

2003 SENATE BILL 61

1 **AN ACT** *to amend* 23.50 (1) and 299.95; and *to create* 299.83 and 299.85 of the
2 statutes; **relating to:** environmental compliance audits, environmental
3 management systems, providing incentives for improving environmental
4 performance, providing immunity from civil penalties for certain violations of
5 environmental requirements, access to certain information, granting
6 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

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

7 **SECTION 1c.** 23.50 (1) of the statutes, as affected by 2003 Wisconsin Act ...
8 (Assembly Bill 421), is amended to read:
9 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
10 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,

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1 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),
2 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2),
3 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
4 administrative rules promulgated thereunder, violations specified under s. 285.86,
5 violations of ch. 951 if the animal involved is a captive wild animal, violations of rules
6 of the Kickapoo reserve management board under s. 41.41 (7) (k), violations to which
7 s. 299.85 (7) (a) 2. or 4. applies. or violations of local ordinances enacted by any local
8 authority in accordance with s. 23.33 (11) (am) or 30.77.

9 **SECTION 1m.** 299.83 of the statutes is created to read:

10 **299.83 Environmental Results Program. (1) DEFINITIONS.** In this section:

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

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

17 (bm) “Environmental management system audit” means a review, of an
18 environmental management system, that is conducted in accordance with standards
19 and guidelines issued by the International Organization for Standardization and the
20 results of which are documented and are communicated to employees of the entity
21 whose environmental management system is reviewed.

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

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

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

8 1. Adoption of an environmental policy that includes a commitment to
9 compliance with environmental requirements, pollution prevention, and continual
10 improvement in environmental performance.

11 2. An analysis of the environmental aspects and impacts of an entity’s
12 activities.

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

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

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

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

20 7. An employee training program to develop awareness of and competence to
21 manage environmental issues.

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

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

4 10. Procedures for control of documents and for keeping records related to
5 environmental performance.

6 11. Environmental management system audits.

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

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

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

18 (f) “Program” means the Environmental Results Program under this section.

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

24 1. Limiting the discharges or emissions of pollutants from, or in some other way
25 minimizing the negative effects on air, water, land, natural resources, or human

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1 health of, a facility that is owned or operated by an entity or an activity that is
2 performed by the entity to an extent that is greater than is required by applicable
3 environmental requirements.

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

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

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

11 5. Organizing uncoordinated entities that produce environmental harm into a
12 program that reduces that harm.

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

15 7. Conserving energy or nonrenewable natural resources.

16 8. Reducing the use of renewable natural resources through increased
17 efficiency.

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

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

21 **(1m)** ADMINISTRATION OF PROGRAM. In administering the program, the
22 department shall attempt to do all of the following:

23 (a) Promote, reward, and sustain superior environmental performance by
24 participants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (e) *Waiver of enforcement record requirements.* Before January 1, 2007, the
25 secretary of natural resources may waive requirements in par. (b) 2. or 3. based on

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1 the request of an applicant. The department shall provide public notice of the
2 request and shall provide at least 30 days for public comment on the request. The
3 secretary may not grant a waiver under this paragraph unless he or she finds that
4 the waiver is consistent with sub. (1m) and will not erode public confidence in the
5 integrity of the program.

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

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

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

18 (d) Notwithstanding s. 227.42 (1), a decision by the department under par. (c)
19 to approve or deny an application is not subject to review under ch. 227.

20 **(4m) INCENTIVES FOR TIER I.** (a) The department shall issue a numbered
21 certificate of recognition to each participant in tier I of the program.

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

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

4 (d) A participant in tier I of the program may use an Environmental Results
5 Program logo selected by the department on written materials produced by the
6 participant.

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

12 (f) After a participant in tier I of the program implements an environmental
13 management system that complies with sub. (3) (d) 1., the department shall conduct
14 any inspections of the participant's covered facilities or activities that are required
15 under chs. 29 to 31, 160, and 280 to 299 at the lowest frequency permitted under
16 those chapters, except that the department may conduct an inspection whenever it
17 has reason to believe that a participant is out of compliance with a requirement in
18 an approval or with an environmental requirement.

