

## 2003 SENATE BILL 61

March 5, 2003 – 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. 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.

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### *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.

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

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

2           **299.83 Environmental Results Program. (1) DEFINITIONS.** In this section:

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

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

9           (bm) “Environmental management system audit” means a review, of an  
10 environmental management system, that is conducted in accordance with standards  
11 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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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

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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).

7 (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.

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

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

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

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

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

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

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

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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 by the regulated entity under sub. (3), unless the violation is caused by a change in  
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

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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.

