

SENATE BILL 61 (LRB -1432)

An Act to create 299.83 and 299.85 of the statutes; relating to: environmental compliance audits, environmental management systems, providing incentives for improving environmental performance, providing immunity from civil penalties for certain violations of environmental requirements, access to certain information, granting rule-making authority, and providing a penalty. (FE)

2003

- 05-06. S. Introduced by Senators **Kedzie, Welch, Schultz, Harsdorf and Stepp**; cosponsored by Representatives **Montgomery, Jeskewitz, M. Lehman, Hines, Olsen, Musser, Ainsworth, Vrakas, Krawczyk, Van Roy, Albers, Ott and Bies.**
- 03-05. S. Read first time and referred to committee on Environment and Natural Resources 105
- 03-13. S. Senator Roessler added as a coauthor 120
- 03-27. S. Public hearing held.
- 04-01. S. Fiscal estimate received.
- 04-07. S. Fiscal estimate received.
- 04-24. S. Executive action taken.
- 04-29. S. Report introduction and adoption of Senate Amendment 1 recommended by committee on Environment and Natural Resources, Ayes 5, Noes 0 (**LRB a0392**) 151
- 04-29. S. Report passage as amended recommended by committee on Environment and Natural Resources, Ayes 3, Noes 2 151
- 04-29. S. Available for scheduling.
- 05-01. S. LRB correction 157
- 05-05. S. Placed on calendar 5-5-2003 by committee on Senate Organization.
- 05-06. S. Referred to committee on Senate Organization 170
- 05-06. S. Report of joint review committee on Criminal Penalties requested pursuant to s. 13.525 (5) Wisconsin Statutes.

2004

- 03-08. S. Placed on calendar 3-9-2004 by committee on Senate Organization.
- 03-09. S. Read a second time.
- 03-09. S. Senator Cowles added as a coauthor.
- 03-09. S. Senator Darling added as a coauthor.
- 03-09. S. Senate amendment 1 **adopted**.
- 03-09. S. Senate amendment 2 offered by Senator Kedzie (**LRB a2654**).
- 03-09. S. Senate amendment 2 **adopted**.
- 03-09. S. Senate amendment 3 offered by Senator Carpenter (**LRB a2716**).
- 03-09. S. Senate amendment 3 **adopted**.
- 03-09. S. Ordered to a third reading.
- 03-09. S. Rules suspended.
- 03-09. S. Read a third time.
- 03-09. S. Referred to a second reading.
- 03-09. S. Vote by which Senate amendment 3 was **adopted** reconsidered, Ayes 23, Noes 10.
- 03-09. S. Senate amendment 3 laid on table, Ayes 25, Noes 8.
- 03-09. S. Senate amendment 4 offered by Senator Carpenter (**LRB a2717**).
- 03-09. S. Refused to take Senate amendment 3 from table and take up, Ayes 7, Noes 26.
- 03-09. S. Senate amendment 4 withdrawn and returned to author.
- 03-09. S. Senator Zien added as a coauthor.
- 03-09. S. Ordered to a third reading.
- 03-09. S. Rules suspended.
- 03-09. S. Read a third time and **passed**, Ayes 25, Noes 8.
- 03-09. S. Senator Panzer added as a coauthor.
- 03-09. S. Senator A. Lasee added as a coauthor.
- 03-09. S. Ordered immediately messaged.
- 03-10. A. Received from Senate 821
- 03-10. A. Read first time and referred to committee on Rules 821
- 03-10. A. Made a special order of business at 9:05 A.M. on 3-11-2004 pursuant to Assembly Resolution 39 860
- 03-11. A. Read a second time.
- 03-11. A. Ordered to a third reading.
- 03-11. A. Rules suspended.
- 03-11. A. Read a third time and **concurred in**.
- 03-11. A. Ordered immediately messaged.
- 03-11. S. Received from Assembly concurred in.

