

SENATE BILL 55

1 281.68 (3m) (d) To be a premier lake association, an association shall do all of
2 the following:

3 1. Meet the qualifications for a qualified lake association under par. (a).

4 2. Demonstrate at the time of application for a grant under this section or s.
5 281.69 that it has a paid membership that is at least equal to 50% of the allowable
6 combined membership under par. (a) 4. and 5.

7 3. Hold at least 2 regularly scheduled meetings of its members each year.

8 4. Distribute at least one annual newsletter published by the association.

9 5. Promote annual monitoring of private sewage systems and encourage real
10 estate owners who are allowed to be members of the association under par. (a) 5. to
11 upgrade failing systems.

12 6. Promote the use of phosphate-free or other environmentally safe soaps and
13 detergent products by the residents and real estate owners who are allowed to be
14 members of the association under par. (a) 4. and 5.

15 7. Promote water safety and the protection of the natural fish population in and
16 wildlife population near each inland lake for which the association was incorporated.

17 8. Cooperate with any local, state, or federal programs that provide support for
18 the protection or improvement of any of the inland lakes for which the association
19 was incorporated.

20 9. Actively raise funds for all of the following:

21 a. Signs at public access sites on each inland lake for which the association was
22 incorporated that provide information on aquatic nuisance species.

23 b. Washing stations to wash boats, boat trailers, and boating equipment.

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1 c. In-kind contributions to assist any efforts of the department to control
2 aquatic nuisance species in each inland lake for which the association was
3 incorporated.

4 d. Manuals for real estate owners and residents who are members of the
5 association that address the issue of owner and resident responsibility for managing
6 the resources of each inland lake for which the association was incorporated.

7 e. Surveys, on a regular basis, that monitor the water quality in each inland
8 lake for which the association was incorporated.

9 ***-0353/3.35* SECTION 3199.** 281.69 (1b) of the statutes is renumbered 281.69
10 (1b) (intro.) and amended to read:

11 281.69 (1b) ~~DEFINITION~~ DEFINITIONS. (intro.) In this section, “lake”:

12 (ag) “Lake” includes a flowage.

13 ***-0353/3.36* SECTION 3200.** 281.69 (1b) (b) of the statutes is created to read:
14 281.69 (1b) (b) “Premier lake association” is an association that meets the
15 qualifications under s. 281.68 (3m) (d).

16 ***-0353/3.37* SECTION 3201.** 281.69 (1b) (c) of the statutes is created to read:
17 281.69 (1b) (c) “Qualified lake association” is an association that meets the
18 qualifications under s. 281.68 (3m) (a).

19 ***-0353/3.38* SECTION 3202.** 281.69 (1b) (d) of the statutes is created to read:
20 281.69 (1b) (d) “Wetland” has the meaning given in s. 23.32 (1).

21 ***-0353/3.39* SECTION 3203.** 281.69 (3) (a) of the statutes is amended to read:
22 281.69 (3) (a) A designation of eligible recipients, which shall include nonprofit
23 conservation organizations, as defined in s. 23.0955 (1), counties, cities, towns,
24 villages, qualified lake associations, ~~as defined in s. 281.68 (1) (b),~~ premier lake
25 associations, town sanitary districts, public inland lake protection and

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1 rehabilitation districts, and other local governmental units, as defined in s. 66.0131
2 (1) (a), that are established for the purpose of lake management.

3 ***-0353/3.40* SECTION 3204.** 281.69 (3) (am) of the statutes is created to read:
4 281.69 (3) (am) That the department in providing grants for lake management
5 projects give higher priority to premier lake associations over the other eligible
6 recipients.

7 ***-0353/3.41* SECTION 3205.** 281.69 (3) (b) 2. of the statutes is amended to read:
8 281.69 (3) (b) 2. The restoration of a wetland, ~~as defined in s. 23.32 (1)~~, if the
9 restoration will protect or improve a lake's water quality or its natural ecosystem.

10 ***-0353/3.42* SECTION 3206.** 281.69 (3) (b) 2m. of the statutes is created to read:
11 281.69 (3) (b) 2m. The restoration of habitat in a littoral area of a lake or along
12 its shoreline if the restoration will protect or improve the lake's water quality or its
13 natural ecosystem.

14 ***-0353/3.43* SECTION 3207.** 281.69 (4m) of the statutes is created to read:
15 281.69 (4m) SIGNS FOR PREMIER LAKES. The department may expend up to
16 \$5,000 in each fiscal year from the appropriation under s. 20.370 (6) (ar) for the
17 design and manufacture of signs, to be provided to premier lake associations, that
18 identify the lakes for which the premier lake associations were incorporated.

19 ***-1335/7.63* SECTION 3208.** 281.75 (4) (b) 3. of the statutes is amended to read:
20 281.75 (4) (b) 3. An authority created under ch. 231, 233 ~~or~~, 234, or 237.

21 ***-0372/1.1* SECTION 3209.** 283.15 (5) (b) of the statutes is amended to read:
22 283.15 (5) (b) A variance applies for the term established by the secretary, but
23 not to exceed ~~3~~ 5 years. The term of the initial variance and any renewals thereof
24 may not exceed the time that the secretary determines is necessary to achieve the
25 water quality based effluent limitation. Initial and interim effluent limitations

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1 established under par. (c) 1. apply, as appropriate, for the term of the underlying
2 permit as issued, reissued or modified to implement the decision under sub. (4) (b)
3 or as extended by operation of s. 227.51 (2). Notwithstanding sub. (4) (d), s. 227.51
4 (2) shall apply for the purposes of continuing the provisions of a permit pending the
5 issuance or reissuance of a permit. Upon the issuance or reissuance of the new
6 permit, sub. (2) (a) 2. and s. 283.63 (1) (am) apply.

7 ***-0372/1.2* SECTION 3210.** 283.15 (6) of the statutes is amended to read:

8 283.15 (6) RENEWAL. A variance may be renewed using the procedures in and
9 subject to subs. (2) to (5), except that a permittee shall submit the application for
10 renewal of its variance with the application for reissuance of its permit. A variance
11 may not be renewed if the permittee did not submit the reports required under sub.
12 (5) (c) 2. or substantially comply with all other conditions of the variance.

13 ***-0367/3.2* SECTION 3211.** 283.33 (1) (b) of the statutes is amended to read:

14 283.33 (1) (b) A discharge of storm water from a municipal separate storm
15 sewer system serving an incorporated area with a population of 100,000 or more, as
16 determined by the 1990 federal census.

17 ***-0367/3.3* SECTION 3212.** 283.33 (1) (c) of the statutes is created to read:

18 283.33 (1) (c) A discharge of storm water from a municipal separate storm
19 sewer system serving an area located in an urbanized area, as determined by the U.S.
20 bureau of the census based on the latest decennial federal census.

21 ***-0367/3.4* SECTION 3213.** 283.33 (1) (cg) of the statutes is created to read:

22 283.33 (1) (cg) A discharge of storm water from a municipal separate storm
23 sewer system serving an area with a population of 10,000 or more and a population
24 density of 1,000 or more per square mile, if the system is designated by the
25 department to be regulated under this section based on an evaluation of whether the

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1 storm water discharge results in, or has the potential to result in, water quality
2 standards being exceeded, including impairment of designated uses, or in other
3 significant water quality impacts, including habitat and biological impacts.

4 ***-0367/3.5* SECTION 3214.** 283.33 (1) (cr) of the statutes is created to read:

5 283.33 (1) (cr) A discharge of storm water from a municipal separate storm
6 sewer system that is designated by the department to be regulated under this section
7 because the system contributes substantially to the pollutant loadings of a physically
8 interconnected municipal separate storm sewer system that is regulated under this
9 section.

10 ***-0367/3.6* SECTION 3215.** 283.33 (1) (d) of the statutes is amended to read:

11 283.33 (1) (d) A discharge of storm water from a facility or activity, other than
12 a facility or activity under ~~par. pars. (a) or (b)~~ to (cr), if the department determines
13 that the discharge either contributes to a violation of a water quality standard or is
14 a significant contributor of pollutants to the waters of the state.

15 ***-0367/3.7* SECTION 3216.** 283.33 (4) (a) (intro.) of the statutes is amended to
16 read:

17 283.33 (4) (a) (intro.) In addition to obtaining a permit under this section, the
18 owner or operator of an industrial activity described in sub. (1) (a) that discharges
19 storm water through a municipal separate storm sewer system described in sub. (1)
20 (b) to (cr) shall submit the following information to the owner or operator of the
21 municipal separate storm sewer system:

22 ***-0367/3.8* SECTION 3217.** 283.33 (8) of the statutes is amended to read:

23 283.33 (8) **RULE MAKING.** The department shall promulgate rules containing
24 ~~criteria for identifying storm water discharges for which permits are required under~~
25 ~~sub. (1) for the administration of this section.~~ The department may not require a

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1 permit under this section for diffused surface drainage or agricultural storm water
2 discharges.

3 ***-1857/5.119* SECTION 3218.** 283.84 (1) (c) of the statutes is amended to read:

4 283.84 (1) (c) Reaches an agreement with the department or a local
5 governmental unit, as defined in s. ~~16.97~~ 22.01 (7), under which the person pays
6 money to the department or local governmental unit and the department or local
7 governmental unit uses the money to reduce water pollution in the project area.

8 ***-0367/3.9* SECTION 3219.** 283.89 (2m) of the statutes is amended to read:

9 283.89 (2m) If the department finds a violation of s. 283.33 (1) to (8) for which
10 a person is subject to a forfeiture under s. 283.91 (2), the department ~~shall~~ may issue
11 a citation and, ~~if the department does issue a citation,~~ the procedures in ss. 23.50 to
12 23.99 apply.

