the recordkeeping system, which shall set the highest priority
4 on compatible state and local records, compatible state and local information technology
5 systems, consistent use of geographical information systems and expeditious implementation
6 of the recordkeeping system in all governmental units.

7 (c) The department may make cost-sharing grants to governmental units of up to 70%
8 of the cost of a project under pars. (a) and (b), and may accept either a cash or in-kind
9 contribution from the governmental unit. The local assistance programs under pars. (a) and
10 (b) may fund the acquisition of equipment for managing the inventory and for recordkeeping
11 and development of the inventory and recordkeeping systems, but not the operation of those
12 systems.

NOTE: This provision creates local assistance programs, administered by the department of commerce, to provide assistance to counties (and to cities and villages in Milwaukee county) to develop inventories of existing private sewage systems, and to develop recordkeeping systems for information regarding private sewage systems. Funding for the local assistance is from the Wisconsin fund grant program, in s. 145.245 (11) (f), as created by this bill draft.

13 **SECTION 14.** 145.245 (3) of the statutes is renumbered 145.20 (5) and amended to read:

14 145.20 (5) MAINTENANCE. (a) The department shall establish a maintenance program
15 to be administered by governmental units responsible for the regulation of private sewage
16 systems. The department shall determine the private sewage systems to which the
17 maintenance program applies. At a minimum the maintenance program is applicable to all
18 new or replacement private sewage systems constructed in a governmental unit after the date
19 on which the governmental unit adopts ~~this~~ the program under s. 145.245. The department
20 may apply the maintenance program by rule to private sewage systems constructed in a

1 governmental unit responsible for the regulation of private sewage systems on or before the
2 date on which the governmental unit adopts the program under s. 145.245. The department
3 shall determine the private sewage systems to which the maintenance program applies in
4 governmental units that do not adopt the program under s. 145.245, except that the
5 maintenance program in these governmental units does not commence until January 1, 2008.

6 (b) The maintenance program shall include a requirement of inspection or pumping of
7 the private sewage system at least once every 3 years if the private sewage system does not
8 have a maintenance plan as prescribed by rule by the department. Inspections may be
9 conducted by a master plumber, journeyman plumber or restricted plumber licensed under this
10 chapter, a person licensed under s. 281.48 or by an employee of the state or governmental unit
11 designated by the department, and the department may determine by rule other persons who
12 are qualified to undertake the required inspection, maintenance, or repairs. The department
13 shall specify the methods to establish the required frequency of inspection, maintenance, and
14 pumping for each type of private sewage system that does not have a maintenance plan and
15 shall periodically update the methods.

16 (c) The department of natural resources may suspend or revoke a license issued under
17 s. 281.48 or a certificate issued under s. 281.17 (3) to the operator of a septage servicing
18 vehicle if the department of natural resources finds that the licensee or operator falsified
19 information on inspection forms. The department of commerce may suspend or revoke the
20 license of a plumber licensed under this chapter if the department finds that the plumber
21 falsified information on inspection forms.

NOTE: The department of commerce administers the private sewage system replacement or rehabilitation grant program under s. 145.245, stats. The program is referred to as the Wisconsin fund. This program pays for part of the cost of replacing or rehabilitating failing private sewage systems for eligible individuals and small business owners.

A county must adopt a resolution in which the county agrees to administer the grant program in accordance with state law. One eligibility requirement is that the county where the property is located must adopt and enforce a maintenance program for private sewage systems that are newly installed or replaced after the date that the county adopts the resolution. The maintenance program ensures that inspection and pumping of private sewage systems is done as required. The department of commerce has established the maintenance requirements by administrative rule in s. Comm. 87.60.

This bill draft moves the county maintenance program statute out of the Wisconsin fund program and into the general department of commerce and county duties for private sewage system regulation, thus making it applicable to all counties. The draft retains the requirement in the current statute that requires inspection or pumping out the contents of a private sewage system at least once every 3 years, but limits this provision to private sewage systems that do not have a maintenance program under current department of commerce rules. The bill draft directs the department of commerce to specify by rule methods to establish requirements for periodic maintenance of these systems, which will continue to allow counties to adopt more frequent maintenance requirements for these systems. The bill draft authorizes the department to designate which credentialed professionals may undertake the required inspection, maintenance, or repairs, in addition to those authorized under the current statute.

The current statute requires that the county maintenance program must apply to private sewage systems that are newly installed or replaced after the date that the county adopts the Wisconsin fund grant program. The bill draft maintains this provision, without change, for counties that participate in the Wisconsin fund grant program. The bill draft requires the department of commerce to determine which other private sewage systems are subject to the maintenance program, whether or not the county participates in the Wisconsin fund program.

- 1 **SECTION 15.** 145.245 (9) (a) of the statutes is amended to read:
2 145.245 (9) (a) Adopt and administer the maintenance program established under sub.
3 (3) s. 145.20 (5);
4 **SECTION 16.** 145.245 (11) (f) of the statutes is created to read:

1 145.245 (11) (f) The department may allocate up to 10% of the funds available under
2 this subsection each fiscal year for local assistance for inventories and recordkeeping under
3 s. 145.20 (6).