2003
ENROLLED BILL

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ADOPTED DOCUMENTS:

Orig Engr SubAmdt

03 - 143243

Amendments to above (if none, write "NONE"): SA1 SA2

Corrections - show date (if none, write "NONE"): 5-1-03

Topic relating to MWOS penalty

3/12/04 [Signature]
Date Enrolling Drafter

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2003 SENATE BILL 61

March 5, 2003 – Introduced by Senators KEDZIE, WELCH, SCHULTZ, HARSORF and STEPP, cosponsored by Representatives MONTGOMERY, JESKEWITZ, M. LEHMAN, HINES, OLSEN, MUSSER, AINSWORTH, VRAKAS, KRAWCZYK, VAN ROY, ALBERS, OTT and BIES. Referred to Committee on Environment and Natural Resources.

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

Analysis by the Legislative Reference Bureau

Environmental Results Program

This bill creates the Environmental Results Program, administered by the Department of Natural Resources (DNR), that provides incentives to public and private entities for improving environmental performance. There are two tiers in the Environmental Results Program.

To participate in tier I of the Environmental Results Program a private or public entity must satisfy several requirements.

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

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

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

The bill requires DNR to provide public recognition to an entity that participates in tier I of the program and to establish a logo that may be used by a participant in tier I. The bill also requires DNR to assign one of its employees to serve as the contact with DNR for each participant in tier I for all licenses and permits that the participant must obtain from DNR. After a participant in tier I implements an environmental management system that satisfies the statutory requirements, DNR must conduct inspections of the participant's facilities that are covered under the program at the lowest frequency that is permitted under DNR's programs.

Under the bill, if the audit of an environmental management system reveals a violation of an environmental law, the participant must include in its report to DNR a description of the violation and the actions taken or proposed to be taken to correct the violation. If the participant proposes to take more than 90 days to correct the violation, the participant must submit a proposed compliance schedule and proposed penalties that the participant would agree to accept (stipulated penalties) if it violates the compliance schedule.

The bill requires DNR to provide public notice and a period for public comment on any compliance schedule and stipulated penalties proposed by a participant. After that period, DNR may approve the compliance schedule as submitted or propose a different compliance schedule. If the parties cannot agree on a compliance schedule, DNR may impose a compliance schedule, which may be appealed by the participant. DNR also reviews proposed stipulated penalties. If the parties cannot agree on stipulated penalties, there are no stipulated penalties.

The bill generally prohibits this state from beginning an action to collect a forfeiture for a violation of an environmental law that is disclosed by a participant in the Environmental Results Program for at least 90 days after DNR receives the report of the violation. Similarly, the bill generally prohibits the state from beginning an action to collect a forfeiture while a participant is complying with a compliance schedule. If the participant corrects the violation within the 90 day period or within the time provided in the compliance schedule, the bill generally prohibits the state from ever bringing an action to collect forfeitures for the violation. If a participant violates a compliance schedule and there are stipulated penalties, the

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participant must pay the stipulated penalties. The bill authorizes this state to begin an action to collect forfeitures from a participant at any time in cases in which a violation presents an imminent threat or may cause serious harm to public health or the environment and cases in which DNR discovers the violation before the participant reports the violation.

To participate in tier II of the program, an applicant must satisfy several requirements. A participant in tier II enters into a participation contract with DNR. The contract specifies the participant's commitments and the incentives that will be provided to the participant.

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

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

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

If DNR determines that an applicant qualifies for participation in tier II, DNR may enter into negotiations with the applicant about a participation contract. DNR may permit interested third parties to participate in the negotiations. If the parties reach an agreement, they may enter into a participation contract with a term of not less than three years or more than ten years, subject to renewal for terms the same length. The bill authorizes DNR to promulgate rules specifying incentives that may be provided to participants in tier II. The bill imposes the same limitations on collecting forfeitures for violations of environmental laws by participants in tier II as for tier I.

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

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Under the bill, DNR may not process or approve any application for participation in the Environmental Results Program that it receives after July 1, 2009.

The bill requires DNR and the Department of Commerce to provide information about environmental management systems to potential participants in the Environmental Results Program.

Environmental Improvement Program

This bill creates the Environmental Improvement Program, administered by DNR, under which a participant may be able to avoid forfeitures (civil monetary penalties) for an environmental violation that the participant reports to DNR.