13 ***-1335/7.64* SECTION 3220.** 285.59 (1) (b) of the statutes is amended to read:

14 285.59 (1) (b) “State agency” means any office, department, agency, institution
15 of higher education, association, society or other body in state government created
16 or authorized to be created by the constitution or any law which is entitled to expend
17 moneys appropriated by law, including the legislature and the courts, the Wisconsin
18 Housing and Economic Development Authority, the Bradley Center Sports and
19 Entertainment Corporation, the University of Wisconsin Hospitals and Clinics
20 Authority, ~~the Fox River Navigational System Authority,~~ and the Wisconsin Health
21 and Educational Facilities Authority.

22 ***-0359/1.1* SECTION 3221.** 285.60 (2m) of the statutes is created to read:

23 285.60 (2m) **GENERAL CONSTRUCTION PERMITS.** The department may, by rule,
24 specify types of stationary sources that may obtain general construction permits. A
25 general construction permit may cover numerous similar stationary sources. A

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1 general construction permit shall require any stationary source that is covered by
2 the general construction permit to comply with ss. 285.61 to 285.69. The department
3 shall issue a general construction permit using the procedures and criteria in ss.
4 285.61, 285.63, 285.65, 285.66, and 285.69.

5 ***-1838/1.1* SECTION 3222.** 285.69 (2) (a) 8. of the statutes is amended to read:
6 285.69 (2) (a) 8. That the fee billed for each stationary source in each year after
7 2001 is based on the actual emissions of all regulated pollutants, and any other air
8 contaminant specified by the department in the rules, in the preceding 5 years, using
9 a 5-year rolling average year.

10 ***-0290/2.2* SECTION 3223.** 287.23 (4) (intro.) of the statutes is renumbered
11 287.23 (4) and amended to read:

12 287.23 (4) APPLICATION. A responsible unit that seeks assistance under the
13 program shall submit an application to the department on forms provided by the
14 department. To qualify for a full grant, the responsible unit must submit the
15 application no later than October 1 in the year preceding the year for which the
16 assistance is sought. For the purpose of this subsection and sub. (5p), if an
17 application is postmarked, it is considered to be submitted on the date that it is
18 postmarked. ~~An application shall include all of the following:~~

19 ***-0290/2.3* SECTION 3224.** 287.23 (4) (a) to (c) of the statutes are repealed.

20 ***-0290/2.4* SECTION 3225.** 287.23 (5) (c) 2. of the statutes is amended to read:
21 287.23 (5) (c) 2. Except as provided in subd. 5. or sub. (5e), for all other
22 responsible units, the amount of the grant for 1993 through 2000 1999 equals either
23 66% of the difference between eligible expenses and avoided disposal costs or \$8
24 times the population of the responsible unit, whichever is less.

25 ***-0290/2.5* SECTION 3226.** 287.23 (5m) of the statutes is amended to read:

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1 287.23 (5m) ALTERNATE PROCESS. The department shall establish, by rule, a
2 process for distributing grants if the amount that would be awarded under sub. (5)
3 or (5e) exceeds the amount of funds available under s. 20.370 (6) (bq).

4 ***-1819/5.2*** **SECTION 3227.** 287.24 of the statutes is created to read:

5 **287.24 Regional recycling program grants.** (1) Subject to sub. (2), from
6 the appropriation under s. 20.370 (6) (bt), the department shall provide grants to
7 groups of local governmental units, on a competitive basis, to assist those groups to
8 establish regional recycling programs. The department shall select recipients based
9 on the potential for reducing the costs of operating local recycling programs.

10 (2) The amount of a grant under this section may not exceed twice the amount
11 contributed by the grant recipients. No group of local governmental units may
12 receive more than one grant under this section.

13 (3) A grant under this section may be used for planning, acquiring a regional
14 recycling processing facility and equipment for such a facility, and developing a
15 regional collection system.

16 (4) The department shall promulgate rules for the administration of the grant
17 program under this section.

18 ***-0363/5.1*** **SECTION 3228.** 289.43 (8) (b) 4. of the statutes is created to read:

19 289.43 (8) (b) 4. Authorize use of the solid waste in public works projects.

20 ***-1307/1.1*** **SECTION 3229.** 292.11 (9) (e) 1m. f. of the statutes is amended to
21 read:

22 292.11 (9) (e) 1m. f. The local governmental unit acquired the property using
23 funds appropriated under s. 20.866 (2) (ta) or (tz).

24 ***-1310/1.1*** **SECTION 3230.** 292.13 (1m) (intro.) of the statutes is amended to
25 read:

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1 292.13 **(1m)** EXEMPTION FROM LIABILITY FOR SOIL CONTAMINATION. (intro.) A
2 person is exempt from s. 292.11 (3), (4) and (7) (b) and (c) with respect to the existence
3 of a hazardous substance in the soil, including sediments, on property possessed or
4 controlled by the person if all of the following apply:

5 ***-1311/1.1*** SECTION 3231. 292.15 (2) (a) 4. of the statutes is amended to read:

6 292.15 (2) (a) 4. ~~The~~ If the voluntary party owns or controls the property, the
7 voluntary party maintains and monitors the property as required under rules
8 promulgated by the department and any contract entered into under those rules.

9 ***-1311/1.2*** SECTION 3232. 292.15 (2) (ae) 4. of the statutes is amended to read:

10 292.15 (2) (ae) 4. ~~The~~ If the voluntary party owns or controls the property, the
11 voluntary party maintains and monitors the property as required under rules
12 promulgated by the department and any contract entered into under those rules.

13 ***-1312/2.1*** SECTION 3233. 292.15 (2) (ae) 7. of the statutes is created to read:

14 292.15 (2) (ae) 7. If the voluntary party owns the property, the voluntary party
15 allows the department, any authorized representative of the department, a
16 representative of a company that has issued insurance required under subd. 3m.,
17 any party that possessed or controlled the hazardous substance or caused the
18 discharge of the hazardous substance, and any consultant or contractor of any of
19 those persons to enter the property to determine whether natural attenuation has
20 failed and to take action to respond to the discharge if natural attenuation has failed.

21 ***-0332/2.1*** SECTION 3234. 292.15 (2) (ag) of the statutes is amended to read:

22 292.15 (2) (ag) *Property affected by off-site discharge.* (intro.) Except as
23 provided in sub. (6) or (7), for a property on which there exists a hazardous substance
24 for which a voluntary party is exempt from liability under s. 292.13 (1) or (1m), a
25 voluntary party is exempt from the provisions of ss. 289.05 (1), (2), (3) and (4), 289.42

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1 (1), 289.67, 291.25 (1) to (5), 291.29, 291.37, 292.11 (3), (4) and (7) (b) and (c) and
2 292.31 (8), and rules promulgated under those provisions, with respect to discharges
3 of hazardous substances on or originating from the property, if the release of those
4 hazardous substances occurred prior to the date on which the department approves
5 the environmental investigation of the property under par. (a) 1., if par. (a) 1. and 4.
6 to 6. apply and all of the following occur at any time before or after the date of
7 acquisition:

8 1. The environment is restored to the extent practicable with respect to the
9 discharges and the harmful effects from the discharges are minimized in accordance
10 with rules promulgated by the department and any contract entered into under those
11 rules, except that this requirement does not apply with respect to the hazardous
12 substance for which the voluntary party is exempt from liability under s. 292.13 (1)
13 or (1m).

14 2. The voluntary party obtains a certificate of completion from the department
15 stating that the environment has been satisfactorily restored to the extent
16 practicable with respect to the discharges and that the harmful effects from the
17 discharges have been minimized, except with respect to the hazardous substance for
18 which the voluntary party is exempt from liability under s. 292.13 (1) or (1m).

19 3. The voluntary party obtains a written determination from the department
20 under s. 292.13 (2) with respect to the hazardous substance for which the voluntary
21 party is exempt from liability under s 292.13 (1) or (1m).

22 4. The voluntary party continues to satisfy the conditions under s. 292.13 (1)
23 (d) to (g) or (1m) (d) to (g).

24 *-1309/1.1* **SECTION 3235.** 292.15 (2) (at) of the statutes is repealed.

25 *-1311/1.3* **SECTION 3236.** 292.15 (2) (b) 4. of the statutes is created to read:

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1 292.15 (2) (b) 4. If the voluntary party does not own or control the property, the
2 person who owns or controls the property fails to maintain and monitor the property
3 as required under rules promulgated by the department or any contract entered into
4 under those rules.

5 ***-1312/2.2*** **SECTION 3237.** 292.15 (2) (b) 5. of the statutes is created to read:

6 292.15 (2) (b) 5. If the voluntary party does not own or control the property, the
7 person who owns or controls the property fails to allow the department, any
8 authorized representative of the department, any representative of a company that
9 has issued insurance required under par. (ae) 3m., any party that possessed or
10 controlled the hazardous substance or caused the discharge of the hazardous
11 substance, or any consultant or contractor of any of those persons to enter the
12 property to determine whether natural attenuation has failed and to take action to
13 respond to the discharge if natural attenuation has failed.

14 ***-1309/1.2*** **SECTION 3238.** 292.15 (2) (c) of the statutes is amended to read:

15 292.15 (2) (c) *Prohibition on action.* The department of justice may not
16 commence an action under 42 USC 9607 against any voluntary party meeting the
17 criteria of this subsection to recover costs for which the voluntary party is exempt
18 under pars. (a), (ae), (ag), (am), ~~(at)~~ and (b).

19 ***-1309/1.3*** **SECTION 3239.** 292.15 (2) (e) of the statutes is amended to read:

20 292.15 (2) (e) *Contract with insurer.* If the department requires insurance
21 under par. (ae) 3m. ~~or (at) 3.~~, the department may contract with an insurer to provide
22 insurance required under par. (ae) 3m. ~~or (at) 3.~~ and may require voluntary parties
23 to obtain coverage under the contract.

