



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Assembly Bill 479

**Assembly Substitute
Amendment 1**

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ASSEMBLY BILL 479

Assembly Bill 479 creates the **Environmental Improvement Program (EIP)**, a voluntary program which provides incentives to participating public or private entities (regulated entities) to achieve compliance with environmental laws. The essential elements of the bill include the following provisions described below.

To participate in the program, the regulated entity must conduct an environmental performance evaluation or have an environmental management system (EMS) that satisfies requirements specified in the bill. The regulated entity must submit a report to the Department of Natural Resources (DNR) describing the results of the evaluation or EMS, including compliance with environmental laws and all environmental violations revealed by the evaluation or EMS. The regulated entity must correct the violations within 90 days or establish a compliance schedule with the DNR to correct violations. Under the EIP, a regulated entity may avoid civil monetary penalties for an environmental violation reported to the DNR, as specified in the bill. The bill does not prevent the state from prosecuting a regulated entity for a criminal violation under circumstances specified in the bill.

For specific requirements, please see *Attachments 1, 2 and 3*. *Attachment 1* lists the major provisions of Assembly Bill 479 and Assembly Substitute Amendment 1. *Attachment 2* provides a comparison of the bill and the substitute amendment. *Attachment 3* compares key definitions in the bill and the substitute amendment.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 creates an **EIP** which is substantially similar to the EIP described in the bill, with the following major changes.

The substitute amendment specifies that the regulated entity must use an environmental compliance audit, identical to an “environmental performance evaluation” in the bill, to evaluate its compliance with environmental laws and reveal any environmental violations. The substitute amendment requires that a regulated entity must complete its environmental compliance audit and

provide the report or audit findings to DNR within one year. The substitute amendment also specifies additional information that must be provided in a public notice. Under the substitute amendment, the state is authorized to bring a civil action against a regulated entity at any time for repeat environmental violations. The substitute amendment also requires the DNR to submit a report on the EIP to the Legislature no later than two years after the effective date of the bill. Additionally, the substitute amendment specifies that any person “intentionally” making a false statement in an environmental compliance audit report is criminally liable. The use of “intentionally” rather than “knowingly” makes the penalty provision consistent with current law. Finally, the substitute amendment sunsets specified elements of the program on July 1, 2007.

The substitute amendment also creates an **Environmental Results Program (ERP)**. The ERP is a voluntary program that provides incentives to participants to go beyond compliance with environmental laws and to improve their environmental performance. The ERP is divided into two tiers, Tier I and Tier II.

To participate in Tier I, an applicant must inform the DNR about its enforcement record, its past and current environmental performance, and must have implemented or commit to implementing an EMS that meets specified requirements. In exchange, a Tier I participant receives a variety of incentives specified in the bill, including use of the program logo, publicity on an Internet site and having a single point of contact at DNR. A Tier I participant may not be subjected to a civil monetary penalty for violations it discovers through its EMS and reports to DNR as specified in the bill.

A Tier II applicant must satisfy a series of requirements to participate, which include having a demonstrated record of “superior environmental performance” as defined in the bill and having implemented an EMS that meets specified requirements. A Tier II participant enters into a “participation contract” with the DNR that specifies the participant’s specific reporting requirements, remedies for failure to comply with the contract, and the incentives that will be provided to the participant. If a Tier II participant discloses a violation discovered in an EMS audit or environmental compliance audit, a Tier II participant may not be subject to a civil monetary penalty for environmental violations, as specified in the bill.

The substitute amendment authorizes DNR to issue charters to associations of entities to assist participation in the ERP and to help them achieve superior environmental performance. Finally, the substitute amendment sunsets the ERP on July 1, 2007.

Assembly Substitute Amendment 1 provides an appropriation of \$150,000 in 2002-03 from the environmental fund to the Department of Commerce (Commerce). From this appropriation, Commerce is required to make grants to nongovernmental organizations to help develop the ability to participate in the ERP and to assist persons to develop environmental management systems. Additionally, Assembly Substitute Amendment 1 provides an appropriation of \$367,000 in 2001-02 and \$403,000 in 2002-03 to the DNR from the environmental fund for administration of the ERP.