A public or private entity that is subject to environmental laws (regulated entity) may participate in the Environmental Improvement Program if the regulated entity satisfies several requirements. To participate, a regulated entity must conduct an environmental compliance audit that satisfies requirements specified in the bill. An environmental compliance audit is a systematic and objective review of the effects of a facility on the environment, including an evaluation of compliance with one or more environmental laws. The bill requires the regulated entity to notify DNR before beginning an audit.

To participate in the program, the regulated entity must submit a report to DNR describing the results of the environmental compliance audit. The regulated entity must complete the environmental compliance audit and submit the report to DNR within a year of notifying DNR that it will conduct the audit. At the time of submitting the report, more than two years must have elapsed since the regulated entity was prosecuted or issued a citation for violating an environmental law. The report must describe all violations of environmental laws revealed by the environmental compliance audit and the actions taken or proposed to be taken to correct the violations. If the regulated entity proposes to take more than 90 days to correct the violations, the regulated entity must submit a proposed compliance schedule and proposed penalties that the regulated entity would agree to accept (stipulated penalties) if it violates the compliance schedule.

The bill requires DNR to provide public notice and a period for public comment on any compliance schedule and stipulated penalties proposed by a regulated entity. After that period, DNR may approve the compliance schedule as submitted or propose a different compliance schedule. If the parties cannot agree on a compliance schedule, DNR may impose a compliance schedule, which may be appealed by the regulated entity. DNR also reviews proposed stipulated penalties. If the parties cannot agree on stipulated penalties, there are no stipulated penalties.

The bill generally prohibits this state from beginning an action to collect a forfeiture for a violation of an environmental law that is disclosed by a regulated entity that satisfies the requirements for participation in the Environmental Improvement Program for at least 90 days after DNR receives the report of the violation. Similarly, the bill generally prohibits the state from beginning an action to collect a forfeiture while a regulated entity is complying with a compliance schedule. If the regulated entity corrects the violation within the 90 day period or within the time provided in the compliance schedule, the bill generally prohibits the

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state from ever bringing an action to collect forfeitures for the violation. If a regulated entity violates a compliance schedule and there are stipulated penalties, the regulated entity must pay the stipulated penalties. The bill authorizes this state to begin an action to collect forfeitures from a regulated entity that satisfies the requirements for participation in the Environmental Improvement Program at any time under several circumstances, including cases in which a violation presents an imminent threat, or may cause serious harm, to public health or the environment, cases in which DNR discovers the violation before the regulated entity reports the violation, and cases of repeated violations of the same environmental law. The bill ends the Environmental Improvement Program on July 1, 2009.

The bill does not prevent the state from prosecuting a criminal violation by a regulated entity that qualifies for participation in the Environmental Improvement Program, but the bill requires DNR and DOJ to take into account the efforts of the regulated entity to comply with environmental laws in deciding whether to begin a criminal enforcement action and what penalty should be sought.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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SECTION ~~299.83~~ 299.83 of the statutes is created to read:

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

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

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

(bm) "Environmental management system audit" means a review, of an environmental management system, that is conducted in accordance with standards and guidelines issued by the International Organization for Standardization and the

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1 results of which are documented and are communicated to employees of the entity
2 whose environmental management system is reviewed.

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

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

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

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

16 2. An analysis of the environmental aspects and impacts of an entity’s
17 activities.

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

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

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

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

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1 7. An employee training program to develop awareness of and competence to
2 manage environmental issues.

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

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

8 10. Procedures for control of documents and for keeping records related to
9 environmental performance.

10 11. Environmental management system audits.

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

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

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

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

23 (g) “Superior environmental performance” means environmental performance
24 that results in measurable or discernible improvement in the quality of the air,
25 water, land, or natural resources, or in the protection of the environment, beyond

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1 that which is achieved under environmental requirements and that may be achieved
2 in ways that include all of the following:

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

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

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

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

15 5. Organizing uncoordinated entities that produce environmental harm into a
16 program that reduces that harm.

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

19 7. Conserving energy or nonrenewable natural resources.

20 8. Reducing the use of renewable natural resources through increased
21 efficiency.

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

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

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

3 (a) Promote, reward, and sustain superior environmental performance by
4 participants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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subject to par. (e)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (4m) INCENTIVES FOR TIER I. (a) The department shall issue a numbered
18 certificate of recognition to each participant in tier I of the program.