NOTE: This provision allows the department of commerce to allocate up to 10% of the funding available each fiscal year under the Wisconsin fund grant program for repair and replacement of private sewage systems for the inventory and recordkeeping programs under s. 145.20 (6), as created by this bill draft.

4 **SECTION 17.** 160.27 (5) of the statutes is amended to read:

5 160.27 (5) Notwithstanding subs. (1) to (3), a regulatory agency may develop and
6 operate a system for monitoring and sampling groundwater to determine compliance with this
7 chapter. This section does not affect the authority of the department to require groundwater
8 monitoring by owners or operators of solid or hazardous waste facilities, water systems or
9 wastewater systems under chs. 280 to 285 or 289 to 299, ~~except s. 281.48.~~

NOTE: The groundwater law in s. 160.27 requires the DNR to develop and operate a system for monitoring and sampling groundwater to determine when groundwater standards are exceeded. Section 160.27 (5) clarifies that the groundwater monitoring and sampling system is in addition to, and does not displace, any groundwater monitoring required by the DNR for solid and hazardous waste facilities, water systems, or wastewater systems that are regulated under environmental statutes. The statute should include groundwater monitoring required at septage disposal sites, and the exception is therefore eliminated. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

10 **SECTION 18.** 196.85 (1m) (c) of the statutes is created to read:

11 196.85 (1m) (c) For the purpose of direct assessment under sub. (1) of expenses
12 incurred by the commission in connection with its activities under s. 66.0821 (5) (a) or 200.59
13 (5) (a) that are initiated under s. 281.49 (11) (d), the term "sewerage system" includes a
14 licensed disposer as defined in s. 281.49 (1) (b).

NOTE: This provision authorizes the PSC to assess a licensed disposer for the PSC's expenses in formally reviewing a dispute over a septage disposal fee charged by a municipal sewage system in conformance with the allocation of the PSC's expenses under s. 66.0821 (5) or 200.59, as affected by this bill draft.

1 **SECTION 19.** 200.59 (5) of the statutes is renumbered 200.59 (5) (a).

2 **SECTION 20.** 200.59 (5) (b), (c) and (d) of the statutes are created to read:

3 200.59 (5) (b) For purposes of this subsection, a user includes a licensed disposer, as
4 defined in s. 281.49 (1) (b), who disposes septage in the commission's facilities under a
5 disposal plan under s. 281.49 (5) and initiates under s. 281.49 (11) (d) a review under par. (a)
6 of a disputed septage disposal fee by the public service commission.

7 (c) If the public service commission determines in a proceeding under par. (a) that a
8 septage disposal fee is unreasonable, the commission shall determine and fix under par. (a) a
9 reasonable fee that conforms with s. 281.49 (5) (c) 4.

10 (d) Notwithstanding the statutes referenced in par. (a) governing a proceeding under
11 par. (a), the public service commission shall allocate its assessment under s. 196.85 (1) for any
12 expense of the commission for a proceeding under par. (a) that is initiated under s. 281.49 (11)
13 (d) as specified in s. 66.0821 (5) (e).

NOTE: Under existing s. 200.59 (5), a "user" of a service provided by the MMSD may file a complaint with the PSC that the rates, rules, and practices of the district are unreasonable or unjustly discriminatory.

The above 2 SECTIONS establish that this complaint process also applies to the district's rates for the disposal of septage by a licensed disposer if the licensed disposer has first sought review of the disputed rate by the municipal sewage system and by the PSC staff under the process specified in the bill draft.

14 **SECTION 21.** 281.17 (3) of the statutes is amended to read:

15 281.17 (3) The department shall promulgate rules establishing an examining program
16 for the certification of operators of water systems, wastewater treatment plants and septage

1 servicing vehicles operated under a license issued under s. 281.48 (3), setting such standards
2 as the department finds necessary to accomplish the purposes of this chapter and chs. 285 and
3 289 to 299, including requirements for continuing education. The department may charge
4 applicants a fee for certification. All moneys collected under this subsection for the
5 certification of operators of water systems, wastewater treatment plants and septage servicing
6 vehicles shall be credited to the appropriation under s. 20.370 (4) (bL). No person may operate
7 a water systems, wastewater treatment plant or septage servicing vehicle without a valid
8 certificate issued under this subsection. The department may suspend or revoke a certificate
9 issued under this subsection for a violation of any statute or rule relating to the operation of
10 a water system or wastewater treatment plant or to septage servicing, for failure to fulfill the
11 continuing education requirements or as provided under s. ~~145.245 (3)~~ 145.20 (5). The owner
12 of any wastewater treatment plant shall be, or shall employ, an operator certified under this
13 subsection who shall be responsible for plant operations, unless the department by rule
14 provides otherwise. In this subsection, "wastewater treatment plant" means a system or plant
15 used to treat industrial wastewater, domestic wastewater or any combination of industrial
16 wastewater and domestic wastewater.

17 **SECTION 22.** 281.41 (3) of the statutes is created to read:

18 281.41 (3) (a) If an owner proposes a sewage disposal plant or an extension of an
19 existing sewage disposal plant that increases the capacity of the existing plant by at least 20
20 percent, the department shall require that owner, in preparing a plan under this section, to
21 address the need for and include plans for the disposal of septage, as defined in s. 281.48 (1)
22 (d). The plan contents required under this paragraph shall address all of the following:

23 1. The amount of septage produced throughout the septage service area and the
24 expected increase in septage production during the planning period.

