



2001 SENATE BILL 495

March 11, 2002 - Introduced by Senators BAUMGART and SCHULTZ, cosponsored by Representatives DUFF and ZIEGELBAUER. Referred to Committee on Environmental Resources.

1 **AN ACT to create** 15.347 (3), 299.83 and 299.85 of the statutes; **relating to:**
2 environmental compliance audits, environmental management systems,
3 providing incentives for improving environmental performance, providing
4 immunity from civil penalties for certain violations of environmental
5 requirements, access to certain information, granting rule-making authority,
6 and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates two programs to be administered by the department of natural resources (DNR), the environmental improvement program and the environmental results program.

Environmental improvement program

Under the environmental improvement program, a participant may be able to avoid having to pay a forfeiture (a civil monetary penalty) 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 compliance audit that satisfies requirements specified in the bill. An environmental compliance audit is a systematic review of the effects of a facility on the environment, including an evaluation of compliance with one or more environmental laws.

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To participate in the program, the regulated entity must notify DNR before it begins the environmental compliance audit and must submit a report to DNR describing the results of the audit. The regulated entity must complete the environmental compliance audit and submit the report to DNR within a year of notifying DNR that it will conduct the audit. 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 compliance audit and the actions taken or proposed to be taken to correct the violations. If the regulated entity proposes to take more than 90 days after filing the report 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 otherwise 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.

The bill sunsets the environmental improvement program on July 1, 2007.

SENATE BILL 495***Environmental results program***

The environmental results program provides incentives for public and private entities to improve their environmental performance. There are two ways in which an entity may participate in the environmental improvement program, called tier I and tier II.

To participate in tier I of the environmental results program, an applicant must satisfy several requirements. At the time of application for tier I, more than five years must have elapsed since the applicant was convicted of a criminal violation of an environmental law that resulted in substantial harm to public health or the environment or that presented an imminent threat to public health or the environment; more than three years must have elapsed since a civil judgment was entered against the applicant for a civil violation of an environmental law that resulted in substantial harm to public health or the environment; and more than two years must have elapsed since the applicant was prosecuted or issued a citation for violating an environmental law.

To participate in tier I, an applicant must inform DNR about its past environmental performance and its current environmental performance. The applicant must also inform DNR of its plans for activities that enhance the environment.

Finally, to participate in tier I, an applicant must have implemented or must commit itself to implementing an environmental management system that satisfies certain requirements. An environmental management system is a set of procedures designed to evaluate the effects of a facility or activity on the environment and to achieve improvements in those effects through planning and changes in operations. The applicant must specify, in its environmental management system, objectives for improving its environmental performance or voluntarily restoring, enhancing, or preserving natural resources. The applicant must also commit itself to conducting annual audits of its environmental management system and to submitting reports to DNR on those audits. The reports must include descriptions of any violations of environmental laws revealed by the audits.

A participant in tier I may be able to avoid having to pay a forfeiture (a civil monetary penalty) for an environmental violation that the participant discovers through its environmental management system and reports to DNR under provisions that are similar to those under the environmental improvement program. The bill requires DNR to provide public recognition to an entity that participates in tier I of the program. The bill also requires DNR to assign one of its employees to serve as the contact with DNR for each participant in tier I for all licenses and permits that the participant must obtain from DNR. After a participant in tier I implements an environmental management system that satisfies the statutory requirements, DNR must conduct inspections of the participant's facilities that are covered under the program at the lowest frequency that is permitted under DNR's programs.

To participate in tier II of the environmental results program, an applicant must satisfy several requirements. A participant in tier II enters into a participation

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contract with DNR. The contract specifies the participant's commitments and the incentives that will be provided to the participant.

At the time of application for tier II, more than ten years must have elapsed since the applicant was convicted of a criminal violation of an environmental law that resulted in substantial harm to public health or the environment or that presented an imminent threat to public health or the environment; more than five years must have elapsed since a civil judgment was entered against the applicant for a civil violation of an environmental law that resulted in substantial harm to public health or the environment; and more than two years must have elapsed since the applicant was prosecuted or issued a citation for violating an environmental law.

To participate in tier II, an applicant must have implemented an environmental management system that satisfies certain requirements. The applicant must commit itself to having an environmental auditor approved by DNR conduct annual audits of the environmental management system and to submitting reports on those audits to DNR. The applicant must also commit itself to annually conducting, or having someone else conduct, audits of its compliance with environmental laws and to submitting the results of those audits to DNR.

Finally, to participate in tier II, an applicant must demonstrate that it has a record of superior environmental performance and describe the measures that it proposes to take to maintain and improve its superior environmental performance. "Superior environmental performance" means that an entity's performance results in a measurable or discernible improvement in the quality of the air, water, land, or natural resources or in the protection of the environment beyond that which is achieved under environmental laws.

If DNR determines that an applicant qualifies for participation in tier II, DNR may enter into negotiations with the applicant about a participation contract. DNR may permit interested third parties to participate in the negotiations. If the parties reach an agreement, they may enter into a contract with a term of from three to ten years, subject to renewal for terms of the same length. The bill requires DNR to ensure that the incentives provided under a participation contract are proportional to the environmental benefits that will be provided by the participant. The bill authorizes DNR to promulgate rules specifying incentives that are consistent with federal and state law that may be provided to participants in tier II.

A participant in tier II may be able to avoid having to pay a forfeiture for an environmental violation that the participant discovers thorough an audit of its environmental management system or an audit of its environmental compliance and reports to DNR under provisions that are similar to those under the environmental improvement program.

The bill authorizes DNR to issue environmental results charters to associations of entities to assist the entities to participate in tier I or tier II and to achieve superior environmental performance. In a charter, the entities describe the goals of the association and the responsibilities and activities that the entities will engage in to accomplish their goals.

