

CHAPTER 299

GENERAL ENVIRONMENTAL PROVISIONS

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299.01 Definitions. In this chapter, unless the context requires otherwise:

(3) “Department” means the department of natural resources.

(4) “Environmental pollution” means the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.

(5) “Groundwater” means any of the waters of the state occurring in a saturated subsurface geological formation of rock or soil.

(6) “Hazardous substance” means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the department.

(7) “Industrial wastes” include liquid or other wastes resulting from any process of industry, manufacture, trade or business or the development of any natural resource.

(8) “Municipality” means any city, town, village, county, county utility district, town sanitary district, public inland lake protection and rehabilitation district or metropolitan sewage district.

(9) “Other wastes” include all other substances, except industrial wastes and sewage, which pollute any of the surface waters of the state. The term also includes unnecessary siltation resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.

(10) “Person” means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(11) “Sewage” means the water-carried wastes created in and to be conducted away from residences, industrial establishments and public buildings, as defined in s. 101.01 (12), with such surface water or groundwater as may be present.

(12) “Sewerage system” means all structures, conduits and pipe lines by which sewage is collected and disposed of, except plumbing inside and in connection with buildings served, and service pipes from building to street main.

(13) “Wastewater” means all sewage.

History: 1995 a. 227 s. 996.

299.05 Permit guarantee program. (1) The department shall promulgate rules under which the department refunds fees paid by an applicant for a license or approval that is issued under ss. 30.10 to 30.205 or 30.21 to 30.27, chs. 280 to 292 or subch. II of ch. 295 and that is of a type specified in the rule if the department fails to make a determination on the application within the time limit specified in the rule for that type of license or approval. The rules under this subsection do not apply to an applicant for a license or other approval related to mining, as defined in s. 293.01 (9), prospecting, as defined in s. 293.01 (18), or nonmetallic mining, as defined in s. 295.11 (3).

(2) The department shall specify time limits for at least the following types of licenses and approvals in the rules under sub. (1):

(a) Permits, contracts, and other approvals under ss. 30.10 to 30.205 and 30.21 to 30.27.

(b) Approvals under s. 281.34.

(c) Permits under subch. IV of ch. 283.

(e) Licenses under subch. III of ch. 289.

(f) Licenses issued under subch. IV of ch. 291.

History: 1997 a. 27, 301; 2003 a. 118, 310.

299.07 License denial, nonrenewal and revocation based on tax delinquency. (1) (a) Except as provided in par. (am), the department shall require each applicant to provide the department with the applicant’s social security number, if the applicant is an individual, or the applicant’s federal employer identification number, if the applicant is not an individual, as a condition of issuing or renewing any of the following:

1. A registration under s. 280.15.

2. A certification under s. 281.17 (3).

3. A license or certification under s. 281.48 (3).

4. A certification under s. 285.51 (2).

4m. A certification under s. 285.59 (5).

5. A certification under s. 289.42 (1).

6. A license under s. 291.23.

7. A license under s. 293.21.

8. A license under s. 293.25 (2).

10. A license under s. 295.33.

11. A certification or registration under s. 299.11.

12. A license under s. 299.51 (3) (c).

(am) 1. If an individual who applies for the issuance or renewal of a license, registration or certification specified in par. (a) does not have a social security number, the department shall require the applicant, as a condition of issuing or renewing the license, registration or certification, to submit a statement made or subscribed under oath or affirmation that the applicant does not have a social

security number. The statement shall be in the form prescribed by the department of workforce development.

2. A license, registration or certification specified in par. (a) that is issued in reliance on a statement submitted under subd. 1. is invalid if the statement is false.

(b) The department may not disclose any information received under par. (a) to any person except as follows:

1. To the department of revenue for the purpose of requesting certifications under s. 73.0301.

2. If the department is required to obtain the information under s. 299.08 (1) (a), to the department of workforce development in accordance with a memorandum of understanding under s. 49.857.

(2) The department shall deny an application for the issuance or renewal of a license, registration or certification specified in sub. (1) (a), or shall revoke a license, registration or certification specified in sub. (1) (a), if the department of revenue certifies under s. 73.0301 that the applicant or holder of the license, registration or certification is liable for delinquent taxes.

History: 1997 a. 237; 1999 a. 9, 32.

299.08 License denial, nonrenewal, suspension or restriction based on failure to pay support. (1) (a) Except as provided in par. (am), the department shall require each applicant who is an individual to provide the department with the applicant's social security number as a condition of issuing or renewing any of the following:

1. A registration under s. 280.15.
2. A certification under s. 281.17 (3).
3. A license or certification under s. 281.48 (3).
4. A certification under s. 285.51 (2).
5. A certification under s. 289.42 (1).
6. A license under s. 291.23.
7. A license under s. 299.51 (3) (c).

(am) 1. If an individual who applies for the issuance or renewal of a license, registration or certification specified in par. (a) does not have a social security number, the department shall require the applicant, as a condition of issuing or renewing the license, registration or certification, to submit a statement made or subscribed under oath or affirmation that the applicant does not have a social security number. The statement shall be in the form prescribed by the department of workforce development.

2. A license, registration or certification specified in par. (a) that is issued in reliance on a statement submitted under subd. 1. is invalid if the statement is false.

(b) The department may not disclose any information received under par. (a) to any person except as follows:

1. To the department of workforce development in accordance with a memorandum of understanding under s. 49.857.

2. If the department is required to obtain the information under s. 299.07 (1) (a), to the department of revenue for the purpose of requesting certifications under s. 73.0301.

(2) The department shall deny an application for the issuance or renewal of a license, registration or certification specified in sub. (1) (a), or shall suspend a license, registration or certification specified in sub. (1) (a) for failure to make court-ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or failure to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and relating to paternity or child support proceedings, as required in a memorandum of understanding under s. 49.857.

History: 1997 a. 191, 237; 1999 a. 9, 32.

299.11 Laboratory certification program. (1) DEFINITIONS. AS used in this section:

(a) "Accuracy" means the closeness of a measured value to its generally accepted value or its value based upon an accepted reference standard.

(b) "Certified laboratory" means a laboratory which performs tests for hire in connection with a covered program and which receives certification under sub. (7) or receives recognition as a certified laboratory under sub. (5).

(c) "Council" means the certification standards review council created under s. 15.107 (12).

(d) "Covered program" means test results submitted in connection with any of the following:

1. A feasibility report, plan of operation or the condition of any license issued for a solid waste facility under subch. III of ch. 289, or hazardous waste facility under s. 291.25 (2) and (3).

2. An application for a mining permit under s. 293.37 (2).

3. Monitoring required by terms and conditions of a permit issued under ch. 283.

4. The replacement of a well or provision of alternative water supplies under s. 281.75 or 281.77.

5. Groundwater monitoring under ch. 160.

6. The management or enforcement of the safe drinking water program under s. 280.13 (1) (b) and (d) or 281.17 (8).

7. The terms of department contracts when specifically required in the contracts.

8. An investigation of a discharge of a hazardous substance under s. 292.11.

9. A regulatory program specified by the department by rule if, after consultation with the council, the department finds that existing quality control programs do not provide consistent and reliable results and the best available remedy is to require that all laboratories performing the tests for that regulatory program be certified or registered.

(e) "Laboratory" means a facility which performs tests in connection with a covered program.

(f) "Precision" means the closeness of repeated measurements of the same parameter within a sample.

(g) "Registered laboratory" means a laboratory which is registered under sub. (8) or receives recognition as a registered laboratory under sub. (5).

(h) "Results" includes measurements, determinations and information obtained or derived from tests.

(i) "Test" means any chemical, bacteriological, biological, physical, radiation or microscopic test, examination or analysis conducted by a laboratory on water, wastewater, waste material, soil or hazardous substance.

(j) "Test category" means one type of test or group of tests specified by rule under sub. (4) for similar materials or classes of materials or which utilize similar methods or related methods.

(2) COORDINATION WITH DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION. (a) The department shall submit to the department of agriculture, trade and consumer protection and to the state laboratory of hygiene any rules proposed under this section that affect the laboratory certification program under s. 93.12 (5), for review and comment. These rules may not take effect unless they are approved by the department of agriculture, trade and consumer protection within 6 months after submission.

(b) The department shall enter into a memorandum of understanding with the department of agriculture, trade and consumer protection setting forth the responsibilities of each department in administering the laboratory certification programs under s. 93.12 (5) and this section. The memorandum of understanding shall include measures to be taken by each department to avoid duplication of application and compliance procedures for laboratory certification.

(3) CERTIFICATION STANDARDS REVIEW COUNCIL. The council shall review the laboratory certification and registration program and shall make recommendations to the department concerning

the specification of test categories, reference sample testing and standards for certification, registration, suspension and revocation and other aspects of the program.

(4) DEPARTMENT MAY REQUIRE CERTIFICATION OR REGISTRATION. (a) *Applicability.* Except as provided in subs. (5) and (6), if results from a test in a specified test category in a covered program are required to be submitted to the department, the department may require by rule that the test be conducted by a laboratory which is certified or registered to conduct tests in that specified category. The department may require that tests be conducted by a certified laboratory if the requirements for registration do not meet the requirements of an applicable federal law.

