



2001 ASSEMBLY BILL 479

August 21, 2001 - Introduced by Representatives DUFF, ZIEGELBAUER, KEDZIE, OTT, HUEBSCH, ALBERS, LIPPERT, AINSWORTH, KRAWCZYK, POWERS, M. LEHMAN, SYKORA, TOWNSEND, GROTHMAN, VRAKAS, WARD, STONE and MUSSER, cosponsored by Senators WELCH, ROESSLER, DARLING and HUELSMAN. Referred to Committee on Environment.

1 **AN ACT to create** 299.85 of the statutes; **relating to:** an environmental
2 improvement program, environmental performance evaluations,
3 environmental management programs, providing immunity from civil
4 penalties for certain violations of environmental requirements, access to
5 certain information, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates the environmental improvement program, administered by the department of natural resources (DNR), under which a participant may be able to avoid forfeitures (civil monetary penalties) for an environmental violation that the participant reports to DNR.

A public or private entity that is subject to environmental laws (regulated entity) may participate in the environmental improvement program if the regulated entity satisfies several requirements. To participate, a regulated entity must conduct an environmental performance evaluation that satisfies requirements specified in the bill or have an environmental management system that satisfies requirements specified in the bill. An environmental performance evaluation is a systematic and objective review of the effects of a facility on the environment, including an evaluation of compliance with one or more environmental laws. An environmental management system is a set of procedures designed to evaluate the effects of a facility on the environment and to achieve improvements in those effects.

To participate in the program, the regulated entity must submit a report to DNR describing the results of the environmental performance evaluation or

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describing findings from the environmental management system. At the time of submitting the report, more than two years must have elapsed since the regulated entity was prosecuted or issued a citation for violating an environmental law. The report must describe all violations of environmental laws revealed by the environmental performance evaluation or environmental management system and the actions taken or proposed to be taken to correct the violations. If the regulated entity proposes to take more than 90-days to correct the violations, the regulated entity must submit a proposed compliance schedule and proposed penalties that the regulated entity would agree to accept (stipulated penalties) if it violates the compliance schedule.

The bill requires DNR to provide public notice and a period for public comment on any compliance schedule and stipulated penalties proposed by a regulated entity. After that period, DNR may approve the compliance schedule as submitted or propose a different compliance schedule. If the parties cannot agree on a compliance schedule, DNR may impose a compliance schedule, which may be appealed by the regulated entity. DNR also reviews proposed stipulated penalties. If the parties cannot agree on stipulated penalties, there are no stipulated penalties.

The bill generally prohibits this state from beginning an action to collect a forfeiture for a violation of an environmental law that is disclosed by a regulated entity that satisfies the requirements for participation in the environmental improvement program for at least 90 days after DNR receives the report of the violation. Similarly, the bill generally prohibits the state from beginning an action to collect a forfeiture while a regulated entity is complying with a compliance schedule. If the regulated entity corrects the violation within the 90 day period or within the time provided in the compliance schedule, the bill generally prohibits the state from bringing an action to collect forfeitures for the violation. If a regulated entity violates a compliance schedule and there are stipulated penalties, the regulated entity must pay the stipulated penalties. The bill authorizes this state to begin an action to collect forfeitures from a regulated entity that satisfies the requirements for participation in the environmental improvement program at any time under several circumstances, including cases in which a violation presents an imminent threat, or may cause serious harm, to public health or the environment or in which DNR discovers the violation before the regulated entity reports the violation.

The bill does not prevent the state from prosecuting a criminal violation by a regulated entity that qualifies for participation in the environmental improvement program, but the bill requires DNR and the department of justice to take into account the efforts of the regulated entity to comply with environmental laws in deciding whether to begin a criminal enforcement action and what penalty should be sought.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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1 **SECTION 1.** 299.85 of the statutes is created to read:

2 **299.85 Environmental improvement program. (1) DEFINITIONS.** In this
3 section:

4 (a) “Environmental management system” means an organized set of
5 procedures implemented by the owner or operator of a facility to evaluate the
6 environmental performance of the facility and to achieve measurable or noticeable
7 improvements in that environmental performance through planning and changes in
8 the facility’s operations.

9 (am) “Environmental performance” means the effects of a facility on air, water,
10 land, natural resources, and human health.

11 (b) “Environmental performance evaluation” means a systematic, documented,
12 and objective review, conducted by or on behalf of the owner or operator of a facility,
13 of the environmental performance of the facility, including an evaluation of
14 compliance with one or more environmental requirements.