The bill requires DNR and the department of commerce to provide information about environmental management systems to potential participants in the

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environmental results program. The bill also creates an environmental results council to advise DNR about the environmental results program.

The bill prohibits DNR from approving applications for the environmental results program after July 1, 2007.

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:

1 **SECTION 1.** 15.347 (3) of the statutes is created to read:

2 15.347 (3) ENVIRONMENTAL RESULTS COUNCIL. There is created in the department
3 of natural resources an environmental results council consisting of 15 members
4 appointed for 5-year terms. The governor shall appoint members representing
5 environmental organizations, businesses, and local governmental units and
6 members who do not represent any of these entities.

7 **SECTION 2.** 299.83 of the statutes is created to read:

8 **299.83 Environmental results program. (1) DEFINITIONS.** In this section:

9 (a) "Covered facility or activity" means a facility or activity that is included, or
10 intended to be included, in the program.

11 (b) "Environmental management system" means an organized set of
12 procedures to evaluate environmental performance and to achieve measurable or
13 noticeable improvements in that environmental performance through planning and
14 changes in operations.

15 (bm) "Environmental management system audit" means a review, of an
16 environmental management system, that is conducted in accordance with standards
17 and guidelines issued by the International Organization for Standardization and the
18 results of which are documented and communicated to employees of the participant.

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1 (c) "Environmental performance," unless otherwise qualified, means the
2 effects, whether regulated under chs. 29 to 31, 160, and 280 to 299 or unregulated,
3 of a facility or activity on air, water, land, natural resources, and human health.

4 (d) "Environmental requirement" means a requirement in chs. 29 to 31, 160,
5 or 280 to 299, a rule promulgated under one of those chapters, or a permit, license,
6 other approval, or order issued by the department under one of those chapters.

7 (dg) "Functionally equivalent environmental management system" means an
8 environmental management system that includes all of the following elements and
9 any other elements that the department determines are essential elements of
10 International Organization for Standardization standard 14001:

11 1. Adoption of an environmental policy that includes a commitment to
12 compliance with environmental requirements, pollution prevention, and continual
13 improvement in environmental performance.

14 2. An analysis of the environmental aspects and impacts of the entity's
15 activities.

16 3. Plans and procedures to achieve compliance with environmental
17 requirements and to maintain that compliance.

18 4. Identification of all environmental requirements applicable to the entity.

19 5. A process for setting environmental objectives and developing appropriate
20 action plans to meet the objectives.

21 6. Establishment of a structure for operational control and responsibility for
22 environmental performance.

23 7. An employee training program to develop awareness of and competence to
24 manage environmental issues.

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1 8. A plan for taking actions to prevent environmental problems and for taking
2 emergency response and corrective actions when environmental problems occur.

3 9. A communication plan for collaboration with employees, the public, and the
4 department on the design of projects and activities to achieve continuous
5 improvement in environmental performance.

6 10. Procedures for control of documents and for keeping records related to
7 environmental performance.

8 11. Audits of the environmental management system.

9 12. A plan for continually improving environmental performance and provision
10 for senior management review of the plan.

11 (dr) "Outside environmental auditor" means an auditor who is functionally or
12 administratively independent of the facility or activity being audited, but who may
13 be employed by the entity that owns the facility being audited or that owns the unit
14 that conducts the activity being audited.

15 (e) "Participation contract" means a contract entered into by the department
16 and a participant in tier II of the program, and that may, with the approval of the
17 department, be signed by other interested parties, that specifies the participant's
18 commitment to superior environmental performance and the incentives to be
19 provided to the participant.

20 (f) "Program" means the environmental results program under this section.

21 (g) "Superior environmental performance" means environmental performance
22 that results in measurable or discernible improvement in the quality of the air,
23 water, land, or natural resources or in the protection of the environment beyond that
24 which is achieved under environmental requirements and that may be achieved in
25 ways that include all of the following:

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1 1. Limiting the discharges or emissions of pollutants from, or in some other way
2 minimizing the negative effects on air, water, land, natural resources, or human
3 health of, a facility that is owned or operated by an entity or an activity that is
4 performed by the entity to an extent that is greater than is required by applicable
5 environmental requirements.

6 2. Minimizing the negative effects on air, water, land, natural resources, or
7 human health of the raw materials used by an entity or the products or services
8 produced or provided by the entity to an extent that is greater than is required by
9 applicable environmental requirements.

10 3. Voluntarily engaging in restoring or preserving natural resources.

11 4. Helping other entities to comply with environmental requirements or to
12 accomplish the results described in subd. 1. or 2.

13 5. Organizing uncoordinated entities that produce environmental harm into a
14 program that reduces that harm.

15 6. Reducing waste or the use or production of hazardous substances in the
16 design, production, delivery, use, or reuse of goods or services.

17 7. Conserving energy or nonrenewable natural resources.

18 8. Reducing the use of renewable natural resources through increased
19 efficiency.

20 9. Adopting methods that reduce the depletion of, or long-term damage to,
21 renewable natural resources.

22 (h) "Violation" means a violation of an environmental requirement.

23 **(1m)** ADMINISTRATION OF PROGRAM. In administering the program, the
24 department shall attempt to do all of the following:

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1 (a) Promote, reward, and sustain superior environmental performance by
2 participants.

3 (b) Promote environmental performance that voluntarily exceeds legal
4 requirements related to health, safety, and the environment and results in
5 continuous improvement in this state's environment, economy, and quality of life.

6 (c) Provide clear incentives for participation that will result in real benefits to
7 participants.