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

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

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

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

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

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

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

23 1. That, within 120 months before the date of application, no judgment of
24 conviction was entered against the applicant, any managing operator of the
25 applicant, or any person with a 25% or more ownership interest in the applicant for

7, subject to par. (e)
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1 a criminal violation involving a covered facility or activity that resulted in
2 substantial harm to public health or the environment or that presented an imminent
3 threat to public health or the environment.

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

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

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

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

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

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

24 2. Commit itself to having an outside environmental auditor approved by the
25 department conduct an annual environmental management system audit and to

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1 submitting to the department an annual report on the environmental management
2 system audit that is in compliance with sub. (6m) (a).

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

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No 8
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(d) *Superior environmental performance.* To be eligible to participate in tier II
8 of the program, an applicant shall demonstrate a record of superior environmental
9 performance and shall describe the measures that it proposes to take to maintain and
10 improve its superior environmental performance.

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

16 1. Describe the involvement of interested persons in developing the proposal
17 for maintaining and improving the applicant's superior environmental performance,
18 identify the interested persons, and describe the interests that those person have in
19 the applicant's participation in the program.

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

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

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

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

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

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

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

24 (g) *Termination of negotiations.* The department may terminate negotiations
25 with an applicant concerning a participation contract. Notwithstanding s. 227.42

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1 (1), a decision to terminate negotiations is not subject to review under ch. 227. The
2 department shall conclude negotiations within 12 months of beginning negotiations
3 unless the applicant and the department agree to an extension.

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

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

11 (j) *Participation contract.* Within 30 days after providing notice under par. (h)
12 or, if the department holds a public informational meeting under par. (i), within 30
13 days after that meeting, the department shall decide whether to enter into a
14 participation contract with an applicant, unless the applicant and the department
15 agree to an extension beyond 30 days. In a participation contract, the department
16 shall require that the participant maintain the environmental management system
17 described in sub. (5) (c) 1. and abide by the commitments in sub. (5) (c) 2. and 3. The
18 department may not reduce the frequency of required inspections or monitoring as
19 an incentive in a participation contract if the audit under sub. (5) (c) 3. is conducted
20 by a person other than an outside environmental auditor. The department shall
21 ensure that the incentives provided under a participation contract are proportional
22 to the environmental benefits that will be provided by the participant under the
23 participation contract. The department shall include in a participation contract
24 remedies that apply if a party fails to comply with the participation contract. The
25 term of a participation contract may not be less than 3 years or more than 10 years,

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1 with opportunity for renewal for additional terms of the same length as the original
2 term upon agreement of the parties. The term of a participation contract may not
3 exceed 5 years if the participation contract incorporates, modifies, or otherwise
4 affects the terms or conditions of a permit issued under s. 283.31, 283.33, or 285.62,
5 unless federal and state law authorize a longer term for the permit.

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

9 (6m) COMPLIANCE REPORTS AND DEFERRED CIVIL ENFORCEMENT. (a) *Compliance*
10 *reports.* If an audit under sub. (3) (d) 4. or (5) (c) 2. or 3. reveals any violations, the
11 participant shall include all of the following in the report of the results of the audit:

- 12 1. A description of all of the violations.
- 13 2. A description of the actions taken or proposed to be taken to correct the
14 violations identified in subd. 1.
- 15 3. A commitment to correct the violations identified in subd. 1. within 90 days
16 of submitting the report or according to a compliance schedule approved by the
17 department.
- 18 4. If the participant proposes to take more than 90 days after submitting the
19 report to correct the violations identified in subd. 1., a proposed compliance schedule
20 that contains the shortest reasonable periods for correcting the violations, a
21 statement that justifies the proposed compliance schedule, a description of measures
22 that the participant will take to minimize the effects of the violations during the
23 period of the compliance schedule, and proposed stipulated penalties to be imposed
24 if the participant fails to comply with the proposed compliance schedule.