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

24 (b) *Enforcement record.* To be eligible to participate in tier II of the program,
25 an applicant shall demonstrate all of the following, subject to par. (e):

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

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

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

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

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

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

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1 b. Determined by the department to be appropriate to the nature, scale, and
2 environmental impacts of the applicant's operations related to 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 to the department an annual report on the environmental management
7 system audit that is 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 activities and to reporting the results of the audit to the
11 department in 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 (e) *Waiver of enforcement record requirements.* Before January 1, 2007, the
17 secretary of natural resources may waive requirements in par. (b) 2. or 3. based on
18 the request of an applicant. The department shall provide public notice of the
19 request and shall provide at least 30 days for public comment on the request. This
20 public comment period may be concurrent with the notice period under sub. (6) (c)
21 to (f). The secretary may not grant a waiver under this paragraph unless he or she
22 finds that the waiver is consistent with sub. (1m) and will not erode public confidence
23 in the integrity of the program.

24 **(6) PROCESS FOR TIER II.** (a) *Letter of intent.* To apply for participation in tier
25 II of the program, an entity shall submit a letter of intent to the department. In

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1 addition to providing information necessary to show that the applicant satisfies the
2 requirements in sub. (5), the applicant shall do all of the following in the letter of
3 intent:

4 1. Describe the involvement of interested persons in developing the proposal
5 for maintaining and improving the applicant's superior environmental performance,
6 identify the interested persons, and describe the interests that those person have in
7 the applicant's participation in the program.

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

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

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

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

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

22 (e) *Request to participate.* Within 30 days after the public notice under par. (c),
23 interested persons may request the department to grant them authorization to
24 participate in the negotiations under par. (f). A person who makes a request under
25 this paragraph shall describe the person's interests in the issues raised by the letter

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1 of intent. The department shall determine whether a person who makes a request
2 under this paragraph may participate in the negotiations under par. (f) based on
3 whether the person has demonstrated sufficient interest in the issues raised by the
4 letter of intent to warrant that participation.

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

11 (g) *Termination of negotiations.* The department may terminate negotiations
12 with an applicant concerning a participation contract. Notwithstanding s. 227.42
13 (1), a decision to terminate negotiations is not subject to review under ch. 227. The
14 department shall conclude negotiations within 12 months of beginning negotiations
15 unless the applicant and the department agree to an extension.

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

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

23 (j) *Participation contract.* Within 30 days after providing notice under par. (h)
24 or, if the department holds a public informational meeting under par. (i), within 30
25 days after that meeting, the department shall decide whether to enter into a

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

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

21 **(6m)** COMPLIANCE REPORTS AND DEFERRED CIVIL ENFORCEMENT. (a) *Compliance*
22 *reports.* If an audit under sub. (3) (d) 4. or (5) (c) 2. or 3. reveals any violations, the
23 participant shall include all of the following in the report of the results of the audit:

- 24 1. A description of all of the violations.

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

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

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

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

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

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

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

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

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

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

19 (d) *Deferred civil enforcement.* 1. a. If a participant in the program corrects
20 violations that are disclosed in a report that meets the requirements of par. (a) within
21 90 days after the department receives the report, this state may not bring a civil
22 action to collect forfeitures for the violations.

23 b. This state may not begin a civil action to collect forfeitures for violations
24 covered by a compliance schedule that is approved under par. (b) during the period
25 of the compliance schedule if the participant is in compliance with the compliance

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

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

11 2. Notwithstanding subd. 1., this state may at any time begin a civil action to
12 collect a forfeiture for a violation if any of the following apply:

13 a. The violation presents an imminent threat to public health or the
14 environment or may cause serious harm to public health or the environment.

15 b. The department discovers the violation before submission of a report that
16 meets the requirement of par. (a).

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

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

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1 (c) The department may suspend the participation of a participant in the
2 program if the department determines that the participant, any managing operator
3 of the participant, or any person with a 25% or more ownership interest in the
4 participant committed a criminal or civil violation involving a covered facility or
5 activity that resulted in substantial harm to public health or the environment or that
6 presented an imminent threat to public health or the environment and the
7 department refers the matter to the department of justice for prosecution.

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

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

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

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

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

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

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

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

20 **(7m)** ENVIRONMENTAL AUDITORS. The department may not approve an outside
21 environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. unless the outside
22 environmental auditor is certified by the Registrar Accreditation Board or meets
23 criteria concerning education, training, experience, and performance that are equal
24 to the criteria in International Organization for Standardization guidance 19011.

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1 **(7s) ACCESS TO RECORDS.** (a) Except as provided in par. (c), the department shall
2 make any record, report, or other information obtained in the administration of this
3 section available to the public.