1 2. The capacity for the disposal of septage during the planning period on land within
2 the septage service area, in the sewage disposal plant, and by other available methods.

3 3. The location of private sewage systems within the septage service area, and the
4 distances required to haul septage for disposal either on land or in the sewage disposal plant.

5 4. The potential for contracts with private sewage system owners, licensed disposers,
6 as defined in s. 281.49 (1) (b), or municipalities to assure delivery of septage to the sewage
7 disposal plant.

8 (b) In addressing the need for and the plan contents required under par. (a), the owner
9 is required only to use data or other information that has previously been collected, whether
10 by the owner or by others, and the owner is not required to conduct new research.

11 (c) The contents of the plan required under par. (a) is for the purpose of assuring that
12 septage disposal needs are considered in the decision-making process for sewage disposal
13 plant planning, but par. (a) does not require construction of facilities for the handling or
14 disposal of septage.

15 (d) In this subsection, "septage service area" means the area containing private sewage
16 systems served or anticipated to be served by a sewage disposal plant during the planning
17 period.

NOTE: Facilities plans are prepared for each sewage disposal plant. There currently is not a specific requirement to address the issues related to septage disposal, although these issues could be included in the plans under current law. This bill draft creates a specific requirement to address septage disposal needs in these plans. The new planning requirement applies to new sewage disposal plants or expansions that increase sewage disposal plant capacity by at least 20 percent. The plans will address such issues as the amount of land and sewage treatment plant capacity available for septage disposal, the location of land disposal sites and sewage disposal plants in relation to the sources of septage, and other related issues. This analysis is for the purpose of assuring that information regarding septage disposal needs is considered

in the decision-making process for sewage treatment plant construction and expansion. The bill draft only specifies that the information must be considered in the decision-making process, and does not require the construction of facilities for handling or disposal of septage.

1 **SECTION 23.** 281.48 (title) of the statutes is amended to read:

2 **281.48 (title) Servicing septic tanks, soil absorption fields, holding tanks, grease**
3 **traps interceptors and privies.**

4 **SECTION 24.** 281.48 (2) (b) to (g) of the statutes are amended to read:

5 281.48 (2) (b) “Grease trap interceptor” means a watertight tank for the collection of
6 grease present in sewage and other wastes, and from which grease may be skimmed from the
7 surface of liquid waste for disposal receptacle designed to intercept and retain grease or fatty
8 substances.

9 (c) “Privy” means a cavity in the ground or a portable above-ground device constructed
10 for toilet uses which receives human excrement either to be partially absorbed directly by the
11 surrounding soil or stored for decomposition and periodic removal an enclosed nonportable
12 toilet into which nonwater-carried human wastes are deposited to a subsurface storage
13 chamber that may or may not be watertight.

14 (d) “Septage” means the scum, liquid, sludge or other waste in a septic tank, soil
15 absorption field, holding tank, grease trap or interceptor, privy, or other component of a private
16 sewage system.

17 (e) “Septic tank” means and includes a septic toilet, chemical closet and any other
18 watertight enclosure used for storage and anaerobic decomposition of human excrement, or
19 domestic or industrial wastes wastewater.

1 (f) "Servicing" means removing septage from a septic tank, soil absorption field,
2 holding tank, grease trap or interceptor, privy, or other component of a private sewage system
3 and disposing of the septage.

4 (g) "Soil absorption field" means an area or cavity in the ground which receives the
5 liquid discharge of a septic tank or similar ~~wastewater treatment device~~ component of a private
6 sewage system.

NOTE: The definitions in this SECTION are amended to clarify and update
the text of the definitions.

7 **SECTION 25.** 281.48 (2) (bm) of the statutes is created to read:

8 281.48 (2) (bm) "Private sewage system" has the meaning given in s. 145.01 (12).

NOTE: The term "private sewage system" is used in current s. 281.48 but
is not defined. The cross-referenced definition is the definition used in
the statutes under department of commerce jurisdiction for private
sewage system regulation.

9 **SECTION 26.** 281.48 (2m) of the statutes is amended to read:

10 281.48 (2m) **POWERS OF THE DEPARTMENT.** The department ~~shall have~~ has general
11 supervision and control of servicing septic tanks, soil absorption fields, holding tanks, grease
12 ~~traps and~~ interceptors, privies, and other components of private sewage systems.

13 **SECTION 27.** 281.48 (3) (d) (intro.) of the statutes is amended to read:

14 281.48 (3) (d) (intro.) A farmer who disposes of septage on land is exempt from the
15 licensing requirement under par. (a) if all of the ~~following~~ conditions in sub. (4m) (b) apply.