(b) *Specification of test categories.* After considering any recommendations by the council, the department may identify by rule specified test categories.

(c) *Delayed effective date.* A rule identifying specified test categories for which tests are required to be conducted by a certified or registered laboratory may not take effect until at least 120 days after publication. The department may not require a person to resubmit results of tests which were not required to be conducted by a certified or registered laboratory at the time of the original submission merely because of that fact.

(5) RECOGNITION OF OTHER CERTIFICATION OR REGISTRATION. (a) *Laboratories certified by the department of agriculture, trade and consumer protection.* The department shall recognize the certification of a laboratory by the department of agriculture, trade and consumer protection under s. 93.12 and shall accept the results of any test conducted by a laboratory certified to conduct that category of test under that section.

(b) *Reciprocity with laboratories certified or registered by other governments.* The department may recognize the certification, registration, licensure or approval of a laboratory by another state or an agency of the federal government if the standards for certification, registration, licensure or approval are substantially equivalent to those established under this section. The department shall negotiate with and attempt to enter into acceptable agreements with federal agencies and agencies of other states for the purpose of reciprocal recognition of laboratory certification and registration under this section. The department may not recognize the certification, registration, licensure or approval of a laboratory by another state or an agency of the federal government unless that state or federal agency recognizes laboratories certified under this section. The department may accept the results of any tests conducted by a laboratory which it recognizes under an agreement. The department shall publish periodically a list of those agencies whose certifications, approvals or registrations it accepts. Any laboratory which is registered, certified or approved by any such agency may apply to the department to have the same recognized under this section.

(c) *Private organization agreements.* The department may recognize the certification, accreditation or approval of a laboratory by a private nonprofit organization if the organization's standards for certification, accreditation or approval are substantially equivalent to those established under this section. The department may negotiate with and attempt to enter into acceptable agreements with private nonprofit organizations for the purpose of recognition under this paragraph. The department shall publish periodically a list of those organizations whose certifications, accreditations or approvals it accepts. The department may accept the results of any tests conducted by a laboratory that it recognizes under an agreement. Any laboratory that is certified, accredited or approved by an organization with which the department has an agreement may apply to the department to be recognized under this paragraph.

(d) *Discretionary acceptance.* The department may accept the results of a test in a specified test category even though the test was not conducted by a certified or registered laboratory. The department may charge an extra fee if it is necessary to verify the results of a test submitted under this paragraph.

(6) NOT APPLICABLE TO OTHER PROGRAMS. No laboratory is required to be registered or certified under this section for any purpose other than the submission of results under a covered program.

(7) CERTIFICATION PROCEDURES. (a) *Criteria.* After considering recommendations by the council, the department shall promulgate by rule uniform minimum criteria, as provided in this subsection, to be used to evaluate laboratories for certification. Criteria shall be consistent with nationally recognized criteria to the maximum extent possible and shall be designed to facilitate reciprocal agreements under sub. (5).

(b) *Methodology.* 1. 'Accepted methodology.' The department shall prescribe by rule the accepted methodology to be followed in conducting tests in each test category. The department may prescribe by rule accepted sampling protocols and documentation procedures for a specified test category to be followed by the person collecting the samples. The department may prescribe this methodology by reference to standards established by technical societies and organizations as authorized under s. 227.21 (2). The department shall attempt to prescribe this methodology so that it is consistent with any methodology requirements under the resource conservation and recovery act, as defined under s. 289.01 (30), the federal water pollution control act, as amended, 33 USC 1251 to 1376, the safe drinking water act, 42 USC 300f to 300j-10, or the toxic substance control act, 15 USC 2601 to 2629.

2. 'Revised methodology.' The department may permit the use of a revised methodology consistent with new or revised editions or standards established by technical societies and organizations on a case-by-case basis.

3. 'Alternative methodology; confidentiality.' a. The department may permit the use of an alternative methodology on a case-by-case basis if the laboratory seeking to use that methodology submits data establishing the accuracy and precision of the alternative methodology and if the accuracy and precision obtained through the use of the alternative methodology equals or exceeds that obtained through use of the accepted methodology. The department shall establish by rule the data which is required to be submitted and the criteria for evaluating accuracy and precision of alternative methods.

b. A laboratory seeking to use an alternative methodology may request confidential treatment of any data or information submitted to the department under this paragraph. The department shall grant confidential status for any data or information relating to unique methods or processes if the disclosure of those methods or processes would tend to adversely affect the competitive position of the laboratory.

4. 'Waiver of the procedure.' The department may waive any procedure prescribed in the accepted methodology on a case-by-case basis if the laboratory seeking this waiver establishes sufficient reasons for the waiver and that the waiver does not adversely affect the purpose for which the test is conducted.

(c) *Reference sample testing.* The department may prescribe by rule criteria for determining the accuracy of tests by certified laboratories on reference samples. The department shall provide, to the extent reasonably possible, reference samples prepared by an independent source for a representative cross section of test categories which are to be regularly and routinely performed by certified laboratories. The department may require a certified laboratory to analyze not more than 3 reference samples per year for each test category.

(d) *Quality control.* The department shall establish by rule minimum requirements for a quality control program which ensures that a laboratory complies with criteria for the accuracy and precision of tests in each test category and which specifies procedures to be followed if these criteria are not met. The department may accept a quality control program based upon state or federal requirements for similar test categories.

(e) *Records.* Where a particular time period is not otherwise specified by law, the department may prescribe by rule for each

test category the length of time laboratory analysis records and quality control data specified in the laboratory's quality control program are to be retained by the laboratory.

(f) *Application for certification.* The department shall specify by rule the criteria and standards to be met by applicants for certification. A laboratory desiring to be certified for a specified test category shall make application on forms provided by the department.

(g) *Initial certification.* The department shall issue an initial certification to a laboratory for a specified test category if all of the following conditions are met:

1. 'Application.' The laboratory submits an application requesting certification in a specified test category.

2. 'Methodology.' The laboratory specifies a methodology prescribed or permitted under par. (b) which it intends to utilize in conducting tests in the specified test category.

3. 'Accuracy.' If the department provides a reference sample, the laboratory conducts a test on the sample and obtains results which comply with the minimum criteria for accuracy for that specified test category.

4. 'Quality control.' The laboratory has or agrees to implement a quality control program which meets minimum requirements under par. (d) for the specified test category and which is to commence no later than the date of certification.

(h) *Certification period.* Certification of laboratories shall be renewed annually. A certification is valid from the date of issuance until it expires, is revoked or suspended.

(i) *Suspension and revocation.* After considering recommendations from the council, the department shall establish by rule criteria and procedures for the review and evaluation of the certification of laboratories and the suspension or revocation of certifications. If, after opportunity for a contested case hearing, the department finds that a certified laboratory materially and consistently failed to comply with the criteria and procedures established by rule, it may suspend or revoke the certification of the laboratory. A person whose certification is suspended or revoked may reapply for certification upon a showing that the person meets the applicable criteria for certification and has corrected the deficiencies that led to the suspension or revocation.

(8) REGISTRATION PROCEDURE. (a) *Criteria.* Upon application, the department shall register a laboratory if the laboratory complies with the requirements of this subsection, if the laboratory does not perform tests commercially for hire and if:

1. The laboratory performs tests solely on its own behalf or on behalf of a subsidiary or other corporation under common ownership or control; or

2. The laboratory is owned or controlled by a municipality or 2 or more municipalities and performs tests solely on behalf of the municipality or municipalities.

(b) *Methodology.* Testing by a registered laboratory conducted in connection with a covered program shall be carried out in accordance with sub. (7) (b).

(c) *Reference sample testing.* The department may require by rule reference sample tests upon application and annually thereafter. If results from these tests do not meet minimum criteria established by rule, the department may require additional reference sample testing. If the laboratory participates in a joint or split sampling program with the federal environmental protection agency, or otherwise obtains independent reference samples, the department may accept those results instead of its own reference samples.

(d) *Quality control.* The laboratory shall conduct self-audits and a quality control program consistent with criteria specified by rule by the department and based on methods and standards prescribed by rule and considering criteria used by the federal environmental protection agency, the American Society for Testing and Materials, the national council on air and stream improve-

ment, the national academy of sciences or other equivalent agency recognized by the department.

(e) *Records.* Where a particular time period is not otherwise specified by law, the department may prescribe by rule for each test category the length of time laboratory analysis records and quality control data specified in the laboratory's quality control program are to be retained by the laboratory.

(f) *Registration.* Registration of laboratories shall be renewed annually. A registration is valid from the date of issuance until it expires, is revoked or suspended.

(g) *Suspension or revocation of registration.* If, after opportunity for a contested case hearing, the department finds that a registered laboratory has falsified results or has materially and consistently failed to comply with the self-audit procedures and quality control programs provided in par. (d), it may suspend or revoke the registration of the laboratory. A person whose registration is suspended or revoked may reapply for registration upon a showing that the person meets the applicable criteria for registration and has corrected the deficiencies that led to the suspension or revocation.

