



State of Wisconsin  
2001 - 2002 LEGISLATURE

Today, if possible

LRBs0303/P3  
RCT:cs:jf  
stays  
stays / P3  
(not submitted)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2001 ASSEMBLY BILL 479

D-note

See pp 2426, 2834  
&  
DNote

Keep  
cut

1 AN ACT to create 15.347 (3), 20.143 (3) (z), 20.370 (9) (fr), 299.83, 299.85 and  
2 560.125 of the statutes; relating to: environmental compliance audits,  
3 environmental management systems, providing incentives for improving  
4 environmental performance, providing immunity from civil penalties for  
5 certain violations of environmental requirements, access to certain  
6 information, granting rule-making authority, making appropriations, and  
7 providing a penalty.

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

8 SECTION 1. 15.347 (3) of the statutes is created to read:  
9 15.347 (3) ENVIRONMENTAL RESULTS COUNCIL. There is created in the department  
10 of natural resources an environmental results council consisting of 15 members  
11 appointed for 5-year terms. The governor shall appoint members representing

1 environmental organizations, businesses, and local governmental units and  
2 members who do not represent any of these entities.

3 **SECTION 2.** 20.005 (3) (schedule) of the statutes: at the appropriate place, insert  
4 the following amounts for the purposes indicated:

			2001-02	2002-03
6	<b>20.143 Commerce, department of</b>			
7	(3) REGULATION OF INDUSTRY, SAFETY AND BUILDINGS			
8	(z) Environmental results and envi-			
9	ronmental management system			
10	grants	SEG B	-0-	150,000

11 **20.370 Natural resources, department of**

12 (9) CUSTOMER ASSISTANCE AND EXTERNAL RELATIONS

13 (fr) Environmental results program

14 — environmental fund

SEG	B	367,000	403,000
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15 **SECTION 3.** 20.143 (3) (z) of the statutes is created to read:

16 20.143 (3) (z) *Environmental results and environmental management system*  
17 *grants.* Biennially, from the environmental fund, the amounts in the schedule for  
18 environmental results and environmental management system grants under s.  
19 560.125.

20 **SECTION 4.** 20.370 (9) (fr) of the statutes is created to read:

21 20.370 (9) (fr) *Environmental results program — environmental fund.*

22 Biennially, from the environmental fund, the amounts in the schedule for the  
23 administration of the environmental results program under s. 299.83.

24 **SECTION 5.** 299.83 of the statutes is created to read:

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

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

4           (b) "Environmental management system" means an organized set of  
5           procedures to evaluate environmental performance and to achieve measurable or  
6           noticeable improvements in that environmental performance through planning and  
7           changes in operations.

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

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

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

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

22           1. Adoption of an environmental policy that includes a commitment to  
23           compliance with environmental requirements, pollution prevention, and continual  
24           improvement in environmental performance.

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

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

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

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

8           6. Establishment of a structure for operational control and responsibility for  
9 environmental performance.

10          7. An employee training program to develop awareness of and competence to  
11 manage environmental issues.

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

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

17          10. Procedures for control of documents and for keeping records related to  
18 environmental performance.

19          11. Audits of the environmental management system.

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

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

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

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

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

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

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

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

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

24 5. Organizing uncoordinated entities that produce environmental harm into a  
25 program that reduces that harm.

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

3           7. Conserving energy or nonrenewable natural resources.

4           8. Reducing the use of renewable natural resources through increased  
5 efficiency.

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

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

9           **(1m)** ADMINISTRATION OF PROGRAM. In administering the program, the  
10 department shall attempt to do all of the following:

11           (a) Promote, reward, and sustain superior environmental performance by  
12 participants.

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

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

18           (d) Promote attention to unregulated environmental problems and provide  
19 opportunities for conservation of resources and environmental restoration by  
20 entities that are subject to environmental requirements and entities that are not  
21 subject to environmental requirements.

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

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

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

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

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

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

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

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

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

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

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

1 entity in the group. An applicant for tier I of the program shall identify the facilities  
2 or activities that it intends to include in the program.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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 in compliance with sub. (6m) (a).