NOTE: The current statutes require a person who services (i.e., pumps
the contents from) a private sewage system to obtain a license, with one
exception. Under the current statutes, a farmer who services a private
sewage system is not required to obtain a license if the farmer does all of
the following: removes septage from a private sewage system that is
located on the same parcel where the septage is disposed, disposes of no
more than 3,000 gallons per week, complies with all regulations related
to servicing a private sewage system, and has sufficient land that is
suitable for septage disposal. This bill draft narrows the exemption for

farmers so that the license exemption is available only to a farmer who services a septic tank, and not to a farmer who services a holding tank or other private sewage system. This bill draft also states explicitly that the farmer must pump and dispose of the septic tank waste on property that the farmer owns or leases, to make this provision conform to legislative intent.

1 **SECTION 28.** 281.48 (3) (d) 1. to 4. of the statutes are repealed.

2 **SECTION 29.** 281.48 (3) (e) of the statutes is amended to read:

3 281.48 (3) (e) *Operator certification.* No person, except for a farmer exempted from
4 licensing under par. (d), may service a ~~septage~~ private sewage system or operate a septage
5 servicing vehicle unless the person is certified as an operator of a septage servicing vehicle
6 under s. 281.17 (3).

7 **SECTION 30.** 281.48 (4g) of the statutes is amended to read:

8 281.48 (4g) **RULES ON SERVICING.** The department shall promulgate rules relating to
9 servicing septic tanks, soil absorption fields, holding tanks, grease traps and interceptors,
10 privies, and other components of private sewage systems in order to protect the public health
11 against unsanitary and unhealthful practices and conditions, and to protect the surface waters
12 and groundwaters of the state from contamination by septage. The rules shall comply with
13 ch. 160. The rules shall apply to all septage disposal, whether undertaken pursuant to a license
14 or ~~registration~~ a license exception under sub. (3). The rules shall require each person with a
15 license under sub. (3) to maintain records of the location of ~~sites~~ private sewage systems
16 serviced and the volume of septage disposed of and location of ~~septage disposed~~ that disposal.

17 **SECTION 31.** 281.48 (4m) (title) and (a) of the statutes are amended to read:

18 281.48 (4m) (title) **SITE LICENSES APPROVALS.** (a) The department may require a soil
19 test and ~~a license~~ shall require a site approval for any location where septage is stored ~~or~~
20 disposed of on land, ~~except that the department may not require a soil test and a license for~~

1 ~~septage disposal in a licensed solid waste disposal facility. In determining whether to require~~
2 ~~a license for a site, the department shall consider the septage disposal needs of different areas~~
3 ~~of the state.~~

NOTE: "Stored" is deleted because storage of septage is regulated under s. 281.41 rather than s. 281.48. The site license for land disposal of septage is changed to a site approval. This change allows the DNR to continue its present practice of reviewing applications for septage disposal and approving them based on the paperwork submitted. A site license, as in the current statute, implies a more thorough review of each application. The exception for septage disposal in a solid waste disposal facility is eliminated so that the hauler must notify the DNR that the septage will be taken to a landfill and the DNR may simply approve the septage disposal if it is consistent with the landfill's plan of operation.

4 **SECTION 32.** 281.48 (4m) (b) (intro.) of the statutes is amended to read:

5 281.48 (4m) (b) (intro.) Notwithstanding par. (a), the department may not require a
6 license site approval for a location where septage is disposed of on land if the person who
7 disposes of the septage is a farmer who owns or leases that location and if:

NOTE: The current statute contains an exemption from the requirement for a site license for any place where septage is disposed on land. DNR may not currently require a site license (changed in this draft to a site approval) for a location where septage is removed from a private sewage system and disposed on the same parcel where the private sewage system is located. This bill draft limits the exception from the requirement for a site approval so that it applies only to farmers. In addition, this bill draft narrows the exception in other respects in the following 2 SECTIONS, as explained in the notes. This bill draft also states explicitly that the farmer must pump and dispose of the septic tank waste on property that the farmer owns or leases, to make this provision conform to legislative intent.

8 **SECTION 33.** 281.48 (4m) (b) 1. of the statutes is amended to read:

9 281.48 (4m) (b) 1. The septage is removed from a septic tank, ~~soil absorption field,~~
10 ~~holding tank, grease trap or privy~~ which is located on the same parcel where the septage is
11 disposed of; and

NOTE: This bill draft narrows the exception from site approval so that it applies only to septage removed from a septic tank. The main effect of this change is either to require the contents of a holding tank or other private sewage system to be taken to a sewage treatment plant or, if the holding tank or other waste is disposed on the same parcel where the holding tank or other private sewage system is located, the disposal site must have a site approval.

1 **SECTION 34.** 281.48 (4m) (b) 2. of the statutes is repealed.

NOTE: The repeal of s. 281.48 (4m) (b) 2. deletes the 3,000 gallon per week limit for disposal of septage without a site approval on the same parcel where the private sewage system is located. This limit is no longer necessary due to the elimination of holding tanks from the types of private sewage systems for which the site approval exemption is provided. Septic tanks, which may continue to be pumped and the septage disposed on the same parcel, do not produce large volumes of septage.

2 **SECTION 35.** 281.48 (4m) (c) of the statutes is amended to read:

3 281.48 (4m) (c) If a location is exempt from licensing site approval under par. (b), the
4 department may require the person who services the septic tank, ~~soil absorption field, holding~~
5 ~~tank, grease trap or privy to register the disposal site with the department and provide the~~
6 department with information to show that sufficient land area is available for disposal.