On March 7, 2002, the Assembly Environment Committee unanimously recommended introduction of Assembly Substitute Amendment 1, and unanimously recommended adoption of Assembly Substitute Amendment 1 and passage of the bill, as amended. On the same date, the Assembly adopted Assembly Substitute Amendment 1 and passed the bill, as amended, on a vote of Ayes, 97; Noes, 2.

REL:tl;wu

Attachments

***Comparison of Assembly Bill 479 and Assembly Substitute
Amendment 1 to 2001 Assembly Bill 479***

Contents of Proposal

“X” denotes that the proposal contains provisions on the subject.

For a subject addressed in multiple proposals, the proposals may differ in their treatment of the subject.

<i>Subject</i>	<i>Pages in Attachment 2</i>	<i>2001 Assembly Bill 479</i>	<i>Assembly Substitute Amendment 1 to 2001 Assembly Bill 479</i>
Requirements for Participation or Eligibility	1	X	X
Required Report or Audit Report	2	X	X
Public Notice and Comment	2	X	X
Approval Process for ERP	2-3		X
Incentives for Tier I Participants in ERP	3		X
Suspension or Termination of Participation From ERP	3		X
Charters in ERP	4		X
Outside Environmental Auditors in ERP	4		X
DNR Powers and Duties in ERP	4		X
Environmental Results Council for ERP	4		X
Compliance Schedules	5	X	X
Stipulated Penalties	5	X	X
Deferred Civil Enforcement	6	X	X
Consideration of Actions by Regulated Entity if Criminal Violation Disclosed	6	X	X
Annual Report	6		X
Access to Records	7	X	X
Penalty	7	X	X
Sunset	7	X	X

*Comparison of 2001 Assembly Bill 479 and
Assembly Substitute Amendment 1 to Assembly Bill 479*

Requirements for Participation or Eligibility

AB 479	<p>(1) Conduct an “environmental performance evaluation” or submit findings from facility’s “environmental management system” (EMS) [each must comply with specific requirements, s. 299.85 (4) and (5), Stats.].</p> <p>(2) Submit report required to participate.</p> <p>(3) When required report is submitted, DNR or DOJ has not, within 2 years, filed suit to enforce an environmental requirement and the DNR or local governmental unit has not, within 2 years, issued a citation to enforce an environmental requirement involving the facility. [s. 299.85 (2), Stats.]</p>
ASA 1 Environmental Improvement Program (EIP)	Same requirements as in AB 479, except an “environmental compliance audit” is required instead of either an “environmental performance evaluation” or findings from the facility’s “EMS.” [s. 299.85 (2), Stats.]
ASA 1 Environmental Results Program (ERP)	<p>Tier I: Enforcement Record: (1) within 60 months before application, no judgment of conviction for a criminal violation involving a covered facility or activity; (2) within 36 months, no civil judgment for violation involving a covered facility or activity; (3) within 24 months, DOJ has not filed enforcement suit and DNR has not issued citation to enforce violation involving covered facility or activity. [s. 299.83 (3), Stats.]</p> <p>Environmental Performance: (1) describe past and current environmental performance for each covered facility or activity; and (2) plans for activities that enhance the environment. [s. 299.83 (3), Stats.]</p> <p>EMS: Has implemented or commits to implementing within one year of application for each covered facility or activity. See s. 299.83 (3) (d) for specific EMS requirements.</p>
	<p>Tier II: Enforcement Record: (1) within 120 months before application date, no judgment of conviction for a criminal violation; (2) within 60 months before application date, no civil judgment for violation involving a covered facility or activity; (3) within 24 months before application date, DOJ has not filed enforcement suit and DNR has not issued citation to enforce violation involving covered facility or</p>

	<p>activity. [s. 299.83 (5), Stats.]</p> <p>EMS: Has implemented for each covered facility or activity. See 299.83 (5) (c), Stats., for specific EMS requirements.</p> <p>“Superior Environmental Performance”: Demonstrate record of “superior environmental performance,” defined in s. 299.83 (1) (g), Stats.</p>
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Required Report or Audit Report