8 (d) Promote attention to unregulated environmental problems and provide
9 opportunities for conservation of resources and environmental restoration by
10 entities that are subject to environmental requirements and entities that are not
11 subject to environmental requirements.

12 (e) Make the program compatible with federal programs that create incentives
13 for achieving environmental performance that exceeds legal requirements.

14 (f) Increase levels of trust, communication, and accountability among
15 regulatory agencies, entities that are subject to environmental requirements, and
16 the public.

17 (g) Reduce the time and money spent by regulatory agencies and entities that
18 are subject to environmental requirements on tasks that do not benefit the
19 environment by focusing on more efficient performance of necessary tasks and
20 eliminating unnecessary tasks.

21 (h) Report environmental performance information and data concerning
22 ambient environmental quality to the public in a manner that is accurate, timely,
23 credible, relevant, and useable to interested persons.

24 (i) Provide for the measurement of environmental performance in terms of
25 accomplishing goals and require the reporting of the results.

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1 (j) Implement an evaluation system that provides flexibility and affords some
2 protection for experimentation by participants that use innovative techniques to try
3 to achieve superior environmental performance.

4 (k) Remove disincentives to achieving superior environmental performance.

5 (L) Provide for sustained business success as well as a reduction in
6 environmental pollution.

7 (m) Promote the transfer of technological and practical innovations that
8 improve environmental performance in an efficient, effective, or safe manner.

9 (n) Lower the administrative costs associated with environmental
10 requirements and with achieving superior environmental performance.

11 **(3) ELIGIBILITY FOR TIER I.** (a) *General.* An applicant is eligible for tier I of the
12 program if the applicant satisfies the requirements in pars. (b) to (d). If an applicant
13 consists of a group of entities, each requirement in pars. (b) to (d) applies to each
14 entity in the group. An applicant for tier I of the program shall identify the facilities
15 or activities that it intends to include in the program.

16 (b) *Enforcement record.* To be eligible to participate in tier I of the program, an
17 applicant shall demonstrate all of the following:

18 1. That, within 60 months before the date of application, no judgment of
19 conviction was entered against the applicant, any managing operator of the
20 applicant, or any person with a 25% or more ownership interest in the applicant for
21 a criminal violation involving a covered facility or activity that resulted in
22 substantial harm to public health or the environment or that presented an imminent
23 threat to public health or the environment.

24 2. That, within 36 months before the date of application, no civil judgment was
25 entered against the applicant, any managing operator of the applicant, or any person

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1 with a 25% or more ownership interest in the applicant for a violation involving a
2 covered facility or activity that resulted in substantial harm to public health or the
3 environment.

4 3. That, within 24 months before the date of application, the department of
5 justice has not filed a suit to enforce an environmental requirement, and the
6 department of natural resources has not issued a citation to enforce an
7 environmental requirement, because of a violation involving a covered facility or
8 activity.

9 (c) *Environmental performance.* To be eligible to participate in tier I of the
10 program, an applicant shall submit an application that describes all of the following:

11 1. The applicant's past environmental performance with respect to each
12 covered facility or activity.

13 2. The applicant's current environmental performance with respect to each
14 covered facility or activity.

15 3. The applicant's plans for activities that enhance the environment, such as
16 improving the applicant's environmental performance with respect to each covered
17 facility or activity.

18 (d) *Environmental management system.* To be eligible to participate in tier I
19 of the program, an applicant shall do all of the following:

20 1. Demonstrate that it has implemented, or commit itself to implementing
21 within one year of application, an environmental management system, for each
22 covered facility or activity, that is all of the following:

23 a. In compliance with the standards for environmental management systems
24 issued by the International Organization for Standardization or determined by the
25 department to be a functionally equivalent environmental management system.

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1 b. Determined by the department to be appropriate to the nature, scale, and
2 environmental impacts of the applicant's operations related to each covered facility
3 or activity.

4 2. Include, in the environmental management system under subd. 1., objectives
5 in at least 2 of the following areas:

6 a. Improving the environmental performance of the applicant, with respect to
7 each covered facility or activity, in aspects of environmental performance that are
8 regulated under chs. 29 to 31, 160, and 280 to 299.

9 b. Improving the environmental performance of the applicant, with respect to
10 each covered facility or activity, in aspects of environmental performance that are not
11 regulated under chs. 29 to 31, 160, and 280 to 299.

12 c. Voluntarily restoring, enhancing, or preserving natural resources.

13 3. Explain to the department the rationale for the choices of objectives under
14 subd. 2. and describe any consultations with residents of the areas in which each
15 covered facility or activity is located or performed and with other interested persons
16 concerning those objectives.

17 4. Conduct, or commit itself to conducting, annual environmental management
18 system audits, with every 3rd environmental management system audit performed
19 by an outside environmental auditor approved by the department, and commit itself
20 to submitting an annual report on the environmental management system audit to
21 the department in compliance with sub. (6m) (a).

22 5. Commit itself to submitting to the department an annual report on progress
23 toward meeting the objectives under subd. 2.

24 **(4) PROCESS FOR TIER I.** (a) Upon receipt of an application for participation in
25 tier I of the program, the department shall provide public notice about the

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1 application in the area in which each covered facility or activity is located or
2 performed.

3 (b) After providing public notice under par. (a) about an application, the
4 department may hold a public informational meeting on the application.

5 (c) The department shall approve or deny an application within 60 days after
6 providing notice under par. (a) or, if the department holds a public informational
7 meeting under par. (b), within 60 days after that meeting. The department may limit
8 the number of participants in tier I of the program, or limit the extent of participation
9 by a particular applicant, based on the department's determination that the
10 limitation is in the best interest of the program.

11 (d) A decision by the department under par. (c) to approve or deny an
12 application is not subject to review under ch. 227.