15 (c) “Environmental requirement” means a requirement in any of the following:

16 1. Chapters 160 or 280 to 299, a rule promulgated under one of those chapters,
17 or a permit, license, other approval, or order issued by the department under one of
18 those chapters.

19 2. An ordinance or other legally binding requirement of a local governmental
20 unit enacted under authority granted by a state law relating to environmental
21 protection.

22 (d) “Facility” means all buildings, equipment, and structures located on a
23 single parcel or on adjacent parcels that are owned or operated by the same person.

24 (e) “Local governmental unit” means a city, village, town, county, town sanitary
25 district, or metropolitan sewerage district.

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1 (f) "Regulated entity" means a public or private entity that is subject to
2 environmental requirements.

3 (2) REQUIREMENTS FOR PARTICIPATION. A regulated entity qualifies for
4 participation in the environmental improvement program with respect to a facility
5 owned or operated by the regulated entity if all of the following apply:

6 (a) The regulated entity conducts an environmental performance evaluation of
7 the facility or submits findings from the facility's environmental management
8 system.

9 (b) If the regulated entity conducts an environmental performance evaluation,
10 the regulated entity notified the department in writing, no fewer than 30 days before
11 beginning an environmental performance evaluation, of the date on which the
12 environmental performance evaluation would begin, the site or facility or the
13 operations or practices at a site or facility to be reviewed, and the general scope of
14 the environmental performance evaluation.

15 (c) If the regulated entity conducts an environmental performance evaluation,
16 the environmental performance evaluation complies with sub. (4).

17 (d) If the regulated entity submits findings from the facility's environmental
18 management system, the environmental management system complies with sub. (5).

19 (e) The regulated entity submits a report as required under sub. (3).

20 (f) At the time of submitting a report under sub. (3), the department of justice
21 has not, within 2 years, filed a suit to enforce an environmental requirement, and the
22 department or a local governmental unit has not, within 2 years, issued a citation
23 to enforce an environmental requirement, because of a violation of an environmental
24 requirement involving the facility.

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1 **(3) REPORT.** To participate in the environmental improvement program with
2 respect to a facility, a regulated entity that owns or operates the facility shall submit
3 a report to the department within 45 days after the date of the final written report
4 of findings of an environmental performance evaluation of the facility or within 45
5 days after the date of findings from the facility's environmental management system
6 if the findings identify a violation of an environmental requirement. The report shall
7 include all of the following:

8 (a) 1. If the regulated entity conducted an environmental performance
9 evaluation, a description of the environmental performance evaluation, including
10 who conducted the environmental performance evaluation, when it was completed,
11 what activities and operations were examined, and what was revealed by the
12 environmental performance evaluation.

13 2. If the regulated entity submits findings from an environmental management
14 system, a description of the environmental management system, of the activities and
15 operations covered by the environmental management system, and of who made the
16 findings and when the findings were made.

17 (b) A description of all violations of environmental requirements revealed by
18 the environmental performance evaluation or the environmental management
19 system and of the length of time that the violations may have continued.

20 (c) A description of actions taken or proposed to be taken to correct the
21 violations of environmental requirements.

22 (d) A commitment to correct the violations of environmental requirements
23 within 90 days of submitting the report or according to a compliance schedule
24 approved by the department.

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1 (e) If the regulated entity proposes to take more than 90 days to correct the
2 violations of environmental requirements, a proposed compliance schedule that
3 contains the shortest reasonable periods for correcting the violations of
4 environmental requirements, a statement that justifies the proposed compliance
5 schedule, and a description of measures that the regulated entity will take to
6 minimize the effects of the violations of environmental requirements during the
7 period of the compliance schedule.

8 (em) If the regulated entity proposes to take more than 90 days to correct the
9 violations of environmental requirements, the proposed stipulated penalties to be
10 imposed if the regulated entity violates the compliance schedule under par. (e).

11 (f) A description of the measures that the regulated entity has taken or will take
12 to prevent future violations of environmental requirements and a timetable for
13 taking the measures that it has not yet taken.

14 **(3m)** PUBLIC NOTICE; COMMENT PERIOD. (a) The department shall provide at least
15 30 days for public comment on a compliance schedule and stipulated penalties
16 proposed in a report under sub. (3). The department may not approve or issue a
17 compliance schedule under sub. (6) or approve stipulated penalties under sub. (6m)
18 until after the end of the comment period.