24 ***-1312/2.3*** **SECTION 3240.** 292.15 (3) of the statutes is amended to read:

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1 292.15 (3) SUCCESSORS AND ASSIGNS. An exemption provided in sub. (2) applies
2 to any successor or assignee of the voluntary party if the successor or assignee
3 complies with the provisions of sub. (2) (a) 4. and 5. or (ae) 3m., 4. and 5., and 7. and,
4 if applicable, sub. (2) (ag) 4. or (am) as though the successor or assignee were the
5 voluntary party except that the exemption in sub. (2) does not apply if the successor
6 or assignee knows that a certificate under sub. (2) (a) 3., (ae) 3., (ag)2. or (am) was
7 obtained by any of the means or under any of the circumstances specified in sub. (2)
8 (a) 6.

9 *–1309/1.4* SECTION 3241. 292.15 (6) (a) of the statutes is renumbered 292.15
10 (6).

11 *–1309/1.5* SECTION 3242. 292.15 (6) (b) of the statutes is repealed.

12 *–0335/2.2* SECTION 3243. 292.21 (1) (c) 2. g. of the statutes is amended to
13 read:

14 292.21 (1) (c) 2. g. A review to determine if the real property is listed in any of
15 the written compilations of sites or facilities considered to pose a threat to human
16 health or the environment, including the national priorities list under 42 USC 9605
17 (a) (8) (B); the federal environmental protection agency's information system for the
18 comprehensive environmental response, compensation and liability act, 42 USC
19 9601 to 9675, (CERCLIS); and the department's most recent Wisconsin remedial
20 response site evaluation report, including the inventory list or database of sites or
21 facilities ~~which may cause or threaten to cause environmental pollution that are~~
22 environmentally contaminated required by s. 292.31 (1) (a); ~~and the department's~~
23 ~~registry of abandoned landfills.~~

24 *–1308/3.1* SECTION 3244. 292.23 of the statutes is created to read:

1 **292.23 Responsibility of local governmental units; solid waste. (1)**

2 DEFINITION. In this section, “local governmental unit” means a municipality, a
3 redevelopment authority created under s. 66.1333, a public body designated by a
4 municipality under s. 66.1337 (4), a community development authority, or a housing
5 authority.

6 **(2) EXEMPTION FROM LIABILITY.** Except as provided in sub. (3), a local
7 governmental unit is exempt from s. 289.05, and rules promulgated under that
8 section, with respect to property acquired by the local governmental unit before, on,
9 or after the effective date of this subsection [revisor inserts date], if any of the
10 following applies:

11 (a) The local governmental unit acquired the property through tax delinquency
12 proceedings or as the result of an order by a bankruptcy court.

13 (b) The local governmental unit acquired the property from a local
14 governmental unit that is exempt under this subsection with respect to the property.

15 (c) The local governmental unit acquired the property through a condemnation
16 or other proceeding under ch. 32.

17 (d) The local governmental unit acquired the property for the purpose of slum
18 clearance or blight elimination.

19 (e) The local governmental unit acquired the property through escheat.

20 (f) The local governmental unit acquired the property using funds appropriated
21 under s. 20.866 (2) (ta) or (tz).

22 **(3) EXCEPTIONS.** (a) Subsection (2) does not apply with respect to a discharge
23 of a hazardous substance caused by any of the following:

24 1. An action taken by the local governmental unit.

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1 2. A failure of the local governmental unit to take appropriate action to restrict
2 access to the property in order to minimize costs or damages that may result from
3 unauthorized persons entering the property.

4 3. A failure of the local governmental unit to sample and analyze unidentified
5 substances in containers stored aboveground on the property.

6 4. A failure of the local governmental unit to remove and properly dispose of,
7 or to place in a different container and properly store, any hazardous substance
8 stored aboveground on the property in a container that is leaking or is likely to leak.

9 (b) Subsection (2) does not apply if, after considering the intended development
10 and use of the property, the department determines that action is necessary to reduce
11 to acceptable levels any substantial threat to public health or safety when the
12 property is developed or put to that intended use, the department directs the local
13 governmental unit to take that necessary action, and the local governmental unit
14 does not take that action as directed.

15 (c) Subsection (2) only applies if the local governmental unit agrees to allow the
16 department, any authorized representatives of the department, any party that
17 possessed or controlled a hazardous substance that was discharged or caused the
18 discharge of a hazardous substance, and any consultant or contractor of such a party
19 to enter the property to take action to respond to the discharge.

20 (d) Subsection (2) does not apply to property described in sub. (2) (f) unless the
21 local governmental unit enters into an agreement with the department to ensure
22 that the conditions in pars. (a) and (b) are satisfied.

23 (e) Subsection (2) does not apply to any solid waste facility, as defined in s.
24 289.01 (35), that was operated by the local governmental unit or was owned by the

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1 local governmental unit while it was operated, to a municipal waste landfill, as
2 defined in s. 289.01 (22), or to an approved facility.

3 ***-0335/2.3* SECTION 3245.** 292.31 (1) (title) of the statutes is amended to read:
4 292.31 (1) (title) INVENTORY LIST OR DATABASE; ANALYSIS; HAZARD RANKING.

5 ***-0335/2.4* SECTION 3246.** 292.31 (1) (a) (title) of the statutes is repealed and
6 recreated to read:

7 292.31 (1) (a) (title) *List or database.*

8 ***-0335/2.5* SECTION 3247.** 292.31 (1) (a) 1. of the statutes is repealed and
9 recreated to read:

10 292.31 (1) (a) 1. The department shall compile and make available a list or
11 database of all known sites or facilities in this state that are environmentally
12 contaminated.

13 ***-0335/2.6* SECTION 3248.** 292.31 (1) (a) 2. of the statutes is repealed.

14 ***-0335/2.7* SECTION 3249.** 292.31 (1) (a) 3. of the statutes is amended to read:

15 292.31 (1) (a) 3. The decision of the department to include a site or facility on
16 the inventory list or database under subd. 1. or exclude a site or facility from the
17 inventory list or database is not subject to judicial review.

18 ***-0335/2.8* SECTION 3250.** 292.31 (1) (a) 4. of the statutes is amended to read:

19 292.31 (1) (a) 4. Notwithstanding s. 227.01 (13) or 227.10 (1), the list or
20 database of sites or facilities ~~which results from the inventory under subd. 1.~~ is not
21 a rule.

22 ***-0335/2.9* SECTION 3251.** 292.31 (1) (b) 1. of the statutes is amended to read:

23 292.31 (1) (b) 1. The department may take direct action under subd. 2. or 3. or
24 may enter into a contract with any person to take the action. The department may

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1 take action under subd. 2. or 3. regardless of whether a site or facility is included on
2 the ~~inventory list or database~~ under par. (a) ~~or the hazard ranking list under par. (c).~~

3 ~~*-0335/2.10*~~ **SECTION 3252.** 292.31 (1) (c) of the statutes is repealed.

4 ~~*-0335/2.11*~~ **SECTION 3253.** 292.31 (2) (a) of the statutes is amended to read:

5 292.31 (2) (a) Methods for preparing the ~~inventory and conducting the analysis~~
6 list or database under sub. (1).

7 ~~*-0335/2.12*~~ **SECTION 3254.** 292.31 (3) (c) of the statutes is amended to read:

8 292.31 (3) (c) *Sequence of remedial action.* In determining the sequence for
9 taking remedial action under this subsection, the department shall consider the
10 ~~hazard ranking of~~ degree to which each site or facility presents a substantial danger
11 to public health or welfare or the environment, the potential urgency of taking
12 remedial action at each site or facility, the amount of funds available, the information
13 available about each site or facility, the willingness and ability of an owner, operator
14 or other responsible person to undertake or assist in remedial action, the availability
15 of federal funds under 42 USC 9601, et seq., and other relevant factors. The
16 department shall give the highest priority to remedial action at sites or facilities
17 which have caused contamination of a municipal water system in a town with a
18 population greater than 10,000. If any such site or facility is eligible for federal funds
19 under 42 USC s. 9601 to 9675, but the federal funds will not be available before
20 January 1, 2000, the department shall proceed with remedial action using state
21 funds.

22 ~~*-0335/2.13*~~ **SECTION 3255.** 292.31 (3) (cm) of the statutes is amended to read:

23 292.31 (3) (cm) *Remedial action schedule.* The department shall commence
24 remedial action as required under this paragraph for sites or facilities ~~which are~~
25 ~~included on the hazard ranking list and~~ that are determined to present a substantial

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1 danger to public health or welfare or the environment. The department shall
2 commence remedial action at no less than 2 of the sites or facilities by January 1,
3 1989. The department shall commence remedial action at all of the sites or facilities
4 by January 1, 2000. After January 1, 1989, and before January 1, 2000, the
5 department shall annually commence remedial action at no less than 2 of the sites
6 or facilities.

7 ***-0335/2.14* SECTION 3256.** 292.31 (3) (d) of the statutes is amended to read:

8 292.31 (3) (d) *Emergency responses.* Notwithstanding rules promulgated
9 under this section, ~~the hazard ranking list~~, the considerations for taking action
10 under par. (c) or the remedial action schedule under par. (cm), the department may
11 take emergency action under this subsection and subs. (1) and (7) at a site or facility
12 if delay will result in imminent risk to public health or safety or the environment.
13 The department is not required to hold a hearing under par. (f) if emergency action
14 is taken under this paragraph. The decision of the department to take emergency
15 action is a final decision of the agency subject to judicial review under ch. 227.

16 ***-0335/2.15* SECTION 3257.** 292.31 (4) of the statutes is amended to read:

17 292.31 (4) **MONITORING COSTS AT NONAPPROVED FACILITIES OWNED OR OPERATED BY**
18 **MUNICIPALITIES.** Notwithstanding the ~~inventory, analysis and hazard ranking list or~~
19 database under sub. (1), the environmental response plan prepared under sub. (2)
20 or the environmental repair authority, remedial action sequence and emergency
21 response requirements under sub. (3), the department shall pay that portion of the
22 cost of any monitoring requirement which is to be paid under s. 289.31 (7) (f) from
23 the appropriation under s. 20.370 (2) (dv) prior to making other payments from that
24 appropriation.