13 **(4m)** INCENTIVES FOR TIER I. (a) The department shall issue a numbered
14 certificate of recognition to each participant in tier I of the program.

15 (b) The department shall identify each participant in tier I of the program on
16 an Internet site maintained by the department.

17 (c) The department shall annually provide notice of the participation of each
18 participant in tier I of the program to newspapers in the area in which each covered
19 facility or activity is located.

20 (d) A participant in tier I of the program may use an environmental results
21 program logo selected by the department on written materials produced by the
22 participant.

23 (e) The department shall assign an employee of the department, who is
24 acceptable to the participant, to serve as the contact with the department for a
25 participant in tier I of the program for communications concerning participation in

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1 the program, for any approvals that the participant is required to obtain, and for
2 technical assistance.

3 (f) After a participant in tier I of the program implements an environmental
4 management system that complies with sub. (3) (d) 1., the department shall conduct
5 any inspections of the participant's covered facilities or activities that are required
6 under chs. 29 to 31, 160, and 280 to 295 at the lowest frequency permitted under
7 those chapters, except that the department may conduct an inspection whenever it
8 has reason to believe that a participant is out of compliance with a requirement in
9 an approval or with an environmental requirement.

10 **(5) ELIGIBILITY FOR TIER II.** (a) *General.* An applicant is eligible for tier II of the
11 program if the applicant satisfies the requirements in pars. (b) to (d). If an applicant
12 consists of a group of entities, each requirement in pars. (b) to (d) applies to each
13 entity in the group. An applicant for tier II of the program shall identify the facilities
14 or activities that it intends to include in the program.

15 (b) *Enforcement record.* To be eligible to participate in tier II of the program,
16 an applicant shall demonstrate all of the following:

17 1. That, within 120 months before the date of application, no judgment of
18 conviction was entered against the applicant, any managing operator of the
19 applicant, or any person with a 25% or more ownership interest in the applicant for
20 a criminal violation involving a covered facility or activity that resulted in
21 substantial harm to public health or the environment or that presented an imminent
22 threat to public health or the environment.

23 2. That, within 60 months before the date of application, no civil judgment was
24 entered against the applicant, any managing operator of the applicant, or any person
25 with a 25% or more ownership interest in the applicant for a violation involving a

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1 covered facility or activity that resulted in substantial harm to public health or the
2 environment.

3 3. That, within 24 months before the date of application, the department of
4 justice has not filed a suit to enforce an environmental requirement, and the
5 department of natural resources has not issued a citation to enforce an
6 environmental requirement, because of a violation involving a covered facility or
7 activity.

8 (c) *Environmental management system.* To be eligible to participate in tier II
9 of the program, an applicant shall do all of the following:

10 1. Demonstrate that it has implemented an environmental management
11 system, for each covered facility or activity, that is all of the following:

12 a. In compliance with the standards for environmental management systems
13 issued by the International Organization for Standardization or determined by the
14 department to be a functionally equivalent environmental management system.

15 b. Determined by the department to be appropriate to the nature, scale, and
16 environmental impacts of the applicant's operations related to to each covered
17 facility or activity.

18 2. Commit itself to having an outside environmental auditor approved by the
19 department conduct an annual environmental management system audit and to
20 submitting an annual report on the environmental management system audit to the
21 department in compliance with sub. (6m) (a).

22 3. Commit itself to annually conducting, or having another person conduct, an
23 audit of compliance with environmental requirements that are applicable to the
24 covered facilities and to reporting the results of the audit to the department in
25 compliance with sub. (6m) (a).

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1 (d) *Superior environmental performance.* To be eligible to participate in tier II
2 of the program, an applicant shall demonstrate a record of superior environmental
3 performance and shall describe the measures that it proposes to take to maintain and
4 improve its superior environmental performance.

5 **(6) PROCESS FOR TIER II.** (a) *Letter of intent.* To apply for participation in tier
6 II of the program, an entity shall submit a letter of intent to the department. In
7 addition to providing information necessary to show that the applicant satisfies the
8 requirements in sub. (5), the applicant shall do all of the following in the letter of
9 intent:

10 1. Describe the involvement of interested persons in developing the proposal
11 for maintaining and improving the applicant's superior environmental performance,
12 identify the interested persons, and describe the interests that those person have in
13 the applicant's participation in the program.

14 2. Outline the provisions that it proposes to include in the participation
15 contract.

16 3. Explain how the measures that the applicant proposes to take to maintain
17 and improve its superior environmental performance are proportional to the
18 incentives that it proposes to receive under the participation contract.

19 (b) *Limitation.* The department may limit the number of letters of intent that
20 it processes based on the staff resources available.

21 (c) *Notice.* If the department decides to process a letter of intent, within 90 days
22 of receiving the letter of intent the department shall provide public notice about the
23 letter of intent in the area in which each covered facility or activity is located or
24 performed.

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1 (d) *Public meeting.* After providing public notice under par. (c) about a letter
2 of intent, the department may hold a public informational meeting on the letter of
3 intent.

4 (e) *Request to participate.* Within 30 days after the public notice under par. (c),
5 interested persons may request the department to grant them authorization to
6 participate in the negotiations under par. (f). A person who makes a request under
7 this paragraph shall describe the person's interests in the issues raised by the letter
8 of intent. The department shall determine whether a person who makes a request
9 under this paragraph may participate in the negotiations under par. (f) based on
10 whether the person has demonstrated sufficient interest in the issues raised by the
11 letter of intent to warrant that participation.