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

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

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

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

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

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

24 (c) *Stipulated penalties.* If the department receives a report under par. (a) that
25 contains proposed stipulated penalties under par. (a) 4., the department shall review

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1 the proposed stipulated penalties. The department may approve the stipulated
2 penalties as submitted or propose different stipulated penalties. If the participant
3 does not agree to stipulated penalties proposed by the department, the department
4 shall schedule a meeting with the participant to attempt to reach an agreement on
5 stipulated penalties. If no agreement is reached, there are no stipulated penalties
6 for failure to comply with the compliance schedule.

7 (d) *Deferred civil enforcement.* 1. a. If a participant in the program corrects
8 violations that are disclosed in a report that meets the requirements of par. (a) within
9 90 days after the department receives the report, this state may not bring a civil
10 action to collect forfeitures for the violations.

11 b. This state may not begin a civil action to collect forfeitures for violations
12 covered by a compliance schedule that is approved under par. (b) during the period
13 of the compliance schedule if the participant is in compliance with the compliance
14 schedule. If the participant fails to comply with the compliance schedule and there
15 are stipulated penalties, the department may collect any stipulated penalties or may
16 terminate participation in the program. If the participant fails to comply with the
17 compliance schedule and there are no stipulated penalties, the department may
18 terminate participation in the program. After the department terminates
19 participation in the program, this state may begin a civil action to collect forfeitures
20 for the violations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (7m) ENVIRONMENTAL AUDITORS. The department may not approve an outside
9 environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. unless the outside
10 environmental auditor is certified by the Registrar Accreditation Board of the
11 American National Standards Institute or meets criteria concerning education,
12 training, experience, and performance that are equal to the criteria in International
13 Organization for Standardization standard 14012. *guidance 19011*

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

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

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

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1 the department to release the information, the participant shall pay the reasonable
2 costs incurred by this state to defend the refusal to release the information.

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

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

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

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

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

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

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

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

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

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

20 1. The implementation and operation of the program, including the setting of
21 goals and priorities for the program.

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

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

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

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

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

9 (11) SUNSET. The department may not process or approve any application for
10 participation in the program that it receives after July 1, 2009.

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

12 **299.85 Environmental Improvement Program.** (1) DEFINITIONS. In this
13 section:

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

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

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

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

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

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

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

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

10 (g) "Violation" means a violation of an environmental requirement.

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

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

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

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

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

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

Handwritten notes: 22 ✓, 228-20, 23, 24 SA2

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

3 (3) **AUDIT REPORT.** To participate in the Environmental Improvement Program
4 with respect to a facility, the regulated entity that owns or operates the facility shall
5 submit a report to the department within 45 days after the date of the final written
6 report of findings of the environmental compliance audit of the facility. The
7 regulated entity shall complete the environmental compliance audit, including the
8 final written report of findings, within 365 days after providing the notice under sub.

9 (2) (b). The report submitted to the department shall include all of the following:

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

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

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

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

21 (e) If the regulated entity proposes to take more than 90 days to correct the
22 violations, a proposed compliance schedule that contains the shortest reasonable
23 periods for correcting the violations, a statement that justifies the proposed
24 compliance schedule, and a description of measures that the regulated entity will

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1 take to minimize the effects of the violations during the period of the compliance
2 schedule.

3 (em) If the regulated entity proposes to take more than 90 days to correct the
4 violations, the proposed stipulated penalties to be imposed if the regulated entity
5 fails to comply with the compliance schedule under par. (e).

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

9 **(3m) PUBLIC NOTICE; COMMENT PERIOD.** (a) The department shall provide at least
10 30 days for public comment on a compliance schedule and stipulated penalties
11 proposed in a report under sub. (3). The department may not approve or issue a
12 compliance schedule under sub. (6) or approve stipulated penalties under sub. (6m)
13 until after the end of the comment period.

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

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

23 2. Describes the proposed compliance schedule and the proposed stipulated
24 penalties.

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

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

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

14 **(6) COMPLIANCE SCHEDULES.** (a) If the department receives a report under sub.
15 (3) that contains a proposed compliance schedule under sub. (3) (e), the department
16 shall review the proposed compliance schedule. The department may approve the
17 compliance schedule as submitted or propose a different compliance schedule. If the
18 regulated entity does not agree to implement a compliance schedule proposed by the
19 department, the department shall schedule a meeting with the regulated entity to
20 attempt to reach an agreement on a compliance schedule. If the department and the
21 regulated entity do not reach an agreement on a compliance schedule, the
22 department may issue a compliance schedule. A compliance schedule under this
23 subsection is subject to review under ch. 227.