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

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

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

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

24 (b) After consultations with interested persons, the department shall annually
25 establish a list identifying aspects of superior environmental performance that the

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1 department will use to identify which letters of intent it will process under sub. (6)
2 in the following year and the order in which it will process the letters of intent.

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

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

11 (e) The department shall select a logo for the program.

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

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

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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 (i) The department shall implement a process to obtain advice from a balanced
6 public group about all of the following:

7 1. The implementation and operation of the program, including the setting of
8 goals and priorities for the program.

9 2. 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 3. Assessing whether incentives provided under a participation contract are
13 proportional to the environmental benefits committed to under a participation
14 contract.

15 4. Procedures for evaluating the program and the results of the program.

16 5. Changes that should be made in the program.

17 **(10) PENALTY.** Any person who intentionally 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 **(11) SUNSET.** The department may not process or approve any application for
21 participation in the program that it receives after July 1, 2009.

22 **SECTION 2.** 299.85 of the statutes is created to read:

23 **299.85 Environmental Improvement Program. (1) DEFINITIONS.** In this
24 section:

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

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

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

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

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

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

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

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

20 (g) “Violation” means a violation of an environmental requirement.

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

24 (a) The regulated entity conducts an environmental compliance audit of the
25 facility.

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

6 (bm) The notice under par. (b) includes a statement, signed by an official of the
7 regulated entity who is responsible for environmental compliance, that
8 acknowledges that sub. (7) (a) does not apply to violations discovered by the
9 regulated entity before the beginning of the environmental compliance audit.

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

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

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

17 **(3) AUDIT REPORT.** To participate in the Environmental Improvement Program
18 with respect to a facility, the regulated entity that owns or operates the facility shall
19 submit a report to the department within 45 days after the date of the final written
20 report of findings of the environmental compliance audit of the facility. The
21 regulated entity shall complete the environmental compliance audit, including the
22 final written report of findings, within 365 days after providing the notice under sub.
23 (2) (b). The report submitted to the department shall include all of the following:

24 (a) A description of the environmental compliance audit, including who
25 conducted the environmental compliance audit, when it was completed, what

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1 activities and operations were examined, what was revealed by the environmental
2 compliance audit, and any other information needed by the department to make the
3 report under sub. (9m).

4 (b) A description of all violations revealed by the environmental compliance
5 audit and of the length of time that the violations may have continued.

6 (c) A description of actions taken or proposed to be taken to correct the
7 violations.

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

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

16 (em) If the regulated entity proposes to take more than 90 days to correct the
17 violations, the proposed stipulated penalties to be imposed if the regulated entity
18 fails to comply with 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 and a timetable for taking the measures that it has not
21 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

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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, includes a plan for corrective action. A regulated entity may use

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1 a form developed by the regulated entity, by a consultant, or by the department for
2 the final written report of findings of the 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 a report under sub.
24 (3) that contains proposed stipulated penalties under sub. (3) (em), the department
25 shall review the proposed stipulated penalties. The department may approve the

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1 stipulated penalties as submitted or propose different stipulated penalties. If the
2 regulated entity does not agree to stipulated penalties proposed by the department,
3 the department shall schedule a meeting with the regulated entity to attempt to
4 reach an agreement on stipulated penalties. If no agreement is reached, there are
5 no stipulated penalties for failure to comply with 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 that are disclosed in the
12 report by a regulated entity that qualifies under sub. (2) for participation in the
13 Environmental Improvement Program.

14 2. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314
15 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m)
16 (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and
17 (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57
18 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a),
19 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b)
20 1., 295.37 (2), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97
21 (1), if a regulated entity that qualifies under sub. (2) for participation in the
22 Environmental Improvement Program corrects violations that it discloses in a report
23 that meets the requirements of sub. (3) within 90 days after the department receives
24 the report that meets the requirements of sub. (3), the regulated entity may not be

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1 required to forfeit more than \$500 for each violation, regardless of the number of days
2 during which the violation continues.

3 3. This state may not begin a civil action to collect forfeitures for violations
4 covered by a compliance schedule that is approved under sub. (6) during the period
5 of the compliance schedule if the regulated entity is in compliance with the
6 compliance schedule. If the regulated entity fails to comply with the compliance
7 schedule, the department may collect any stipulated penalties during the period in
8 which the stipulated penalties apply. This state may begin a civil action to collect
9 forfeitures for violations that are not corrected by the end of the period in which the
10 stipulated penalties apply. If the regulated entity fails to comply with the compliance
11 schedule and there are no stipulated penalties, this state may begin a civil action to
12 collect forfeitures for the violations.