19 (b) Before the start of the public comment period under par. (a), the department
20 shall provide public notice of the proposed compliance schedule and stipulated
21 penalties that does all of the following:

22 1. Identifies the regulated entity that submitted the report under sub. (3), the
23 facility at which the violation occurred, and the nature of the violation.

24 2. Describes the proposed compliance schedule and the proposed stipulated
25 penalties.

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1 3. Identifies an employee of the department and an employee of the regulated
2 entity who may be contacted for additional information about the proposed
3 compliance schedule and the proposed stipulated penalties.

4 4. States that comments concerning the proposed compliance schedule and the
5 proposed stipulated penalties may be submitted to the department during the
6 comment period and states the last date of the comment period.

7 **(4) ENVIRONMENTAL PERFORMANCE EVALUATION.** If a regulated entity conducts an
8 environmental performance evaluation under sub. (2) (a), the regulated entity does
9 not qualify for participation in the environmental improvement program unless the
10 final written report of findings of the environmental performance evaluation is
11 labeled “environmental performance evaluation report,” is dated, and, if the
12 environmental performance evaluation identifies violations of environmental
13 requirements, includes a plan for corrective action. A regulated entity may use a
14 form developed by the regulated entity, by a consultant, or by the department for the
15 final written report of findings of the environmental performance evaluation.

16 **(5) ENVIRONMENTAL MANAGEMENT SYSTEM.** If a regulated entity submits findings
17 from the facility’s environmental management system under sub. (2) (a), the
18 regulated entity does not qualify for participation in the environmental
19 improvement program unless the regulated entity’s efforts to prevent, detect, and
20 correct violations of environmental requirements are appropriate to the size of the
21 regulated entity and to the nature of its business and are consistent with any criteria
22 used by the federal environmental protection agency to define due diligence in
23 federal audit policies or regulations.

24 **(6) COMPLIANCE SCHEDULES.** (a) If the department receives a report under sub.
25 (3) that contains a proposed compliance schedule under sub. (3) (e), the department

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1 shall review the proposed compliance schedule. The department may approve the
2 compliance schedule as submitted or propose a different compliance schedule. If the
3 regulated entity does not agree to implement a compliance schedule proposed by the
4 department, the department shall schedule a meeting with the regulated entity to
5 attempt to reach an agreement on a compliance schedule. If the department and the
6 regulated entity do not reach an agreement on a compliance schedule, the
7 department may issue a compliance schedule. A compliance schedule under this
8 subsection is subject to review under ch. 227.

9 (b) The department may not approve or issue a compliance schedule that
10 extends longer than 12 months beyond the date of approval of the compliance
11 schedule. The department shall consider the following factors in determining
12 whether to approve a compliance schedule:

13 1. The environmental and public health consequences of the violations.

14 2. The time needed to implement a change in raw materials or method of
15 production if that change is an available alternative to other methods of correcting
16 the violations.

17 3. The time needed to purchase any equipment or supplies that are needed to
18 correct the violations.

19 **(6m)** STIPULATED PENALTIES. (a) If the department receives proposed stipulated
20 penalties under sub. (3) (em), the department shall review the proposed stipulated
21 penalties. The department may approve the stipulated penalties as submitted or
22 propose different stipulated penalties. If the regulated entity does not agree to
23 stipulated penalties proposed by the department, the department shall schedule a
24 meeting with the regulated entity to attempt to reach an agreement on stipulated

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1 penalties. If no agreement is reached, there are no stipulated penalties for violations
2 of the compliance schedule.

3 (b) Stipulated penalties approved under par. (a) shall specify a period, not
4 longer than 6 months beyond the end of the compliance schedule, during which the
5 stipulated penalties will apply.

6 **(7) DEFERRED CIVIL ENFORCEMENT.** (a) 1. For at least 90 days after the
7 department receives a report that meets the requirements in sub. (3), this state may
8 not begin a civil action to collect forfeitures for violations of environmental
9 requirements that are disclosed in the report by a regulated entity that qualifies
10 under sub. (2) for participation in the environmental improvement program.

11 2. If the regulated entity corrects violations that are disclosed by a regulated
12 entity that qualifies under sub. (2) for participation in the environmental
13 improvement program in a report that meets the requirements of sub. (3) within 90
14 days after the department receives a report that meets the requirements of sub. (3),
15 this state may not bring a civil action to collect forfeitures for the violations.