24 (b) The department may not approve or issue a compliance schedule that
25 extends longer than 12 months beyond the date of approval of the compliance

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

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

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

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

9 **(6m) STIPULATED PENALTIES.** (a) If the department receives a report under sub.
10 (3) that contains proposed stipulated penalties under sub. (3) (em), the department
11 shall review the proposed stipulated penalties. The department may approve the
12 stipulated penalties as submitted or propose different stipulated penalties. If the
13 regulated entity does not agree to stipulated penalties proposed by the department,
14 the department shall schedule a meeting with the regulated entity to attempt to
15 reach an agreement on stipulated penalties. If no agreement is reached, there are
16 no stipulated penalties for failure to comply with the compliance schedule.

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

20 **(7) DEFERRED CIVIL ENFORCEMENT.** (a) 1. For at least 90 days after the
21 department receives a report that meets the requirements in sub. (3), this state may
22 not begin a civil action to collect forfeitures for violations that are disclosed in the
23 report by a regulated entity that qualifies under sub. (2) for participation in the
24 Environmental Improvement Program.

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33-1 SA2

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2. ~~If~~ a regulated entity that qualifies under sub. (2) for participation in the Environmental Improvement Program corrects violations that it discloses in a report that meets the requirements of sub. (3) within 90 days after the department receives the report that meets the requirements of sub. (3), ~~this state may not bring a civil action to collect forfeitures for the violations.~~

33-4 SA2

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

33-16 SA2

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

33-17 SA2

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

33-20 SA2

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

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

33-21/8 SA2

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SECTION 2

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

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

6 5. The violation is a violation of the same environmental requirement at the
7 same facility and committed in the same manner as a violation previously reported
8 ^{5A2} by the regulated entity under sub. (3), unless the violation is caused by a change in
9 ^{3A-9} business processes or activities.

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

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

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

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

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

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

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

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

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

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

SENATE BILL 61

1 the reasonable costs incurred by this state to defend the refusal to release the
2 information.

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

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

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

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

- 22 1. Failure to have a required permit or other approval.
- 23 2. Failure to have a required plan.
- 24 3. Violation of a condition of a permit or other approval.
- 25 4. Release of a substance to the environment.

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1 5. Failure to report.

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

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

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

SA2
under this section

9 (10) PENALTY. Any person who intentionally makes a false statement in a report
10 submitted under sub. (9) shall be fined not less than \$10 nor more than \$10,000 or
11 imprisoned for not more than 6 months or both.

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

14 (END)

37-13 *SA2*



State of Wisconsin
2003-2004 LEGISLATURE

CORRECTIONS IN:

**SENATE AMENDMENT 1,
TO 2003 SENATE BILL 61**

Prepared by the Legislative Reference Bureau
(April 29, 2003)

1. Page 1, line 3: delete "institute" and substitute "Institute".

**SENATE AMENDMENT 1,
TO 2003 SENATE BILL 61**

April 29, 2003 – Offered by COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES.

1 At the locations indicated, amend the bill as follows:

2 ✓ **1.** Page 24, line 10: delete the material beginning with “of” and ending with
3 “institute” on line 11.

4 ✓ **2.** Page 24, line 13: delete “standard 14012” and substitute “guidance 19011”.

5 (END)

**SENATE AMENDMENT 2,
TO 2003 SENATE BILL 61**

March 9, 2004 - Offered by Senator KEDZIE.

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 5, line 1: before that line insert:

3 "SECTION 1c. 23.50 (1) of the statutes, as affected by 2003 Wisconsin Act

4 (Assembly Bill 421), is amended to read:

5 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
6 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,
7 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),
8 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2),
9 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
10 administrative rules promulgated thereunder, violations specified under s. 285.86,
11 violations of ch. 951 if the animal involved is a captive wild animal, violations of rules
12 of the Kickapoo reserve management board under s. 41.41 (7) (k), violations to which

✓ 5-1 →

5-1

1 s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances enacted by any local
2 authority in accordance with s. 23.33 (11) (am) or 30.77.