12 (f) *Negotiations.* If the department determines that an applicant satisfies the
13 requirements in sub. (5), the department may begin negotiations concerning a
14 participation contract with the applicant and with any persons to whom the
15 department granted permission under par. (e). The department may begin the
16 negotiations no sooner than 30 days after providing public notice under par. (c) about
17 the applicant's letter of intent.

18 (g) *Termination of negotiations.* The department may terminate negotiations
19 with an applicant concerning a participation contract and the decision to terminate
20 negotiations is not subject to review under ch. 227. The department shall conclude
21 negotiations within 12 months of beginning negotiations unless the applicant and
22 the department agree to an extension.

23 (h) *Notice of proposed contract.* If negotiations under par. (f) result in a
24 proposed participation contract, the department shall provide public notice about

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1 the proposed participation contract in the area in which each covered facility or
2 activity is located or performed.

3 (i) *Meeting on proposed contract.* After providing public notice under par. (h)
4 about a proposed participation contract, the department may hold a public
5 informational meeting on the proposed participation contract.

6 (j) *Participation contract.* Within 30 days after providing notice under par. (h)
7 or, if the department holds a public informational meeting under par. (i), within 30
8 days after that meeting, the department shall decide whether to enter into a
9 participation contract with an applicant, unless the applicant and the department
10 agree to an extension beyond 30 days. In a participation contract, the department
11 shall require that the participant maintain the environmental management system
12 described in sub. (5) (c) 1. and abide by the commitments in sub. (5) (c) 2. and 3. The
13 department may not reduce the frequency of required inspections or monitoring as
14 an incentive in a participation contract if the audit under sub. (5) (c) 3. is conducted
15 by a person other than an outside environmental auditor. The department shall
16 ensure that the incentives provided under a participation contract are proportional
17 to the environmental benefits that will be provided by the participant under the
18 participation contract. The department shall include in a participation contract
19 remedies that apply if a party fails to comply with the participation contract. The
20 term of a participation contract may not be less than 3 years or more than 10 years,
21 with opportunity for renewal for additional terms of the same length as the original
22 term upon agreement of the parties. The term of a participation contract may not
23 exceed 5 years if the participation contract incorporates, modifies, or otherwise
24 affects the terms or conditions of a permit issued under s. 283.31, 283.33, or 285.62,
25 unless federal and state law authorize a longer term for the permit.

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1 (k) *Review of decision.* Notwithstanding s. 227.42, there is no right to an
2 administrative hearing on the department's decision to enter into a participation
3 contract under par. (j), but the decision is subject to judicial review.

4 **(6m) COMPLIANCE REPORTS AND DEFERRED CIVIL ENFORCEMENT.** (a) *Compliance*
5 *reports.* If an audit under sub. (3) (d) 4. or (5) (c) 2. or 3. reveals any violations of
6 environmental requirements, the participant shall include all of the following in the
7 report of the results of the audit:

8 1. A description of all of the violations.

9 2. A description of the actions taken or proposed to be taken to correct the
10 violations identified in subd. 1.

11 3. A commitment to correct the violations identified in subd. 1. within 90 days
12 of submitting the report or according to a compliance schedule approved by the
13 department.

14 4. If the participant proposes to take more than 90 days after submitting the
15 report to correct the violations identified in subd. 1., a proposed compliance schedule
16 that contains the shortest reasonable periods for correcting the violations, a
17 statement that justifies the proposed compliance schedule, a description of measures
18 that the participant will take to minimize the effects of the violations during the
19 period of the compliance schedule, and proposed stipulated penalties to be imposed
20 if the participant violates the proposed compliance schedule.

21 5. A description of the measures that the participant has taken or will take to
22 prevent future violations.

23 (b) *Compliance schedules.* 1. If the department receives a report under par. (a)
24 that contains a proposed compliance schedule under par. (a) 4., the department shall
25 review the proposed compliance schedule. The department may approve the

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1 compliance schedule as submitted or propose a different compliance schedule. If the
2 participant does not agree to implement a compliance schedule proposed by the
3 department, the department shall schedule a meeting with the participant to
4 attempt to reach an agreement on a compliance schedule. If the department and the
5 participant do not reach an agreement on a compliance schedule, the department
6 shall terminate the participation of the participant in the program. If the parties
7 agree to a compliance schedule, the participant shall incorporate the compliance
8 schedule into its environmental management system.

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

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

14 b. 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 c. The time needed to purchase any equipment or supplies that are needed to
18 correct the violations.

19 (c) *Stipulated penalties.* 1. If the department receives proposed stipulated
20 penalties under par. (a) 4., 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 participant does not agree to stipulated
23 penalties proposed by the department, the department shall schedule a meeting with
24 the participant to attempt to reach an agreement on stipulated penalties. If no

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

3 (d) *Deferred civil enforcement.* 1. a. If a participant in the program corrects
4 violations that are disclosed in a report that meets the requirements of par. (a) within
5 90 days after the department receives the report, this state may not bring a civil
6 action to collect forfeitures for the violations.

7 b. This state may not begin a civil action to collect forfeitures for violations
8 covered by a compliance schedule that is approved under par. (b) during the period
9 of the compliance schedule if the participant is not violating the compliance schedule.
10 If the participant violates the compliance schedule and there are stipulated
11 penalties, the department may collect any stipulated penalties or may terminate
12 participation in the program. If the participant violates the compliance schedule and
13 there are no stipulated penalties, the department may terminate participation in the
14 program. After the department terminates participation in the program, this state
15 may begin a civil action to collect forfeitures for the violations.

16 c. If the department approves a compliance schedule under par. (b) and the
17 participant corrects the violations according to the compliance schedule, this state
18 may not bring a civil action to collect forfeitures for the violations.