AB 479	<p>Submit report to DNR within 45 days after final report of either the environmental performance evaluation or findings from the facility’s EMS, if the findings identify violation of environmental requirements.</p> <p>Specified contents of report in s. 299.85 (3) (a) to (f), Stats.</p>
ASA 1 EIP	<p>Submit environmental compliance audit report to DNR within 45 days of final written report of the audit findings. Requires entity to complete audit and report of audit findings within 365 days of providing notice to DNR of date audit would begin, site, facility or operations or practices to be reviewed and general scope of audit, whichever is earlier. [s. 299.85 (3), Stats.]</p> <p>Specified contents of environmental compliance audit report are same as AB 479, s. 299.85 (3) (a) to (f), Stats.</p>
ASA 1 ERP	Not applicable; see Approval Process.

Public Notice and Comment

AB 479	<p>At least 30 days for public comment on compliance schedule and stipulated penalties proposed by entity in required report. Before public comment period starts, requires DNR to provide public notice that meets specific requirements. [s. 299.85 (3m) (b), Stats.]</p>
ASA 1 EIP	<p>Adds condition that public notice identify facility where violation occurred, describe violation, if related to reporting or administrative requirement, and type of violation. [s. 299.85 (3m) (b) 1., Stats.]</p>
ASA 1 ERP	Contained in Approval Process section.

Approval Process for ERP

ASA 1 ERP	<p>Tier I: Requires DNR to provide public notice in area where each covered facility or activity is located when application received. After</p>
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	<p>notice provided, DNR may hold public informational hearing.</p> <p>Requires approval or denial within 60 days after providing notice or, if public informational meeting, within 60 days after the meeting. [s. 299.83 (4), Stats.] Decision not subject to ch. 277 review.</p>
	<p>Tier II: (1) Requires entity to submit letter of intent. Requires letter to contain information specified in s. 299.83 (6) (a), Stats.</p> <p>(2) If DNR processes letter, required to provide public notice of letter in area where each covered facility or activity is located. Authorized to hold public informational meeting on letter.</p> <p>(3) Within 30 days after notice, interested persons may request participation in contract negotiations.</p> <p>(4) Authorizes DNR to terminate contract negotiations; requires negotiations to conclude within 12 months.</p> <p>(5) If negotiations successful, requires DNR to provide public notice about proposed participation contract in the area of each covered facility or activity.</p> <p>(6) DNR authorized to hold public informational meeting on contract.</p> <p>(7) Participation contract provisions specified in s. 299.83 (6) (j), Stats.</p> <p>(8) DNR decision to enter participation contract subject to judicial review, not administrative hearing. [s. 299.83 (6) (k), Stats.]</p>

Incentives for Tier I Participants in ERP

ASA 1	<p>(1) Numbered certificate of recognition; (2) publicity including name on Internet site and annual notice of participation to newspapers; (3) use of program logo; (4) single point of contact at DNR; (5) after EMS implemented, requires inspections at lowest frequency permitted, except DNR may inspect if reason to believe participant is out of compliance. [s. 299.83 (4m), Stats.]</p>
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Suspension or Termination of Participation From ERP

ASA 1	<p>Authorizes DNR to terminate participation at: (1) participant's request; or (2) if judgment entered for a criminal or civil violation involving a covered facility or activity.</p>
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	<p>Authorizes DNR, after opportunity for a hearing, to terminate participation contract if participant is in substantial noncompliance with contract. Person not party to contract, but believes a participant is in substantial noncompliance, may ask DNR to terminate contract.</p> <p>Authorizes DNR to suspend participant if DNR determines participant committed a criminal or civil violation involving covered facility or activity.</p> <p>Authorizes DNR to suspend or terminate Tier I participant if does not implement, or fails to maintain required EMS, conduct required annual audits or fail to submit annual reports to DNR. [s. 299.83 (7), Stats.]</p>
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Charters in ERP

ASA 1	<p>(1) Authorizes DNR to issue charter to association of entities to assist participation in Tier I or II and achieve superior environmental performance. Requires charter to contain specific requirements, including annual reporting to DNR. [s. 299.83 (7e), Stats.]</p> <p>(2) Requires public notice of proposed charter and public informational hearing.</p> <p>(3) Authorizes DNR, after opportunity for hearing, to terminate charter if association in substantial noncompliance with charter. Any person with evidence of noncompliance may request termination. [s. 299.83 (7e), Stats.]</p>
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Outside Environmental Auditors in ERP

