

State of Wisconsin



2009 Senate Bill 126

Date of enactment: **July 8, 2009**
Date of publication*: **July 10, 2009**

2009 WISCONSIN ACT 30

AN ACT *to repeal* 299.80 (16) (b), 299.83 (3) (d) 1. b., 299.83 (5) (c) 1. b., 299.83 (11) and 299.85 (11); *to renumber and amend* 299.80 (16) (a) and 299.85 (2) (f); *to consolidate, renumber and amend* 299.83 (3) (d) 1. (intro.) and a. and 299.83 (5) (c) 1. (intro.) and a.; *to amend* 299.83 (title), 299.83 (1) (dg) (intro.), 299.83 (1) (dg) 1., 299.83 (1) (dg) 3., 299.83 (1) (dg) 7., 299.83 (1) (f), 299.83 (3) (e), 299.83 (4) (c), 299.83 (4m) (d), 299.83 (5) (e), 299.83 (6) (a) 1., 299.83 (6) (j), 299.83 (6) (k), 299.83 (6m) (b) 1., 299.83 (6m) (b) 2. (intro.), 299.83 (6m) (c), 299.83 (6m) (d) 1. a., 299.83 (6m) (d) 2. b., 299.83 (7e) (a), 299.83 (7m), 299.83 (8) (h), 299.85 (title), 299.85 (2) (intro.), 299.85 (3) (intro.), 299.85 (4), 299.85 (6) (b) (intro.), 299.85 (7) (a) 1. and 2., 299.85 (8) (intro.) and 299.85 (9m) (intro.); and *to create* 299.83 (1) (dg) 5m., 299.83 (1) (dg) 10g., 299.83 (1) (dg) 10r., 299.83 (6) (L) and 299.83 (6m) (am) of the statutes; **relating to:** changes to and extension of the Environmental Results Program, extension of the Environmental Improvement Program and the length of a compliance schedule under that program, and reporting requirements for certain environmental programs.

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

SECTION 1. 299.80 (16) (a) of the statutes is renumbered 299.80 (16) and amended to read:

299.80 (16) ~~Beginning not later than November 1, 1998, the secretary of natural resources Every even-numbered year, no later than December 15, the department shall submit an annual a progress report on the program under this section to the governor and, under s. 13.172 (3), the standing committees of the legislature with jurisdiction over environmental matters. This subsection does not apply after December 31, 2012.~~

SECTION 2. 299.80 (16) (b) of the statutes is repealed.

SECTION 3. 299.83 (title) of the statutes is amended to read:

299.83 (title) Environmental Results Green Tier Program.

SECTION 4. 299.83 (1) (dg) (intro.) of the statutes is amended to read:

299.83 (1) (dg) (intro.) “Functionally equivalent environmental management system” means an environmental management system that is appropriate to the nature, scale, and environmental impacts of an entity’s activities, products, and services and 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:

SECTION 5. 299.83 (1) (dg) 1. of the statutes is amended to read:

299.83 (1) (dg) 1. Adoption of an environmental policy that includes a commitment to compliance with environmental requirements, pollution prevention, and continual improvement in environmental performance and that is available to the public.

* Section 991.11, WISCONSIN STATUTES 2007–08 : 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].

SECTION 6. 299.83 (1) (dg) 3. of the statutes is amended to read:

299.83 (1) (dg) 3. Plans Establishment and implementation of plans and procedures to achieve compliance with environmental requirements and to maintain that compliance.

SECTION 7. 299.83 (1) (dg) 5m. of the statutes is created to read:

299.83 (1) (dg) 5m. Establishment, implementation, and maintenance of resources, roles, and responsibilities for establishing, implementing, maintaining, and improving the environmental management system.

SECTION 8. 299.83 (1) (dg) 7. of the statutes is amended to read:

299.83 (1) (dg) 7. An Establishment, implementation, and maintenance of an employee training program to develop awareness of and competence to manage environmental issues.

SECTION 9. 299.83 (1) (dg) 10g. of the statutes is created to read:

299.83 (1) (dg) 10g. Establishment, implementation, and maintenance of procedures to monitor and measure, on a regular basis, key characteristics of an entity's operations that can have a significant environmental impact.

SECTION 10. 299.83 (1) (dg) 10r. of the statutes is created to read:

299.83 (1) (dg) 10r. Establishment, implementation, and maintenance of procedures for periodically evaluating compliance with applicable environmental requirements.

SECTION 11. 299.83 (1) (f) of the statutes is amended to read:

299.83 (1) (f) "Program" means the Environmental Results Green Tier Program under this section.

SECTION 12. 299.83 (3) (d) 1. (intro.) and a. of the statutes are consolidated, renumbered 299.83 (3) (d) 1. and amended to read:

299.83 (3) (d) 1. Demonstrate that it has implemented, or commit itself to implementing within one year of the department's approval of its application, an environmental management system, for each covered facility or activity, that is all of the following: a. In 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.