3 ✓2. Page 5, line 1: substitute "SECTION 1m" for "SECTION 1".

4 ✓3. Page 10, line 14: after "(d)" insert ", subject to par. (e)".

5 ✓4. Page 10, line 19: after "following" insert ", subject to par. (e)".

6 ✓5. Page 13, line 2: after that line insert:

7 "(e) *Waiver of enforcement record requirements.* Before January 1, 2007, the
8 secretary of natural resources may waive requirements in par. (b) 2. or 3. based on
9 the request of an applicant. The department shall provide public notice of the
10 request and shall provide at least 30 days for public comment on the request. The
11 secretary may not grant a waiver under this paragraph unless he or she finds that
12 the waiver is consistent with sub. (1m) and will not erode public confidence in the
13 integrity of the program."

13-2

14 ✓6. Page 14, line 17: after "(d)" insert ", subject to par. (e)".

15 ✓7. Page 14, line 22: after "following" insert ", subject to par. (e)".

16 ✓8. Page 16, line 10: after that line insert:

17 "(e) *Waiver of enforcement record requirements.* Before January 1, 2007, the
18 secretary of natural resources may waive requirements in par. (b) 2. or 3. based on
19 the request of an applicant. The department shall provide public notice of the
20 request and shall provide at least 30 days for public comment on the request. This
21 public comment period may be concurrent with the notice period under sub. (6) (c)
22 to (f). The secretary may not grant a waiver under this paragraph unless he or she

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16-10

1 finds that the waiver is consistent with sub. (1m) and will not erode public confidence
2 in the integrity of the program.

3 ✓ 9. Page 28, line 20: after that line insert:

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

28-20

8 ✓ 10. Page 33, line 1: delete "If" and substitute "Notwithstanding minimum or
9 maximum forfeitures specified in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11),
10 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and
11 (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1),
12 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1),
13 (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m),
14 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b) 1., 295.37 (2), 299.15 (4), 299.51
15 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if".

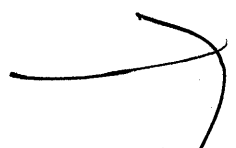
33

16 ✓ 11. Page 33, line 4: delete the material beginning with "this" and ending with
17 "violations" on line 5, and substitute "the regulated entity may not be required to
18 forfeit more than \$500 for each violation, regardless of the number of days during
19 which the violation continues".

33-4

20 ✓ 12. Page 33, line 16: delete "If" and substitute "Notwithstanding minimum or
21 maximum forfeitures specified in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11),
22 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and
23 (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1),
24 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1),

33-16



33-16

1 (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m),
2 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b) 1., 295.37 (2), 299.15 (4), 299.51
3 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if

4 ✓ **13.** Page 33, line 17: delete the material beginning with "this" and ending with
5 "violations" on line 18, and substitute "the regulated entity may not be required to
6 forfeit more than \$500 for each violation, regardless of the number of days during
33-17 which the violation continues".

8 ✓ **14.** Page 33, line 18: after that line insert:
9 "(am) The department may issue a citation and follow the procedures under ss.
33-18 23.50 to 23.99 to collect a forfeiture for a violation to which par. (a) 2. or 4. applies."

11 ✓ **15.** Page 33, line 20: after "forfeiture" insert "not limited in amount under par.
12 (a) 2. or 4."

13 ✓ **16.** Page 34, line 9: after that line insert:
14 "6. The violation is discovered by the regulated entity before the beginning of
34-9 the compliance audit."

16 ✓ **17.** Page 37, line 9: delete the material beginning with "in a report" and
17 ending with "(3)" on line 10, and substitute "under this section".

18 ✓ **18.** Page 37, line 13: after that line insert:
19 "SECTION 3b. 299.95 of the statutes is amended to read:

20 **299.95 Enforcement; duty of department of justice; expenses.** The
21 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
22 ss. 281.48, 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan
23 approvals, permits, and water quality certifications of the department, except those
24 promulgated or issued under ss. 281.48, 285.57, 285.59, and 299.64 and except as

✓ 37-13

37-13 cont

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)