ASA 1	<p>DNR may not approve outside auditor for EMS audit under tier I or tier II unless certified by Registrar Accreditation Board of American National Standards Institute or meets criteria equal to criteria in IOS standard 14012. [s. 299.83 (7m), Stats.]</p>
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DNR Powers and Duties in ERP

ASA 1	<p>Includes: identifying aspects of superior environmental performance; consulting with environmental results council about program operation and with DOC about program administration; submitting progress report to the Legislature not later than 36th month after effective date and every 2 years after it submits first report. [s. 299.83 (8), Stats.]</p>
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	Authorizes DNR to promulgate administrative rules to administer program and specify incentives may provide to Tier II participants consistent with federal laws and other state laws. [s. 299.83 (8), Stats.]
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Environmental Results Council for ERP

ASA 1	<p>15 members appointed for 5-year terms. Members represent environmental organizations, businesses, local governmental units and members who do not represent these groups. [s. 15.347 (3), Stats.]</p> <p>Required to advise DNR about: (1) program implementation; (2) evaluating costs of application and entering into participation contract or charter; (3) assessing if incentives in participation contract are proportional to environmental benefits; (4) program evaluation; (5) changes that should be made. [s. 299.83 (9), Stats.]</p>
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Compliance Schedules

AB 479	<p>Requires entity proposing longer than 90 days to correct violations described in required report to propose compliance schedule. Authorizes DNR to approve or propose different compliance schedule. If entity does not agree to DNR-proposed schedule, requires DNR to schedule meeting with entity to reach agreement. If no agreement reached, authorizes DNR to issue a compliance schedule. Compliance schedule is subject to ch. 227 review. [s. 299.85 (6), Stats.]</p> <p>DNR may not approve or issue compliance schedule that extends longer than 12 months beyond approval date of compliance schedule. Specific factors in determining approval listed in s. 299.85 (6), Stats.</p>
ASA 1 EIP	Same as AB 479. [s. 299.85 (6), Stats.]

<p>ASA 1 ERP</p>	<p>Compliance Reports. If annual EMS audit reveals violations of environmental requirements, requires participant to include all the following in the report of the results of the audit: (1) description of all violations; (2) actions taken or proposed to correct violations; and (3) commitment to correct violations within 90 days of submitting report or according to compliance schedule approved by DNR. [s. 299.83 (6m) (a), Stats.]</p> <p>Compliance Schedule: Requires participant proposing longer than 90 days to correct violations to include proposed compliance schedule in compliance report that includes specific information in s. 299.83 (6m) (b), Stats.</p> <p>Requires DNR to review proposed schedule. Authorizes DNR to approve or propose different compliance schedule. If no agreement on schedule, requires DNR to terminate participant’s participation in program. If parties agree to a schedule, requires participant to incorporate schedule into its EMS. [s. 299.83 (6m) (b), Stats.]</p>
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Stipulated Penalties

<p>AB 479</p>	<p>Requires DNR to review proposed stipulated penalties for violations of compliance schedule if an entity proposes to take longer than 90 days to correct violations. Authorizes DNR to approve or propose different stipulated penalties. If participant does not agree to DNR-proposed penalties, requires DNR to attempt to reach agreement with participant. If no agreement reached, no stipulated penalties for violations of compliance schedule. [s. 299.85 (6m), Stats.]</p>
<p>ASA 1 EIP</p>	<p>Same as AB 479. [s. 299.85 (6m), Stats.]</p>
<p>ASA 1 ERP</p>	<p>Same as AB 479. [s. 299.83 (6m) (c), Stats.]</p>