25 ***-0335/2.16* SECTION 3258.** 292.31 (5) of the statutes is amended to read:

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1 292.31 (5) MUNICIPAL INCINERATOR ASH TESTING. Notwithstanding the ~~inventory,~~
2 ~~analysis and hazard ranking list or database~~ under sub. (1), the environmental
3 response plan prepared under sub. (2), the environmental repair authority, remedial
4 action sequence and emergency response requirements under sub. (3), or the
5 monitoring costs under sub. (4), the department shall pay the cost incurred by a
6 municipality after June 30, 1986, and before January 30, 1988, for testing required
7 to determine whether the ash from a municipally owned incinerator is hazardous.
8 The department shall make payments under this subsection from the appropriation
9 under s. 20.370 (2) (dv) prior to making other payments from that appropriation.

10 *–0333/1.1* **SECTION 3259.** 292.31 (7) (am) of the statutes is created to read:

11 292.31 (7) (am) 1. The department may accept the transfer of an interest in
12 property that was acquired by the federal environmental protection agency as part
13 of a remedial action under the federal Comprehensive Environmental Response,
14 Compensation, and Liability Act, 42 USC 9601 to 9675.

15 2. The department may acquire an interest in property from any person as part
16 of a remedial action conducted in cooperation with the federal environmental
17 protection agency if the acquisition is necessary to implement the remedy. Under
18 this subdivision, the department may acquire an interest in property that is
19 necessary to ensure that restrictions on the use of land or groundwater are
20 enforceable. The department may expend moneys from the appropriations under ss.
21 20.370 (2) (dv) and 20.866 (2) (tg) if necessary to compensate a person for an interest
22 in property acquired by the department under this subdivision.

23 3. The department may enforce the terms of any interest in property that it
24 acquires under this paragraph.

25 *–0360/2.1* **SECTION 3260.** 292.35 (1) (am) of the statutes is created to read:

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1 292.35 (1) (am) “Financial assistance” means money, other than a loan,
2 provided by this state to pay a portion of the cost of investigation and remedial action
3 for a site or facility, except that “financial assistance” does not include money
4 provided by the state because the state is a responsible party at a site or facility.

5 ***-0360/2.2*** **SECTION 3261.** 292.35 (1) (d) of the statutes is created to read:

6 292.35 (1) (d) “Remedial action” means action that is taken in response to a
7 discharge of a hazardous substance to restore the environment and minimize the
8 harmful effects of the discharge on the air, lands, and waters of this state, including
9 actions taken immediately after the discharge occurs.

10 ***-0360/2.3*** **SECTION 3262.** 292.35 (2) of the statutes is renumbered 292.35 (2)
11 (intro.) and amended to read:

12 292.35 (2) **APPLICABILITY.** (intro.) This section only applies to a site or facility
13 if ~~the~~ any of the following criteria is satisfied:

14 (a) The site or facility is owned by a local governmental unit. This section does
15 not apply to a landfill until January 1, 1996 and, if the site or facility is a landfill, the
16 landfill is closed under s. 289.05 (3).

17 ***-0360/2.4*** **SECTION 3263.** 292.35 (2) (b) of the statutes is created to read:

18 292.35 (2) (b) The local governmental unit is a responsible party at the site or
19 facility and all of the following apply:

20 1. The local governmental unit commits itself, by resolution of its governing
21 body, to paying more than 50% of the amount determined by subtracting any
22 financial assistance received for the site or facility from the total cost of investigation
23 and remedial action for the site or facility.

24 2. If the site or facility is a landfill, the landfill is closed.

25 ***-0360/2.5*** **SECTION 3264.** 292.35 (2g) (bg) of the statutes is created to read:

SENATE BILL 55**SECTION 3264**

1 292.35 (2g) (bg) 1. A transporter who is notified by certified mail by a local
2 governmental unit that the transporter is a responsible party at a site or facility shall
3 submit any records requested by the local governmental unit relating to the
4 transport and disposal of waste at the site or facility. The transporter shall submit
5 the records to the local governmental unit within 90 days of receiving the request.

6 2. If any records requested under subd. 1. were lost or destroyed before the
7 transporter received notice under subd. 1., the transporter may, within 90 days of
8 receiving the request under subd. 1., submit an affidavit that includes all of the
9 following:

10 a. A statement that the records are no longer available.

11 b. A statement that the transporter will cooperate by providing depositions,
12 statements, and other materials reasonably sought by the local governmental unit,
13 or an allocator appointed under sub. (3) (a), that will aid in the process of allocating
14 responsibility for the costs of investigation and remedial action at the site or facility.

15 c. A description of the process used by the transporter to search for the records.

16 3. A transporter shall provide depositions, statements, and other materials
17 reasonably sought by the local governmental unit, or an allocator appointed under
18 sub. (3) (a), that will aid in the process of allocating responsibility for the costs of
19 investigation and remedial action at the site or facility.

20 4. If a transporter discovers additional records more than 90 days after
21 receiving a request under subd. 1., the transporter shall immediately submit the
22 records to the local governmental unit, along with an explanation of why the records
23 were not submitted earlier.

24 *–0360/2.6* **SECTION 3265.** 292.35 (2g) (br) of the statutes is created to read:

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1 292.35 (2g) (br) If a person fails to comply with par. (b) or (bg), the local
2 governmental unit may bring an action in circuit court to compel compliance. In an
3 action under this paragraph, the court may require a person who failed to comply
4 with par. (b) or (bg) to pay costs and, notwithstanding s. 814.04 (1), reasonable
5 attorney fees.

6 *~~0360/2.7~~* **SECTION 3266.** 292.35 (2r) (a) of the statutes is amended to read:

7 292.35 (2r) (a) The local governmental unit shall, in consultation with the
8 department, prepare a draft report that identifies and evaluates options for remedial
9 action plan at the site or facility and identifies the local governmental unit's
10 preferred remedial option. The local governmental unit shall submit the remedial
11 action option report and a list of responsible parties to the department.

12 *~~0360/2.8~~* **SECTION 3267.** 292.35 (2r) (b) of the statutes is amended to read:

13 292.35 (2r) (b) ~~Upon completion receipt of the draft remedial action plan option~~
14 report, the local governmental unit shall send written notice to all responsible
15 parties identified by the local governmental unit, provide public notice and conduct
16 department shall schedule a public hearing to receive comments on the draft
17 remedial action plan option report and the list of responsible parties. The
18 department shall provide public notice of the hearing by publishing a class 2 notice,
19 under ch. 985. The department shall provide notice to listed responsible parties by
20 certified mail. The notice to responsible parties shall offer the person receiving the
21 notice an opportunity to provide information regarding the status of that person or
22 any other person as a responsible party, notice and a description of the public
23 hearing, and a description of the procedures in this section. At the public hearing,
24 the local governmental unit department shall solicit testimony on whether the draft
25 preferred remedial option in the remedial action plan options report is the least

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1 eostly most cost effective method of meeting the standards for remedial action
2 promulgated by the department by rule. The ~~local governmental unit~~ department
3 shall accept written comments for at least 30 days after the close of the public
4 hearing.

5 ***-0360/2.9* SECTION 3268.** 292.35 (2r) (c) of the statutes is amended to read:

6 292.35 (2r) (c) ~~Upon~~ No later than 90 days after the conclusion of the period
7 for written comment, the ~~local governmental unit~~ department shall ~~prepare a~~
8 preliminary remedial action plan issue a decision specifying an approved remedial
9 option, taking into account the local governmental unit's preferred remedial option,
10 the written comments, and the comments received at the public hearing and shall
11 ~~submit the preliminary remedial action plan~~ to the department for approval. ~~The~~
12 ~~department may approve the preliminary remedial action plan as submitted or~~
13 ~~require modifications.~~ If the department fails to issue a decision within the time
14 required, the local governmental unit's preferred remedial option is approved and
15 constitutes the department's decision. The decision is subject to review under s.
16 227.42 and to judicial review under ss. 227.52 to 227.58. A court shall conduct the
17 review of a decision under this paragraph as expeditiously as possible. The decision
18 concerning the remedial option is not subject to review in any other administrative
19 or judicial proceeding. No later than 90 days after the conclusion of the period for
20 written comment, the department shall also issue a list of responsible parties.
21 making any revision to the list provided under par. (a) that the department
22 determines is appropriate, taking into account the written comments and the
23 comments received at the public hearing.

24 ***-0360/2.10* SECTION 3269.** 292.35 (3) (title) of the statutes is amended to
25 read:

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SECTION 3269

1 292.35 (3) (title) ~~OFFER COST ALLOCATION, OFFER TO SETTLE; SELECTION OF UMPIRE.~~

2 ***-0360/2.11* SECTION 3270.** 292.35 (3) (a) of the statutes is renumbered 292.35
3 (3) (as), and 292.35 (3) (as) (intro.) and 2., as renumbered, are amended to read:

4 292.35 (3) (as) (intro.) ~~Upon receiving the department's approval of the~~
5 ~~preliminary remedial action plan~~ Once a cost allocation decision has been made
6 under par. (am), the local governmental unit shall ~~serve~~ provide an offer to settle
7 regarding the ~~contribution of funds for investigation and remedial action at the site~~
8 ~~or facility on~~ based on the cost allocation decision to each of the responsible parties
9 identified by the local governmental unit, ~~using the procedure for service of a~~
10 ~~summons under s. 801.11 listed under sub. (2r) (c) by certified mail~~ and shall notify
11 the department that the offer to settle has been ~~served~~ mailed. The local
12 governmental unit shall include in the offer to settle all of the following information:

13 2. The names, addresses, and contact persons, to the extent known, for all of
14 the responsible parties identified by the local governmental unit.