19 2. Notwithstanding subd. 1., this state may at any time begin a civil action to
20 collect forfeitures for violations if any of the following apply:

21 a. The violations present an imminent threat to public health or the
22 environment or may cause serious harm to public health or the environment.

23 b. The department discovers the violations before submission of a report that
24 meets the requirement of par. (a).

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1 **(7) SUSPENSION OR TERMINATION OF PARTICIPATION.** (a) The department may
2 suspend or terminate the participation of a participant in the program at the request
3 of the participant.

4 (b) The department may terminate the participation of a participant in the
5 program if a judgment is entered against the participant, any managing operator of
6 the participant, or any person with a 25% or more ownership interest in the
7 participant for a criminal or civil violation involving a covered facility or activity that
8 resulted in substantial harm to public health or the environment or that presented
9 an imminent threat to public health or the environment.

10 (c) The department may suspend the participation of a participant in the
11 program if the department determines that the participant, any managing operator
12 of the participant, or any person with a 25% or more ownership interest in the
13 participant committed a criminal or civil violation involving a covered facility or
14 activity that resulted in substantial harm to public health or the environment or that
15 presented an imminent threat to public health or the environment and the
16 department refers the matter to the department of justice for prosecution.

17 (d) The department may suspend or terminate the participation of a
18 participant in tier I of the program if the participant does not implement, or fails to
19 maintain, the environmental management system described in sub. (3) (d) 1., fails
20 to conduct annual audits described in sub. (3) (d) 4., or fails to submit annual reports
21 described in sub. (3) (d) 5.

22 (e) The department may, after an opportunity for a hearing, terminate a
23 participation contract if the department determines that the participant is in
24 substantial noncompliance with the participation contract.

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1 (f) A person who is not a party to a participation contract, but who believes that
2 a participant is in substantial noncompliance with a participation contract, may ask
3 the department to terminate a participation contract under par. (e).

4 **(7e) CHARTERS.** (a) The department may issue an environmental results
5 charter to an association of entities to assist the entities to participate in tier I or tier
6 II of the program and to achieve superior environmental performance. An
7 association to which a charter is issued may consist of private entities, public
8 entities, or a combination of private and public entities. An association to which a
9 charter is issued may be organized on any basis that helps to achieve superior
10 environmental performance.

11 (b) In a charter the entities in the association shall describe the goals of the
12 association, the responsibilities of the entities, and the activities that the entities will
13 engage in to accomplish their goals. The term of a charter may not be less than 3
14 years or more than 10 years, with the opportunity for renewal for additional terms
15 of the same length upon the agreement of the entities and the department.

16 (c) The department may not issue a charter unless the department determines
17 that the entities in the association have the resources to carry out the charter. Before
18 issuing a proposed charter, the department shall provide public notice of the
19 proposed charter in the areas in which the activities under the charter will be
20 engaged in. After providing public notice and before issuing a proposed charter, the
21 department shall hold a public informational hearing on the proposed charter. A
22 decision by the department to issue a charter is not subject to review under ch. 227.

23 (d) An association to which a charter has been issued shall report annually to
24 the department on the activities that have been engaged in under the charter.

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1 (e) The department may, after an opportunity for a hearing, terminate a charter
2 if the department determines that the entities in the chartered association are in
3 substantial noncompliance with the charter. Any person who has evidence that the
4 entities in a chartered association are not in compliance with a charter may ask the
5 department to terminate the charter.

6 **(7m) ENVIRONMENTAL AUDITORS.** The department may not approve an outside
7 environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. unless the outside
8 environmental auditor is certified by the Registrar Accreditation Board of the
9 American National Standards Institute or meets criteria concerning education,
10 training, experience, and performance that are equal to the criteria in International
11 Organization for Standardization standard 14012.

12 **(7s) ACCESS TO RECORDS.** (a) Except as provided in par. (c), the department shall
13 make any record, report, or other information obtained in the administration of this
14 section available to the public.

15 (c) The department shall keep confidential any part of a record, report, or other
16 information obtained in the administration of this section, other than emission data
17 or discharge data, upon receiving an application for confidential status by any person
18 containing a showing satisfactory to the department that the part of a record, report,
19 or other information would, if made public, divulge a method or process that is
20 entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.

21 (d) If the department refuses to release information on the grounds that it is
22 confidential under par. (c) and a person challenges that refusal, the department shall
23 inform the affected participant of that challenge. Unless the participant authorizes
24 the department to release the information, the participant shall pay the reasonable
25 costs incurred by this state to defend the refusal to release the information.

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1 (e) Paragraph (c) does not prevent the disclosure of any information to a
2 representative of the department for the purpose of administering this section or to
3 an officer, employee, or authorized representative of the federal government for the
4 purpose of administering federal law. When the department provides information
5 that is confidential under par. (c) to the federal government, the department shall
6 also provide a copy of the application for confidential status.

7 **(8) POWERS AND DUTIES OF THE DEPARTMENT.** (a) To facilitate the process under
8 sub. (6), the department shall develop model terms that may be used in participation
9 contracts.

10 (b) After consultations with interested persons, the department shall annually
11 establish a list identifying aspects of superior environmental performance that the
12 department will use to identify which letters of intent it will process under sub. (6)
13 in the following year and the order in which it will process the letters of intent.

14 (c) The department may promulgate rules for the administration of the
15 program. In the rules, the department may specify incentives, that are consistent
16 with federal laws and other state laws, that the department may provide to
17 participants in tier II of the program.

18 (d) The department shall encourage small businesses, agricultural
19 organizations, entities that are not subject to environmental requirements, local
20 governments, and other entities to form groups to work cooperatively on projects to
21 achieve superior environmental performance.

22 (dm) The department shall select a logo for the program.