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

12          (4) PROCESS FOR TIER I. (a) Upon receipt of an application for participation in  
13          tier I of the 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 I of the program, or limit the extent of participation  
22          by a particular applicant, based on the department's determination that the  
23          limitation is in the best interest of the 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.

1           **(4m) INCENTIVES FOR TIER I.** (a) The department shall issue a numbered  
2 certificate of recognition to each participant in tier I of the program.

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

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

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

11           (e) The department shall assign an employee of the department, who is  
12 acceptable to the participant, to serve as the contact with the department for a  
13 participant in tier I of the program for communications concerning participation in  
14 the program, for any approvals that the participant is required to obtain, and for  
15 technical assistance.

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

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

1 entity in the group. An applicant for tier II of the program shall identify the facilities  
2 or activities that it intends to include in the program.

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

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

11 2. That, within 60 months before the date of application, no civil judgment was  
12 entered against the applicant, any managing operator of the applicant, or any person  
13 with a 25% or more ownership interest in the applicant for a violation involving a  
14 covered facility or activity that resulted in substantial harm to public health or the  
15 environment.

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

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

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

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

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

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

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

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

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

24           1. Describe the involvement of interested persons in developing the proposal  
25 for maintaining and improving the applicant's superior environmental performance,

1 identify the interested persons, and describe the interests that those person have in  
2 the applicant's participation in the program.

3 2. Outline the provisions that it proposes to include in the participation  
4 contract.

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

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

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

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

17 (e) *Request to participate.* Within 30 days after the public notice under par. (c),  
18 interested persons may request the department to grant them authorization to  
19 participate in the negotiations under par. (f). A person who makes a request under  
20 this paragraph shall describe the person's interests in the issues raised by the letter  
21 of intent. The department shall determine whether a person who makes a request  
22 under this paragraph may participate in the negotiations under par. (f) based on  
23 whether the person has demonstrated sufficient interest in the issues raised by the  
24 letter of intent to warrant that participation.

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

7           (g) *Termination of negotiations.* The department may terminate negotiations  
8 with an applicant concerning a participation contract and the decision to terminate  
9 negotiations is not subject to review under ch. 227. The department shall conclude  
10 negotiations within 12 months of beginning negotiations unless the applicant and  
11 the department agree to an extension.

12           (h) *Notice of proposed contract.* If negotiations under par. (f) result in a  
13 proposed participation contract, the department shall provide public notice about  
14 the proposed participation contract in the area in which each covered facility or  
15 activity is located or performed.

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

19           (j) *Participation contract.* Within 30 days after providing notice under par. (h)  
20 or, if the department holds a public informational meeting under par. (i), within 30  
21 days after that meeting, the department shall decide whether to enter into a  
22 participation contract with an applicant, unless the applicant and the department  
23 agree to an extension beyond 30 days. In a participation contract, the department  
24 shall require that the participant maintain the environmental management system  
25 described in sub. (5) (c) 1. and abide by the commitments in sub. (5) (c) 2. and 3. The

1 department may not reduce the frequency of required inspections or monitoring as  
2 an incentive in a participation contract if the audit under sub. (5) (c) 3. is conducted  
3 by a person other than an outside environmental auditor. The department shall  
4 ensure that the incentives provided under a participation contract are proportional  
5 to the environmental benefits that will be provided by the participant under the  
6 participation contract. The department shall include in a participation contract  
7 remedies that apply if a party fails to comply with the participation contract. The  
8 term of a participation contract may not be less than 3 years or more than 10 years,  
9 with opportunity for renewal for additional terms of the same length as the original  
10 term upon agreement of the parties. The term of a participation contract may not  
11 exceed 5 years if the participation contract incorporates, modifies, or otherwise  
12 affects the terms or conditions of a permit issued under s. 283.31, 283.33, or 285.62,  
13 unless federal and state law authorize a longer term for the permit.

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

17 (6m) COMPLIANCE REPORTS AND DEFERRED CIVIL ENFORCEMENT. (a) *Compliance*  
18 *reports.* If an audit under sub. (3) (d) 4. or (5) (c) 2. or 3. reveals any violations of  
19 environmental requirements, the participant shall include all of the following in the  
20 report of the results of the audit:

- 21 1. A description of all of the violations.
- 22 2. A description of the actions taken or proposed to be taken to correct the  
23 violations identified in subd. 1.