15 ***-0360/2.12* SECTION 3271.** 292.35 (3) (ac) of the statutes is created to read:

16 292.35 (3) (ac) The local governmental unit may appoint a person to make a cost
17 allocation among the responsible parties at a site or facility. If the local governmental
18 unit uses an allocator, the allocator shall submit a preliminary cost allocation to the
19 local governmental unit no later than 90 days after the department issues a decision
20 under sub. (2r) (c). If the local governmental unit does not use an allocator, the local
21 governmental unit shall prepare a preliminary cost allocation no later than 90 days
22 after the department issues a decision under sub. (2r) (c).

23 ***-0360/2.13* SECTION 3272.** 292.35 (3) (ae) of the statutes is created to read:

24 292.35 (3) (ae) The local governmental unit shall hold a public hearing on the
25 preliminary cost allocation under par. (ac). At least 14 days before the public

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1 hearing, the local governmental unit shall mail a notice of the public hearing to all
2 responsible parties listed under sub. (2r) (c). The local governmental unit shall also
3 publish a class 2 notice, under ch. 985, of the hearing in a local newspaper with
4 circulation in the area where the site or facility is located. The local governmental
5 unit shall accept comments on the cost allocation for 30 days after the close of the
6 public hearing.

7 ***-0360/2.14* SECTION 3273.** 292.35 (3) (am) of the statutes is created to read:

8 292.35 (3) (am) If an allocator is used under par. (ac), the allocator shall make
9 a final cost allocation decision, taking into account the written comments and
10 comments received at the public hearing and subject to sub. (6m), and provide the
11 cost allocation decision to the local governmental unit and the responsible parties no
12 later than 90 days after the close of the public comment period under par. (ae). If no
13 allocator is used, the local governmental unit shall make a final cost allocation
14 decision, taking into account the written comments and comments received at the
15 public hearing and subject to sub. (6m), and provide the cost allocation decision to
16 the responsible parties no later than 90 days after the close of the public comment
17 period under par. (ae).

18 ***-0360/2.15* SECTION 3274.** 292.35 (3) (aw) of the statutes is created to read:

19 292.35 (3) (aw) If a responsible party accepts the offer to settle under par. (as),
20 the responsible party shall notify the local governmental unit of the acceptance. If
21 a responsible party rejects the offer to settle, the responsible party shall notify the
22 local governmental unit, in writing, of the basis for the rejection no later than 30 days
23 after receiving the offer to settle. Upon receipt of notice of rejection, the local
24 governmental unit may request the department to select an umpire.

25 ***-0360/2.16* SECTION 3275.** 292.35 (3) (b) of the statutes is amended to read:

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1 292.35 (3) (b) The department shall maintain a list of competent and
2 disinterested umpires who are environmental experts and are qualified to perform
3 the duties under subs. (4) to (6). None of the umpires may be employees of the
4 department. Upon receiving notice a request from a local governmental unit under
5 par. (a) (aw), the secretary or his or her designee shall select an umpire from the list
6 and inform the local governmental unit and responsible parties of the person
7 selected.

8 ***-0360/2.17*** SECTION 3276. 292.35 (3) (c) of the statutes is amended to read:

9 292.35 (3) (c) Within 10 days after receiving notice of the umpire selected by
10 the department under par. (b), the local governmental unit may notify the
11 department that the umpire selected is unacceptable. Within 10 days after receiving
12 notice of the umpire selected by the department under par. (b), a responsible party
13 may notify the department that the umpire selected is unacceptable or that the
14 responsible party does not intend to participate in the negotiation. Failure to notify
15 the department that the umpire is unacceptable shall be considered acceptance. If
16 all responsible parties ~~identified by the local governmental unit indicate that they~~
17 ~~do not intend to participate in the negotiation, the department shall inform the local~~
18 ~~governmental unit and the local governmental unit shall cease further action under~~
19 ~~this section.~~

20 ***-0360/2.18*** SECTION 3277. 292.35 (4) (a) of the statutes is amended to read:

21 292.35 (4) (a) The umpire, immediately upon being appointed, shall contact the
22 department, the local governmental unit, and the responsible parties that received
23 the offer to settle and shall schedule the negotiating sessions. The umpire shall
24 schedule the first negotiating session no later than 20 days after being appointed.
25 The umpire may meet with all parties to the negotiation, individual parties or groups

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1 of parties. The umpire shall facilitate a discussion between the local governmental
2 unit and the responsible parties to attempt to reach an agreement on ~~the design and~~
3 ~~implementation of the remedial action plan and~~ the contribution of funds by the local
4 governmental unit and responsible parties.

5 ***-0360/2.19* SECTION 3278.** 292.35 (5) of the statutes is amended to read:

6 292.35 (5) AGREEMENT IN NEGOTIATION. The local governmental unit and any of
7 the responsible parties may enter into any agreement in negotiation regarding the
8 ~~design and implementation of the remedial action plan and~~ the contribution of funds
9 by the local governmental unit and responsible parties for the investigation and
10 remedial action. ~~The portion of the agreement containing the design and~~
11 ~~implementation of the remedial action plan shall be submitted to the department for~~
12 ~~approval. The department may approve that portion of the agreement as submitted~~
13 ~~or require modifications.~~

14 ***-0360/2.20* SECTION 3279.** 292.35 (6) (a) of the statutes is amended to read:

15 292.35 (6) (a) If the local governmental unit and any responsible parties are
16 unable to reach an agreement under sub. (5) by the end of the period of negotiation,
17 the umpire shall make a recommendation, subject to sub. (6m), regarding the design
18 ~~and implementation of the remedial action plan and~~ the contribution of funds for
19 investigation and remedial action by the local governmental unit and all responsible
20 parties that were identified by the local governmental unit listed under sub. (2r) (c)
21 and that did not reach an agreement under sub. (5), whether or not the responsible
22 parties participated in negotiations under sub. (4). The umpire shall submit the
23 recommendation to the department ~~for its approval, the local governmental unit, and~~
24 all responsible parties affected by the recommendation within 20 60 days after the
25 end of the period of negotiation under sub. (4) (c). ~~The department may approve the~~

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1 ~~recommendation as submitted or require modifications. The umpire shall distribute~~
2 ~~a copy of the approved recommendation to the local governmental unit and all~~
3 ~~responsible parties identified by the local governmental unit.~~

4 ***-0360/2.21* SECTION 3280.** 292.35 (6m) of the statutes is created to read:

5 292.35 (6m) RESPONSIBILITY OF TRANSPORTER. (a) If a transporter complies with
6 sub. (2g) (bg) 1. to 3., a local governmental unit or other person making an allocation
7 under sub. (3) (a), an umpire making a recommendation under sub. (6) (a), or,
8 notwithstanding sub. (9) (c), a finder of fact making an apportionment under sub. (9)
9 (d) may not allocate to the transporter more than 15% of the costs allocated to
10 responsible parties.

11 (b) 1. Except as provided in subd. 2., if a transporter fails to comply with sub.
12 (2g) (bg) 1. to 3. or provides false information under those provisions, a local
13 governmental unit or other person making an allocation under sub. (3) (a), an umpire
14 making a recommendation under sub. (6) (a), or, notwithstanding sub. (9) (c), a finder
15 of fact making an apportionment under sub. (9) (d) shall allocate to the transporter
16 more than 15% of the costs allocated to responsible parties.

17 2. If a transporter provides information under sub. (2g) (bg) 1. to 3. after the
18 day on which the information is required to be provided and an explanation of why
19 the information was not provided sooner, a local governmental unit or other person
20 making an allocation under sub. (3) (a), an umpire making a recommendation under
21 sub. (6) (a), or, notwithstanding sub. (9) (c), a finder of fact making an apportionment
22 under sub. (9) (d) may allocate to the transporter less than 15% of the costs allocated
23 to responsible parties.

24 ***-0360/2.22* SECTION 3281.** 292.35 (7) of the statutes is amended to read:

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1 292.35 (7) RESPONSIBLE PARTIES SUBJECT TO AN OFFER TO SETTLE, AGREEMENT, OR
2 RECOMMENDATION. A responsible party that accepts an offer to settle under sub. (3)
3 (aw), that enters into an agreement under sub. (5) with a local governmental unit,
4 or that accepts the umpire's recommendation under sub. (6), if the local
5 governmental unit does not reject the recommendation, is required to comply with
6 the offer to settle, agreement, or recommendation. When the responsible party has
7 complied with the offer to settle, agreement, or recommendation, the responsible
8 party is not liable to the state, including under s. 292.11 (7) (b) or 292.31 (8), or to the
9 local governmental unit for any additional costs of the investigation or remedial
10 action; the responsible party is not liable to any other responsible party for
11 contribution to costs incurred by any other responsible party for the investigation or
12 remedial action; and the responsible party is not subject to an order under s. 292.11
13 (7) (c) for the discharge that is the subject of the offer to settle, agreement, or
14 recommendation.

15 ***-0360/2.23*** SECTION 3282. 292.35 (8) (b) 2. of the statutes is amended to read:

16 292.35 (8) (b) 2. The responsible party accepts an offer to settle under sub. (3)
17 (aw) or the local governmental unit and the responsible party enter into an
18 agreement under sub. (5) or accept the umpire's recommendation under sub. (6); the
19 responsible party does not comply with the requirements of the offer to settle,
20 agreement, or recommendation; and the local governmental unit recovers a
21 judgment against that responsible party based on the offer to settle, agreement, or
22 recommendation.

23 ***-0360/2.24*** SECTION 3283. 292.35 (9) (a) 1. of the statutes is renumbered
24 292.35 (9) (a) and amended to read:

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1 292.35 (9) (a) This subsection applies only to a site or facility that satisfies the
2 applicability provisions of sub. (2) and for which the remedial action specified in an
3 agreement under sub. (5) or a recommendation under sub. (6) ~~is completed~~ has
4 begun.