(h) *Certification option.* A laboratory which is otherwise eligible to seek registration may elect to apply for certification under sub. (7).

(9) FEES. The department shall promulgate by rule a graduated schedule of fees for certified and registered laboratories which are designed to recover the costs of administering this section.

History: 1983 a. 410; 1985 a. 22 s. 11; 1985 a. 29 s. 3202 (39); 1985 a. 84 s. 8; 1985 a. 182 s. 57; 1989 a. 31; 1991 a. 32, 39; 1993 a. 27, 491; 1995 a. 27; 1995 a. 227 s. 818; Stats. 1995 s. 299.11; 1995 a. 417 s. 52.

Cross Reference: See also chs. HSS 165 and NR 149 and 219, Wis. adm. code.

299.13 Pollution prevention. (1) DEFINITIONS. In this section:

(b) "Capacity assurance plan" means the plan submitted under 42 USC 9604 (c) (9) for the management of hazardous waste generated in this state.

(be) "Center" means the solid and hazardous waste education center under s. 36.25 (30).

(d) "Hazardous waste" has the meaning given in s. 289.01 (12).

(dm) 1. "Pollution prevention" means an action that does any of the following:

a. Prevents waste from being created.

b. Reduces the amount of waste that is created.

c. Changes the nature of waste being created in a way that reduces the hazards to public health or the environment posed by the waste.

2. "Pollution prevention" does not include incineration, recycling or treatment of a waste, changes in the manner of disposal of a waste or any practice that changes the characteristics or volume of a waste if the practice is not part of the process that produces a product or provides a service.

(f) "Release" means emission to the air, discharge to the waters of the state or disposal on the land.

(g) "Toxic pollutants" has the meaning given in s. 283.01 (17).

(1m) PROMOTION OF POLLUTION PREVENTION. In carrying out the duties under this section and ss. 36.25 (30) and 560.19, the department, the department of commerce and the center shall promote all of the following techniques for pollution prevention:

(a) Replacing a hazardous substance used in a process with a substance that is not hazardous or is less hazardous.

(b) Reformulating a product so that the product is not hazardous or is less hazardous upon use, release or disposal.

(c) Changing processes and equipment that produce hazardous substances, toxic pollutants or hazardous waste.

(d) Improving operation of production processes and equipment.

- (e) Reusing or otherwise reducing the demand for hazardous substances within processes.
- (f) Reducing energy use.
- (g) Training employees to minimize waste.

(2) DEPARTMENT DUTIES. The department shall do all of the following:

(a) Designate an employee of the department to serve as pollution prevention coordinator and to do all of the following:

2. Recommend educational priorities to the University of Wisconsin—Extension for the center, considering volume and toxicity of hazardous substances, toxic pollutants and hazardous waste produced, lack of compliance with environmental standards, potential for pollution prevention, and projected shortfalls in hazardous waste treatment or disposal facilities under the capacity assurance plan.

3. Coordinate the department's pollution prevention efforts with those of other governmental agencies and private groups.

4. Provide training concerning pollution prevention to employees of the department.

(b) Identify all department requirements for reporting on pollution prevention and, to the extent possible and practical, standardize, coordinate and consolidate the reporting in order to minimize duplication and provide useful information on pollution prevention to the legislature and the public.

(c) Assist the University of Wisconsin—Extension in conducting the education program under s. 36.25 (30).

(d) Seek federal funding to promote pollution prevention.

History: 1989 a. 325, 359; 1991 a. 32, 39; 1993 a. 16; 1995 a. 27 ss. 4337 to 4349, 9116 (5); 1995 a. 227 s. 820; Stats. 1995 s. 299.13; 1997 a. 27; 1999 a. 9; 2001 a. 103.

Note: See 1989 Wis. Act 325, which creates this section, for a declaration of legislative findings and purpose.

299.15 Reports on substances used; wastewater fee.

(1) The department shall require by rule that all persons discharging industrial wastes, hazardous substances or air contaminants in this state report the manner used, amount used and amount discharged for each such waste, substance or contaminant. The required report shall include industrial wastes and hazardous substances discharged into any sewerage system operated by a municipality. The department may verify reports received by field monitoring of industrial waste and other waste outfalls and air contaminant sources.

(2) (a) The department by rule shall prescribe method of analysis and form of the reports required by this section and shall establish parameters for the pollutants on which reports are required by this section. The pollutants for which parameters are to be established shall include, but are not limited to:

1. Hazardous substances;
2. Air contaminants; and
3. Elemental discharges such as mercury or cadmium which may be toxic or hazardous when released to the environment.

(b) The department may, by rule, establish minimum reporting levels for pollutants and minimum effluent volumes for which reports are required under this section.

(3) (am) 1. There is established an annual wastewater discharge environmental fee.

2. In fiscal year 1991–92, the fee under this paragraph shall be paid by each person required to report a wastewater discharge under sub. (1). In fiscal year 1991–92, the fee under this paragraph shall be based on an administrative fee of \$100 plus an additional fee, to be set by the department by rule and to be based on the concentration or quantity or both of pollutants discharged in relation to the parameters established under sub. (2) (a).

3. After June 30, 1992, the fee under this paragraph shall be paid by each person required to obtain a permit under s. 283.31. After June 30, 1992, the fee to be paid by a person under this paragraph shall be an amount determined under a rule promulgated by the department and shall be based on those pollutants included in the permit under s. 283.31 that are specified by the department by

rule, the environmental harm caused by the pollutants discharged, the quantity of the pollutants discharged and the quality of the water receiving the discharge.

(b) In establishing an annual discharge fee schedule under par. (am) 1., the department shall distinguish between substances discharged directly to surface waters and those discharged into land disposal systems or publicly owned treatment works based on their relative impacts on the quality of groundwaters and surface waters.

(cm) 1. In fiscal year 1999–2000, the department may not charge total fees under par. (am) that exceed \$7,450,000.

2. In any fiscal year after fiscal year 1999–2000, the department may not charge total fees under par. (am) that exceed \$7,925,000.

3. The department shall charge the fee under par. (am) so that municipalities that are subject to the fee pay 50% of the total charged and so that other persons who are subject to the fee pay 50% of the total charged.

(d) The annual fees under this section shall be paid for each plant at which pollutants are discharged.

(e) In the rules under par. (am) 3. for fees required to be paid in fiscal years beginning with fiscal year 2000–01, the department shall do all of the following:

1. Use the fees paid by a person in fiscal year 1999–2000 as the basis for the person's fees.

2. Determine the fee for each person based on the number of units of pollutants discharged by the person, using a 5–year rolling average.

3. Use a performance–based approach that increases a person's fees in proportion to increases in the number of units of pollutants discharged by the person, as determined under subd. 2., and decreases a person's fees in proportion to decreases in the number of units of pollutants discharged by the person, as determined under subd. 2.

4. Omit any multiplier or similar mechanism that would increase a person's fees in order to compensate for decreases in overall amounts of discharges.

5. Omit any provision that would increase the fee per unit of pollutant discharged in order to compensate for decreases in overall amounts of discharges.

(4) Violators of the reporting requirements established under sub. (1) shall forfeit not less than \$200 nor more than \$10,000 or an amount double the applicable environmental fee under sub. (3), whichever is greater, for each offense.

(5) The department may hold hearings relating to any aspect of the administration of the system established under this section, including, but not limited to, the assessment of fees against specific plants and, in connection therewith, may compel the attendance of witnesses and the production of evidence.

History: 1971 c. 125; 1973 c. 90; 1977 c. 29, 203, 377; 1979 c. 34 ss. 985n, 2102 (39) (a); 1979 c. 221 ss. 634, 2202 (39); Stats. 1979 s. 144.96; 1983 a. 27; 1985 a. 29; 1987 a. 27; 1991 a. 39, 269; 1993 a. 9, 16, 490; 1995 a. 227 s. 822; Stats. 1995 s. 299.15; 1997 a. 27; 1999 a. 9.

Cross Reference: See also chs. NR 101, 202, and 438, Wis. adm. code.

299.21 Gifts and grants. The department may accept gifts and grants from any private or public source for any purpose relating to its environmental quality functions and may expend or use such gifts and grants for the purposes for which received.

History: 1991 a. 39 s. 2553; Stats. 1991 s. 144.965; 1995 a. 227 s. 823; Stats. 1995 s. 299.21.

299.23 Financial interest prohibited. The secretary of natural resources and any other person in a position of administrative responsibility in the department may not have a financial interest in any enterprise which might profit by weak or preferential administration or enforcement of the powers and duties of the department.

History: 1979 c. 221 s. 621; Stats. 1979 s. 144.952; 1983 a. 410 s. 74; Stats. 1983 s. 144.97; 1995 a. 227 s. 825; Stats. 1995 s. 299.23.