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

4           4. If the participant proposes to take more than 90 days after submitting the  
5 report to correct the violations identified in subd. 1., a proposed compliance schedule  
6 that contains the shortest reasonable periods for correcting the violations, a  
7 statement that justifies the proposed compliance schedule, a description of measures  
8 that the participant will take to minimize the effects of the violations during the  
9 period of the compliance schedule, and proposed stipulated penalties to be imposed  
10 if the participant violates the proposed compliance schedule.

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

13           (b) *Compliance schedules.* 1. If the department receives a report under par. (a)  
14 that contains a proposed compliance schedule under par. (a) 4., the department shall  
15 review the proposed compliance schedule. The department may approve the  
16 compliance schedule as submitted or propose a different compliance schedule. If the  
17 participant does not agree to implement a compliance schedule proposed by the  
18 department, the department shall schedule a meeting with the participant to  
19 attempt to reach an agreement on a compliance schedule. If the department and the  
20 participant do not reach an agreement on a compliance schedule, the department  
21 shall terminate the participation of the participant in the program. If the parties  
22 agree to a compliance schedule, the participant shall incorporate the compliance  
23 schedule into its environmental management system.

24           2. The department may not approve a compliance schedule that extends longer  
25 than 12 months beyond the date of approval of the compliance schedule. The

1 department shall consider the following factors in determining whether to approve  
2 a compliance schedule:

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

4 b. The time needed to implement a change in raw materials or method of  
5 production if that change is an available alternative to other methods of correcting  
6 the violations.

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

9 (c) *Stipulated penalties.* 1. If the department receives proposed stipulated  
10 penalties under par. (a) 4., the department shall review the proposed stipulated  
11 penalties. The department may approve the stipulated penalties as submitted or  
12 propose different stipulated penalties. If the participant does not agree to stipulated  
13 penalties proposed by the department, the department shall schedule a meeting with  
14 the participant to attempt to reach an agreement on stipulated penalties. If no  
15 agreement is reached, there are no stipulated penalties for violations of the  
16 compliance schedule.

17 (d) *Deferred civil enforcement.* 1. a. If a participant in the program corrects  
18 violations that are disclosed in a report that meets the requirements of par. (a) within  
19 90 days after the department receives the report, this state may not bring a civil  
20 action to collect forfeitures for the violations.

21 b. This state may not begin a civil action to collect forfeitures for violations  
22 covered by a compliance schedule that is approved under par. (b) during the period  
23 of the compliance schedule if the participant is not violating the compliance schedule.  
24 If the participant violates the compliance schedule and there are stipulated  
25 penalties, the department may collect any stipulated penalties or may terminate

1 participation in the program. If the participant violates the compliance schedule and  
2 there are no stipulated penalties, the department may terminate participation in the  
3 program. After the department terminates participation in the program, this state  
4 may begin a civil action to collect forfeitures for the violations.

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

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

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

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

14 (7) SUSPENSION OR TERMINATION OF PARTICIPATION. (a) The department may  
15 suspend or terminate the participation of a participant in the program at the request  
16 of the participant.

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

23 (c) The department may suspend the participation of a participant in the  
24 program if the department determines that the participant, any managing operator  
25 of the participant, or any person with a 25% or more ownership interest in the

1 participant committed a criminal or civil violation involving a covered facility or  
2 activity that resulted in substantial harm to public health or the environment or that  
3 presented an imminent threat to public health or the environment and the  
4 department refers the matter to the department of justice for prosecution.

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

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

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

16 (7e) CHARTERS. (a) The department may issue an environmental results  
17 charter to an association of entities to assist the entities to participate in tier I or tier  
18 II of the program and to achieve superior environmental performance. An  
19 association to which a charter is issued may consist of private entities, public  
20 entities, or a combination of private and public entities. An association to which a  
21 charter is issued may be organized on any basis that helps to achieve superior  
22 environmental performance.

