



2003 ASSEMBLY BILL 700

December 5, 2003 - Introduced by Representatives MILLER, OTT, PLOUFF and BERCEAU, cosponsored by Senators COWLES, WIRCH, ERPENBACH, LASSA and RISSER. Referred to Committee on Natural Resources.

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.

Analysis by the Legislative Reference Bureau

This bill creates the Environmental Results Program, administered by the Department of Natural Resources (DNR), that provides incentives to public and private entities for improving environmental performance. There are two tiers in the Environmental Results Program.

To participate in tier I of the Environmental Results Program a private or public entity must satisfy several requirements.

At the time of application for tier I, more than five years must have elapsed since the applicant was convicted of a criminal violation of an environmental law that resulted in substantial harm to public health or the environment or that presented an imminent threat to public health or the environment, since the applicant was convicted of making a false statement or obstructing justice with respect to an environmental law, since a judgment was entered against the applicant for violating an administrative order issued by the federal Environmental Protection Agency, and since a judgment was entered against the applicant for violating a consent decree or settlement agreement with an individual, this state, or the federal government in a

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matter that is related to an environmental law; more than three years must have elapsed since a civil judgment was entered against the applicant for a civil violation of an environmental law that resulted in substantial harm to public health or the environment; and more than two years must have elapsed since the applicant was prosecuted or issued a citation for violating an environmental law.

To participate in tier I, an applicant must inform DNR about its past environmental performance and its current environmental performance. The applicant must also inform DNR of its plans for activities that enhance the environment.

Finally, to participate in tier I, an applicant must have implemented or commit itself to implementing an environmental management system that satisfies certain requirements. An environmental management system is a set of procedures designed to evaluate the effects of a facility or activity on the environment and to achieve improvements in those effects. The applicant must specify, in its environmental management system, objectives for improving its environmental performance or voluntarily restoring, enhancing, or preserving natural resources. The applicant must also commit itself to conducting annual audits of its environmental management system and to submitting reports on those audits to DNR.

The bill requires DNR to provide public recognition to an entity that participates in tier I of the program and to establish a logo that may be used by a participant in tier I. The bill also requires DNR to assign one of its employees to serve as the contact with DNR for each participant in tier I for all licenses and permits that the participant must obtain from DNR. After a participant in tier I implements an environmental management system that satisfies the statutory requirements, DNR must conduct inspections of the participant's facilities that are covered under the program at the lowest frequency that is permitted under DNR's programs.

Under the bill, if the audit of an environmental management system reveals a violation of an environmental law, the participant must include in its report to DNR a description of the violation and the actions taken or proposed to be taken to correct the violation. If the participant proposes to take more than 90 days to correct the violation, the participant must submit a proposed compliance schedule and proposed penalties that the participant would agree to accept (stipulated penalties) if it violates the compliance schedule.

The bill requires DNR to provide public notice and a period for public comment on any compliance schedule and stipulated penalties proposed by a participant. After that period, DNR may approve the compliance schedule as submitted or propose a different compliance schedule. If the parties cannot agree on a compliance schedule, DNR may impose a compliance schedule, which may be appealed by the participant. DNR also reviews proposed stipulated penalties. If the parties cannot agree on stipulated penalties, there are no stipulated penalties.

The bill generally prohibits this state from beginning an action to collect a forfeiture for a violation of an environmental law that is disclosed by a participant in the Environmental Results Program for at least 90 days after DNR receives the report of the violation. Similarly, the bill generally prohibits the state from

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beginning an action to collect a forfeiture while a participant is complying with a compliance schedule. If the participant corrects the violation within the 90 day period or within the time provided in the compliance schedule, the bill generally prohibits the state from ever bringing an action to collect forfeitures for the violation. If a participant violates a compliance schedule and there are stipulated penalties, the participant must pay the stipulated penalties. The bill authorizes this state to begin an action to collect forfeitures from a participant at any time in cases in which a violation presents an imminent threat or may cause serious harm to public health or the environment and cases in which DNR discovers the violation before the participant reports the violation.