23 (e) The department shall consult with the environmental results council about
24 the operation of the program, priorities for the program, and evaluation of the
25 program.

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1 (f) The department and the department of commerce shall jointly provide
2 information about participation contracts and environmental management systems
3 to potential participants in the program and to other interested persons. The
4 department shall consult with the department of commerce about the
5 administration of the program.

6 (g) The department shall collect, process, evaluate, and disseminate data and
7 information about environmentally beneficial and innovative practices submitted by
8 participants in the program. The department may conduct or direct studies,
9 experiments, or research related to the program in cooperation with participants and
10 other interested persons. The department may enter into agreements with the
11 Robert M. La Follette institute of public affairs at the University of
12 Wisconsin-Madison to assist in the promotion, administration, or evaluation of the
13 program.

14 (h) The department shall submit a progress report on the program to the
15 legislature, in the manner provided in s. 13.172 (2), no later than the first day of the
16 36th month beginning after the effective date of this paragraph [revisor inserts
17 date], and every 2 years after it submits the first report.

18 **(9) ENVIRONMENTAL RESULTS COUNCIL.** The environmental results council shall
19 advise the department about all of the following:

20 (a) The implementation of the program, including the setting of goals for the
21 program.

22 (b) Evaluating the costs of applying for the program and of entering into a
23 participation contract or a charter and the administrative costs of participating in
24 the program.

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1 (c) Assessing whether incentives provided under a participation contract are
2 proportional to the environmental benefits committed to under a participation
3 contract.

4 (d) Procedures for evaluating the program.

5 (e) Changes that should be made in the program.

6 **(10) PENALTY.** Any person who intentionally makes a false statement in
7 material submitted under this section shall be fined not less than \$10 nor more than
8 \$10,000 or imprisoned for not more than 6 months or both.

9 **(11) SUNSET.** The department may not process or approve any application for
10 participation in the program that it receives after July 1, 2007.

11 **SECTION 3.** 299.85 of the statutes is created to read:

12 **299.85 Environmental improvement program. (1) DEFINITIONS.** In this
13 section:

14 (a) "Environmental compliance audit" means a systematic, documented, and
15 objective review, conducted by or on behalf of the owner or operator of a facility, of
16 the environmental performance of the facility, including an evaluation of compliance
17 with one or more environmental requirements.

18 (am) "Environmental performance" means the effects of a facility on air, water,
19 land, natural resources, and human health.

20 (c) "Environmental requirement" means a requirement in any of the following:

21 1. Chapters 29 to 31, 160 or 280 to 299, a rule promulgated under one of those
22 chapters, or a permit, license, other approval, or order issued by the department
23 under one of those chapters.

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

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

6 (e) "Local governmental unit" means a city, village, town, county, town sanitary
7 district, or metropolitan sewerage district.

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

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

13 (a) The regulated entity conducts an environmental compliance audit of the
14 facility.

15 (b) The regulated entity notified the department in writing, no fewer than 30
16 days before beginning the environmental compliance audit, of the date on which the
17 environmental compliance audit would begin, the site or facility or the operations or
18 practices at a site or facility to be reviewed, and the general scope of the
19 environmental compliance audit.

20 (c) The environmental compliance audit complies with sub. (4).

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

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

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1 to enforce an environmental requirement, because of a violation of an environmental
2 requirement involving the facility.

3 (3) AUDIT REPORT. To participate in the environmental improvement program
4 with respect to a facility, the regulated entity that owns or operates the facility shall
5 submit a report to the department within 45 days after the date of the final written
6 report of findings of the environmental compliance audit of the facility. The
7 regulated entity shall complete the environmental compliance audit, including the
8 final written report of findings, within 365 days after providing the notice under sub.
9 (2) (b). The report submitted to the department shall include all of the following:

10 (a) A description of the environmental compliance audit, including who
11 conducted the environmental compliance audit, when it was completed, what
12 activities and operations were examined, what was revealed by the environmental
13 compliance audit, and any other information needed by the department to make the
14 report under sub. (9m).

15 (b) A description of all violations of environmental requirements revealed by
16 the environmental compliance audit and of the length of time that the violations may
17 have continued.

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

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

23 (e) If the regulated entity proposes to take more than 90 days to correct the
24 violations of environmental requirements, a proposed compliance schedule that
25 contains the shortest reasonable periods for correcting the violations of

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1 environmental requirements, a statement that justifies the proposed compliance
2 schedule, and a description of measures that the regulated entity will take to
3 minimize the effects of the violations of environmental requirements during the
4 period of the compliance schedule.

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

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

11 **(3m)** PUBLIC NOTICE; COMMENT PERIOD. (a) The department shall provide at least
12 30 days for public comment on a compliance schedule and stipulated penalties
13 proposed in a report under sub. (3). The department may not approve or issue a
14 compliance schedule under sub. (6) or approve stipulated penalties under sub. (6m)
15 until after the end of the comment period.

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

19 1. Identifies the regulated entity that submitted the report under sub. (3) and
20 the facility at which the violation occurred, describes the environmental
21 requirement that was violated, and indicates whether the violation related to
22 reporting or another administrative requirement and whether the violation related
23 to air, water, solid waste, hazardous waste, or another, specified, aspect of
24 environmental regulation.

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1 2. Describes the proposed compliance schedule and the proposed stipulated
2 penalties.

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

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

9 **(4) ENVIRONMENTAL COMPLIANCE AUDIT.** A regulated entity does not qualify for
10 participation in the environmental improvement program unless the final written
11 report of findings of the environmental compliance audit is labeled “environmental
12 compliance audit report,” is dated, and, if the environmental compliance audit
13 identifies violations of environmental requirements, includes a plan for corrective
14 action. A regulated entity may use a form developed by the regulated entity, by a
15 consultant, or by the department for the final written report of findings of the
16 environmental compliance audit.