23 (b) In a charter the entities in the association shall describe the goals of the  
24 association, the responsibilities of the entities, and the activities that the entities will  
25 engage in to accomplish their goals. The term of a charter may not be less than 3

1 years or more than 10 years, with the opportunity for renewal for additional terms  
2 of the same length upon the agreement of the entities and the department.

3 (c) The department may not issue a charter unless the department determines  
4 that the entities in the association have the resources to carry out the charter. Before  
5 issuing a proposed charter, the department shall provide public notice of the  
6 proposed charter in the areas in which the activities under the charter will be  
7 engaged in. After providing public notice and before issuing a proposed charter, the  
8 department shall hold a public informational hearing on the proposed charter. A  
9 decision by the department to issue a charter is not subject to review under ch. 227.

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

12 (e) The department may, after an opportunity for a hearing, terminate a charter  
13 if the department determines that the entities in the chartered association are in  
14 substantial noncompliance with the charter. Any person who has evidence that the  
15 entities in a chartered association are not in compliance with a charter may ask the  
16 department to terminate the charter.

17 **(7m) ENVIRONMENTAL AUDITORS.** The department may not approve an outside  
18 environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. unless the outside  
19 environmental auditor is certified by the Registrar Accreditation Board of the  
20 American National Standards Institute or meets criteria concerning education,  
21 training, experience, and performance that are equal to the criteria in International  
22 Organization for Standardization standard 14012.

23 **(7s) ACCESS TO RECORDS.** (a) Except as provided in par. (c), the department shall  
24 make any record, report, or other information obtained in the administration of this  
25 section available to the public.

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

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

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

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

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

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

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

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

10          (e) The department shall consult with the environmental results council about  
11 the operation of the program, priorities for the program, and evaluation of the  
12 program.

13          (f) The department and the department of commerce shall jointly provide  
14 information about participation contracts and environmental management systems  
15 to potential participants in the program and to other interested persons. The  
16 department shall consult with the department of commerce about the  
17 administration of the program.

18          (g) The department shall collect, process, evaluate, and disseminate data and  
19 information about environmentally beneficial and innovative practices submitted by  
20 participants in the program. The department may conduct or direct studies,  
21 experiments, or research related to the program in cooperation with participants and  
22 other interested persons. The department may enter into agreements with the  
23 Robert M. La Follette institute of public affairs at the University of  
24 Wisconsin–Madison to assist in the promotion, administration, or evaluation of the  
25 program.

1 (h) The department shall submit a progress report on the program to the  
2 legislature, in the manner provided in s. 13.172 (2), no later than the first day of the  
3 36th month beginning after the effective date of this paragraph .... [revisor inserts  
4 date], and every 2 years after it submits the first report.

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

7 (a) The implementation of the program, including the setting of goals for the  
8 program.

9 (b) Evaluating the costs of applying for the program and of entering into a  
10 participation contract or a charter and the administrative costs of participating in  
11 the program.

12 (c) Assessing whether incentives provided under a participation contract are  
13 proportional to the environmental benefits committed to under a participation  
14 contract.

15 (d) Procedures for evaluating the program.

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

17 (10) PENALTY. (a) Any person who ~~knowingly~~<sup>intentionally</sup> makes a false statement in  
18 material submitted under this section shall be fined not less than \$10 nor more than  
19 \$10,000 or imprisoned for not more than 6 months or both.

20 (b) For purposes of this subsection, an act is committed ~~knowingly~~<sup>intentionally</sup> if it is done  
21 voluntarily and is not the result of negligence, mistake, accident, or circumstances  
22 that are beyond the control of the person.

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

25 SECTION 6. 299.85 of the statutes is created to read:



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

3           (a) “Environmental compliance audit” means a systematic, documented, and  
4 objective review, conducted by or on behalf of the owner or operator of a facility, of  
5 the environmental performance of the facility, including an evaluation of compliance  
6 with one or more environmental requirements.

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

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

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

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

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

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

20           (f) “Regulated entity” means a public or private entity that is subject to  
21 environmental requirements.

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

1 (a) The regulated entity conducts an environmental compliance audit of the  
2 facility.