299.31 Groundwater protection. The department shall comply with the requirements of ch. 160 in the administration of any program, responsibility or activity assigned or delegated to it by law.

History: 1983 a. 410; 1995 a. 227 s. 819; Stats. 1995 s. 299.31.

299.33 Uniform transboundary pollution reciprocal access act. (1) DEFINITIONS. In this section:

(a) “Person” means an individual person, corporation, business trust, estate, trust, partnership, association, joint venture, government in its private or public capacity, governmental subdivision or agency, or any other legal entity.

(b) “Reciprocating jurisdiction” means a state of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States of America, or a province or territory of Canada, which has enacted this section or provides substantially equivalent access to its courts and administrative agencies.

(2) **FORUM.** An action or other proceeding for injury or threatened injury to property or person in a reciprocating jurisdiction caused by environmental pollution originating, or that may originate, in this jurisdiction may be brought in this jurisdiction.

(3) **RIGHT TO RELIEF.** A person who suffers, or is threatened with, injury to his or her person or property in a reciprocating jurisdiction caused by environmental pollution originating, or that may originate, in this jurisdiction has the same rights to relief with respect to the injury or threatened injury, and may enforce those rights in this jurisdiction as if the injury or threatened injury occurred in this jurisdiction.

(4) **APPLICABLE LAW.** The law to be applied in an action or other proceeding brought pursuant to this section, including what constitutes “environmental pollution”, is the law of this jurisdiction excluding choice of law rules. Nothing in this section restricts the applicability of federal law in actions in which federal law is preemptive. Nothing in this section determines whether state law or federal law applies in any particular legal action.

(5) **EQUALITY OF RIGHTS.** This section creates no substantive rights of action beyond those available under other law in this state and does not accord a person injured or threatened with injury in another jurisdiction any rights superior to those that the person would have if injured or threatened with injury in this jurisdiction.

(6) **RIGHT ADDITIONAL TO OTHER RIGHTS.** The right provided in this section is in addition to and not in derogation of any other rights, except that no action or proceeding for injury or threatened injury to property or person in another jurisdiction caused by environmental pollution originating, or that may originate, in this jurisdiction may be brought in this jurisdiction unless the right to relief is provided under this section.

(7) **WAIVER OF SOVEREIGN IMMUNITY.** The defense of sovereign immunity is applicable in any action or other proceeding brought pursuant to this section only to the extent that it would apply to a person injured or threatened with injury in this jurisdiction.

(8) **EXCLUSION.** This section does not apply to any action or other proceeding for injury or threatened injury to property or person caused by a publicly owned treatment work operated under a permit for the discharge of pollutants issued by the department under s. 285.31.

(9) **UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This section shall be applied and construed to carry out its general purpose to make uniform the law with respect to the subject of this section among jurisdictions enacting it.

(10) **TITLE.** This section may be cited as the “uniform transboundary pollution reciprocal access act”.

History: 1985 a. 291; 1987 a. 403; 1993 a. 16; 1995 a. 227 s. 832; Stats. 1995 s. 299.33.

299.43 Collection and disposal of products containing 2,4,5-T and silvex. (1) AUTHORIZATION. The department is authorized to establish facilities for the collection and disposal of

pesticide products prohibited from use under s. 94.707. The department may establish the location of these facilities and the dates and times when the facilities are open.

(2) **RESTRICTIONS.** The department shall restrict the persons who may use any facility established under sub. (1) so that:

(a) No person who is regularly engaged in the business of manufacturing, selling, distributing or transporting pesticides may use the facility.

(b) No person who is a certified commercial applicator or a certified nonresident commercial applicator under s. 94.705 may use the facility.

(c) No person who is licensed under s. 289.31, 291.23 or 291.25 may use the facility.

History: 1983 a. 397; 1987 a. 27; 1995 a. 227 s. 717; Stats. 1995 s. 299.43.

299.45 Manufacture and purchase of polychlorinated biphenyls. (1) In this section:

(a) “PCBs” mean the class of organic compounds generally known as polychlorinated biphenyls and includes any of several compounds or mixtures of compounds produced by replacing 2 or more hydrogen atoms on the biphenyl molecule with chlorine atoms.

(b) “Ppm” means parts per million by weight.

(c) “Product containing PCBs” means any item, device or material to which PCBs are intentionally added during or after manufacture as plasticizers, heat transfer media, hydraulic fluids, dielectric fluids, solvents, surfactants, insulators or coating, adhesive, printing or encapsulating materials or for other uses related to the function of such item, device or material.

(2) No person may manufacture, or purchase for use within this state, PCBs or a product containing PCBs.

(3) Subsection (2) shall not apply to any product containing PCBs if:

(a) The product contains PCBs in a closed system as a dielectric fluid for an electric transformer, electromagnet or capacitor, unless the department by rule prohibits such manufacture or purchase of specific products for which the department has determined that adequate alternatives are available at the time of manufacture or purchase.

(b) The product is an electrical component containing less than 2 pounds of PCBs, unless the department by rule prohibits the manufacture or purchase of any such product manufactured after the effective date of such rule for which the department has determined that an adequate alternative is available.

(c) The product is wastepaper, pulp or other paper products or materials, in which case such product may be purchased for use within this state in the manufacture of recycled paper products.

(4) Subsection (2) shall not be construed to prohibit the manufacture or purchase of PCBs or products containing PCBs for use within this state in scientific research, analytical testing or experimentation.

(5) The department by rule may exempt other uses of PCBs from the provisions of sub. (2) for specific products when adequate alternatives are not available.

(6) (a) In determining whether adequate alternatives are available under sub. (3) (a) and (b) or (5), the department shall take into account and make specific findings as to the following criteria:

1. The commercial availability and cost of alternative products;

2. The safety of alternative products to both human life and property;

3. The acceptance of alternative products by insurance underwriters;

4. The extent to which use of such alternative products is otherwise restricted by law;

5. The degree to which such alternative products satisfy the performance standards required for the particular use; and

6. Any adverse environmental effects associated with such alternative products.

(7) The department shall adopt rules prescribing the methods and providing or designating sites and facilities for the disposal of PCBs and products containing PCBs. Such rules may require reporting by persons disposing of PCBs and products containing PCBs. Persons disposing of PCBs or products containing PCBs shall comply with such rules unless such products are exempted under sub. (3) (b) or (c). In this section, disposal does not include the disposal of PCBs in sludge produced by wastewater treatment systems under s. 289.05 (1) and chs. NR 500 to 520, Wis. adm. code, the discharge of effluents containing PCBs or the manufacture or sale of recycled paper products to which PCBs have not been intentionally added during or after manufacture for any of the uses set forth in sub. (1) (c). Nothing in this section shall exempt any person from applicable disposal or discharge limitations required or authorized under other statutes.

(8) The department shall adopt rules setting forth the method and manner of sampling, preparing samples and analyzing PCBs which shall be used by the department in implementing this section.

(9) The department shall enforce this section as provided in ss. 283.89 and 283.91.

History: 1975 c. 412; 1977 c. 325; 1977 c. 377 s. 30; 1979 c. 32 s. 92 (1); 1979 c. 34 ss. 984t, 2102 (39) (g); 1979 c. 154; 1979 c. 221 s. 632; Stats. 1979 s. 144.79; 1981 c. 390; 1989 a. 56 ss. 176, 259; 1995 a. 227 s. 718; Stats. 1995 s. 299.45.

Cross Reference: See also ch. NR 157, Wis. adm. code.

299.47 Sale and delivery of dry cleaning solvent. (1) In this section:

(a) “Dry cleaning facility” has the meaning given in s. 292.65 (1) (d).

(b) “Dry cleaning solvent” has the meaning given in s. 292.65 (1) (e).

(c) “Owner” means a person who owns, or has possession or control of, a dry cleaning facility, or who receives direct or indirect consideration from the operation of a dry cleaning facility.

(2) A supplier of dry cleaning solvent may not sell or deliver to the owner or operator of a dry cleaning facility any dry cleaning solvent unless the dry cleaning facility is licensed under s. 77.9961 (2).

(3) Any person who violates sub. (2) may be required to forfeit not more than \$500 for each violation.

History: 1999 a. 9.

299.51 Medical waste management. (1) DEFINITIONS. In this section:

(a) “Clinic” has the meaning given in s. 287.07 (7) (c) 1. a.

(am) “Manifest” means a form used for identifying the quantity, composition, origin, routing and destination of medical waste during its transport and disposal.

(b) “Medical waste” means infectious waste, as defined in s. 287.07 (7) (c) 1. c., and other waste that contains or may be mixed with infectious waste.

(bm) “Nursing home” has the meaning given in s. 50.01 (3).

(c) “Solid waste disposal” has the meaning given in s. 289.01 (34).

(d) “Solid waste facility” has the meaning given in s. 289.01 (35).

(e) “Solid waste treatment” has the meaning given in s. 289.01 (39).

(2) MEDICAL WASTE REDUCTION. Except as provided under sub. (3) (am), every clinic, nursing home and hospital shall implement a policy for the reduction of the amount of medical waste generated as required by the department by rule.