Deferred Civil Enforcement

<p>AB 479</p>	<p>For at least 90 days after DNR receives report required to participate in program that identifies environmental violations, state not authorized to begin civil action. [s. 299.85 (7), Stats.]</p> <p>Specifies conditions under which state may or may not begin a civil action for violations covered by a compliance schedule. [s. 299.85 (7)]</p>
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	<p>(a) 3., Stats.]</p> <p>Authorizes state civil action at any time if specific conditions apply. [s. 299.85 (7) (b), Stats.]</p>
ASA 1 EIP	<p>Adds that state may begin civil action to collect forfeitures at any time for repeat environmental violations, unless caused by a change in business processes or activities. [s. 299.85 (7) (b) 5., Stats.]</p>
ASA 1 ERP	<p>If participant corrects violations disclosed in a compliance report within 90 days after DNR receives report, state not authorized to bring civil action for disclosed violations. [s. 299.83 (6m) (d), Stats.]</p> <p>Specifies conditions under which state may or may not begin a civil action for violations covered by a compliance schedule. [s. 299.83 (6m) (d) 1., Stats.]</p> <p>Authorizes state civil action at any time if specific conditions apply. [s. 299.83 (6m) (d) 2., Stats.]</p>

Consideration of Actions by Regulated Entity if Criminal Violation Disclosed

AB 479	<p>If required report discloses potential criminal violation of environmental requirement, requires DNR and DOJ to take into account diligent actions and reasonable care of entity to comply with environmental requirements in deciding whether to pursue enforcement action and determine what penalty to seek. [s. 299.85 (8), Stats.]</p> <p>“Due diligence or reasonable care” defined in s. 299.85 (8) (a) to (f).</p>
ASA 1 EIP	<p>Same as AB 479. [s. 299.85 (8), Stats.]</p>
ASA 1 ERP	<p>Not applicable.</p>

Annual Report

AB 479	<p>No provision.</p>
ASA 1 EIP	<p>Requires DNR to submit to legislative standing committees with jurisdiction over environmental matters no later than first day after 24th</p>

	month beginning after effective date of bill. Specifies required content of report. [s. 299.85 (9m), Stats.]
ASA 1 ERP	No provision, but see DNR Powers and Duties in ERP.

Access to Records

AB 479	Requires DNR to make any record, report or other information available to public. Exception: Requires DNR to keep confidential any part of a record, report or other information, other than emission data or discharge data, upon satisfactory showing it is entitled to trade secret protection. [s. 299.85 (9), Stats.]
ASA 1 EIP	Specifies person must submit application for confidential status providing satisfactory showing that information entitled to trade secret protection. [s. 299.85 (9), Stats.]
ASA 1 ERP	Same as AB 479 and ASA 1 EIP. [s. 299.85 (7s), Stats.]

Penalty

AB 479	Requires any person who knowingly makes a false statement in a report fined no less than \$10 or more than \$10,000 or imprisoned for at least 6 months, or both. “Knowingly” defined as an act is done voluntarily and not result of negligence, mistake, accident or circumstances beyond person’s control. [s. 299.85 (9), Stats.]
ASA 1 EIP	Adds “intentionally” instead of “knowingly.” No definition. [s. 299.85 (10), Stats.]
ASA 1 ERP	Same as ASA 1 EIP. [s. 299.83 (10), Stats.]

Sunset

AB 479	No provision.
ASA 1 EIP	Deferred civil enforcement and DNR and DOJ consideration of actions by regulated entity provisions do not apply to a regulated entity that submits a report required to participate in the program after July 1, 2007. [s. 299.85 (11), Stats.]
ASA 1 ERP	DNR may not process or approve any application received after July 1, 2007. [s. 299.83 (11), Stats.]

Definitions in 2001 Assembly Bill 479 and Assembly Substitute Amendment 1 Environmental Improvement Program (EIP) and Environmental Results Program (ERP)

“Environmental Compliance Audit”

AB 479	No provision, but definition of “environmental performance evaluation” in the bill [s. 299.85 (1) (b), Stats.] is identical to definition of “environmental compliance audit” in ASA 1 EIP.
ASA 1 EIP	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. [s. 299.85 (1) (a), Stats.]
ASA 1 ERP	No provision.