SECTION 13. 299.83 (3) (d) 1. b. of the statutes is repealed.

SECTION 14. 299.83 (3) (e) of the statutes is amended to read:

299.83 (3) (e) Waiver of enforcement record requirements. ~~Before January 1, 2007, the~~ The secretary of natural resources may waive requirements in par. (b) 2. or 3. based on the request of an applicant. The department shall provide public notice of the request and shall pro-

vide at least 30 days for public comment on the request. The secretary may not grant a waiver under this paragraph unless he or she finds that the waiver is consistent with sub. (1m) and will not erode public confidence in the integrity of the program.

SECTION 15. 299.83 (4) (c) of the statutes is amended to read:

299.83 (4) (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, unless the department and the applicant agree to a longer period. 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.

SECTION 16. 299.83 (4m) (d) of the statutes is amended to read:

299.83 (4m) (d) A participant in tier I of the program may use an Environmental Results a Green Tier Program logo selected by the department on written materials produced by the participant.

SECTION 17. 299.83 (5) (c) 1. (intro.) and a. of the statutes are consolidated, renumbered 299.83 (5) (c) 1. and amended to read:

299.83 (5) (c) 1. Demonstrate that it has implemented an environmental management system, for each covered facility or activity, that is ~~all of the following: a. In in~~ 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.

SECTION 18. 299.83 (5) (c) 1. b. of the statutes is repealed.

SECTION 19. 299.83 (5) (e) of the statutes is amended to read:

299.83 (5) (e) Waiver of enforcement record requirements. ~~Before January 1, 2007, the~~ The secretary of natural resources may waive requirements in par. (b) 2. or 3. based on the request of an applicant. The department shall provide public notice of the request and shall provide at least 30 days for public comment on the request. This public comment period may be concurrent with the notice period under sub. (6) (c) to (f). The secretary may not grant a waiver under this paragraph unless he or she finds that the waiver is consistent with sub. (1m) and will not erode public confidence in the integrity of the program.

SECTION 20. 299.83 (6) (a) 1. of the statutes is amended to read:

299.83 (6) (a) 1. Describe the involvement of interested persons in developing and implementing the proposal for maintaining and improving the applicant's superior environmental performance, identify the inter-

ested persons, and describe the interests that those persons have in the applicant's participation in the program.

SECTION 21. 299.83 (6) (j) of the statutes is amended to read:

299.83 (6) (j) *Participation ~~contract~~ decision.* 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.

(jm) Participation contract. 1. 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 shall include in a participation contract a provision that describes how the participant will maintain the involvement of interested parties during the term of the participation contract. 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.

2. 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.

SECTION 22. 299.83 (6) (k) of the statutes is amended to read:

299.83 (6) (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) or (L), but the decision is subject to judicial review.

SECTION 23. 299.83 (6) (L) of the statutes is created to read:

299.83 (6) (L) *Alternate process.* 1. A person participating in the program under s. 299.80 may choose to apply for participation in tier II using the process under this paragraph, rather than under pars. (a) to (j), by submitting a letter notifying the department of its choice, before the expiration of the cooperative agreement under s. 299.80, along with a copy of its most recent performance evaluation under s. 299.80 (3) (j).

2. The department shall enter into discussions with a person submitting a letter under subd. 1. to develop a proposed participation contract that is based on the cooperative agreement under s. 299.80, making the changes necessary to ensure that the participation contract complies with par. (jm). For the purposes of par. (jm) 1., if the person agrees to include in the participation contract the measures to maintain and improve its environmental performance that were included in the cooperative agreement, the operational flexibility and variances granted to the person in the cooperative agreement are presumed to be proportional to the environmental benefits that will be provided by the participant.

3. The department shall provide public notice about a proposed participation contract developed under subd. 2. in the area in which each covered facility or activity is located or performed.

4. After providing public notice under subd. 3., the department may hold a public informational meeting about a proposed participation contract.

5. The department may enter into a participation contract under this paragraph with a person with whom the department has developed a proposed participation contract unless significant concerns are raised in comments arising from public notice under subd. 3. or from an informational meeting under subd. 4. and the person is unable or unwilling to respond to the concerns to the department's satisfaction.

SECTION 24. 299.83 (6m) (am) of the statutes is created to read:

299.83 (6m) (am) *Optional reports of violations.* If a participant discovers a violation, other than through an audit under sub. (3) (d) 4. or (5) (c) 2. or 3., the participant may, no more than 30 days after discovering the violation, submit a report to the department that includes all of the following:

1. A description of the violation and the date on which the participant discovered the violation.

2. A description of the actions taken or proposed to be taken to correct the violation.

3. A commitment to correct the violation 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 violation, a proposed compliance schedule that contains the shortest reasonable periods for correcting the violation, a statement that justifies the proposed compliance schedule, a description of measures that the participant will take to minimize the effects of the violation 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.

SECTION 25. 299.83 (6m) (b) 1. of the statutes is amended to read:

299.83 (6m) (b) 1. If the department receives a report under par. (a) or (am) that contains a proposed compliance schedule under par. (a) 4. or (am) 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.