(3) RULES. The department shall promulgate rules that do all of the following:

(a) Establish requirements for medical waste reduction by hospitals.

(am) Exempt types of generators of medical waste that generate less than 50 pounds of medical waste per month from the requirement under sub. (2).

(b) Establish requirements for packaging, handling, shipping and transporting medical waste.

(c) Require a license for persons who transport medical waste and impose a fee for that license.

(d) Require the use of manifests to monitor the transport and disposal of medical waste.

(4) PROHIBITIONS. (a) No person may transport medical waste without a license issued by the department under sub. (3) (c).

(b) No person may dispose of medical waste in a facility for solid waste disposal unless the medical waste has undergone solid waste treatment.

(5) PENALTY. Any person who violates sub. (4) (b) may be required to forfeit not more than \$25,000. Each act of disposal in violation of sub. (4) (b) constitutes a separate offense.

History: 1991 a. 39, 300; 1995 a. 227 s. 643; Stats. 1995 s. 299.51.

299.53 Used oil fuel. (1) DEFINITIONS. In this section:

(a) “Used oil” means any petroleum-derived or synthetic oil which, as a result of use or management, is contaminated. “Used oil” includes, but is not limited to, the following:

1. Engine, turbine and gear lubricants.

2. Hydraulic fluid, including transmission fluid.

3. Metalworking fluid, including cutting, grinding, machining, rolling, stamping, quenching and coating oils.

4. Insulating fluid or coolant.

(b) “Used oil fuel” means any fuel designated by the department by rule that contains used oil or is produced from used oil or from a combination of used oil and other material.

(2) NOTIFICATION. (a) A person who does any of the following shall notify the department of the location and description of each facility used and the description of the used oil fuel:

1. Owns or operates a facility that produces used oil fuel or a facility that recovers energy by burning used oil fuel.

2. Distributes or markets used oil fuel.

(b) The department may by rule exempt specific persons or facilities from the requirements of par. (a).

(3) INSPECTIONS AND RIGHT OF ENTRY. Upon the request of any officer or employee of the department and with notice provided no later than upon the officer’s or employee’s arrival, any person subject to sub. (2) (a) shall permit the officer or employee access to vehicles, premises and records relating to used oil fuel at any reasonable time. An officer or employee of the department may take samples of any used oil fuel. The officer or employee shall commence and complete inspections with reasonable promptness. The officer or employee shall give the person a receipt for each sample taken and, upon request, half of the sample. The department shall promptly furnish the person with a copy of the results of the analysis of each sample and a copy of the inspection report.

(4) ENFORCEMENT; PENALTIES. (a) *Compliance orders.* If the department determines that any person is in violation of sub. (2) (a) or (3) or any rule promulgated under this section, the department may do one or more of the following:

1. Give the person written notice of the violation.

2. Issue a special order requiring compliance within a specified time period.

3. Refer the matter to the department of justice for enforcement under s. 299.95.

(b) *Department of justice action; disposition.* The department of justice may initiate the legal action requested by the department under par. (a) 3. after receipt of the written request. In any action commenced by it under this paragraph, the department of justice shall, prior to stipulation, consent order, judgment or other final disposition of the case, consult with the department for the purpose of determining the department’s views on final disposition. The department of justice may not enter into a final disposition

different than that previously discussed without first informing the department.

(c) *Penalties.* 1. Any person who violates sub. (2) (a) or (3) or any rule promulgated or special order issued under this section shall forfeit not more than \$25,000 for each violation.

2. Any person who intentionally makes any false statement or representation in complying with sub. (2) (a) shall be fined not more than \$25,000 or imprisoned for not more than one year in the county jail or both. For a 2nd or subsequent violation, the person is guilty of a Class I felony, except that, notwithstanding the maximum fine specified in s. 939.50 (3) (i), the person may be fined not more than \$50,000.

(d) *Venue.* Any action on a violation shall be commenced in the circuit court for the county in which the violation occurred. If all parties stipulate and the circuit court for Dane County agrees, the proceedings may be transferred to the circuit court for Dane County.

History: 1987 a. 384; 1995 a. 227 s. 644; Stats. 1995 s. 299.53; 1997 a. 283; 2001 a. 109.

299.55 Confidentiality of records; used oil collection facilities and used oil fuel facilities. (1) RECORDS. Except as provided under sub. (2), records and other information furnished to or obtained by the department in the administration of ss. 287.15 and 299.53 are public records subject to s. 19.21.

(2) **CONFIDENTIAL RECORDS.** (a) *Application.* Any person subject to s. 287.15 or 299.53 may seek confidential treatment of any records or other information furnished to or obtained by the department in the administration of s. 287.15 or 299.53.

(b) *Standards for granting confidential status.* Except as provided under par. (c), the department shall grant confidential status for any records or information received by the department and certified by the applicant as relating to production or sales figures or to processes or production unique to the applicant or which would tend to adversely affect the competitive position of the applicant if made public.

(c) *Emission data; analyses and summaries.* The department may not grant confidential status for emission data. Nothing in this subsection prevents the department from using records and other information in compiling or publishing analyses or summaries relating to the general condition of the environment if the analyses or summaries do not identify a specific applicant or facility or reveal records or other information granted confidential status.

(d) *Use of confidential records.* Except as provided under par. (c) and this paragraph, the department or the department of justice may use records and other information granted confidential status under this subsection only in the administration and enforcement of s. 287.15 or 299.53. The department or the department of justice may release for general distribution records and other information granted confidential status under this subsection if the applicant expressly agrees to the release. The department or the department of justice may release on a limited basis records and other information granted confidential status under this subsection if the department or the department of justice is directed to take this action by a judge or hearing examiner under an order which protects the confidentiality of the records or other information. The department or the department of justice may release to the U.S. environmental protection agency or its authorized representative records and other information granted confidential status under this subsection if the department or the department of justice includes in each release of records or other information a request to the U.S. environmental protection agency or its authorized representative to protect the confidentiality of the records or other information.

History: 1987 a. 384; 1989 a. 335 s. 89; 1995 a. 227 s. 645; Stats. 1995 s. 299.55.

299.62 Environmental protection requirements for tank vessels. (1) DEFINITIONS. In this section:

(a) “Bulk” means an undivided quantity of a substance that is loaded directly into a vessel and is not divided into individual containers.

(am) “Discharge” has the meaning given in s. 292.01 (3).

(b) “Double hull” has the meaning given in 33 CFR 157.03 (kk).

(c) “Hazardous material” has the meaning given in 46 USC 2101 (14).

(d) “Oil” means hydrocarbon, vegetable or mineral oil of any kind or in any form and includes oil mixed with wastes other than dredged spoil.

(e) “Tank vessel” means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

(2) **PROHIBITION.** (a) Except as provided in par. (b) or (c), no tank vessel of under 5,000 gross tons may transport oil or hazardous material in bulk on that part of the Mississippi River over which this state has jurisdiction from the northern boundary of the Upper Mississippi River National Wildlife and Fish Refuge to the southernmost point of the Upper Mississippi River National Wildlife and Fish Refuge in this state unless the tank vessel has a double hull.

(b) Paragraph (a) does not apply to a tank vessel when the tank vessel and its crew are in danger due to extreme weather conditions.

(c) Paragraph (a) does not apply to a self-propelled tank vessel or a tank vessel that is propelled by a towing vessel if a tugboat accompanies the self-propelled tank vessel or tank vessel and towing vessel.

(3) **PENALTIES.** (a) Except as provided under par. (b), any person who owns or controls the movement of a tank vessel violating sub. (2) shall be required to forfeit not less than \$5,000 nor more than \$10,000.

(b) Any person who owns or controls the movement of a tank vessel violating sub. (2) and who, within 5 years before the commission of the current violation, was previously convicted of violating sub. (2) shall be fined not less than \$10,000 nor more than \$25,000 or imprisoned for not more than 6 months or both.

(c) In addition to any penalty under par. (a) or (b), any person who owns or controls the movement of a tank vessel violating sub. (2) from which oil or a hazardous material is discharged shall be required to forfeit triple the amount of the damage to the environment.

History: 1995 a. 290 s. 10; 1997 a. 35 s. 329.

299.64 Open burning on commercial vessels. (1) DEFINITIONS. In this section:

(a) “Commercial vessel” means a vessel that is operated to transport property or passengers for hire or used by its operator or owner to earn a livelihood.

(b) “Open burning” has the meaning given in s. 289.51 (1) (b).

(2) **PROHIBITION.** No person may engage in or permit open burning on a commercial vessel in the waters of the state.

(3) **CITATIONS.** The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of sub. (2).

(4) **PENALTY.** Any person who violates sub. (2) shall be required to forfeit no less than \$100 nor more than \$500.

History: 1995 a. 290 s. 11; 1997 a. 35 s. 330.

299.66 Inspecting vessels. An employee or agent of the department may board and inspect any vessel that is subject to s. 299.62 or 299.64 to determine the state of compliance with those provisions.