7 **SECTION 36.** 281.48 (4m) (d) of the statutes is created to read:

8 281.48 (4m) (d) A person seeking a site approval under par. (a) shall submit an
9 application to the department at least 7 days prior to using the site. Upon receiving an
10 application for site approval, the department may enter and inspect the site if the department
11 determines such an inspection is necessary. Commencing 7 days after submitting the
12 application, the applicant may use the site unless the department notifies the applicant that the
13 site may not be used.

NOTE: The procedure for a septage hauler to obtain a site license (changed to a site approval in this bill draft) is set out by the DNR in administrative rules in ch. NR 113. The rules contain a provision requiring the hauler to notify the DNR at least 7 days prior to using a

field for septage disposal. The rules do not clearly state the consequence if DNR does not respond within the 7 days. This bill draft provides that the hauler may commence using the site after providing notice to the DNR and the 7 days have elapsed. The hauler may then continue using the site unless the DNR subsequently determines that the site may not be used and so notifies the hauler.

1 **SECTION 37.** 281.48 (4s) (a) (intro.) of the statutes is amended to read:

2 281.48 (4s) (a) (intro.) ~~The~~ Except as provided in par. (c), the department shall collect
3 the following fees:

4 **SECTION 38.** 281.48 (4s) (a) 4. and (b) of the statutes are repealed.

NOTE: This SECTION repeals the fees for licenses for septage land disposal sites (changed to a site approved in this bill draft). Currently, the DNR does not collect these fees.

5 **SECTION 39.** 281.48 (4s) (c) of the statutes is created to read:

6 281.48 (4s) (c) In lieu of the fees specified in par. (a), the department may establish by
7 rule fees for a license under sub. (3) (a) necessary to meet the costs incurred by the department
8 in administering and enforcing licenses, approvals, and other program requirements under this
9 section. The fees established under this paragraph shall be a fixed amount for each licensee,
10 a variable amount for each licensee based on the number of vehicles used by a licensee for
11 servicing, or a combination of these amounts.

NOTE: This SECTION authorizes the DNR to establish by rule new fees for septage servicing licensees, in lieu of the current statutorily specified fees, subject to the conditions in this provision.

12 **SECTION 40.** 281.48 (5) (a) 4. of the statutes is amended to read:

13 281.48 (5) (a) 4. Violated any provisions of this section or any rule prescribed by the
14 department or falsified information on inspection forms under s. ~~145.245 (3)~~ 145.20 (5).

15 **SECTION 41.** 281.48 (5p) of the statutes is created to read:

1 281.48 (5p) No city, village, town, or county may prohibit, through zoning or any other
2 means, the disposal of septage on land if that disposal complies with this section and rules
3 promulgated under this section or with an ordinance adopted under sub. (5m) (a).

NOTE: This provides that a city, village, town, or county may not
prohibit septage disposal on land if the disposal conforms with the
statutes and DNR rules or with a septage land disposal ordinance
adopted by a county, city, village, or town under s. 281.48 (5m) (a).

4 **SECTION 42.** 281.49 (1) (a) of the statutes is renumbered 281.49 (1) (m) and, as
5 renumbered, is amended to read:

6 281.49 (1) (m) "Septage" means the scum, liquid, sludge or other waste from a septic
7 tank, soil absorption field, holding tank or privy. This term does not include the waste from
8 a grease trap interceptor.

9 **SECTION 43.** 281.49 (1) (a) of the statutes is created to read:

10 281.49 (1) (a) "Cost" means the cost of capital, debt service, operation, and
11 maintenance, and any other type of cost used by a municipal sewage system in establishing
12 fees for the treatment and disposal of sewage by its customers connected to the system.

13 **SECTION 44.** 281.49 (5) (c) 4. of the statutes is amended to read:

14 281.49 (5) (c) 4. ~~Actual and equitable Reasonable disposal fees based on the volume~~
15 ~~of septage introduced into the municipal sewage system and calculated at the rate applied to~~
16 ~~other users of the municipal sewage system, and including the costs of additional facilities or~~
17 ~~personnel necessary to accept septage at the point of introduction into the municipal sewage~~
18 ~~system that meet the requirements in sub. (10).~~

19 **SECTION 44.** 281.49 (10), (11) and (12) of the statutes are created to read:

20 281.49 (10) Disposal fees established by a municipal sewage system under sub. (5) (c)
21 4. for the disposal of septage introduced into the system by a licensed disposer shall be based

1 on only the following actual costs related to the disposal of the septage, as determined in
2 accordance with a uniform cost accounting system applicable to all services provided by the
3 system:

4 (a) The cost of facilities at the system that receive and hold septage.

5 (b) The cost of any testing of septage conducted by the system.

6 (c) The cost of treating septage by the system. This cost may vary based on the volume
7 and strength of the septage.

8 (d) The portion of the system's additional administrative and personnel costs for
9 accepting the septage not reflected in the costs identified in subds. 2. and 3.

10 **(11) REVIEW OF SEPTAGE DISPOSAL FEES.** (a) Each municipal sewage system shall
11 establish a procedure to review a septage disposal fee charged by the system that is disputed
12 by a licensed disposer.

