



State of Wisconsin

2001 - 2002 LEGISLATURE

January 2002 Special Session

LRBb2403/1

RCT:cjs:cmh

LFB:.....Bonderud - Environmental improvement program and  
environmental results program

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

ASSEMBLY AMENDMENT ,

TO ASSEMBLY SUBSTITUTE AMENDMENT 1,

TO ASSEMBLY BILL 1

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 10, line 8: after that line insert:

3 "SECTION 14h. 15.347 (3) of the statutes is created to read:

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

9 2. Page 11, line 21: after that line insert:

1       **“20.143 Commerce, department of**

2       (3)    REGULATION OF INDUSTRY, SAFETY AND BUILDINGS

3       (z)    Environmental results and envi-  
4           ronmental management system

5           grants                                    SEG    B           -0-    150,000”.

6       **3.** Page 12, line 5: after that line insert:

7       “(9)   CUSTOMER ASSISTANCE AND EXTERNAL RELATIONS

8       (fr)   Environmental results program

9           — environmental fund                SEG    B           -0-    403,000”.

10      **4.** Page 13, line 13: after that line insert:

11      “SECTION 30f. 20.143 (3) (z) of the statutes is created to read:

12           20.143 (3) (z) *Environmental results and environmental management system*  
13           *grants.* Biennially, from the environmental fund, the amounts in the schedule for  
14           environmental results and environmental management system grants under s.  
15           560.125.”.

16      **5.** Page 16, line 5: after that line insert:

17      “SECTION 36p. 20.370 (9) (fr) of the statutes is created to read:

18           20.370 (9) (fr) *Environmental results program — environmental fund.*

19           Biennially, from the environmental fund, the amounts in the schedule for the  
20           administration of the environmental results program under s. 299.83.”.

21      **6.** Page 186, line 13: after that line insert:

22      “SECTION 373f. 299.83 of the statutes is created to read:

23           **299.83 Environmental results program. (1) DEFINITIONS.** In this section:

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

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

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

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

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

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

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

24           2. An analysis of the environmental aspects and impacts of the entity’s  
25 activities.

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

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

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

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

8           7. An employee training program to develop awareness of and competence to  
9 manage environmental issues.

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

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

15          10. Procedures for control of documents and for keeping records related to  
16 environmental performance.

17          11. Audits of the environmental management system.

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

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

24          (e) “Participation contract” means a contract entered into by the department  
25 and a participant in tier II of the program, and that may, with the approval of the

1 department, be signed by other interested parties, that specifies the participant's  
2 commitment to superior environmental performance and the incentives to be  
3 provided to the participant.

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

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

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

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

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

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

22 5. Organizing uncoordinated entities that produce environmental harm into a  
23 program that reduces that harm.

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

1           7. Conserving energy or nonrenewable natural resources.

2           8. Reducing the use of renewable natural resources through increased  
3 efficiency.

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

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

7           **(1m)** ADMINISTRATION OF PROGRAM. In administering the program, the  
8 department shall attempt to do all of the following:

9           (a) Promote, reward, and sustain superior environmental performance by  
10 participants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           (b) *Enforcement record.* To be eligible to participate in tier I of the program, an  
2 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 I of the  
20 program, an applicant shall submit an application that describes all of the following:

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

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



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 I  
5 of the 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, an environmental management system, for each  
8 covered facility or activity, that is all of the following:

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

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

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

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

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

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

24           3. Explain to the department the rationale for the choices of objectives under  
25 subd. 2. and describe any consultations with residents of the areas in which each

1 covered facility or activity is located or performed and with other interested persons  
2 concerning those objectives.

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

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

10 (4) PROCESS FOR TIER I. (a) Upon receipt of an application for participation in  
11 tier I of the program, the department shall provide public notice about the  
12 application in the area in which each covered facility or activity is located or  
13 performed.

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

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

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

24 (4m) INCENTIVES FOR TIER I. (a) The department shall issue a numbered  
25 certificate of recognition to each participant in tier I of the program.

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

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

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

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

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

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

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

3           1. That, within 120 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 60 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 management system.* To be eligible to participate in tier II  
20 of the program, an applicant shall do all of the following:

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

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

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

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

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

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

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

21           1. Describe the involvement of interested persons in developing the proposal  
22 for maintaining and improving the applicant's superior environmental performance,  
23 identify the interested persons, and describe the interests that those person have in  
24 the applicant's participation in the program.

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

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

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

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

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

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

23           (f) *Negotiations.* If the department determines that an applicant satisfies the  
24 requirements in sub. (5), the department may begin negotiations concerning a  
25 participation contract with the applicant and with any persons to whom the

1 department granted permission under par. (e). The department may begin the  
2 negotiations no sooner than 30 days after providing public notice under par. (c) about  
3 the applicant's letter of intent.