13 4. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314
14 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m)
15 (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and
16 (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57
17 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a),
18 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b)
19 1., 295.37 (2), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97
20 (1), if the department approves a compliance schedule under sub. (6) and the
21 regulated entity corrects the violations according to the compliance schedule, the
22 regulated entity may not be required to forfeit more than \$500 for each violation,
23 regardless of the number of days during which the violation continues.

24 (am) The department may issue a citation and follow the procedures under ss.
25 23.50 to 23.99 to collect a forfeiture for a violation to which par. (a) 2. or 4. applies.

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1 (b) Notwithstanding par. (a), this state may at any time begin a civil action to
2 collect a forfeiture not limited in amount under par. (a) 2. or 4. for a violation if any
3 of the following apply:

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

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

8 3. The violation results in a substantial economic benefit that gives the
9 regulated entity a clear advantage over its business competitors.

10 4. The violation is identified through monitoring or sampling required by
11 permit, statute, rule, regulation, judicial or administrative order, or consent
12 agreement.

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

17 6. The violation is discovered by the regulated entity before the beginning of
18 the compliance audit.

19 **(8) CONSIDERATION OF ACTIONS BY REGULATED ENTITY.** If the department receives
20 a report that complies with sub. (3) from a regulated entity that qualifies under sub.
21 (2) for participation in the Environmental Improvement Program, and the report
22 discloses a potential criminal violation, the department and the department of
23 justice shall take into account the diligent actions of, and reasonable care taken by,
24 the regulated entity to comply with environmental requirements in deciding
25 whether to pursue a criminal enforcement action and what penalty should be sought.

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1 In determining whether a regulated entity acted with due diligence and reasonable
2 care, the department and the department of justice shall consider whether the
3 regulated entity has demonstrated any of the following:

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

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

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

11 (d) That the regulated entity has promptly made appropriate efforts to achieve
12 compliance with environmental requirements since beginning to conduct
13 environmental compliance audits and those efforts were taken with due diligence.

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

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

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

22 (c) The department shall keep confidential any part of a record, report, or other
23 information obtained in the administration of this section, other than emission data
24 or discharge data, upon receiving an application for confidential status by any person
25 containing a showing satisfactory to the department that the part of a record, report,

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1 or other information would, if made public, divulge a method or process that is
2 entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.

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

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

15 **(9m)** ANNUAL REPORT. The department shall submit an annual report under s.
16 13.172 (3) concerning the Environmental Improvement Program to the standing
17 committees of the legislature with jurisdiction over environmental matters. The
18 department shall submit the first annual report no later than the first day of the 24th
19 month beginning after the effective date of this subsection [revisor inserts date].
20 The department shall include all of the following in the annual report:

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

24 (b) The number of violations reported by type, including the number of
25 violations related to air, water, solid waste, hazardous waste, and to other specified

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1 aspects of environmental regulation and the number of violations involving each of
2 the following:

- 3 1. Failure to have a required permit or other approval.
- 4 2. Failure to have a required plan.
- 5 3. Violation of a condition of a permit or other approval.
- 6 4. Release of a substance to the environment.
- 7 5. Failure to report.

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

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

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

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

18 **(11) SUNSET.** Subsections (7) and (8) do not apply to a regulated entity that
19 submits a report under sub. (3) after July 1, 2009.

20 **SECTION 3b.** 299.95 of the statutes is amended to read:

21 **299.95 Enforcement; duty of department of justice; expenses.** The
22 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
23 ss. 281.48, 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan
24 approvals, permits, and water quality certifications of the department, except those
25 promulgated or issued under ss. 281.48, 285.57, 285.59, and 299.64 and except as

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1 provided in ~~s.~~ ss. 285.86 and 299.85 (7) (am). The circuit court for Dane county or for
2 any other county where a violation occurred in whole or in part has jurisdiction to
3 enforce chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order,
4 license, plan approval, permit, or certification by injunctive and other relief
5 appropriate for enforcement. For purposes of this proceeding where chs. 281 to 285
6 and 289 to 295 or this chapter or the rule, special order, license, plan approval, permit
7 or certification prohibits in whole or in part any pollution, a violation is considered
8 a public nuisance. The department of natural resources may enter into agreements
9 with the department of justice to assist with the administration of chs. 281 to 285 and
10 289 to 295 and this chapter. Any funds paid to the department of justice under these
11 agreements shall be credited to the appropriation account under s. 20.455 (1) (k).

12

(END)