13 (b) Upon the request of a licensed disposer, a municipal sewage system shall use the
14 procedure established by the system under par. (a) to review whether a septage disposal fee
15 charged by the system for the quantity and type of septage specified by the licensed disposer
16 conforms with sub. (5) (c) 4.

17 (c) After pursuing the review of a septage disposal fee under par. (b), a licensed disposer
18 may request the staff of the public service commission to informally review the disputed
19 septage disposal fee. If the staff determine that there is sufficient basis for a dispute regarding
20 the fee and that use of the procedure under par. (b) is not likely to resolve the dispute, the staff
21 may agree to review the disputed septage disposal fee. Based on its review, the staff may
22 recommend a reasonable septage disposal fee that conforms with sub. (5) (c) 4.

23 (d) If the use of the procedure under par. (c) does not lead to resolution of the dispute,
24 the licensed disposer requesting the review under par. (c) may make a written request to the

1 public service commission for review of the disputed septage disposal fee under s. 66.0821
2 (5) or 200.59 (5).

3 (e) Upon the request of a licensed disposer, or the public service commission or its staff,
4 a municipal sewage system shall provide information to the requester concerning the basis of
5 its septage disposal fees and to the commission or its staff any other information that the
6 commission or its staff requests related to a review under par. (c) or (d).

7 **(12) NOTICE OF SEPTAGE DISPOSAL INCREASES.** Each municipal sewage system shall
8 notify each licensed disposer currently approved under sub. (5) (b) to dispose of septage in
9 the system of any increase in a disposal fee applicable to the licensed disposer at least 60 days
10 prior to imposing the increased disposal fee. The notice shall include a description of how the
11 system calculated the new disposal fee.

NOTE: The treatment of ss. 281.49 (5) (c) 4. and (10), (11), and (12) in this SECTION and the preceding SECTION modify the requirements for fees that a municipal sewage system may charge for the disposal of septage introduced into the system by a licensed disposer, create a process for the review of a septage disposal fee charged by a municipal sewage system that is disputed by a licensed disposer, and requires each municipal sewage system to notify licensed disposers who dispose of septage in the system of any increase in the disposal fee applicable to the licensed disposer prior to imposing the increased disposal fee.

12 **SECTION 45.** 281.58 (1) (cv) of the statutes is created to read:

13 281.58 (1) (cv) "Septage" has the meaning designated under s. 281.48 (2) (e).

14 **SECTION 46.** 281.58 (7) (b) 7. of the statutes is created to read:

15 281.58 (7) (b) 7. Projects or capacity for the receiving, storage, and disposal of septage.

NOTE: The current statutes create the clean water fund program, which provides financial assistance to municipalities for the cost of planning, design and construction of wastewater treatment facilities, and other surface and groundwater pollution abatement facilities. The program includes various forms of financial assistance, including market interest rate or below market interest rate loans.

The current clean water fund program can be used as a source of funding for a portion of a sewage treatment plant project that provides receiving, storage, and disposal of septage. However, this is not expressly stated in the statute. This bill draft adds an explicit statement that such facilities for septage are eligible for financial assistance under the clean water fund.

1 **SECTION 47.** 281.58 (8) (b) 1. of the statutes is amended to read:

2 281.58 (8) (b) 1. Except as provided in subd. 2. and par. (k), the amount of reserve
3 capacity for a project eligible for financial assistance through a method specified under sub.
4 (6) (b) is limited to that future capacity required to serve the users of the project expected to
5 exist within the sewer service area of the project and that future capacity required to serve the
6 need expected to exist outside of the sewer service area of the project for septage that is
7 reasonably likely to be disposed in the project 10 years after the project is estimated to become
8 operational. The department, in consultation with the demographic services center in the
9 department of administration under s. 16.96, shall promulgate rules defining procedures for
10 projecting population used in determining the amount of reserve capacity.

NOTE: The current clean water fund program places a limit on the allowable reserve capacity of a sewage treatment plant in order to qualify for below market rate loans and certain other financial assistance. Reserve capacity is the extra capacity to treat wastewater beyond present needs. The current statutory limit is the capacity to treat wastewater from users within the service area for no more than 10 years after completion of the project. This bill draft adds to the allowable reserve capacity an amount needed to provide septage disposal for property located outside of the sewer service area for that 10-year period if the septage is reasonably likely to be taken to the sewage treatment plant.

11 **SECTION 48.** 281.58 (12) (a) 5. of the statutes is created to read:

12 281.58 (12) (a) 5. The interest rate for the portion of a project that provides facilities
13 for receiving and treating septage and capacity for disposal of septage is zero percent.

NOTE: This bill draft creates a zero percent interest rate for the portion of a clean water fund loan for septage receiving and treatment facilities and capacity for septage disposal. This interest rate applies even though

the rest of the project has a different interest rate or method of financial assistance. The purpose of the zero percent interest rate is to provide an incentive for a municipality to add facilities and capacity for septage disposal, and to reduce the risk for the municipality of providing that capacity, but then not receiving the expected amount of septage. Even though the interest rate is zero, the municipality will need to repay the clean water fund loan, so the municipality will still have an incentive to build cost-effective projects and to market the septage disposal service.