To participate in tier II of the program, an applicant must satisfy several requirements. A participant in tier II enters into a participation contract with DNR. The contract specifies the participant's commitments and the incentives that will be provided to the participant.

At the time of application for tier II, more than ten years must have elapsed since the applicant was convicted of a criminal violation of an environmental law that resulted in substantial harm to public health or the environment or that presented an imminent threat to public health or the environment, since the applicant was convicted of making a false statement or obstructing justice with respect to an environmental law, since a judgment was entered against the applicant for violating an administrative order issued by the federal Environmental Protection Agency, and since a judgment was entered against the applicant for violating a consent decree or settlement agreement with an individual, this state, or the federal government in a matter that is related to an environmental law; more than five years must have elapsed since a civil judgment was entered against the applicant for a civil violation of an environmental law that resulted in substantial harm to public health or the environment; and more than two years must have elapsed since the applicant was prosecuted or issued a citation for violating an environmental law.

To participate in tier II, an applicant must have implemented an environmental management system that satisfies certain requirements. The applicant must commit itself to having an environmental auditor approved by DNR conduct annual audits of the environmental management system and to submitting reports on those audits to DNR. The applicant must also commit itself to annually conducting, or having an auditor conduct, audits of its compliance with environmental laws and to submitting the results of those audits to DNR.

Finally, to participate in tier II, an applicant must demonstrate that it has a record of superior environmental performance and describe the measures that it proposes to take to maintain and improve its superior environmental performance. "Superior environmental performance" means that an entity's environmental performance results in measurable or discernible improvement in the quality of the air, water, land, or natural resources, or in the protection of the environment, beyond that achieved under environmental laws.

If DNR determines that an applicant qualifies for participation in tier II, DNR may enter into negotiations with the applicant about a participation contract. DNR may permit interested third parties to participate in the negotiations. If the parties

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reach an agreement, they may enter into a participation contract with a term of not less than three years or more than ten years, subject to renewal for terms of the same length. The bill authorizes DNR to promulgate rules specifying incentives that may be provided to participants in tier II. The bill imposes the same limitations on collecting forfeitures for violations of environmental laws by participants in tier II as for tier I.

The bill authorizes DNR to issue an environmental results charter to an association of entities to assist the entities to participate in tier I or tier II and to achieve superior environmental performance. In the charter, the entities describe the goals of the association, the responsibilities of the entities, and the activities that the entities will engage in to accomplish their goals.

Under the bill, DNR may not process or approve any application for participation in the Environmental Results Program that it receives after July 1, 2009.

The bill requires DNR and the Department of Commerce to provide information about environmental management systems to potential participants in the Environmental Results Program.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

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

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

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

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1 and guidelines issued by the International Organization for Standardization and the
2 results of which are documented and are communicated to employees of the entity
3 whose environmental management system is reviewed.

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

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

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

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

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

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

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

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

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

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

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

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

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

10 11. Environmental management system audits.

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

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

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

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

23 (g) “Superior environmental performance” means environmental performance
24 that results in measurable or discernible improvement in the quality of the air,
25 water, land, or natural resources, or in the protection of the environment, beyond

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1 that which is achieved under environmental requirements and that may be achieved
2 in ways that include all of the following:

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

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

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

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

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

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

19 7. Conserving energy or nonrenewable natural resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 1g. That, within 60 months before the date of application, no judgment of
2 conviction was entered against the applicant, any managing operator of the
3 applicant, or any person with a 25 percent or more ownership interest in the
4 applicant for a false statement or obstructing justice with respect to an
5 environmental requirement in a matter that involves a covered facility or activity.

6 1m. That, within 60 months before the date of application, no judgment was
7 entered against the applicant, any managing operator of the applicant, or any person
8 with a 25 percent or more ownership interest in the applicant for violating an
9 administrative order issued by the federal environmental protection agency in a
10 matter that involves a covered facility or activity.

