



WISCONSIN LEGISLATIVE COUNCIL  
REPORT TO THE LEGISLATURE

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SPECIAL COMMITTEE ON  
SEPTAGE DISPOSAL

[*2005 ASSEMBLY BILL 449*]

June 3, 2005

RL 2005-04



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## **Special Committee on Septage Disposal**

Prepared by:

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and Rachel Letzing, Staff Attorney

June 3, 2005

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# **PART I**

## **KEY PROVISIONS OF COMMITTEE RECOMMENDATION**

The Special Committee on Septage Disposal recommends the following proposal to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature.

### **2005 Assembly Bill 449, Relating to the Management and Disposal of Septage and Municipal Sewage Sludge, Granting Rule-Making Authority, and Making an Appropriation**

Assembly Bill 449, relating to the management and disposal of septage and municipal sewage sludge, granting rule-making authority, and making an appropriation does the following:

- Requires fees charged by municipal sewage systems for the disposal of septage to be reasonable and based on specified actual costs and establishes a three-stage process for the review of a disputed fee by the municipal sewage system, staff at the Public Service Commission (PSC), and the PSC.
- Requires each municipal sewage system to notify each licensed disposer who disposes of septage in the system at least 60 days prior to imposing an increase in a disposal fee applicable to the licensed disposer.
- Establishes two grant programs to provide cost-sharing grants to counties for up to 70% of the local cost of inventorying existing private sewage systems and developing a county private sewage system recordkeeping system. These programs are to be administered by the Department of Commerce and funded through the reallocation of a portion of the existing appropriation for the grant program for private sewage system replacement and rehabilitation.
- Moves the county private sewage system maintenance program out of the Wisconsin Fund grant program and into the general duties of the Department of Commerce and makes all counties responsible for adoption and enforcement of the maintenance program.
- Modifies the Clean Water Fund Program for municipal waste water treatment facilities to provide 0% interest rate loans for any portion of a treatment work project that relates to septage handling facilities and treatment capacity.
- Updates the statutes governing the regulation of septage and sewage sludge disposal, including specifying that a local unit of government may not prohibit the land disposal of septage or sewage sludge and placing limits on the authority of local units of government to regulate the land disposal of sewage sludge.
- Authorizes the Department of Natural Resources (DNR) to establish fees for licenses to service private sewage systems in lieu of the current statutorily specified fees and repeals the current fees for licenses for septage land disposal sites.
- Removes a conflict between two current statutes and clarifies that the Attorney General enforces violations of septage servicing and disposal violations referred by the DNR.

- Updates general cross-references to all of the environmental statutes by deleting several exceptions for the septic disposal statute created as part of the technical renumbering of environmental statutes in the 1995 Session of the Legislature.

## PART II

# COMMITTEE ACTIVITY

### Assignment

The Joint Legislative Council established the Special Committee on Septage Disposal by a June 4, 2004 mail ballot. The committee was directed to examine the current capacity and future need for disposal of septage that is pumped from septic tanks and holding tanks, to review the laws related to this subject, and to develop proposed legislation that will assure protection of public health and the environment, as well as the availability of disposal options for future population and business growth.

Membership of the Special Committee, appointed by a July 21, 2004 mail ballot, consisted of two Senators, three Representatives and four public members. A list of committee members is included as *Appendix 3* to this report.

### Summary of Meetings

The Special Committee held three meetings in Madison on the following dates:

September 16, 2004  
October 14, 2004  
November 16, 2004

September 16, 2004: At the first meeting of the Special Committee, the committee heard testimony from the following invited speakers:

