

JES:jal;tlu

02/11/2005

1 **AN ACT** *to amend* 299.95 of the statutes; **relating to:** enforcement of the regulation of
2 the servicing of private sewage systems and septage disposal.

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

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

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

NOTE: Under current law, the department of natural resources (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.