11 1r. That, within 60 months before the date of application, no judgment was
12 entered against the applicant, any managing operator of the applicant, or any person
13 with a 25 percent or more ownership interest in the applicant for violating a consent
14 decree or settlement agreement with an individual, this state, or the federal
15 government in a matter that is related to a law for the protection of the natural
16 environment and that involves a covered facility or activity.

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

22 3. That, within 24 months before the date of application, the department of
23 justice has not filed a suit to enforce an environmental requirement, and the
24 department of natural resources has not issued a citation to enforce an

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1 environmental requirement, because of a violation involving a covered facility or
2 activity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **(4m)** INCENTIVES FOR TIER I. (a) The department shall issue a numbered
10 certificate of recognition to each participant in tier I of the program.

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

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

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

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

24 (f) After a participant in tier I of the program implements an environmental
25 management system that complies with sub. (3) (d) 1., the department shall conduct

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1 any inspections of the participant's covered facilities or activities that are required
2 under chs. 29 to 31, 160, and 280 to 299 at the lowest frequency permitted under
3 those chapters, except that the department may conduct an inspection whenever it
4 has reason to believe that a participant is out of compliance with a requirement in
5 an approval or with an environmental requirement.

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

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

13 1. That, within 120 months before the date of application, no judgment of
14 conviction was entered against the applicant, any managing operator of the
15 applicant, or any person with a 25 percent or more ownership interest in the
16 applicant for a criminal violation involving a covered facility or activity that resulted
17 in substantial harm to public health or the environment or that presented an
18 imminent threat to public health or the environment.

19 1g. That, within 120 months before the date of application, no judgment of
20 conviction was entered against the applicant, any managing operator of the
21 applicant, or any person with a 25 percent or more ownership interest in the
22 applicant for a false statement or obstructing justice with respect to an
23 environmental requirement in a matter that involves a covered facility or activity.

24 1m. That, within 120 months before the date of application, no judgment was
25 entered against the applicant, any managing operator of the applicant, or any person

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1 with a 25 percent or more ownership interest in the applicant for violating an
2 administrative order issued by the federal environmental protection agency in a
3 matter that involves a covered facility or activity.

4 1r. That, within 120 months before the date of application, no judgment was
5 entered against the applicant, any managing operator of the applicant, or any person
6 with a 25 percent or more ownership interest in the applicant for violating a consent
7 decree or settlement agreement with an individual, this state, or the federal
8 government in a matter that is related to a law for the protection of the natural
9 environment and that involves a covered facility or activity.

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

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

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

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

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

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

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

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

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

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

24 1. Describe the involvement of interested persons in developing the proposal
25 for maintaining and improving the applicant's superior environmental performance,

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1 identify the interested persons, and describe the interests that those person have in
2 the applicant's participation in the program.

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

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

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

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

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

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

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

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

12 (h) *Notice of proposed contract.* If negotiations under par. (f) result in a
13 proposed participation contract, the department shall provide public notice about
14 the proposed participation contract in the area in which each covered facility or
15 activity is located or performed.

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

19 (j) *Participation contract.* Within 30 days after providing notice under par. (h)
20 or, if the department holds a public informational meeting under par. (i), within 30
21 days after that meeting, the department shall decide whether to enter into a
22 participation contract with an applicant, unless the applicant and the department
23 agree to an extension beyond 30 days. In a participation contract, the department
24 shall require that the participant maintain the environmental management system
25 described in sub. (5) (c) 1. and abide by the commitments in sub. (5) (c) 2. and 3. The

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1 department may not reduce the frequency of required inspections or monitoring as
2 an incentive in a participation contract if the audit under sub. (5) (c) 3. is conducted
3 by a person other than an outside environmental auditor. The department shall
4 ensure that the incentives provided under a participation contract are proportional
5 to the environmental benefits that will be provided by the participant under the
6 participation contract. The department shall include in a participation contract
7 remedies that apply if a party fails to comply with the participation contract. The
8 term of a participation contract may not be less than 3 years or more than 10 years,
9 with opportunity for renewal for additional terms of the same length as the original
10 term upon agreement of the parties. The term of a participation contract may not
11 exceed 5 years if the participation contract incorporates, modifies, or otherwise
12 affects the terms or conditions of a permit issued under s. 283.31, 283.33, or 285.62,
13 unless federal and state law authorize a longer term for the permit.