5 ***-0360/2.25*** SECTION 3284. 292.35 (9) (b) of the statutes is amended to read:

6 292.35 (9) (b) Except as provided in pars. (bm), (br), and (e), sub. (7) and s.
7 292.21, a responsible party is liable for a portion of the costs, as determined under
8 pars. (c) to (e), that have been or will be incurred by a local governmental unit for
9 remedial action in an agreement under sub. (5) or a recommendation under sub. (6)
10 and for any related investigation. A right of action shall accrue to a local
11 governmental unit against the responsible party for costs listed in this paragraph.

12 ***-0360/2.26*** SECTION 3285. 292.35 (9) (c) of the statutes is amended to read:

13 292.35 (9) (c) The Except as provided in sub. (6m), the liability of each party
14 to the action to recover costs under par. (b) is limited to a percentage of the cost of the
15 remedial action that is determined by dividing the percentage of that party's
16 contribution to the environmental pollution resulting from the disposal or discharge
17 of a hazardous substance at the site or facility by the percentage of contribution of
18 all responsible parties to the environmental pollution resulting from the disposal or
19 discharge of a hazardous substance at the site or facility. Section 895.045 does not
20 apply to this paragraph.

21 ***-0360/2.27*** SECTION 3286. 292.35 (9) (cs) of the statutes is created to read:

22 292.35 (9) (cs) If this state provides financial assistance for a site or facility, the
23 finder of fact shall apply the financial assistance toward the amount that cannot be
24 collected from a responsible party because the responsible party is unidentifiable,

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1 deceased, insolvent, or a dissolved corporation, before applying par. (c) to determine
2 the liability of the responsible parties from which it is possible to collect.

3 ***-0360/2.28* SECTION 3287.** 292.35 (9) (d) 7. of the statutes is created to read:
4 292.35 (9) (d) 7. The extent to which the party cooperated and assisted in the
5 process under subs. (2g) to (5).

6 ***-0320/5.8* SECTION 3288.** 292.65 (1) (intro.) of the statutes is amended to
7 read:

8 292.65 (1) DEFINITIONS. (intro.) In this section ~~and s. 292.66:~~

9 ***-0320/5.9* SECTION 3289.** 292.65 (1) (b) of the statutes is amended to read:
10 292.65 (1) (b) “Case closure letter” means a letter provided by the department
11 that states that, based on information available to the department, no further
12 remedial action is necessary with respect to a dry cleaning ~~solvent product~~ discharge.

13 ***-0320/5.10* SECTION 3290.** 292.65 (1) (d) (intro.) of the statutes is amended
14 to read:

15 292.65 (1) (d) (intro.) “Dry cleaning facility” means a facility for dry cleaning
16 apparel or household fabrics for the general public using a dry cleaning product,
17 other than a facility that is one of the following:

18 ***-0320/5.11* SECTION 3291.** 292.65 (1) (e) of the statutes is amended to read:

19 292.65 (1) (e) “Dry cleaning ~~solvent product~~” means a ~~ehlorine-based or~~
20 ~~hydrocarbon-based formulation or product that is used as a primary cleaning agent~~
21 ~~in dry cleaning facilities~~ hazardous substance used to clean apparel or household
22 fabrics, except for a hazardous substance used to launder apparel or household
23 fabrics.

24 ***-0320/5.12* SECTION 3292.** 292.65 (1) (gm) of the statutes is amended to read:

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1 292.65 (1) (gm) “Immediate action” means a remedial action that is taken
2 within a short time after a discharge of dry cleaning solvent product occurs, or after
3 the discovery of a discharge of dry cleaning solvent product, to halt the discharge,
4 contain or remove discharged dry cleaning solvent product, or remove contaminated
5 soil or water in order to restore the environment to the extent practicable and to
6 minimize the harmful effects of the discharge to air, lands, and waters of the state
7 and to eliminate any imminent threat to public health, safety, or welfare.

8 ***-0320/5.13*** SECTION 3293. 292.65 (1) (gs) of the statutes is created to read:

9 292.65 (1) (gs) “Interim action” means a remedial action that is taken to contain
10 or stabilize a discharge of a dry cleaning product, in order to minimize any threats
11 to public health, safety, or welfare or to the environment, while other remedial
12 actions are being planned.

13 ***-0320/5.14*** SECTION 3294. 292.65 (4) (b) of the statutes is amended to read:

14 292.65 (4) (b) *Report*. An owner or operator shall report a dry cleaning solvent
15 product discharge to the department in a timely manner, as provided in s. 292.11.

16 ***-0320/5.15*** SECTION 3295. 292.65 (4) (e) of the statutes is amended to read:

17 292.65 (4) (e) *Investigation*. After notifying the department under par. (c) 1.,
18 if applicable, and before conducting remedial action activities, an owner or operator
19 shall complete an investigation to determine the extent of environmental impact of
20 the dry cleaning solvent product discharge, except as provided in pars. (g) and (h).

21 ***-0320/5.16*** SECTION 3296. 292.65 (4) (h) of the statutes is repealed and
22 recreated to read:

23 292.65 (4) (h) *Interim action*. An owner or operator is not required to complete
24 an investigation or prepare a remedial action plan before conducting an interim
25 action activity if the department determines that an interim action is necessary.

SENATE BILL 55**SECTION 3297**

1 ***-0320/5.17*** **SECTION 3297.** 292.65 (4) (i) of the statutes is amended to read:

2 292.65 (4) (i) *Review of site investigation and remedial action plan.* The
3 department shall, at the request of an owner or operator, review the site
4 investigation results and the remedial action plan and advise the owner or operator
5 on the adequacy of the proposed remedial action activities in meeting the
6 requirements of this section. The department shall complete the review of the site
7 investigation and remedial action plan within 45 days. The department shall also
8 provide an estimate of when funding will be available to pay an award for remedial
9 action conducted in response to the dry cleaning solvent product discharge.

10 ***-0320/5.18*** **SECTION 3298.** 292.65 (4) (j) (intro.) and 1. of the statutes are
11 amended to read:

12 292.65 (4) (j) *Remedial action.* (intro.) The owner or operator shall conduct all
13 remedial action activities that are required under this section in response to the dry
14 cleaning solvent product discharge, including all of the following:

15 1. Recovering any recoverable dry cleaning solvent product from the
16 environment.

17 ***-0320/5.19*** **SECTION 3299.** 292.65 (5) (b) (intro.) of the statutes is amended
18 to read:

19 292.65 (5) (b) (intro.) An owner or operator who is required to implement
20 enhanced pollution prevention measures under par. (a) shall demonstrate all of the
21 following:

22 ***-0320/5.20*** **SECTION 3300.** 292.65 (5) (b) 1. of the statutes is amended to read:

23 292.65 (5) (b) 1. That the owner or operator manages all wastes that are
24 generated at the dry cleaning facility and that contain dry cleaning solvent product
25 as hazardous wastes in compliance with ch. 291 and 42 USC 6901 to 6991i.

SENATE BILL 55**SECTION 3301**

1 ***-0320/5.21*** **SECTION 3301.** 292.65 (5) (b) 1. of the statutes, as affected by 2001
2 Wisconsin Act (this act), is renumbered 292.65 (5) (c) 1.

3 ***-0320/5.22*** **SECTION 3302.** 292.65 (5) (b) 2. of the statutes is amended to read:
4 292.65 (5) (b) 2. That the dry cleaning facility does not discharge dry cleaning
5 ~~solvent product~~ or wastewater from dry cleaning machines into any sanitary sewer
6 or septic tank or into the waters of this state.

7 ***-0320/5.23*** **SECTION 3303.** 292.65 (5) (b) 2. of the statutes, as affected by 2001
8 Wisconsin Act (this act), is renumbered 292.65 (5) (c) 2.

9 ***-0320/5.24*** **SECTION 3304.** 292.65 (5) (b) 3. of the statutes is amended to read:
10 292.65 (5) (b) 3. That each machine or other piece of equipment in which dry
11 cleaning ~~solvent product~~ is used, or the entire area in which those machines or pieces
12 of equipment are located, is surrounded by a containment dike or other containment
13 structure that is able to contain any leak, spill, or other release of dry cleaning
14 ~~solvent product~~ from the machines or other pieces of equipment.

15 ***-0320/5.25*** **SECTION 3305.** 292.65 (5) (b) 4. of the statutes is amended to read:
16 292.65 (5) (b) 4. That the floor within any area surrounded by a dike or other
17 containment structure under subd. 3. is sealed or is otherwise impervious to dry
18 cleaning ~~solvent product~~.

19 ***-0320/5.26*** **SECTION 3306.** 292.65 (5) (b) 5. of the statutes is amended to read:
20 292.65 (5) (b) 5. That ~~all dry cleaning solvent is~~ any perchloroethylene
21 delivered to the dry cleaning facility is delivered by means of a closed, direct-coupled
22 delivery system.

23 ***-0320/5.27*** **SECTION 3307.** 292.65 (5) (b) 5. of the statutes, as affected by 2001
24 Wisconsin Act (this act), is renumbered 292.65 (5) (c) 3.

SENATE BILL 55**SECTION 3308**

1 ***-0320/5.28*** **SECTION 3308.** 292.65 (5) (c) (intro.) of the statutes is created to
2 read:

3 292.65 (5) (c) The owner or operator of a dry cleaning facility is not eligible for
4 an award under this section unless the owner or operator has implemented the
5 following enhanced pollution prevention measures:

6 ***-0320/5.29*** **SECTION 3309.** 292.65 (7) (a) (intro.) of the statutes is amended
7 to read:

8 292.65 (7) (a) *General.* (intro.) Subject to pars. (c), (cc), (cm), and (d), eligible
9 costs for an award under this section include reasonable and necessary costs paid
10 incurred by the owner or operator of a dry cleaning facility because of a discharge of
11 dry cleaning product at the dry cleaning facility for the following items only:

12 ***-0320/5.30*** **SECTION 3310.** 292.65 (7) (a) 2. of the statutes is amended to read:

13 292.65 (7) (a) 2. Investigation and assessment of contamination caused by a dry
14 cleaning solvent product discharge from a dry cleaning facility.