History: 1995 a. 290 s. 13; 1997 a. 35 s. 331.

299.80 Environmental cooperation pilot program. (1) DEFINITIONS. In this section:

(a) “Approval” means a permit, license or other approval issued by the department under chs. 280 to 295.

(b) “Cooperative agreement” means an agreement entered into under sub. (6).

(c) “Environmental management system” means an organized set of procedures implemented by the owner or operator of a facility to evaluate the environmental performance of the facility and to achieve measurable or noticeable improvements in that environmental performance through planning and changes in the facility’s operations.

(d) “Environmental performance” means the effects, whether regulated under chs. 280 to 295 or unregulated, of a facility on air, water, land, natural resources and human health.

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

(f) “Interested person” means a person who is or may be affected by the activities at a facility that is covered or proposed to be covered by a cooperative agreement or a representative of such a person.

(g) “Performance evaluation” means a systematic, documented and objective review, conducted by or on behalf of the owner or operator of a facility, of the environmental performance of the facility, including an evaluation of compliance with the cooperative agreement covering the facility, approvals that are not replaced by the cooperative agreement and the provisions of chs. 280 to 295 and rules promulgated under those chapters for which a variance is not granted under sub. (4).

(h) “Pollutant” means any of the following:

1. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt or industrial, municipal or agricultural waste discharged into water or onto land.

2. Any dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination of those things emitted into the air, but not uncombined water vapor.

(i) “Violation” means a violation of a cooperative agreement, of an approval that is not replaced by the cooperative agreement or of a provision of chs. 280 to 295 and rules promulgated under those chapters for which a participant has not received a variance under sub. (4).

(2) PILOT PROGRAM. The department shall administer a pilot program under which it enters into not more than 10 cooperative agreements to evaluate innovative environmental regulatory methods. In administering the program, the department shall do all of the following:

(a) Provide at least the same level of protection of public health and the environment as provided by the environmental regulatory methods under chs. 280 to 295.

(b) Encourage facility owners and operators to systematically assess the pollution that they cause, directly and indirectly, to the air, water and land.

(c) Encourage facility owners and operators to implement efficient and cost-effective pollution reduction strategies for their facilities, while complying with verifiable and enforceable pollution limits.

(d) Encourage facility owners and operators to achieve superior environmental performance, both with respect to the effects of a facility that are regulated under chs. 280 to 295 and those effects that are unregulated, to reduce usage of natural resources, to minimize transfers of waste discharges among air, water and land and to reduce waste generation, while achieving a balance among the economic, social and environmental impacts of these efforts that is acceptable to the community in which the facility is located.

(e) Recognize and reward facility owners and operators who have demonstrated excellence and leadership in environmental stewardship or pollution prevention and who can achieve reductions in emissions and waste generation through implementation of innovative measures.

(f) Encourage the transfer of information about methods for improving environmental performance and the adoption of these methods by others.

(g) Consolidate into a cooperative agreement environmental requirements relating to a facility owned or operated by a participant that are otherwise included in separate approvals to the extent that consolidation is practical and efficient.

(h) Grant the owners and operators of facilities greater flexibility than would otherwise be allowed under chs. 280 to 295 and rules promulgated under those chapters.

(i) Seek to reduce the time and money spent by government and owners and operators of facilities on paperwork and other administrative tasks that do not result in benefits to the environment.

(j) Encourage public participation, and consensus among interested persons, in the development of innovative environmental regulatory methods and in monitoring the environmental performance of projects under this section.

(k) Seek to improve the provision of useful information to the public about the environmental and human health impacts of facilities on communities.

(L) Provide public access to information about performance evaluations conducted by participants in the program under this section.

(m) Encourage facility owners and operators and communities to work together to reduce pollution to levels below the levels required under chs. 280 to 295.

(n) Seek to increase trust among government, facility owners and operators and the public through open communication and support of early and credible resolution of conflicts over issues concerning the environment and environmental regulation.

(3) CONTENT OF COOPERATIVE AGREEMENTS. A cooperative agreement shall do all of the following:

(a) Identify the facility or facilities, the activities and the pollutants that are covered by the cooperative agreement.

(b) Specify any approvals and provisions of approvals that are replaced by the cooperative agreement.

(c) Commit the participant to implement an environmental management system that is based on the standards for environmental management systems issued by the International Organization for Standardization, or an alternative environmental management system that is acceptable to the department, at the covered facilities and commit the participant to documenting the environmental management system.

(d) Commit the participant to superior environmental performance, to achieving measurable or noticeable improvements in environmental performance, to reducing natural resource usage and to reducing waste generation, while achieving a balance among the economic, social and environmental impacts of these efforts that is acceptable to the community in which the facility is located.

(e) Specify waste reduction goals in measurable and verifiable terms.

(f) Identify changes in raw materials, in the design, methods of production, distribution or uses of products or in the reuse, recycling or disposal of materials that the participant will implement to achieve process efficiencies, to reduce the pollution of the air, water and land and to reduce water use, energy use or indoor chemical exposure.

(g) Contain pollution limits that are verifiable, enforceable and at least as stringent as the pollution limits under chs. 280 to 295 and rules promulgated under those chapters.

(h) Describe the operational flexibility granted to the participant and any variances granted under sub. (4).

(i) Contain the requirements that would be included in any approvals that are replaced by the cooperative agreement, as modified under pars. (g) and (h).

(j) Require the participant to submit a baseline performance evaluation within 180 days of the date that the cooperative agreement is entered into and to update the performance evaluation periodically.

(k) Require the participant to report any violations discovered during a performance evaluation as required in sub. (12).

(L) Ensure that members of the interested persons group, established as required under sub. (5) (b), have the opportunity to comment on the participant's environmental management system and are involved in reviewing the participant's performance under the cooperative agreement and require a process that seeks consensus between the participant and interested persons over issues concerning that performance.

(m) Require the participant to assist interested persons to understand the implementation of the cooperative agreement.

(n) Require the participant to provide information to the public about the participant's environmental performance and the results of the project, including environmental, social and economic impacts, and to meet with interested persons at least once every 6 months to discuss the implementation of the participant's environmental management system and to receive comments on the progress of the project.

(o) Describe how the participant will measure the opinions of its employees and the public concerning its participation in the program under this section.

(p) Require the participant to assess the success of the project in reducing the time and money spent by the participant on paperwork and other administrative activities that do not directly benefit the environment.

(q) Specify that the term of the agreement is 5 years with the possibility of a renewal for up to 5 years as provided in sub. (6e).

(4) VARIANCES. (a) If chs. 280 to 295 or rules promulgated under those chapters authorize the department to grant a variance from a requirement that would otherwise apply to a facility covered by a cooperative agreement and the participant qualifies under the standards provided in the statutes or rules for granting the variance, the department may grant a variance from that requirement.

(b) If a variance is not authorized under par. (a), the department may grant a participant a variance from a requirement in chs. 280 to 295 that would otherwise apply to a facility covered by a cooperative agreement if the variance results in a measurable reduction in overall levels of pollution caused by the participant and is consistent with subs. (2) and (3) (g) and does one of the following:

1. Promotes the reduction in overall levels of pollution to below the levels required under chs. 280 to 295.

2. Provides for alternative monitoring, testing, record keeping, notification or reporting requirements that reduce the administrative burden on state agencies or the participant and that provide the information needed to ensure compliance with the cooperative agreement and the provisions of chs. 280 to 295 and rules promulgated under those chapters for which the cooperative agreement does not grant a variance.

(5) APPLICATION. The department shall solicit applications for participation in the program under this section. The owner or operator of a facility that is required to be covered by at least one approval under chs. 280 to 295 may apply to participate in the pilot program by submitting all of the following:

- (a) A proposed cooperative agreement that satisfies sub. (3).

(b) A description of the process used by the applicant to establish an interested persons group that includes residents of the area in which the facility proposed to be covered by the agreement is located, a list of members of the interested persons group and a description of the involvement of the interested persons group in the development of the proposed cooperative agreement.

(6) ENTERING INTO COOPERATIVE AGREEMENTS. (a) The department shall review each application submitted under sub. (5). Upon completion of that review, the department shall decide whether to enter into negotiations with the applicant. In determining whether to enter into negotiations and in selecting participants, the department shall seek to ensure participation by a variety of types, sizes and locations of facilities and shall consult with the federal environmental protection agency. A decision by the department not to enter into negotiations is not subject to review under ch. 227. If the department decides to enter into negotiations, it shall prepare a draft cooperative agreement and provide public notice of its decision in the manner provided in sub. (8) (d).

(b) During negotiations concerning a proposed cooperative agreement, the department may not modify or revoke any approval for a facility that would be replaced by the cooperative agreement if the applicant is not violating the approval.

(c) The department may terminate negotiations with an applicant concerning a proposed cooperative agreement and the decision to terminate negotiations is not subject to review under ch. 227.