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

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

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

16 (j) *Participation contract.* Within 30 days after providing notice under par. (h)  
17 or, if the department holds a public informational meeting under par. (i), within 30  
18 days after that meeting, the department shall decide whether to enter into a  
19 participation contract with an applicant, unless the applicant and the department  
20 agree to an extension beyond 30 days. In a participation contract, the department  
21 shall require that the participant maintain the environmental management system  
22 described in sub. (5) (c) 1. and abide by the commitments in sub. (5) (c) 2. and 3. The  
23 department may not reduce the frequency of required inspections or monitoring as  
24 an incentive in a participation contract if the audit under sub. (5) (c) 3. is conducted  
25 by a person other than an outside environmental auditor. The department shall

1 ensure that the incentives provided under a participation contract are proportional  
2 to the environmental benefits that will be provided by the participant under the  
3 participation contract. The department shall include in a participation contract  
4 remedies that apply if a party fails to comply with the participation contract. The  
5 term of a participation contract may not be less than 3 years or more than 10 years,  
6 with opportunity for renewal for additional terms of the same length as the original  
7 term upon agreement of the parties. The term of a participation contract may not  
8 exceed 5 years if the participation contract incorporates, modifies, or otherwise  
9 affects the terms or conditions of a permit issued under s. 283.31, 283.33, or 285.62,  
10 unless federal and state law authorize a longer term for the permit.

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

14 (6m) COMPLIANCE REPORTS AND DEFERRED CIVIL ENFORCEMENT. (a) *Compliance*  
15 *reports.* If an audit under sub. (3) (d) 4. or (5) (c) 2. or 3. reveals any violations of  
16 environmental requirements, the participant shall include all of the following in the  
17 report of the results of the audit:

- 18 1. A description of all of the violations.
- 19 2. A description of the actions taken or proposed to be taken to correct the  
20 violations identified in subd. 1.
- 21 3. A commitment to correct the violations identified in subd. 1. within 90 days  
22 of submitting the report or according to a compliance schedule approved by the  
23 department.
- 24 4. If the participant proposes to take more than 90 days after submitting the  
25 report to correct the violations identified in subd. 1., a proposed compliance schedule



1 that contains the shortest reasonable periods for correcting the violations, a  
2 statement that justifies the proposed compliance schedule, a description of measures  
3 that the participant will take to minimize the effects of the violations during the  
4 period of the compliance schedule, and proposed stipulated penalties to be imposed  
5 if the participant violates the proposed compliance schedule.

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

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

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

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

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

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

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

14           (d) *Deferred civil enforcement.* 1. a. If a participant in the program corrects  
15 violations that are disclosed in a report that meets the requirements of par. (a) within  
16 90 days after the department receives the report, this state may not bring a civil  
17 action to collect forfeitures for the violations.

18           b. This state may not begin a civil action to collect forfeitures for violations  
19 covered by a compliance schedule that is approved under par. (b) during the period  
20 of the compliance schedule if the participant is not violating the compliance schedule.  
21 If the participant violates the compliance schedule and there are stipulated  
22 penalties, the department may collect any stipulated penalties or may terminate  
23 participation in the program. If the participant violates the compliance schedule and  
24 there are no stipulated penalties, the department may terminate participation in the

1 program. After the department terminates participation in the program, this state  
2 may begin a civil action to collect forfeitures for the violations.

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

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

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

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

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

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

21 (c) The department may suspend the participation of a participant in the  
22 program if the department determines that the participant, any managing operator  
23 of the participant, or any person with a 25% or more ownership interest in the  
24 participant committed a criminal or civil violation involving a covered facility or  
25 activity that resulted in substantial harm to public health or the environment or that

1 presented an imminent threat to public health or the environment and the  
2 department refers the matter to the department of justice for prosecution.

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

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

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

14 **(7e) CHARTERS.** (a) The department may issue an environmental results  
15 charter to an association of entities to assist the entities to participate in tier I or tier  
16 II of the program and to achieve superior environmental performance. An  
17 association to which a charter is issued may consist of private entities, public  
18 entities, or a combination of private and public entities. An association to which a  
19 charter is issued may be organized on any basis that helps to achieve superior  
20 environmental performance.

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

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

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

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

15           **(7m) ENVIRONMENTAL AUDITORS.** The department may not approve an outside  
16 environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. unless the outside  
17 environmental auditor is certified by the Registrar Accreditation Board of the  
18 American National Standards Institute or meets criteria concerning education,  
19 training, experience, and performance that are equal to the criteria in International  
20 Organization for Standardization standard 14012.

21           **(7s) ACCESS TO RECORDS.** (a) Except as provided in par. (c), the department shall  
22 make any record, report, or other information obtained in the administration of this  
23 section available to the public.