“Environmental Management System (EMS)”

AB 479	An organized set of procedures implemented by the owner or operator of a facility to evaluate the facility’s environmental performance and to achieve measurable or noticeable improvements in environmental performance through planning and changes in the facility’s operations. [s. 299.85 (1) (a), Stats.]
ASA 1 EIP	No provision.
ASA 1 ERP	An organized set of procedures to evaluate environmental performance and to measurable or noticeable improvements in environmental performance through planning and changes in the facility’s operations. [s. 299.83 (1) (b), Stats.]

“Environmental Management System Audit”

AB 479	No provision.
ASA 1 EIP	No provision.

ASA 1 ERP	A review, of an EMS, conducted in accordance with standards and guidelines issued by the International Organization for Standardization (IOS) and results of which are documented and communicated to employees of the participant. [s. 299.83 (1) (bm), Stats.]
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“Environmental Requirement”

AB 479	A requirement in any of the following: (1) chs. 160 or 280 to 299, a rule under one of those chapters, or a permit, license or other approval or order issued by DNR under one of those chapters; or (2) an ordinance or other legally binding requirement of a local governmental unit enacted under authority granted by state law relating to environmental protection. [s. 299.85 (1) (c), Stats.]
ASA 1 EIP	Same as AB 479. [s. 299.85 (1) (c), Stats.]
ASA 1 ERP	A requirement in chs. 20 to 31, 160 or 280 to 299, a rule promulgated under one of those chapters or a permit, license, approval or DNR order under one of those chapters. [s. 299.83 (1) (d), Stats.]

“Environmental Performance”

AB 479	The effects of a facility on air, water, land, natural resources, and human health. [s. 299.85 (1) (c), Stats.]
ASA 1 EIP	Same as AB 479. [s. 299.85 (1) (am), Stats.]
ASA 1 ERP	Unless otherwise qualified, 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. [s. 299.83 (1) (c), Stats.]

“Local Governmental Unit”

AB 479	A city, village, town, county, town sanitary district or metropolitan sewerage district. [s. 299.85 (1) (e), Stats.]
ASA 1 EIP	Same as AB 479. [s. 299.85 (1) (e), Stats.]
ASA 1 ERP	Not applicable.

“Outside Environmental Auditor”

AB 479 and ASA 1 EIP	No provision.
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ASA 1 ERP	Auditor 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. [s. 299.83 (1) (dr), Stats.]
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“Participation Contract”

AB 479 and ASA 1 EIP	Not applicable.
ASA 1 ERP	Contract entered into by the DNR and a Tier II participant, that may, with DNR approval, be signed by other interested parties, that specifies the participant’s commitment to “superior environmental performance” and the incentives to be provided. [s. 299.83 (1) (e), Stats.]

“Regulated Entity”

AB 479	Means a public or private entity subject to environmental requirements. [s. 299.85 (1) (f), Stats.]
ASA 1	Same as AB 479. [s. 299.85 (1) (f), Stats.]
ASA 1 ERP	Not applicable.

“Superior Environmental Performance”

AB 479 and ASA 1 EIP	Not applicable.
ASA 1 ERP	<p>Environmental performance that results in measurable or discernible improvement in the quality of air, water, land, or natural resources or in the protection of the environment beyond that achieved under environmental requirements and that may be achieved in ways that include one of the following:</p> <ol style="list-style-type: none"> (1) Limiting discharges or emissions of pollutants from, or in some way minimizing negative effects on air, water, land, natural resources or human health of, a facility owned or operated by an entity or an activity performed by the entity to an extent greater than required by applicable environmental requirements. (2) Minimizing negative effects on air, water, land, natural resources or human health of raw materials used or products or services produced or provided to an extent greater than required by applicable environmental requirements. (3) Voluntarily engaging in restoring or preserving natural resources.

	<p>(4) Helping other entities comply with environmental requirements or to accomplish results described in 1. or 2.</p> <p>(5) Organizing uncoordinated entities that produce environmental harm into a program that reduces harm.</p> <p>(6) Reducing waste or use or production of hazardous substances in the design, production, delivery, use or reuse of goods or services.</p> <p>(7) Conserving energy or nonrenewable resources.</p> <p>(8) Reducing use of renewable natural resources through increased efficiency.</p> <p>(9) Adopting methods that reduce depletion of or long-term damage to renewable natural resources. [s. 299.83 (1) (g), Stats.]</p>
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