(d) Except as provided in par. (e), the department may enter into a cooperative agreement with an applicant if the department determines that the applicant's efforts described under sub. (5) (b) were adequate, that the cooperative agreement complies with sub. (3) and that entering into the agreement will assist the department to comply with sub. (2). The decision by the department to enter into a cooperative agreement is not subject to review under ch. 227. A cooperative agreement is subject to review under ch. 227.

(e) The department may not enter into an initial cooperative agreement after October 1, 2002.

(6e) EXTENSION OF COOPERATIVE AGREEMENT. If the department determines that renewal of a cooperative agreement is consistent with sub. (2) and if the participant agrees to renewal, the department may notify the joint committee on finance that the department proposes to renew the cooperative agreement. If, within 14 working days after the date that the department submits the proposal, the cochairpersons of the committee notify the secretary that the committee has scheduled a meeting for the purpose of reviewing the proposal, the department may not renew the cooperative agreement until the committee approves the proposal. If the cochairpersons of the committee do not so notify the secretary, the department may renew the cooperative agreement. A cooperative agreement may be renewed for one 5-year term.

(6m) EXPIRATION OF COOPERATIVE AGREEMENT. If a participant timely submits an application for an approval that is replaced by a cooperative agreement and submits any information requested by the department to enable the department to act on the application, but the department does not issue the approval before the cooperative agreement expires, sub. (9) (a) continues to apply and the provisions of the cooperative agreement continue to apply until the approval is issued.

(7) AMENDMENT, REVOCATION OF COOPERATIVE AGREEMENT. (a) This subsection applies to the amendment or revocation of a cooperative agreement, notwithstanding any provisions of chs. 280 to 295 concerning the amendment or revocation of approvals.

(b) 1. The department may amend a cooperative agreement with the consent of the participant.

2. The department may, after an opportunity for a hearing, amend a cooperative agreement for cause, including any of the following:

- a. A change in federal or state environmental laws.
- b. A violation of the cooperative agreement.

c. Obtaining a cooperative agreement by misrepresentation or failure to fully disclose all relevant information.

(c) 1. The department may revoke a cooperative agreement at the request of the participant.

2. The department may, after an opportunity for a hearing, revoke a cooperative agreement if it finds any of the following:

a. That the participant is in substantial noncompliance with the cooperative agreement, with an approval that is not replaced by the cooperative agreement or with a provision of chs. 280 to 295 or rules promulgated under those chapters for which the cooperative agreement does not grant a variance.

b. That the participant has refused the department's request to amend the cooperative agreement.

c. That the participant is unable, or has shown an unwillingness, to comply with pollution reduction goals that apply to the participant under the cooperative agreement.

d. That the participant has not satisfactorily addressed a substantive issue raised by a majority of the members of the interested persons group, established under sub. (5) (b), within a reasonable time after receiving notice of the issue.

3. If the department revokes a cooperative agreement, it shall do all of the following in a written revocation decision:

a. Delay any compliance deadlines established in the cooperative agreement if a delay is necessary to provide the participant with a reasonable amount of time to obtain approvals required under chs. 280 to 295 that were replaced by the cooperative agreement.

b. Establish practical interim requirements, that do not allow pollution in excess of that allowed under chs. 280 to 295 at the time that the cooperative agreement was entered into, to replace specified requirements of the cooperative agreement until the department issues the approvals required under chs. 280 to 295 that were replaced by the cooperative agreement.

4. A participant shall comply with the department's revocation decision and with all requirements of the cooperative agreement for which the department does not establish interim requirements until the department issues the approvals required under chs. 280 to 295 that were replaced by the cooperative agreement.

(d) A final decision under par. (b) or (c) is subject to review under ch. 227.

(8) PUBLIC NOTICE; MEETINGS. (a) The department shall provide at least 30 days for public comment on the proposed issuance, amendment or revocation of a cooperative agreement.

(b) Before the start of the public comment period under par. (a), the department shall prepare a draft of the cooperative agreement, cooperative agreement amendment or notice of cooperative agreement revocation and a fact sheet that does all of the following:

1. Briefly describes the principal facts and the significant factual, legal, methodological and policy questions considered by the department.

2. Briefly describes how the proposed action is consistent with subs. (2) and (3).

3. Identifies any variances that would be granted under sub. (4) by the proposed action.

(c) The department shall prepare a public notice of a proposed action under par. (a) that does all of the following:

1. Briefly describes the facility that is the subject of the proposed action.

2. Identifies the proposed action and states whether any variances would be granted under sub. (4) by the proposed action.

3. Identifies an employee of the department and an employee of the applicant or participant who may be contacted for additional information about the proposed action.

4. States that the draft of the proposed action and the fact sheet under par. (b) are available upon request.

5. States that comments concerning the proposed action may be submitted to the department during the comment period and states the last date of the comment period.

6. Describes the procedures that the department will use to make a final decision on the proposed action, describes how persons may request public informational meetings, contested case hearings or public hearings and how persons may make requests to appear at those meetings and hearings.

(d) Before the start of the public comment period, the department shall mail the public notice under par. (c) to the applicant or participant, the federal environmental protection agency, the members of the interested persons group established under sub. (5) (b) and all persons who have asked to receive notice of proposed actions under par. (a). The department shall mail the public notice to any other person upon request. The department shall make a copy of the public notice available at the department's main office, at any other department office in the area of the facility subject to the proposed action and at public libraries in that area. The department shall circulate the public notice in the area of the facility subject to the proposed action by posting the notice in public buildings, publishing the notice in local newspapers and by any other methods that the department determines are effective.

(e) The department shall hold a public informational meeting on a proposed action under par. (a) if the comments received during the public comment period demonstrate considerable public interest in the proposed action.

(9) EFFECT OF COOPERATIVE AGREEMENT. (a) For the purposes of chs. 280 to 295, a cooperative agreement entered into under this section is considered to be an approval that is identified under sub. (3) (b) as being replaced by the cooperative agreement.

(b) A provision of an approval that is identified under sub. (3) (b) as being replaced by a cooperative agreement is superseded by the cooperative agreement.

(10) FEES. A participant shall pay the same fees under chs. 280 to 295 that it would be required to pay if it had not entered into a cooperative agreement.

(11) REPORTING BY PARTICIPANTS. (a) Reports submitted under a cooperative agreement fulfill the reporting requirements under chs. 280 to 295 relating to the facility, activities and pollutants that are covered by the cooperative agreement, except for any requirements for immediate reporting.

(b) A participant shall notify the department before it increases the amount of the discharge or emission of a pollutant from a covered facility and before it begins to discharge or emit a pollutant that it did not discharge or emit from a covered facility when the cooperative agreement was entered into. The notification shall describe any proposed facility expansion, production increase or process modification that would result in the increased or new discharge or emission and shall state the identity and quantity of the pollutant planned to be emitted or discharged. If the increased or new discharge or emission is not authorized under the cooperative agreement, the department may amend the cooperative agreement under sub. (7) in a manner consistent with subs. (2) and (3) or require the participant to obtain an approval if an approval is required under chs. 280 to 295.

(12) REPORTS OF VIOLATIONS. A participant shall submit a report to the department within 45 days after completion of a performance evaluation if the performance evaluation reveals violations at a facility covered by a cooperative agreement. The report shall contain all of the following:

(a) A description of the performance evaluation, including who conducted the performance evaluation, when it was completed, what activities and operations were examined and what was revealed by the performance evaluation.

(b) A description of all violations revealed by the performance evaluation.

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

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

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

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

(13) COMPLIANCE SCHEDULES. (a) If the department receives a report under sub. (12) that contains a proposed compliance schedule under sub. (12) (e), the department shall review the proposed compliance schedule. The department may approve the compliance schedule as submitted or propose a different compliance schedule. If the participant does not agree to implement a compliance schedule proposed by the department, the department shall schedule a meeting with the participant to attempt to reach an agreement on a compliance schedule. If the department and the participant do not reach an agreement on a compliance schedule, the department shall initiate the procedure under sub. (7) (c) 2. to revoke the cooperative agreement. If the parties agree to a compliance schedule, the department shall amend the cooperative agreement to incorporate the compliance schedule.

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

1. The environmental and public health consequences of the violations.
2. The time needed to implement a change in raw materials or method of production if that change is an available alternative to other methods of correcting the violations.
3. The time needed to purchase any equipment or supplies that are needed to correct the violations.

(14) DEFERRED CIVIL ENFORCEMENT. (a) 1. This state may not commence a civil action to collect forfeitures for violations at a facility covered by a cooperative agreement that are disclosed in a report that meets the requirements of sub. (12) for at least 90 days after the department receives the report.

2. If the participant corrects violations that are disclosed in a report that meets the requirements of sub. (12) within 90 days after the department receives a report that meets the requirements of sub. (12), this state may not commence a civil action to collect forfeitures for the violations.

3. This state may not commence a civil action to collect forfeitures for violations covered by a compliance schedule that is approved under sub. (13) during the period of the compliance schedule if the participant is not violating the compliance schedule. If the participant violates the compliance schedule, the department may collect the stipulated penalties in the compliance schedule or may revoke the cooperative agreement. After the department revokes a cooperative agreement, this state may commence civil action to collect forfeitures for the violations.