- **Greg Kester, DNR**, gave a brief overview of state requirements for septage disposal at treatment facilities and on agricultural land, the effects of DNR and Department of Commerce's split jurisdiction over the septage program, the problems faced by St. Croix County and the Elcho Sanitary District, and a list of issues to consider in future discussions regarding septage disposal.
- **Roman Kaminski, Department of Commerce**, provided information on the number of sanitary permits issued for POWTS (private on-site wastewater treatment systems) since 2000, explained that the administrative rule, ch. Comm 83, Wis. Adm. Code, emphasizes long-term operation and maintenance of all POWTS, and summarized issues that have been identified since ch. Comm 83 was revised in 2000.
- **David Wagner, Ehlers and Associates, Brookfield**, outlined the methods municipalities use to finance wastewater treatment facilities and provided an overview of the difficulties communities face in recovering the costs of building or improving these facilities.
- **Bob Biebel, Southeastern Wisconsin Regional Planning Commission**, gave a brief overview of the planning process for the northwestern Waukesha County sewerage system during 2000 and 2001 and the problems that prevented implementation of this plan.
- **Rick Stadelman, Wisconsin Towns Association**, provided an overview of the issues that towns are concerned about regarding septage disposal.

- **Paul Kent, Municipal Environmental Group--Wastewater Division**, outlined three areas of concern for the Wastewater Division regarding septic disposal.
- **Matthew Stohr, Legislative Assistant, Wisconsin Counties Association**, provided an overview of the counties' concerns regarding proposed revisions to ch. Comm 83, Wis. Adm. Code, including county liability.
- **Jim Clark, Dane County Sanitarian**, emphasized that adequate funding for the septic program is the key to creating an effective and coherent septic program throughout the state.

October 14, 2004: At this meeting, the committee heard testimony from the following invited speakers:

- **Duane Greuel, Environmental Specialist, Planning and Zoning Department, Wood County**, identified problems with the statewide private sewage system program and suggested solutions to these problems.
- **Scott Carmody, President, Carmody Data Systems**, described the software he has developed for tracking private sewage system maintenance that has been adopted in 13 states and in Sydney, Australia.
- **Ken Neu, Environmental/Health Products & Service, Richfield**, discussed an alternative for the treatment of septic based on an aerobic treatment system designed specifically for septic.

The committee then discussed Memo No. 1, *Suggestions of Issues for Committee Discussion* and providing drafting instructions for legislative proposals based on that discussion.

November 16, 2004: The committee reviewed and directed staff to prepare modifications to the following bill drafts at this meeting:

- WLC: 0042/1, deletion of statutory cross-references.
- WLC: 0046/1, maintenance of private sewage systems.
- WLC: 0047/1, septic and sewage sludge disposal regulations.
- WLC: 0048/1, clean water fund loans; and sewage treatment plant planning.
- WLC: 0050/1, local assistance program.
- WLC: 0054/1, septic disposal fees.
- WLC: 0055/1, enforcement.
- WLC: 0056/1, septic servicing and septic land disposal license fees.

While discussing WLC: 0054/1, Representative Ainsworth created the Working Group on Septage Disposal Fees to address issues relating to municipal sewage system fees for septic disposal that could not be resolved at the meeting. This informal working group held a meeting on November 24, 2004 in Madison and subsequently completed its work through email and telephone communications. Subsequently, the above drafts, as modified by the committee, were consolidated into a single draft, WLC: 0062/1.

## PART III

# RECOMMENDATIONS INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL

This part of the report provides background information on, and a description of, Assembly Bill 449 as recommended by the Special Committee on Septage Disposal.

### Background

Both the DNR and the Department of Commerce have jurisdiction over septage. The DNR has regulatory jurisdiction over the disposal of septage pumped from septic tanks and holding tanks, while the Department of Commerce and delegated counties have jurisdiction over the design, approval, maintenance, and reporting for the installation and management of septic systems and holding tanks.

The importance of the proper management and disposal of septage is underscored by the fact that almost 1/3 of the households in Wisconsin are served by a private sewage system.\*

Finding adequate and reliable places for septage disposal can be a challenge. Current law requires that sewage treatment plants accept septage between November 15 and April 15, but also provides exceptions to this requirement. Sewage treatment plants have used these statutory exceptions in order to refuse to accept and treat septage in many areas of the state. The difficulty of finding disposal options is exacerbated because land available for disposal of septage on land is diminishing in areas of population growth. Furthermore, septage treatment plants that are willing to accept septage must construct facilities to introduce septage in the sewage system. These facilities, however, may be underused because current law does not require septage to be taken to the sewage treatment plant. As a result, the capital costs for these facilities must then be paid by homes and businesses that are connected to the sewage treatment plant.