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

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

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

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

15 (3) AUDIT REPORT. To participate in the environmental improvement program  
16 with respect to a facility, the regulated entity that owns or operates the facility shall  
17 submit a report to the department by the 45th day after the date of the final written  
18 report of findings of the environmental compliance audit of the facility or the 270th  
19 day after providing the notice under sub. (2) (b), whichever is earlier. The report shall  
20 include all of the following:

21 (a) A description of the environmental compliance audit, including who  
22 conducted the environmental compliance audit, when it was completed, what  
23 activities and operations were examined, ~~and~~ what was revealed by the  
24 environmental compliance audit

and any other information needed by the  
department to make the report under sub. (3m)

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1 (b) A description of all violations of environmental requirements revealed by  
2 the environmental compliance audit and of the length of time that the violations may  
3 have continued.

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

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

9 (e) If the regulated entity proposes to take more than 90 days to correct the  
10 violations of environmental requirements, a proposed compliance schedule that  
11 contains the shortest reasonable periods for correcting the violations of  
12 environmental requirements, a statement that justifies the proposed compliance  
13 schedule, and a description of measures that the regulated entity will take to  
14 minimize the effects of the violations of environmental requirements during the  
15 period of the compliance schedule.

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

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

22 **(3m) PUBLIC NOTICE; COMMENT PERIOD.** (a) The department shall provide at least  
23 30 days for public comment on a compliance schedule and stipulated penalties  
24 proposed in a report under sub. (3). The department may not approve or issue a

1 compliance schedule under sub. (6) or approve stipulated penalties under sub. (6m)  
2 until after the end of the comment period.

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

6 1. Identifies the regulated entity that submitted the report under sub. (3) and  
7 the facility at which the violation occurred, describes the environmental  
8 requirement that was violated, and indicates whether the violation related to  
9 reporting or another administrative requirement and whether the violation related  
10 to air, water, solid waste, hazardous waste, or another, specified, aspect of  
11 environmental regulation.

12 2. Describes the proposed compliance schedule and the proposed stipulated  
13 penalties.

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

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

20 (4) ENVIRONMENTAL COMPLIANCE AUDIT. A regulated entity does not qualify for  
21 participation in the environmental improvement program unless the final written  
22 report of findings of the environmental compliance audit is labeled “environmental  
23 compliance audit report,” is dated, and, if the environmental compliance audit  
24 identifies violations of environmental requirements, includes a plan for corrective  
25 action. A regulated entity may use a form developed by the regulated entity, by a

1 consultant, or by the department for the final written report of findings of the  
2 environmental compliance audit.

3 (6) COMPLIANCE SCHEDULES. (a) If the department receives a report under sub.  
4 (3) that contains a proposed compliance schedule under sub. (3) (e), the department  
5 shall review the proposed compliance schedule. The department may approve the  
6 compliance schedule as submitted or propose a different compliance schedule. If the  
7 regulated entity does not agree to implement a compliance schedule proposed by the  
8 department, the department shall schedule a meeting with the regulated entity to  
9 attempt to reach an agreement on a compliance schedule. If the department and the  
10 regulated entity do not reach an agreement on a compliance schedule, the  
11 department may issue a compliance schedule. A compliance schedule under this  
12 subsection is subject to review under ch. 227.

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

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

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

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

23 (6m) STIPULATED PENALTIES. (a) If the department receives proposed stipulated  
24 penalties under sub. (3) (em), the department shall review the proposed stipulated  
25 penalties. The department may approve the stipulated penalties as submitted or

1 propose different stipulated penalties. If the regulated entity does not agree to  
2 stipulated penalties proposed by the department, the department shall schedule a  
3 meeting with the regulated entity to attempt to reach an agreement on stipulated  
4 penalties. If no agreement is reached, there are no stipulated penalties for violations  
5 of the compliance schedule.

