

# State of Wisconsin



2003 Assembly Bill 228

Date of enactment:  
Date of publication\*:

## 2003 WISCONSIN ACT

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.

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

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

(c) "Environmental performance," unless otherwise qualified, means the effects, whether regulated under chs. 29 to 31, 160, and 280 to 299 or unregulated, of a

facility or activity on air, water, land, natural resources, and human health.

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

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

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

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

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

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

\* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

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

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

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

11. Environmental management system audits.

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

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

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

(f) "Program" means the Environmental Results Program under this section.

(g) "Superior environmental performance" means environmental performance that 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 which is achieved under environmental requirements and that may be achieved in ways that include all of the following:

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

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

3. Voluntarily engaging in restoring or preserving natural resources.

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

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

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

7. Conserving energy or nonrenewable natural resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Implement an evaluation system that provides flexibility and affords some protection for experimenta-

tion by participants that use innovative techniques to try to achieve superior environmental performance.

(k) Remove disincentives to achieving superior environmental performance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

applicant for a criminal violation involving a covered facility or activity that resulted in substantial harm to public health or the environment or that presented an imminent threat to public health or the environment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) *Notice of proposed contract.* If negotiations under par. (f) result in a proposed participation contract, the department shall provide public notice about the pro-

posed participation contract in the area in which each covered facility or activity is located or performed.

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

(j) *Participation contract.* Within 30 days after providing notice under par. (h) or, if the department holds a public informational meeting under par. (i), within 30 days after that meeting, the department shall decide whether to enter into a participation contract with an applicant, unless the applicant and the department agree to an extension beyond 30 days. In a participation contract, the department shall require that the participant maintain the environmental management system described in sub. (5) (c) 1. and abide by the commitments in sub. (5) (c) 2. and 3. The department may not reduce the frequency of required inspections or monitoring as an incentive in a participation contract if the audit under sub. (5) (c) 3. is conducted by a person other than an outside environmental auditor. The department shall ensure that the incentives provided under a participation contract are proportional to the environmental benefits that will be provided by the participant under the participation contract. The department shall include in a participation contract remedies that apply if a party fails to comply with the participation contract. The term of a participation contract may not be less than 3 years or more than 10 years, with opportunity for renewal for additional terms of the same length as the original term upon agreement of the parties. The term of a participation contract may not exceed 5 years if the participation contract incorporates, modifies, or otherwise affects the terms or conditions of a permit issued under s. 283.31, 283.33, or 285.62, unless federal and state law authorize a longer term for the permit.

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

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

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

that contains the shortest reasonable periods for correcting the violations, a statement that justifies the proposed compliance schedule, a description of measures that the participant will take to minimize the effects of the violations during the period of the compliance schedule, and proposed stipulated penalties to be imposed if the participant fails to comply with the proposed compliance schedule.

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

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

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

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

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

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

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

(d) *Deferred civil enforcement.* 1. a. If a participant in the program corrects violations that are disclosed in a report that meets the requirements of par. (a) within 90 days after the department receives the report, this state

may not bring a civil action to collect forfeitures for the violations.

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

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

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

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

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

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

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

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

(d) The department may suspend or terminate the participation of a participant in tier I of the program if the participant does not implement, or fails to maintain, the environmental management system described in sub. (3)

(d) 1., fails to conduct annual audits described in sub. (3) (d) 4., or fails to submit annual reports described in sub. (3) (d) 5.

(e) The department may, after an opportunity for a hearing, terminate a participation contract if the department determines that the participant is in substantial non-compliance with the participation contract.

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

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

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

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

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

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

**(7m) ENVIRONMENTAL AUDITORS.** The department may not approve an outside environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. unless the outside environmental auditor is certified by the Registrar Accreditation Board or meets criteria concerning educa-

tion, training, experience, and performance that are equal to the criteria in International Organization for Standardization guidance 19011.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Changes that should be made in the program.

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

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

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

**299.85 Environmental Improvement Program.**

(1) DEFINITIONS. In this section:

(a) “Environmental compliance audit” means a systematic, documented, and objective review, conducted by or on behalf of the owner or operator of a facility, of the environmental performance of the facility, including

an evaluation of compliance with one or more environmental requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) AUDIT REPORT. To participate in the Environmental Improvement Program with respect to a facility, the regulated entity that owns or operates the facility shall submit a report to the department within 45 days after the date of the final written report of findings of the environmental compliance audit of the facility. The regulated

entity shall complete the environmental compliance audit, including the final written report of findings, within 365 days after providing the notice under sub. (2) (b). The report submitted to the department shall include all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(6m) STIPULATED PENALTIES.** (a) If the department receives a report under sub. (3) that contains proposed stipulated penalties under sub. (3) (em), the department shall review the proposed stipulated penalties. The department may approve the stipulated penalties as sub-

mitted or propose different stipulated penalties. If the regulated entity does not agree to stipulated penalties proposed by the department, the department shall schedule a meeting with the regulated entity to attempt to reach an agreement on stipulated penalties. If no agreement is reached, there are no stipulated penalties for failure to comply with the compliance schedule.

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

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

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.

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.

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.

(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:

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).

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

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

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

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

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

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

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

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

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

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

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

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

method or process that is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.

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

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

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

(a) The number of reports received under sub. (3), including the number of reports by county of the facility

involved and by whether the regulated entity is governmental or nongovernmental.

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

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

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

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

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

**(10) PENALTY.** Any person who intentionally makes a false statement in a report submitted under sub. (3) shall be fined not less than \$10 nor more than \$10,000 or imprisoned for not more than 6 months or both.

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