16 3. This state may not begin a civil action to collect forfeitures for violations
17 covered by a compliance schedule that is approved under sub. (6) during the period
18 of the compliance schedule if the regulated entity is not violating the compliance
19 schedule. If the regulated entity violates the compliance schedule, the department
20 may collect any stipulated penalties during the period in which the stipulated
21 penalties apply. This state may begin civil action to collect forfeitures for violations
22 of environmental requirements that are not corrected by the end of the period in
23 which the stipulated penalties apply. If the regulated entity violates the compliance
24 schedule and there are no stipulated penalties, this state may begin a civil action to
25 collect forfeitures for the violations.

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1 4. If the department approves a compliance schedule under sub. (6) and the
2 regulated entity corrects the violations according to the compliance schedule, this
3 state may not bring a civil action to collect forfeitures for the violations.

4 (b) Notwithstanding par. (a), this state may at any time begin a civil action to
5 collect forfeitures for violations of environmental requirements if any of the following
6 apply:

7 1. The violations present an imminent threat to public health or the
8 environment or may cause serious harm to public health or the environment.

9 2. The department discovers the violations before submission of a report under
10 sub. (3).

11 3. The violations resulted in a substantial economic benefit that gives the
12 regulated entity a clear advantage over its business competitors.

13 4. The violations are identified through monitoring or sampling required by
14 permit, statute, rule, regulation, judicial or administrative order, or consent
15 agreement.

16 **(8) CONSIDERATION OF ACTIONS BY REGULATED ENTITY.** If the department receives
17 a report that complies with sub. (3) from a regulated entity that qualifies under sub.
18 (2) for participation in the environmental improvement program, and the report
19 discloses a potential criminal violation of an environmental requirement, the
20 department and the department of justice shall take into account the diligent actions
21 of, and reasonable care taken by, the regulated entity to comply with environmental
22 requirements in deciding whether to pursue a criminal enforcement action and what
23 penalty should be sought. In determining whether a regulated entity acted with due
24 diligence and reasonable care, the department and the department of justice shall
25 consider whether the regulated entity has demonstrated any of the following:

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1 (a) That the regulated entity took corrective action that was timely when the
2 violation was discovered.

3 (b) That the regulated entity exercised reasonable care in attempting to
4 prevent the violation and to ensure compliance with environmental requirements.

5 (c) That the regulated entity had a documented history of good faith efforts to
6 comply with environmental requirements before implementing its environmental
7 management system or before beginning to conduct environmental performance
8 evaluations.

9 (d) That the regulated entity has promptly made appropriate efforts to achieve
10 compliance with environmental requirements since implementing its
11 environmental management system or since beginning to conduct environmental
12 performance evaluations and that action was taken with due diligence.

13 (e) That the regulated entity exercised reasonable care in identifying violations
14 in a timely manner.

15 (f) That the regulated entity willingly cooperated in any investigation that was
16 conducted by this state or a local governmental unit to determine the extent and
17 cause of the violation.

18 **(9) ACCESS TO RECORDS.** (a) Except as provided in par. (c), the department shall
19 make any record, report, or other information obtained in the administration of this
20 section available to the public.

21 (c) The department shall keep confidential any part of a record, report, or other
22 information obtained in the administration of this section, other than emission data
23 or discharge data, upon a showing satisfactory to the department by any person that
24 the part of a record, report, or other information would, if made public, divulge a

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1 method or process that is entitled to protection as a trade secret, as defined in s.
2 134.90 (1) (c), of that person.

3 (d) If the department refuses to release information on the grounds that it is
4 confidential under par. (c) and a person challenges that refusal, the department shall
5 inform the affected regulated entity of that challenge. Unless the regulated entity
6 authorizes the department to release the information, the regulated entity shall pay
7 the reasonable costs incurred by this state to defend the refusal to release the
8 information.

9 (e) Paragraph (c) does not prevent the disclosure of any information to a
10 representative of the department for the purpose of administering this section or to
11 an officer, employee or authorized representative of the federal government for the
12 purpose of administering federal law. When the department provides information
13 that is confidential under par. (c) to the federal government, the department shall
14 also provide a copy of the application for confidential status.

15 **(10) PENALTY.** (a) Any person who knowingly makes a false statement in a
16 report submitted under sub. (3) shall be fined not less than \$10 nor more than
17 \$10,000 or imprisoned for not more than 6 months or both.

18 (b) For purposes of this subsection, an act is committed knowingly if it is done
19 voluntarily and is not the result of negligence, mistake, accident, or circumstances
20 that are beyond the control of the person.

21 (END)