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

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

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

19 3. This state may not begin a civil action to collect forfeitures for violations  
20 covered by a compliance schedule that is approved under sub. (6) during the period  
21 of the compliance schedule if the regulated entity is not violating the compliance  
22 schedule. If the regulated entity violates the compliance schedule, the department  
23 may collect any stipulated penalties during the period in which the stipulated  
24 penalties apply. This state may begin civil action to collect forfeitures for violations  
25 of environmental requirements that are not corrected by the end of the period in

1 which the stipulated penalties apply. If the regulated entity violates the compliance  
2 schedule and there are no stipulated penalties, this state may begin a civil action to  
3 collect forfeitures for the violations.

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

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

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

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

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

16 4. The violation is identified through monitoring or sampling required by  
17 permit, statute, rule, regulation, judicial or administrative order, or consent  
18 agreement.

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

23 (8) CONSIDERATION OF ACTIONS BY REGULATED ENTITY. If the department receives  
24 a report that complies with sub. (3) from a regulated entity that qualifies under sub.  
25 (2) for participation in the environmental improvement program, and the report

1 discloses a potential criminal violation of an environmental requirement, the  
2 department and the department of justice shall take into account the diligent actions  
3 of, and reasonable care taken by, the regulated entity to comply with environmental  
4 requirements in deciding whether to pursue a criminal enforcement action and what  
5 penalty should be sought. In determining whether a regulated entity acted with due  
6 diligence and reasonable care, the department and the department of justice shall  
7 consider whether the regulated entity has demonstrated any of the following:

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

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

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

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

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

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

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



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

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

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

19           **(9m) ANNUAL REPORT.** The department shall submit an annual report under s.  
20 13.172 (3) concerning the environmental improvement program to the standing  
21 committees of the legislature with jurisdiction over environmental matters. The  
22 department shall submit the first annual report no later than the first day of the 24th  
23 month beginning after the effective date of this subsection .... [revisor inserts date].  
24 The department shall include all of the following in the annual report:

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

4 (b) The number of violations reported by type, including the number of  
5 violations related to air, water, solid waste, hazardous waste, and to other specified  
6 aspects of environmental regulation and the number of violations involving each of  
7 the following:

- 8 1. Failure to have a required permit or other approval.
- 9 2. Failure to have a required plan.
- 10 3. Violation of a condition of a permit or other approval.
- 11 4. Release of a substance to the environment.
- 12 5. Failure to report.

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

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

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

20 (10) PENALTY. (a) Any person who ~~knowingly~~ <sup>intentionally</sup> makes a false statement in a  
21 report submitted under sub. (3) shall be fined not less than \$10 nor more than  
22 \$10,000 or imprisoned for not more than 6 months or both.

23 (b) For purposes of this subsection, an act is committed ~~knowingly~~ <sup>intentionally</sup> if it is done  
24 voluntarily and is not the result of negligence, mistake, accident, or circumstances  
25 that are beyond the control of the person.

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

3           **SECTION 7.** 560.125 of the statutes is created to read:

4           **560.125 Environmental results and environmental management**  
5 **system grant program.** (1) The department shall make grants from the  
6 appropriation under s. 20.143 (3) (z) to nongovernmental organizations to help those  
7 organizations develop the ability to participate as interested persons in the  
8 environmental results program under s. 299.83. The department shall allocate at  
9 least half of the amounts appropriated under s. 20.143 (3) (z) in the 2001–03 fiscal  
10 biennium for grants under this subsection.

11           (2) The department shall make grants from the appropriation under s. 20.143  
12 (3) (z) to assist persons to develop environmental management systems, as defined  
13 in s. 299.83 (1) (b).

14           **SECTION 8. Nonstatutory provisions.**

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

23           (2) POSITION AUTHORIZATION. The authorized FTE positions for the department  
24 of natural resources are increased by 5.0 SEG positions to be funded from the

1 appropriation under section 20.370 (9) (fr) of the statutes, as created by this act, for  
2 the administration of the environmental results program.

3 (END)

*ONote*

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0303/P3dn  
RCT:es:jf

March 1, 2002

Tim Kalies:

This is another revision of the substitute amendment to AB 479. The changes in this version are based on your written response to the drafter's note on /P1, on a conversation with Mark McDermid of DNR, on your email message of February 27, and on our conversation of February 28<sup>th</sup> and March 1<sup>st</sup>.