15 ***-0320/5.31*** **SECTION 3311.** 292.65 (7) (a) 8. of the statutes is amended to read:

16 292.65 (7) (a) 8. Maintenance of equipment for dry cleaning solvent product
17 recovery performed as part of remedial action activities.

18 ***-0320/5.32*** **SECTION 3312.** 292.65 (7) (a) 13. of the statutes is repealed.

19 ***-0320/5.33*** **SECTION 3313.** 292.65 (7) (c) 3. of the statutes is amended to read:

20 292.65 (7) (c) 3. Other costs that the department determines to be associated
21 with, but not integral to, the investigation and remediation of a dry cleaning solvent
22 product discharge from a dry cleaning facility.

23 ***-0320/5.34*** **SECTION 3314.** 292.65 (7) (d) of the statutes is amended to read:

24 292.65 (7) (d) *Discharges from multiple activities.* If hazardous substances are
25 discharged at a dry cleaning facility as a result of dry cleaning operations and as a

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1 result of other activities, eligible costs under this section are limited to activities
2 necessitated by the discharge of dry cleaning solvent product.

3 ***-0320/5.35* SECTION 3315.** 292.65 (8) (a) (intro.) of the statutes is amended
4 to read:

5 292.65 (8) (a) *Application.* (intro.) An owner or operator shall submit an
6 application on a form provided by the department. An owner or operator may not
7 submit an application before September 1, 1998. An owner or operator may not
8 submit an application after August 30, ~~2003~~ 2005, if the application relates to a dry
9 cleaning facility that ceased to operate before September 1, 1998. An owner or
10 operator may not submit an application after August 20, 2008, if the application
11 relates to any other dry cleaning facility. The department shall authorize owners and
12 operators to apply for awards at stages in the process under sub. (4) that the
13 department specifies by rule. An application shall include all of the following
14 documentation of activities, plans, and expenditures associated with the eligible
15 costs incurred because of a dry cleaning solvent product discharge from a dry
16 cleaning facility:

17 ***-0320/5.36* SECTION 3316.** 292.65 (8) (d) 7. of the statutes is amended to read:
18 292.65 (8) (d) 7. The applicant has not paid all of the fees under ss. 77.9961,
19 and 77.9962 and 77.9963.

20 ***-0320/5.37* SECTION 3317.** 292.65 (8) (d) 8. of the statutes is amended to read:
21 292.65 (8) (d) 8. The dry cleaning solvent product discharge was caused by a
22 person who provided services or products to the owner or operator or to a prior owner
23 or operator of the dry cleaning facility, including a person who provided
24 perchloroethylene to the owner or operator or prior owner or operator of a dry
25 cleaning facility using a system other than a closed, direct-coupled delivery system.

SENATE BILL 55**SECTION 3318**

1 ***-0320/5.38*** **SECTION 3318.** 292.65 (8) (e) 1. of the statutes is renumbered
2 292.65 (8) (e), and 292.65 (8) (e) (intro.), as renumbered, is amended to read:

3 292.65 (8) (e) *Deductible.* (intro.) The department may reimburse the owner
4 or operator of a dry cleaning facility ~~that is operating at the time that the owner or~~
5 ~~operator applies under par. (a) only for eligible costs incurred at each dry cleaning~~
6 facility that exceed the following deductible:

7 ***-0320/5.39*** **SECTION 3319.** 292.65 (8) (e) 3. of the statutes is repealed.

8 ***-0320/5.40*** **SECTION 3320.** 292.65 (11) of the statutes is amended to read:

9 292.65 (11) ENVIRONMENTAL FUND REIMBURSEMENT. If the department expends
10 funds from the environmental fund under s. 292.11 (7) (a) or 292.31 (3) (b) because
11 of a discharge of dry cleaning solvent product at a dry cleaning facility, the
12 department shall transfer from the appropriation account under s. 20.370 (6) (eq) to
13 the environmental fund an amount equal to the amount expended under s. 292.11
14 (7) (a) or 292.31 (3) (b). The department shall make transfers under this subsection
15 when the department determines that sufficient funds are available in the
16 appropriation account under s. 20.370 (6) (eq).

17 ***-0320/5.41*** **SECTION 3321.** 292.65 (13) of the statutes is amended to read:

18 292.65 (13) COUNCIL. The dry cleaner environmental response council shall
19 advise the department concerning the ~~programs~~ program under this section ~~and s.~~
20 ~~292.66.~~ The dry cleaner environmental response council shall evaluate the program
21 under this section at least every 5 years, using criteria developed by the council.

22 ***-0320/5.42*** **SECTION 3322.** 292.66 of the statutes is repealed.

23 ***-1881/4.3*** **SECTION 3323.** 292.75 of the statutes is renumbered 560.132, and
24 560.132 (1) (b), (2) (a) and (6), as renumbered, are amended to read:

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1 560.132 (1) (b) “Local governmental unit” means a city, village, town, county,
2 redevelopment authority created under s. ~~66.431~~ 66.1333, community development
3 authority created under s. ~~66.4325~~ 66.1335, or housing authority.

4 (2) (a) The department shall administer a program to award brownfield site
5 assessment grants from the appropriation under s. ~~20.370 (6) (et)~~ 20.143 (1) (qm) to
6 local governmental units for the purposes of conducting any of the eligible activities
7 under sub. (3). In fiscal year 2001–02, the department shall allocate \$1,000,000 for
8 grants under this section.

9 (6) LIMITATION OF GRANT. The total amount of all grants awarded to a local
10 governmental unit in a fiscal year under this section shall be limited to an amount
11 equal to 15% of the available funds ~~appropriated under s. 20.370 (6) (et)~~ for the
12 program under this section for the fiscal year.

13 *~~1881/4.4~~* **SECTION 3324.** 292.77 of the statutes is repealed.

14 *~~0320/5.43~~* **SECTION 3325.** 292.99 (1m) of the statutes is amended to read:
15 292.99 (1m) Any person who violates s. 292.65 (12m) ~~or 292.66 (5)~~ shall forfeit
16 not less than \$10 nor more than \$10,000.

17 *~~2295/2.3~~* **SECTION 3326.** 299.83 of the statutes is created to read:

18 **299.83 Green tier program. (1) DEFINITIONS.** In this section:

19 (a) “Approval” means a permit, license, or other approval issued by the
20 department under chs. 280 to 295.

21 (am) “Covered facility or activity” means a facility or activity that is included,
22 or intended to be included, in the green tier program.

23 (b) “Environmental management system” means an organized set of
24 procedures to evaluate environmental performance and to achieve measurable or

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1 noticeable improvements in that environmental performance through planning and
2 changes in operations.

3 (bm) “Environmental management system audit” means a review, of an
4 environmental management system, that is conducted in accordance with standards
5 and guidelines issued by the International Organization for Standardization and the
6 results of which are documented and communicated to employees of the participant.

7 (c) “Environmental performance,” unless otherwise qualified, means the
8 effects, whether regulated under chs. 160 and 280 to 299 or unregulated, of a facility
9 or activity on air, water, land, natural resources, and human health.

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

14 (d) “Environmental requirement” means a requirement in chs. 160 or 280 to
15 299, a rule promulgated under one of those chapters, or a permit, license, other
16 approval, or order issued by the department under one of those chapters.

17 (e) “Green tier contract” means a contract entered into by the department and
18 a participant in tier III of the green tier program, and that may, with the approval
19 of the department, be signed by other interested parties, that specifies the
20 participant’s commitment to superior environmental performance and the
21 incentives to be provided to the participant.

22 (f) “Green tier program” means the program under this section.

23 (fm) “Regulated entity” means a public or private entity that is subject to
24 environmental requirements.

25 (g) “Superior environmental performance” means one of the following:

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

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

10 3. That an entity voluntarily engages in restoring, enhancing, or preserving
11 natural resources.

12 4. That an entity helps other entities to comply with environmental
13 requirements or to accomplish the results described in subd. 1. or 2.

14 (h) “Violation” means a violation of an environmental requirement.

15 (2) **ELIGIBLE PARTICIPANTS.** Any regulated entity may participate in tier I of the
16 green tier program if the regulated entity qualifies for participation under sub. (3)

17 (a). Any public or private entity may apply to the department to participate in tier
18 II or tier III of the green tier program. A group of public or private entities may
19 together apply to the department to participate in tier II or tier III of the green tier
20 program. An applicant for tier II or tier III of the green tier program shall identify
21 the facilities or activities that it intends to include in the program.

22 (3) **ELIGIBILITY AND PROCESS FOR TIER I.** (a) *General eligibility.* A regulated
23 entity qualifies for participation in tier I of the green tier program with respect to a
24 facility owned or operated by the regulated entity if all of the following apply:

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1 1. The regulated entity conducts an environmental performance evaluation of
2 the facility or submits findings from the facility's environmental management
3 system.

4 2. If the regulated entity conducts an environmental performance evaluation,
5 the regulated entity notified the department in writing, no fewer than 30 days before
6 beginning an environmental performance evaluation, of the date on which the
7 environmental performance evaluation would begin, the site or facility or the
8 operations or practices at a site or facility to be reviewed, and the general scope of
9 the environmental performance evaluation.

10 3. If the regulated entity conducts an environmental performance evaluation,
11 the environmental performance evaluation complies with par. (d).

12 4. If the regulated entity submits findings from the facility's environmental
13 management system, the environmental management system complies with par. (e).

14 5. The regulated entity submits a report as required under par. (b).