Staff Brief 04-2, *Statutes and Administrative Rules Related to Septage Disposal*, provides background information on the state statutes and administrative rules regarding disposal of septage in municipal sewage systems, septic system servicing, septic system maintenance, and septage operator certification.

### Description

#### 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. The bill 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.

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\* The terms "septic system," "private sewage system," "POWTS," and "private on-site wastewater treatment system" are used in the current statutes and administrative rules to refer to septic tank/soil absorption fields and holding tanks.

- Establishes a three-stage process for a licensed disposer to obtain a review of a disputed septage disposal fee by the municipal sewage system, staff at the PSC, and then the PSC and specifies the allocation of the PSC's expenses in the third stage.
- Requires each municipal sewage system to notify each licensed disposer who disposes of 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**

The bill creates two 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. These programs are to be administered by the Department of Commerce and funded through the reallocation of a portion of the existing appropriation for the grant program for private sewage system replacement and rehabilitation.

### **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. The bill 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. The bill modifies the Clean Water Fund Program to provide 0% interest rate loans for any portion of a treatment work project that relates to facilities for receiving and storing 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. The bill 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 DNR has adopted administrative rules to implement the statutes. The bill 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, the bill 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 authorizes the DNR to establish fees for licenses to service private sewage systems in lieu of the current statutorily specified fees. The bill also repeals the current fees for licenses for septage land disposal sites.

### **Enforcement**

The bill removes a conflict between two current statutes and clarifies that the Attorney General enforces violations of septage servicing and disposal violations referred by the DNR. The bill 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 include 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. The bill deletes these exceptions. A detailed explanation of the consequence of each amendment is included in the bill.



## **Appendix 1**

### **Committee and Joint Legislative Council Votes**

WLC: 0062/2, relating to the management and disposal of septage and municipal sewage sludge and granting rule-making authority, was recommended by the Special Committee on Septage Disposal to the Joint Legislative Council for introduction in the 2005-06 Session of the Legislature.

#### **Special Committee Vote**

In a February 14, 2005 mail ballot, the Special Committee considered WLC: 0062/1, the committee's composite bill draft, and WLC: 0122/1, an amendment to WLC: 0062/1, relating to septage disposal fees, recommended by the Working Group on Septage Disposal Fees. The Special Committee's votes on these proposals are as follows:

- The Special Committee adopted WLC: 0122/1, on a vote of Ayes, 9 (Reps. Ainsworth, Ott, and Steinbrink; Sens. Kedzie and Jauch; and Public Members Begalke, Deflorian, Renon, and Thom); and Noes, 0.
- The Special Committee recommended WLC: 0062/1, as amended, on a vote of Ayes, 9 (Reps. Ainsworth, Ott, and Steinbrink; Sens. Kedzie and Jauch; and Public Members Begalke, Deflorian, Renon, and Thom); and Noes, 0. WLC: 0062/2 contains the provisions in WLC: 0062/1, as amended by WLC: 0122/1.

#### **Joint Legislative Council Vote**

At its March 9, 2005 meeting, the Joint Legislative Council voted as follows on the recommendation of the Special Committee:

- Introduction by the Joint Legislative Council of WLC: 0062/1 passed by a vote of Ayes, 18 (Reps. Wieckert, Ainsworth, Freese, Gard, Huebsch, Kaufert, Kreuser, Nischke, Pocan and Schneider; and Sens. Lasee, Brown, Decker, Grothman, Miller, Risser, Robson and Zien); Noes, 0; and Excused, 4 (Rep. Travis; and Sens. Fitzgerald, Kapanke and Schultz).

The proposal that the Joint Legislative Council voted to introduce was subsequently introduced as 2005 Assembly Bill 449.



## Appendix 2

### Joint Legislative Council

*[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]*

**Co-Chair**

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*Senate President*

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**DEAN KAUFERT**

1360 Alpine Lane

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees. [s. 13.81, Stats.]

## Joint Legislative Council

*[Current Joint Legislative Council Members Receiving Committee Report]*

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### Co-Chair

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees. [s. 13.81, Stats.]