Mark indicated to me that participants in tier I of the environmental results program should qualify for deferred civil enforcement based on their environmental management system audits and that those participants should not be required to perform environmental compliance audits. In this version of the draft, participants in tier I are required to perform environmental management system audits and participants in tier II are required to perform both environmental management system audits and environmental compliance audits. All participants may be eligible for deferred civil enforcement. It was necessary to modify point 11 of the definition of "functionally equivalent environmental management system" so that the definition would not require participants in tier I to conduct environmental compliance audits. Point 11 could be completely eliminated because both tier I and tier II require EMS audits.

I have modified the definition of "superior environmental performance" based on the Green Tier Committee draft. As drafted, the definition requires that, whatever method is chosen, environmental performance does not qualify as superior unless it results in measurable or discernible improvement in the quality of air, land, water, or natural resources or "in the protection of the environment" beyond that which is achieved under environmental laws. It is still unclear to me what a measurable or discernible improvement in the protection of the environment would be, so I find the definition to be vague. Also, I do not think that the definition itself requires that an entity go "beyond compliance" because it only requires going beyond what is "achieved" under current law, not beyond what is required.

You indicated to me that, under the environmental improvement portion of the draft, the participant is to complete the correction of environmental violations (not just submit its audit report) within one year of notifying DNR that it would conduct an audit, unless there is a compliance schedule. Therefore, I did not change the time limit in s. 299.85 (3) to one year. I did reword that provision to try to make it more clear that two reports are not required.

Please contact me if you have questions or redraft instructions or if you want me to convert the draft to introducible form.

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Mark indicated to me that participants in tier I of the environmental results program should qualify for deferred civil enforcement based on their environmental management system audits and that those participants should not be required to perform environmental compliance audits. In this version of the draft, participants in tier I are required to perform environmental management system audits and participants in tier II are required to perform both environmental management system audits and environmental compliance audits. All participants may be eligible for deferred civil enforcement. It was necessary to modify point 11 of the definition of "functionally equivalent environmental management system" so that the definition would not require participants in tier I to conduct environmental compliance audits. Point 11 could be completely eliminated because both tier I and tier II require EMS audits.

I have modified the definition of "superior environmental performance" based on the Green Tier Committee draft. As drafted, the definition requires that, whatever method is chosen, environmental performance does not qualify as superior unless it results in measurable or discernible improvement in the quality of air, land, water, or natural resources or "in the protection of the environment" beyond that which is achieved under environmental laws. It is still unclear to me what a measurable or discernible improvement in the protection of the environment would be, so I find the definition to be vague. Also, I do not think that the definition itself requires that an entity go "beyond compliance" because it only requires going beyond what is "achieved" under current law, not beyond what is required.

You indicated to me that, under the environmental improvement portion of the draft, the participant is to complete the correction of environmental violations (not just submit its audit report) within one year of notifying DNR that it would conduct an audit, unless there is a compliance schedule. Therefore, I did not change the time limit in s. 299.85 (3) to one year. I did reword that provision to try to make it more clear that two reports are not required.

Please contact me if you have questions or redraft instructions or if you want me to convert the draft to introducible form.

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## Tradewell, Becky

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**From:** Kalies, Tim  
**Sent:** Tuesday, March 05, 2002 12:12 PM  
**To:** Tradewell, Becky  
**Subject:** Small changes to s0303/p3

Hi Becky,

I guess I had the audit report 1/2 right. It should read something like this.

Page 26, lines 15-20.

(3) AUDIT REPORT. To participate in the environmental improvement program with respect to a facility, the regulated entity that owns or operates the facility shall submit a report to the department within 45 days after the date of the final written report of findings of the environmental compliance audit of the facility. The environmental compliance audit of the facility, including the final written report of findings, shall be completed within one year after providing the notice under sub. (2) (b). The report shall contain all of the following:

The only other change is to delete Page 24, lines 20-22, and Page 34, lines 23-25.

That should do it. Once this is done, go ahead and jacket it. Thank you for everything you've done with this.  
Tim

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2/5/02 Per Tim - delete position authorization.