1 **SECTION 49.** 281.77 (1) (b) of the statutes is amended to read:

2 281.77 (1) (b) "Regulated activity" means an activity for which the department may
3 issue an order under chs. 285 or 289 to 299 or this chapter, ~~except s. 281.48~~, if the activity is
4 conducted in violation of chs. 285 or 289 to 299 or this chapter, ~~except s. 281.48~~, or in violation
5 of licenses, permits or special orders issued or rules promulgated under chs. 285 or 289 to 299
6 or this chapter, ~~except s. 281.48~~.

NOTE: Section 281.77, stats., relates to damage to water supplies. This statute authorizes the DNR to conduct a hearing and order the owner or operator of a "regulated activity" that has damaged private water supplies to treat the water, repair the private water supply or replace the private water supply. Section 281.77 (1) (b) defines "regulated activity" as any activity under environmental statutes for which the DNR may issue an order if the activity is conducted in violation of the environmental statutes. A violation of septage disposal regulations should be treated in the same manner as any other violation of an environmental statute. Therefore, the exception for septage disposal is deleted. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

7 **SECTION 50.** 283.82 of the statutes is created to read:

8 **283.82 Land application of sewage sludge.** (1) The department shall oversee, set
9 technical standards for, and regulate the application of sewage sludge to land.

10 (2) No city, village, town, or county may prohibit, through zoning or any other means,
11 the application of sewage sludge to land if that application complies with this section and rules
12 promulgated under this section.

1 (3) A city, village, town, or county may not regulate the application of sewage sludge
2 to land, except that the city, village, town, or county may enact the model ordinance developed
3 under sub. (4).

4 (4) The department shall develop a model land application ordinance for sewage sludge.
5 The model ordinance shall be consistent with rules promulgated under this section.

NOTE: This provision directs the DNR to set standards for and to regulate the application of sewage sludge to land, and to develop a model land application ordinance for sewage sludge. Further, this provision states that a city, village, town, or county may not prohibit the land application of sludge if the land application complies with the standards promulgated by DNR, and not regulate the land application of sewage sludge except by enacting the model ordinance developed by the DNR.

6 **SECTION 51.** 283.87 (1) of the statutes is amended to read:

7 283.87 (1) DEPARTMENT MAY RECOVER COSTS. In an action against any person who
8 violates this chapter or any provision of s. 29.601 or chs. 30, 31, 281, 285 or 289 to 299, except
9 ~~s. 281.48~~, relating to water quality the department may recover the cost of removing,
10 terminating or remedying the adverse effects upon the water environment resulting from the
11 unlawful discharge or deposit of pollutants into the waters of the state, including the cost of
12 replacing fish or other wildlife destroyed by the discharge or deposit. All moneys recovered
13 under this section shall be deposited into the environmental fund.

NOTE: Section 283.87 authorizes the DNR to recover costs in a legal action against a person who violates environmental statutes relating to water quality. Under this statute, the DNR may recover the cost of removing, terminating, or remedying adverse effects on the water environment resulting from unlawful discharge or deposit of pollutants into the waters of the state. The costs recovered can include the costs of replacing fish or other wildlife destroyed by the discharge. Any moneys recovered are placed in the environmental fund. The violation of septage disposal regulations should be treated in the same manner as the violation of the environmental statutes relating to water quality. Therefore, the exception for septage disposal is eliminated. [For a full explanation of the source of the current exemption in this statute for

septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

1 **SECTION 52.** 299.95 of the statutes is amended to read:

2 **299.95 Enforcement; duty of department of justice; expenses.** The attorney general
3 shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except ss. ~~281.48~~, 285.57, 285.59,
4 and 299.64, and all rules, special orders, licenses, plan approvals, permits, and water quality
5 certifications of the department, except those promulgated or issued under ss. ~~281.48~~, 285.57,
6 285.59, and 299.64 and except as provided in ss. 285.86 and 299.85 (7) (am). The circuit court
7 for Dane county or for any other county where a violation occurred in whole or in part has
8 jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order,
9 license, plan approval, permit, or certification by injunctive and other relief appropriate for
10 enforcement. For purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this
11 chapter or the rule, special order, license, plan approval, permit or certification prohibits in
12 whole or in part any pollution, a violation is considered a public nuisance. The department
13 of natural resources may enter into agreements with the department of justice to assist with
14 the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid to the
15 department of justice under these agreements shall be credited to the appropriation account
16 under s. 20.455 (1) (k).

NOTE: Under current law, the DNR may issue a citation to collect a forfeiture for a violation of regulations governing the servicing of private sewage systems, or the disposal of septage. The person receiving the citation usually pleads no contest and pays the forfeiture amount, which ends the matter. The person receiving the citation has the option of pleading not guilty and requesting a jury trial. The district attorney is responsible for enforcing citations issued by the DNR.