SECTION 26. 299.83 (6m) (b) 2. (intro.) of the statutes is amended to read:

299.83 (6m) (b) 2. (intro.) The department may not approve a compliance schedule that extends longer than 12 months beyond the date of approval of the compliance schedule, unless the secretary determines that a longer schedule is necessary. The department shall consider the following factors in determining whether to approve a compliance schedule:

SECTION 27. 299.83 (6m) (c) of the statutes is amended to read:

299.83 (6m) (c) *Stipulated penalties.* If the department receives a report under par. (a) or (am) that contains proposed stipulated penalties under par. (a) 4. or (am) 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.

SECTION 28. 299.83 (6m) (d) 1. a. of the statutes is amended to read:

299.83 (6m) (d) 1. a. If a participant in the program corrects violations that are disclosed in a report that meets the requirements of par. (a) or (am) within 90 days after the department receives the report, this state may not bring a civil action to collect forfeitures for the violations.

SECTION 29. 299.83 (6m) (d) 2. b. of the statutes is amended to read:

299.83 (6m) (d) 2. b. The department discovers the violation before submission of a report that meets the requirement of par. (a) or (am).

SECTION 30. 299.83 (7e) (a) of the statutes is amended to read:

299.83 (7e) (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 or to take actions that may lead to 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 the entities to participate in tier I or tier II of the program or to take actions that may lead to superior environmental performance.

SECTION 31. 299.83 (7m) of the statutes is amended to read:

299.83 (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 accredited by an accreditation body that complies with standards of the International Organization for Standardization for accreditation bodies or meets criteria concerning education, training, experience, and performance that the department determines are equal equivalent to the criteria in the standards and guidance of the International Organization for Standardization guidance 19014 for entities providing audit and certification of environmental management systems.

SECTION 32. 299.83 (8) (h) of the statutes is amended to read:

299.83 (8) (h) The Every even-numbered year, no later than December 15, 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 May 1, 2007, and every 2 years after it submits the first report governor and, under s. 13.172 (2), to the standing committees of the legislature with jurisdiction over environmental matters.

SECTION 33. 299.83 (11) of the statutes is repealed.

SECTION 34. 299.85 (title) of the statutes is amended to read:

299.85 (title) Environmental Improvement Compliance Audit Program.

SECTION 35. 299.85 (2) (intro.) of the statutes is amended to read:

299.85 (2) REQUIREMENTS FOR PARTICIPATION. (intro.) Subject to sub. (2m), a regulated entity qualifies for participation in the Environmental Improvement Compliance Audit Program with respect to a facility owned or operated by the regulated entity if all of the following apply:

SECTION 36. 299.85 (2) (f) of the statutes is renumbered 299.85 (2m) and amended to read:

299.85 (2m) CONSIDERATION OF CERTAIN VIOLATIONS. At the time of submitting a report under sub. (3), Upon the receipt of a notice under sub. (2) (b), the department

~~shall consider whether 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. If the department determines that, because of the nature of the violation involved in the suit, participation by the regulated entity may damage the integrity of the Environmental Compliance Audit Program, the department shall notify the regulated entity that it is not eligible for participation.~~

SECTION 37. 299.85 (3) (intro.) of the statutes is amended to read:

299.85 (3) **AUDIT REPORT.** (intro.) To participate in the Environmental Improvement Compliance Audit 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:

SECTION 38. 299.85 (4) of the statutes is amended to read:

299.85 (4) **ENVIRONMENTAL COMPLIANCE AUDIT.** A regulated entity does not qualify for participation in the Environmental Improvement Compliance Audit 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.

SECTION 39. 299.85 (6) (b) (intro.) of the statutes is amended to read:

299.85 (6) (b) (intro.) 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, unless the secretary of natural resources determines that a longer schedule is necessary. The department shall consider the following factors in determining whether to approve a compliance schedule:

SECTION 40. 299.85 (7) (a) 1. and 2. of the statutes are amended to read:

299.85 (7) (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 participa-

tion in the Environmental Improvement Compliance Audit Program.

2. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b) 1., 295.37 (2), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if a regulated entity that qualifies under sub. (2) for participation in the Environmental Improvement Compliance Audit 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), the regulated entity may not be required to forfeit more than \$500 for each violation, regardless of the number of days during which the violation continues.

SECTION 41. 299.85 (8) (intro.) of the statutes is amended to read:

299.85 (8) **CONSIDERATION OF ACTIONS BY REGULATED ENTITY.** (intro.) 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 Compliance Audit 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:

SECTION 42. 299.85 (9m) of the statutes is amended to read:

299.85 (9m) **ANNUAL REPORT.** (intro.) The Every even-numbered year, no later than December 15, the department shall submit an annual a progress report on the program under this section to the governor and, 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 May 1, 2006.~~ The department shall include all of the following in the annual report:

SECTION 43. 299.85 (11) of the statutes is repealed.