



State of Wisconsin  
2003 - 2004 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,  
TO 2003 ASSEMBLY BILL 228**

September 23, 2003 – Offered by Senators ERPENBACH and HANSEN.

1     **AN ACT** *to create* 299.83 of the statutes; **relating to:** environmental compliance  
2         audits, environmental management systems, providing incentives for  
3         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.

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

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

7         **299.83 Environmental Results Program. (1) DEFINITIONS.** In this section:

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

10            (b) “Environmental management system” means an organized set of  
11            procedures to evaluate environmental performance and to achieve measurable or

1 noticeable improvements in that environmental performance through planning and  
2 changes in operations.

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

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

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

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

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

21 2. An analysis of the environmental aspects and impacts of an entity’s  
22 activities.

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

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

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

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

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

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

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

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

14           11. Environmental management system audits.

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

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

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

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

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

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

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

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

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

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

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

23 7. Conserving energy or nonrenewable natural resources.

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

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

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

4           **(1m)** ADMINISTRATION OF PROGRAM. In administering the program, the  
5 department shall attempt to do all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **(3) ELIGIBILITY FOR TIER I.** (a) *General.* An applicant is eligible for tier I 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 I 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 I of the program, an  
22 applicant shall demonstrate all of the following:

23 1. That, within 60 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

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

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

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

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

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

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

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

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

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

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

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

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

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

23          4. Conduct, or commit itself to conducting, annual environmental management  
24 system audits, with every 3rd environmental management system audit performed  
25 by an outside environmental auditor approved by the department, and commit itself



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

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

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

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

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

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

19 **(4m) INCENTIVES FOR TIER I.** (a) The department shall issue a numbered  
20 certificate of recognition to each participant in tier I of the program.

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

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

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

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

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.

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

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,

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.

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



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:

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.

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.

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

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.

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.