For most other environmental enforcement actions, when the DNR does not issue a citation, the DNR refers the violation to the attorney general, who may then commence an enforcement action in circuit court. However, there is a conflict in 2 different statutes relating to enforcement

of the septage servicing and disposal regulatory statute. The first statute, s. 281.98, provides that a person who violates a provision of ch. 281 (which includes the septage statutes), or any rules or orders issued by DNR under the statutes, may be required to forfeit from \$10 to \$5,000 for each violation. The attorney general enforces these statutes, rules, and orders upon referral by the DNR. The 2nd statute, s. 299.95, provides that the attorney general may enforce most environmental statutes. However, the septage servicing and disposal statute is specifically excluded from the enforcement authority of the attorney general under s. 299.95. This conflict casts doubt on the ability of the attorney general to enforce septage disposal regulations.

This bill draft retains the authority of DNR to issue citations for septage servicing and disposal violations, with enforcement by the district attorney. This bill draft deletes the exception in s. 299.95 for enforcement of these septage regulations by the attorney general. With this change, the DNR can continue to issue citations for violations of these regulations (generally for lesser violations), and will have the option of referring cases involving more serious violations to the attorney general for enforcement.

The bill draft does not affect the enforcement of the separate requirement for the certification of operators of septage servicing vehicles. The DNR enforces this requirement by either revoking the certification or referring the violation to the attorney general for enforcement.

1 **SECTION 53.** 348.15 (3) (bv) of the statutes is amended to read:

2 348.15 (3) (bv) In the case of a vehicle or combination of vehicles used primarily for
3 the transportation of septage, as defined in s. 281.49 (1) ~~(a)~~ (m), the gross weight imposed on
4 the highway by the wheels of any one axle may not exceed 21,500 pounds or, for 2 axles 8 or
5 less feet apart, 37,000 pounds or, for groups of 3 or more consecutive axles more than 9 feet
6 apart, a weight of 4,000 pounds more than is shown in par. (c) or, for groups of 4 or more
7 consecutive axles more than 10 feet apart, a weight of 6,000 pounds more than is shown in par.
8 (c) or, for groups of 5 or more consecutive axles more than 14 feet apart, a weight of 7,000
9 pounds more than is shown in par. (c), but not to exceed 80,000 pounds. This paragraph does
10 not apply to the national system of interstate and defense highways, except for that portion of

1 USH 51 between Wausau and STH 78 and that portion of STH 78 between USH 51 and the
2 I 90/94 interchange near Portage upon their federal designation as I 39.

3 **SECTION 54.** 895.48 (2) (c) 2. of the statutes is amended to read:

4 895.48 (2) (c) 2. Who would be liable for the discharge under chs. 281 to 285 or 289
5 to 299, ~~except s. 281.48,~~ or any rule promulgated or permit or order issued under chs. 281 to
6 285 or 289 to 299, ~~except s. 281.48;~~

NOTE: Section 895.48 (2), stats., creates an exemption from civil liability for certain actions taken by a person who provides assistance or advice regarding an emergency involving the discharge of a hazardous substance. In s. 895.48 (2) (c), the statute provides that the civil liability exemption does not extend to a person who would be liable for the discharge of hazardous substances under environmental statutes. A person who discharges hazardous substances in violation of septage disposal statutes should be treated the same as a person who violates other environmental statutes. Therefore, the exception for septage disposal is deleted. [For a full explanation of the source of the current exemption in this statute for septage disposal, see the NOTE to the SECTION in this bill draft that amends s. 20.370 (3) (ma).]

7 **SECTION 55. Initial applicability.** The treatment of section 281.49 (12) of the statutes
8 first applies to increases in disposal fees on the first day of the third month beginning after
9 publication.

NOTE: This provision specifies the initial applicability of the requirement in s. 281.49 (12), as created by this bill draft, that each municipal sewage system must notify licensed disposers of septage in the system of any increase in a disposal fee applicable to the license disposer prior to imposing the increased disposal fee.

10

(END)

Tradewell, Becky

To: Stolzenberg, John; Patrosky, Mark
Subject: Septage draft

Comments from MCP 3/31/2005

John and Mark:

A few things on the septage draft:

- ✓ 1. Should the local assistance programs under proposed s. 145.20 (6) (a) and (b) be limited to "governmental units responsible for the regulation of private sewage systems"? *That is what "governmental unit" means in ch. 145*
- ✓ 2. The phrase "address the need for and include plans for the disposal of septage" in proposed s. 281.41 (3) (a) (intro.) (and similar language in par. (b) of that subsection) seems a bit unclear. What exactly is the need that must be addressed? If the intent is to require them to address "the need for the disposal of septage," perhaps adding commas would work: "address the need for, and include plans for, the disposal of septage." Also, I am confused by the requirement that plans for the disposal of septage be included given that par. (c) says that par. (a) does not require construction of facilities for the handling or disposal of septage. *Just add the commas*
- ✓ 3. In the definition of "privy," (s. 281.48 (2) (c)) would it be OK to say "into which human wastes not carried by water are deposited" or something like that to avoid "nonwater-carried"? *yes*
4. Given the elimination of site licenses for DNR, it seems as though you might want to change s. 281.48 (5m) (c). *He is checking with DNR*
- ✓ 5. Could we clarify the initial applicability provision? How about "first applies to increases in disposal fees that take effect on the first day" etc.? *yes*

Let me know if you want to discuss any of this.

Becky

4/7/05 Per Mark Patrosky - Amend 281.48(5m)(c) to require
site approval and strike the language that is stricken in
s. 281.48(4m)(a).

Ret