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

17 **(6m) COMPLIANCE REPORTS AND DEFERRED CIVIL ENFORCEMENT.** (a) *Compliance*
18 *reports.* If an audit under sub. (3) (d) 4. or (5) (c) 2. or 3. reveals any violations, the
19 participant shall include all of the following in the report of the results of the audit:

20 1. A description of all of the violations.

21 2. A description of the actions taken or proposed to be taken to correct the
22 violations identified in subd. 1.

23 3. A commitment to correct the violations identified in subd. 1. within 90 days
24 of submitting the report or according to a compliance schedule approved by the
25 department.

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1 4. If the participant proposes to take more than 90 days after submitting the
2 report to correct the violations identified in subd. 1., a proposed compliance schedule
3 that contains the shortest reasonable periods for correcting the violations, a
4 statement that justifies the proposed compliance schedule, a description of measures
5 that the participant will take to minimize the effects of the violations during the
6 period of the compliance schedule, and proposed stipulated penalties to be imposed
7 if the participant fails to comply with the proposed compliance schedule.

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

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

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

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

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

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

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

14 (d) *Deferred civil enforcement.* 1. a. If a participant in the program corrects
15 violations that are disclosed in a report that meets the requirements of par. (a) within
16 90 days after the department receives the report, this state may not bring a civil
17 action to collect forfeitures for the violations.

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

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1 participation in the program, this state may begin a civil action to collect forfeitures
2 for the violations.

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

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

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

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

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

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

21 (c) The department may suspend the participation of a participant in the
22 program if the department determines that the participant, any managing operator
23 of the participant, or any person with a 25 percent or more ownership interest in the
24 participant committed a criminal or civil violation involving a covered facility or
25 activity that resulted in substantial harm to public health or the environment or that

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1 presented an imminent threat to public health or the environment and the
2 department refers the matter to the department of justice for prosecution.

3 (d) The department may suspend or terminate the participation of a
4 participant in tier I of the program if the participant does not implement, or fails to
5 maintain, the environmental management system described in sub. (3) (d) 1., fails
6 to conduct annual audits described in sub. (3) (d) 4., or fails to submit annual reports
7 described in sub. (3) (d) 5.

8 (e) The department may, after an opportunity for a hearing, terminate a
9 participation contract if the department determines that the participant is in
10 substantial noncompliance with the participation contract.

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

14 **(7e) CHARTERS.** (a) The department may issue an environmental results
15 charter to an association of entities to assist the entities to participate in tier I or tier
16 II of the program and to achieve superior environmental performance. An
17 association to which a charter is issued may consist of private entities, public
18 entities, or a combination of private and public entities. An association to which a
19 charter is issued may be organized on any basis that helps to achieve superior
20 environmental performance.

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

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

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

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

15 **(7m) ENVIRONMENTAL AUDITORS.** The department may not approve an outside
16 environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. unless the outside
17 environmental auditor is certified by the Registrar Accreditation Board or meets
18 criteria concerning education, training, experience, and performance that are equal
19 to the criteria in International Organization for Standardization guidance 19011.

20 **(7s) ACCESS TO RECORDS.** (a) Except as provided in par. (c), the department shall
21 make any record, report, or other information obtained in the administration of this
22 section available to the public.

23 (c) The department shall keep confidential any part of a record, report, or other
24 information obtained in the administration of this section, other than emission data
25 or discharge data, upon receiving an application for confidential status by any person

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1 containing a showing satisfactory to the department that the part of a record, report,
2 or other information would, if made public, divulge a method or process that is
3 entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), of that person.

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

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

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

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

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

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

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

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

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

19 (h) The department shall submit a progress report on the program to the
20 legislature, in the manner provided in s. 13.172 (2), no later than the first day of the
21 36th month beginning after the effective date of this paragraph [revisor inserts
22 date], and every 2 years after it submits the first report.

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