17 **(6) COMPLIANCE SCHEDULES.** (a) If the department receives a report under sub.
18 (3) that contains a proposed compliance schedule under sub. (3) (e), the department
19 shall review the proposed compliance schedule. The department may approve the
20 compliance schedule as submitted or propose a different compliance schedule. If the
21 regulated entity does not agree to implement a compliance schedule proposed by the
22 department, the department shall schedule a meeting with the regulated entity to
23 attempt to reach an agreement on a compliance schedule. If the department and the
24 regulated entity do not reach an agreement on a compliance schedule, the

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1 department may issue a compliance schedule. A compliance schedule under this
2 subsection is subject to review under ch. 227.

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

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

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

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

13 **(6m)** STIPULATED PENALTIES. (a) If the department receives proposed stipulated
14 penalties under sub. (3) (em), the department shall review the proposed stipulated
15 penalties. The department may approve the stipulated penalties as submitted or
16 propose different stipulated penalties. If the regulated entity does not agree to
17 stipulated penalties proposed by the department, the department shall schedule a
18 meeting with the regulated entity to attempt to reach an agreement on stipulated
19 penalties. If no agreement is reached, there are no stipulated penalties for violations
20 of the compliance schedule.

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

24 **(7)** DEFERRED CIVIL ENFORCEMENT. (a) 1. For at least 90 days after the
25 department receives a report that meets the requirements in sub. (3), this state may

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1 not begin a civil action to collect forfeitures for violations of environmental
2 requirements that are disclosed in the report by a regulated entity that qualifies
3 under sub. (2) for participation in the environmental improvement program.

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

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

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

22 (b) Notwithstanding par. (a), this state may at any time begin a civil action to
23 collect a forfeiture for a violation of an environmental requirement if any of the
24 following apply:

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1 1. The violation presents an imminent threat to public health or the
2 environment or may cause serious harm to public health or the environment.

3 2. The department discovers the violation before submission of a report under
4 sub. (3).

5 3. The violation resulted in a substantial economic benefit that gives the
6 regulated entity a clear advantage over its business competitors.

7 4. The violation is identified through monitoring or sampling required by
8 permit, statute, rule, regulation, judicial or administrative order, or consent
9 agreement.

10 5. The violation is a violation of the same environmental requirement at the
11 same facility and committed in the same manner as a violation previously reported
12 by the regulated entity under sub. (3), unless the violation is caused by a change in
13 business processes or activities.

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

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

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

3 (c) That the regulated entity had a documented history of good faith efforts to
4 comply with environmental requirements before beginning to conduct
5 environmental compliance audits.

6 (d) That the regulated entity has promptly made appropriate efforts to achieve
7 compliance with environmental requirements since beginning to conduct
8 environmental compliance audits and that action was taken with due diligence.

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

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

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

17 (c) The department shall keep confidential any part of a record, report, or other
18 information obtained in the administration of this section, other than emission data
19 or discharge data, upon receiving an application for confidential status by any person
20 containing a showing satisfactory to the department that the part of a record, report,
21 or other information would, if made public, divulge a method or process that is
22 entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.

23 (d) If the department refuses to release information on the grounds that it is
24 confidential under par. (c) and a person challenges that refusal, the department shall
25 inform the affected regulated entity of that challenge. Unless the regulated entity

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1 authorizes the department to release the information, the regulated entity shall pay
2 the reasonable costs incurred by this state to defend the refusal to release the
3 information.

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

10 **(9m)** ANNUAL REPORT. The department shall submit an annual report under s.
11 13.172 (3) concerning the environmental improvement program to the standing
12 committees of the legislature with jurisdiction over environmental matters. The
13 department shall submit the first annual report no later than the first day of the 24th
14 month beginning after the effective date of this subsection [revisor inserts date].
15 The department shall include all of the following in the annual report:

16 (a) The number of reports received under sub. (3), including the number of
17 reports by county of the facility involved and by whether the regulated entity is
18 governmental or nongovernmental.

19 (b) The number of violations reported by type, including the number of
20 violations related to air, water, solid waste, hazardous waste, and to other specified
21 aspects of environmental regulation and the number of violations involving each of
22 the following:

- 23 1. Failure to have a required permit or other approval.
- 24 2. Failure to have a required plan.
- 25 3. Violation of a condition of a permit or other approval.

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1 4. Release of a substance to the environment.

2 5. Failure to report.

3 (c) The average time to correct the reported violations and the number of
4 violations not yet corrected, by category under par. (b).

5 (d) The number of regulated entities requiring longer than 90 days to take
6 corrective action and a description of the stipulated penalties associated with the
7 compliance schedules for those corrective actions.

8 (e) Any recommendations for changes in the program based on discussions with
9 interested persons, including legislators and members of the public.

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

13 **(11) SUNSET.** Subsections (7) and (8) do not apply to a regulated entity that
14 submits a report under sub. (3) after July 1, 2007.

15 **SECTION 4. Nonstatutory provisions.**

16 (1) **INITIAL TERMS OF COUNCIL.** Notwithstanding the length of terms specified for
17 the environmental results council under section 15.347 (3) of the statutes, as created
18 by this act, 3 of the initial members shall be appointed for terms that expire on July
19 1, 2003, 3 of the initial members shall be appointed for terms that expire on July 1,
20 2004, 3 of the initial members shall be appointed for terms that expire on July 1,
21 2005, 3 of the initial members shall be appointed for terms that expire on July 1,
22 2006, and 3 of the initial members shall be appointed for terms that expire on July
23 1, 2007.

24

(END)