24           (c) The department shall keep confidential any part of a record, report, or other  
25 information obtained in the administration of this section, other than emission data

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

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

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

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

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

23 (c) The department may promulgate rules for the administration of the  
24 program. In the rules, the department may specify incentives, that are consistent

1 with federal laws and other state laws, that the department may provide to  
2 participants in tier II of the program.

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

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

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

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

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

24 (h) The department shall submit a progress report on the program to the  
25 legislature, in the manner provided in s. 13.172 (2), no later than the first day of the

1 36th month beginning after the effective date of this paragraph .... [revisor inserts  
2 date], and every 2 years after it submits the first report.

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

5 (a) The implementation of the program, including the setting of goals for the  
6 program.

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

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

13 (d) Procedures for evaluating the program.

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

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

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

20 SECTION 373g. 299.85 of the statutes is created to read:

21 **299.85 Environmental improvement program.** (1) DEFINITIONS. In this  
22 section:

23 (a) "Environmental compliance audit" means a systematic, documented, and  
24 objective review, conducted by or on behalf of the owner or operator of a facility, of



1 the environmental performance of the facility, including an evaluation of compliance  
2 with one or more environmental requirements.

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

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

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

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

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

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

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

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

21 (a) The regulated entity conducts an environmental compliance audit of the  
22 facility.

23 (b) The regulated entity notified the department in writing, no fewer than 30  
24 days before beginning the environmental compliance audit, of the date on which the  
25 environmental compliance audit would begin, the site or facility or the operations or

1 practices at a site or facility to be reviewed, and the general scope of the  
2 environmental compliance audit.

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

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

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

10 **(3) AUDIT REPORT.** To participate in the environmental improvement program  
11 with respect to a facility, the regulated entity that owns or operates the facility shall  
12 submit a report to the department within 45 days after the date of the final written  
13 report of findings of the environmental compliance audit of the facility. The  
14 regulated entity shall complete the environmental compliance audit, including the  
15 final written report of findings, within 365 days after providing the notice under sub.  
16 (2) (b). The report submitted to the department shall include all of the following:

17 (a) A description of the environmental compliance audit, including who  
18 conducted the environmental compliance audit, when it was completed, what  
19 activities and operations were examined, what was revealed by the environmental  
20 compliance audit, and any other information needed by the department to make the  
21 report under sub. (9m).

22 (b) A description of all violations of environmental requirements revealed by  
23 the environmental compliance audit and of the length of time that the violations may  
24 have continued.

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

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

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

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

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

19 **(3m) PUBLIC NOTICE; COMMENT PERIOD.** (a) The department shall provide at least  
20 30 days for public comment on a compliance schedule and stipulated penalties  
21 proposed in a report under sub. (3). The department may not approve or issue a  
22 compliance schedule under sub. (6) or approve stipulated penalties under sub. (6m)  
23 until after the end of the comment period.

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

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

10 2. Describes the proposed compliance schedule and the proposed stipulated  
11 penalties.

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

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

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

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

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

- 15           1. The environmental and public health consequences of the violations.
- 16           2. The time needed to implement a change in raw materials or method of  
17 production if that change is an available alternative to other methods of correcting  
18 the violations.
- 19           3. The time needed to purchase any equipment or supplies that are needed to  
20 correct the violations.

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

1 meeting with the regulated entity to attempt to reach an agreement on stipulated  
2 penalties. If no agreement is reached, there are no stipulated penalties for violations  
3 of the compliance schedule.

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

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

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

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

1 schedule and there are no stipulated penalties, this state may begin a civil action to  
2 collect forfeitures for the violations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **(9) ACCESS TO RECORDS.** (a) Except as provided in par. (c), the department shall  
23 make any record, report, or other information obtained in the administration of this  
24 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.** Any person who intentionally makes a false statement in a report  
21 submitted under sub. (3) shall be fined not less than \$10 nor more than \$10,000 or  
22 imprisoned for not more than 6 months or both.

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

1           **7.** Page 218, line 2: after that line insert:

2           “**SECTION 474g.** 560.125 of the statutes is created to read:

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

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

13           **8.** Page 360, line 13: after that line insert:

14           “(3q) **INITIAL TERMS OF ENVIRONMENTAL RESULTS COUNCIL.** Notwithstanding the  
15 length of terms specified for the environmental results council under section 15.347  
16 (3) of the statutes, as created by this act, 3 of the initial members shall be appointed  
17 for terms that expire on July 1, 2003, 3 of the initial members shall be appointed for  
18 terms that expire on July 1, 2004, 3 of the initial members shall be appointed for  
19 terms that expire on July 1, 2005, 3 of the initial members shall be appointed for  
20 terms that expire on July 1, 2006, and 3 of the initial members shall be appointed for  
21 terms that expire on July 1, 2007.”

22

(END)