15 6. At the time of submitting a report under par. (b), the department of justice
16 has not, within 2 years, filed a suit to enforce an environmental requirement, and the
17 department of natural resources has not, within 2 years, issued a citation to enforce
18 an environmental requirement, because of a violation involving the facility.

19 (b) *Report.* To participate in tier I of the green tier program with respect to a
20 facility, a regulated entity that owns or operates the facility shall submit a report to
21 the department within 45 days after the date of the final written report of findings
22 of an environmental performance evaluation of the facility or within 45 days after
23 the date of findings from the facility's environmental management system. The
24 report shall include all of the following:

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1 1. a. If the regulated entity conducted an environmental performance
2 evaluation, a description of the environmental performance evaluation, including
3 the person who conducted the environmental performance evaluation, when it was
4 completed, what activities and operations were examined, and what was revealed by
5 the environmental performance evaluation.

6 b. If the regulated entity submits findings from an environmental management
7 system, a description of the environmental management system, of the activities and
8 operations covered by the environmental management system, and of who made the
9 findings and when the findings were made.

10 2. If any violations were revealed by the environmental performance
11 evaluation or the environmental management system, a description of those
12 violations and of the length of time that the violations may have continued.

13 3. A description of actions taken or proposed to be taken to correct any
14 violations described in subd. 2.

15 4. A commitment to correct any violations identified in subd. 2. within 90 days
16 of submitting the report or according to a compliance schedule approved by the
17 department.

18 5. If the regulated entity proposes to take more than 90 days to correct
19 violations, a proposed compliance schedule that contains the shortest reasonable
20 periods for correcting the violations, a statement that justifies the proposed
21 compliance schedule, and a description of measures that the regulated entity will
22 take to minimize the effects of the violations during the period of the compliance
23 schedule.

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1 6. If the regulated entity proposes to take more than 90 days to correct the
2 violations, the proposed stipulated penalties to be imposed if the regulated entity
3 violates the compliance schedule under subd. 5.

4 7. A description of the measures that the regulated entity has taken or will take
5 to prevent future violations and a timetable for taking the measures that it has not
6 yet taken.

7 (c) *Public notice; comment period.* 1. The department shall provide at least 30
8 days for public comment on a compliance schedule and stipulated penalties proposed
9 in a report under par. (b). The department may not approve or issue a compliance
10 schedule under par. (f) or approve stipulated penalties under par. (g) until after the
11 end of the comment period.

12 2. Before the start of the public comment period under subd. 1., the department
13 shall provide public notice of the proposed compliance schedule and stipulated
14 penalties that does all of the following:

15 a. Identifies the regulated entity that submitted the report under par. (b), the
16 facility at which the violation occurred, and the nature of the violation.

17 b. Describes the proposed compliance schedule and the proposed stipulated
18 penalties.

19 c. Identifies an employee of the department and an employee of the regulated
20 entity who may be contacted for additional information about the proposed
21 compliance schedule and the proposed stipulated penalties.

22 d. States that comments concerning the proposed compliance schedule and the
23 proposed stipulated penalties may be submitted to the department during the
24 comment period and states the last date of the comment period.

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1 (d) *Environmental performance evaluation.* If a regulated entity conducts an
2 environmental performance evaluation under par. (a) 1., the regulated entity does
3 not qualify for participation in tier I of the green tier program unless the final written
4 report of findings of the environmental performance evaluation is labeled
5 “environmental performance evaluation report,” is dated, and, if the environmental
6 performance evaluation identifies violations, includes a plan for corrective action.
7 A regulated entity may use a form developed by the regulated entity, by a consultant,
8 or by the department for the final written report of findings of the environmental
9 performance evaluation.

10 (e) *Environmental management system.* If a regulated entity submits findings
11 from the facility’s environmental management system under par. (a) 1., the
12 regulated entity does not qualify for participation in tier I of the green tier program
13 unless the regulated entity’s efforts to prevent, detect, and correct violations are
14 appropriate to the size of the regulated entity and to the nature of its business and
15 are consistent with any criteria used by the federal environmental protection agency
16 to define due diligence in federal audit policies or regulations.

17 (f) *Compliance schedules.* 1. If the department receives a report under par. (b)
18 that contains a proposed compliance schedule under par. (b) 5., the department shall
19 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 paragraph is subject to review under ch. 227.

3 2. 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 a. The environmental and public health consequences of the violations.

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

13 (g) *Stipulated penalties.* 1. If the department receives proposed stipulated
14 penalties under par. (b) 6., 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 2. Stipulated penalties approved under subd. 1. 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 (4) INCENTIVES FOR TIER I. (a) *Deferred civil enforcement.* 1. a. For at least 90
25 days after the department receives a report that meets the requirements in sub. (3)

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1 (b), this state may not begin a civil action to collect forfeitures for violations that are
2 disclosed in the report by a regulated entity that qualifies under sub. (3) (a) for
3 participation in tier I of the green tier program.

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

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

17 d. If the department approves a compliance schedule under sub. (3) (f) and the
18 regulated entity corrects the violations according to the compliance schedule, this
19 state may not bring a civil action to collect forfeitures for the violations.

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

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

24 b. The department discovers the violations before submission of a report under
25 sub. (3) (b).

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1 c. The violations resulted in a substantial economic benefit that gives the
2 regulated entity a clear advantage over its business competitors.

3 d. The violations are identified through monitoring or sampling required by
4 permit, statute, rule, regulation, judicial or administrative order, or consent
5 agreement.

6 (b) *Consideration of actions by regulated entity.* If the department receives a
7 report that complies with sub. (3) (b) from a regulated entity that qualifies under sub.
8 (3) (a) for participation in tier I of the green tier program, and the report discloses
9 a potential criminal violation, the department and the department of justice shall
10 take into account the diligent actions of, and reasonable care taken by, the regulated
11 entity to comply with environmental requirements in deciding whether to pursue a
12 criminal enforcement action and what penalty should be sought. In determining
13 whether a regulated entity acted with due diligence and reasonable care, the
14 department and the department of justice shall consider whether the regulated
15 entity has demonstrated any of the following:

16 1. That the regulated entity took corrective action that was timely when the
17 violation was discovered.

18 2. That the regulated entity exercised reasonable care in attempting to prevent
19 the violation and to ensure compliance with environmental requirements.

20 3. That the regulated entity had a documented history of good faith efforts to
21 comply with environmental requirements before implementing its environmental
22 management system or before beginning to conduct environmental performance
23 evaluations.

24 4. That the regulated entity has promptly made appropriate efforts to achieve
25 compliance with environmental requirements since implementing its

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1 environmental management system or since beginning to conduct environmental
2 performance evaluations and that action was taken with due diligence.

3 5. That the regulated entity exercised reasonable care in identifying violations
4 in a timely manner.

5 6. That the regulated entity willingly cooperated in any investigation that was
6 conducted by this state or a local governmental unit to determine the extent and
7 cause of the violation.

8 (c) *Recognition.* If a regulated entity conducts an environmental performance
9 evaluation that complies with sub. (3) (d) at least every 2 years, submits a report that
10 complies with sub. (3) (b) for each environmental performance evaluation, corrects
11 any violations described in those reports, and otherwise qualifies under sub. (3) (a)
12 for participation in tier I of the green tier program, all of the following apply:

13 1. The department shall issue to the regulated entity a numbered certificate
14 of recognition.

15 2. The department shall identify the regulated entity, on an Internet site
16 maintained by the department, as a participant in tier I of the green tier program.

17 3. The department shall annually provide notice of the regulated entity's status
18 as a participant in tier I of the green tier program to newspapers in the area in which
19 facilities operated by the regulated entity are located.

20 4. The regulated entity may use a green tier logo selected by the department
21 on written materials produced by the regulated entity.

22 (5) **ELIGIBILITY FOR TIER II.** (a) *General.* An applicant is eligible for tier II of
23 the green tier program if the applicant satisfies the requirements in pars. (b) to (d).
24 If an applicant consists of a group of entities, each requirement in pars. (b) to (d)
25 applies to each entity in the group.

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

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

9 2. That, within 36 months before the date of application, no civil judgment was
10 entered against the applicant, any managing operator of the applicant, or any person
11 with a 25% or more ownership interest in the applicant for a violation involving a
12 covered facility or activity that resulted in substantial harm to public health or the
13 environment.

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

19 (c) *Environmental performance.* To be eligible to participate in tier II of the
20 green tier program, an applicant shall submit an application that describes all of the
21 following:

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

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

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

4 (d) *Environmental management system.* To be eligible to participate in tier II
5 of the green tier program, an applicant shall do all of the following:

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

9 a. Based on the standards for environmental management systems issued by
10 the International Organization for Standardization or determined by the
11 department to be functionally equivalent to an environmental management system
12 that is based on those standards.

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

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

18 a. Improving the environmental performance of the applicant, with respect to
19 each covered facility or activity, in aspects of environmental performance that are
20 regulated under chs. 160 and 280 to 299.

21 b. Improving the environmental performance of the applicant, with respect to
22 each covered facility or activity, in aspects of environmental performance that are not
23 regulated under chs. 160 and 280 to 299.

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

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

5 4. Conduct, or commit itself to conducting, annual environmental management
6 system audits, with every 3rd environmental management system audit performed
7 by an outside environmental auditor approved by the department, and commit itself
8 to submitting an annual report on the environmental management system audit to
9 the department.

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

12 **(6) PROCESS FOR TIER II.** (a) Upon receipt of an application for participation in
13 tier II of the green tier program, the department shall provide public notice about the
14 application in the area in which each covered facility or activity is located or
15 performed.

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

18 (c) The department shall approve or deny an application within 60 days after
19 providing notice under par. (a) or, if the department holds a public informational
20 meeting under par. (b), within 60 days after that meeting. The department may limit
21 the number of participants in tier II of the green tier program, or limit the extent of
22 participation by a particular applicant, based on the department's determination
23 that the limitation is in the best interest of the green tier program.

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