## **Appendix 3**

### **Septage Disposal**

**Representative John H. Ainsworth, Chair**  
W6382 Waukechon Road  
Shawano, WI 54166

**Senator Neal J. Kedzie**  
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8602-88th Avenue  
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**Randy Renon**  
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1811 School Road  
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**Senator Robert Jauch**  
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Poplar, WI 54864

**Representative Alvin R. Ott**  
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**Bernard Deflorian**  
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**Wally Thom**  
Rice Lake Utilities  
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**STUDY ASSIGNMENT:** The committee is directed to examine the current capacity and future need for disposal of septage that is pumped from septic tanks and holding tanks, to review the laws related to this subject, and to develop proposed legislation that will assure protection of public health and the environment, as well as the availability of disposal options for future population and business growth.

**9 MEMBERS:** 2 Senators; 3 Representatives; and 4 Public Members.

**LEGISLATIVE COUNCIL STAFF:** Mark Patronskey, Senior Staff Attorney, Rachel Letzing, Staff Attorney, John Stolzenberg, Chief of Research Services, and Julie Learned, Support Staff.



## **Appendix 4**

### **Committee Materials List**

(Copies of documents are available at [www.legis.state.wi.us/lc](http://www.legis.state.wi.us/lc))

#### **November 16, 2004 Meeting**

- WLC: [0042/1](#), relating to deleting statutory exemptions for septage disposal regulation
- WLC: [0046/1](#), relating to maintenance of private sewage systems
- WLC: [0047/1](#), relating to the regulations applicable to the land disposal of septage, and limitations on ordinances applicable to septage and municipal sludge disposal
- WLC: [0048/1](#), relating to clean water fund loans for septage treatment and disposal facilities at sewage treatment plants and facilities plans for septage disposal in sewage treatment plants
- WLC: [0050/1](#), relating to local assistance for an inventory of private sewage systems and a recordkeeping system for private sewage systems
- WLC: [0054/1](#), relating to septage disposal fees charged by municipal sewage systems, creating the disposal fee council, and granting rule-making authority
- WLC: [0055/1](#), relating to enforcement of the regulation of the servicing of private sewage systems and septage disposal
- WLC: [0056/1](#), relating to fees for licenses to service private sewage systems and granting rule-making authority
- [Memo No. 2](#), Example Application of the Limit in WLC: 0054/1 on Septage Disposal Fees Charged by Municipal Sewage Systems (11-09-04)
- [Memo No. 3](#), Draft Legislation Prepared for the Special Committee (11-09-04)
- [Memorandum](#) from the Wisconsin Liquid Waste Carriers Association (10-27-04)

#### **October 14, 2004**

- [Memo No. 1](#), Suggestions of Issues for Committee Discussion (10-4-04)
- [Testimony](#), Duane Greuel, Environmental Specialist, Wood County
- [Testimony](#), Scott Carmody, President, Carmody Data Systems
- [Memorandum](#) from Kendra Bonderud, Legislative Fiscal Bureau, Environmental Management Account of the Environmental Fund
- [Material](#) distributed at the request of Public Member Sandra Begalke

#### **September 16, 2004**

- [Staff Brief 04-2](#), Statutes and Administrative Rules Related to Septage Disposal (9-9-04)
- [Testimony](#), Greg Kester, Department of Natural Resources

- [Testimony](#), Roman Kaminski, Department of Commerce
- [Testimony](#), David Wagner, Ehlers and Associates, Brookfield
- [Testimony](#), Bob Biebel, Southeastern Wisconsin Regional Planning Commission
- [Testimony](#), Jim Clark, Dane County Sanitarian
- [Testimony](#), Matthew Stohr, Legislative Assistant, Wisconsin Counties Association
- [Testimony](#), Paul Kent, Municipal Environmental Group--Wastewater Division
- [Testimony](#), Sandra Begalke, Public Member, representing WI Liquid Waste Carriers Association
- [Testimony](#), Ken Neu, Concerned Citizen, Business Owner
- [Testimony](#), Paul Koehler, Koehler Septic and Plumbing, Inc.