4. If the department approves a compliance schedule under sub. (13) and the participant corrects the violations according to the compliance schedule, this state may not commence a civil action to collect forfeitures for the violations.

(b) Notwithstanding par. (a), this state may at any time commence a civil action to collect forfeitures for violations if any of the following apply:

1. The violations present an imminent threat to public health or the environment or may cause serious harm to public health or the environment.

2. The department discovers the violations before submission of a report under sub. (12).

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

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

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

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

(16) REPORTS CONCERNING THE PROGRAM UNDER THIS SECTION. (a) Beginning not later than November 1, 1998, the secretary of natural resources shall submit an annual progress report on the program under this section to the governor and, under s. 13.172 (3), the standing committees of the legislature with jurisdiction over environmental matters.

(b) Not later than October 1, 2001, the secretary of natural resources shall submit a report to the governor and, under s. 13.172 (2) the legislature on the success of the program under this section. The report shall include recommendations concerning the continuation of the program under this section and any changes that should be made to the program.

History: 1997 a. 27, 41.

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

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

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

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

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

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

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

1. Adoption of an environmental policy that includes a commitment to compliance with environmental requirements, pollution prevention, and continual improvement in environmental performance.
2. An analysis of the environmental aspects and impacts of an entity’s activities.
3. Plans and procedures to achieve compliance with environmental requirements and to maintain that compliance.
4. Identification of all environmental requirements applicable to the entity.
5. A process for setting environmental objectives and developing appropriate action plans to meet the objectives.
6. Establishment of a structure for operational control and responsibility for environmental performance.
7. An employee training program to develop awareness of and competence to manage environmental issues.
8. A plan for taking actions to prevent environmental problems and for taking emergency response and corrective actions when environmental problems occur.
9. A communication plan for collaboration with employees, the public, and the department on the design of projects and activities to achieve continuous improvement in environmental performance.
10. Procedures for control of documents and for keeping records related to environmental performance.
11. Environmental management system audits.
12. A plan for continually improving environmental performance and provision for senior management review of the plan.

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

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

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

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

1. Limiting the discharges or emissions of pollutants from, or in some other way minimizing the negative effects on air, water, land, natural resources, or human health of, a facility that is owned or operated by an entity or an activity that is performed by the entity to an extent that is greater than is required by applicable environmental requirements.
2. Minimizing the negative effects on air, water, land, natural resources, or human health of the raw materials used by an entity or of the products or services produced or provided by the entity to an extent that is greater than is required by applicable environmental requirements.
3. Voluntarily engaging in restoring or preserving natural resources.

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

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

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

7. Conserving energy or nonrenewable natural resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Remove disincentives to achieving superior environmental performance.

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

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

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

(3) ELIGIBILITY FOR TIER I. (a) *General.* An applicant is eligible for tier I of the program if the applicant satisfies the requirements in pars. (b) to (d), subject to par. (e). If an applicant consists of a group of entities, each requirement in pars. (b) to (d) applies

to each entity in the group. An applicant for tier I of the program shall identify the facilities or activities that it intends to include in the program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Conduct, or commit itself to conducting, annual environmental management system audits, with every 3rd environmental management system audit performed by an outside environmental

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. That, within 120 months before the date of application, no judgment of conviction was entered against the applicant, any

managing operator of the applicant, or any person with a 25% or more ownership interest in the applicant for a criminal violation involving a covered facility or activity that resulted in substantial harm to public health or the environment or that presented an imminent threat to public health or the environment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ticipation contract may not exceed 5 years if the participation contract incorporates, modifies, or otherwise affects the terms or conditions of a permit issued under s. 283.31, 283.33, or 285.62, unless federal and state law authorize a longer term for the permit.

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

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

1. A description of all of the violations.
2. A description of the actions taken or proposed to be taken to correct the violations identified in subd. 1.
3. A commitment to correct the violations identified in subd. 1. within 90 days of submitting the report or according to a compliance schedule approved by the department.
4. If the participant proposes to take more than 90 days after submitting the report to correct the violations identified in subd. 1., a proposed compliance schedule that contains the shortest reasonable periods for correcting the violations, a statement that justifies the proposed compliance schedule, a description of measures that the participant will take to minimize the effects of the violations during the period of the compliance schedule, and proposed stipulated penalties to be imposed if the participant fails to comply with the proposed compliance schedule.
5. A description of the measures that the participant has taken or will take to prevent future violations.

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

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

- a. The environmental and public health consequences of the violations.
- b. The time needed to implement a change in raw materials or method of production if that change is an available alternative to other methods of correcting the violations.
- c. The time needed to purchase any equipment or supplies that are needed to correct the violations.

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

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

receives the report, this state may not bring a civil action to collect forfeitures for the violations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) The department shall submit a progress report on the program to the legislature, in the manner provided in s. 13.172 (2), no later than May 1, 2007, and every 2 years after it submits the first report.

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

1. The implementation and operation of the program, including the setting of goals and priorities for the program.
2. Evaluating the costs of applying for the program and of entering into a participation contract or a charter and the administrative costs of participating in the program.
3. Assessing whether incentives provided under a participation contract are proportional to the environmental benefits committed to under a participation contract.
4. Procedures for evaluating the program and the results of the program.
5. Changes that should be made in the program.

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

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

History: 2003 a. 276, 326, 327.

299.85 Environmental Improvement Program.

(1) DEFINITIONS. In this section:

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

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

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

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

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

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

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

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

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

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

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

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

(bm) The notice under par. (b) includes a statement, signed by an official of the regulated entity who is responsible for environmental compliance, that acknowledges that sub. (7) (a) does not apply to violations discovered by the regulated entity before the beginning of the environmental compliance audit.

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

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

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

(3) AUDIT REPORT. To participate in the Environmental Improvement Program with respect to a facility, the regulated entity that owns or operates the facility shall submit a report to the department within 45 days after the date of the final written report of findings of the environmental compliance audit of the facility. The regulated entity shall complete the environmental compliance audit, including the final written report of findings, within 365 days after providing the notice under sub. (2) (b). The report submitted to the department shall include all of the following:

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

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

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

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

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

minimize the effects of the violations during the period of the compliance schedule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6m) STIPULATED PENALTIES. (a) If the department receives a report under sub. (3) that contains proposed stipulated penalties under sub. (3) (em), the department shall review the proposed stipulated penalties. The department may approve the stipulated penalties as submitted or propose different stipulated penalties. If the regulated entity does not agree to stipulated penalties proposed by the department, the department shall schedule a meeting with the regulated entity to attempt to reach an agreement on stipulated penalties. If no agreement is reached, there are no stipulated penalties for failure to comply with the compliance schedule.

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

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

2. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b) 1., 295.37 (2), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if a regulated entity that qualifies under sub. (2) for participation in the Environmental Improvement Program corrects violations that it discloses in a report that meets the requirements of sub. (3) within 90 days after the department receives the report that meets the requirements of sub. (3), the regulated entity may not be required to forfeit more than \$500 for each violation, regardless of the number of days during which the violation continues.

3. This state may not begin a civil action to collect forfeitures for violations covered by a compliance schedule that is approved under sub. (6) during the period of the compliance schedule if the regulated entity is in compliance with the compliance schedule. If the regulated entity fails to comply with the compliance schedule, the department may collect any stipulated penalties during the period in which the stipulated penalties apply. This state may begin a civil action to collect forfeitures for violations that are not corrected by the end of the period in which the stipulated penalties apply. If the regulated entity fails to comply with the compliance schedule and there are no stipulated penalties, this state may begin a civil action to collect forfeitures for the violations.

4. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b) 1., 295.37 (2), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if the department approves a compliance schedule under sub. (6) and the regulated entity corrects the violations according to the compliance schedule, the regulated entity may not be required to forfeit more than \$500 for each violation, regardless of the number of days during which the violation continues.

(am) The department may issue a citation and follow the procedures under ss. 23.50 to 23.99 to collect a forfeiture for a violation to which par. (a) 2. or 4. applies.

(b) Notwithstanding par. (a), this state may at any time begin a civil action to collect a forfeiture not limited in amount under par. (a) 2. or 4. for a violation if any of the following apply:

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

2. The department discovers the violation before submission of a report under sub. (3).

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

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

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

6. The violation is discovered by the regulated entity before the beginning of the compliance audit.

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

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

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

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

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

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

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

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

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

(d) If the department refuses to release information on the grounds that it is confidential under par. (c) and a person challenges that refusal, the department shall inform the affected regulated entity of that challenge. Unless the regulated entity autho-

izes the department to release the information, the regulated entity shall pay the reasonable costs incurred by this state to defend the refusal to release the information.

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

(9m) ANNUAL REPORT. The department shall submit an annual report under s. 13.172 (3) concerning the Environmental Improvement Program to the standing committees of the legislature with jurisdiction over environmental matters. The department shall submit the first annual report no later than May 1, 2006. The department shall include all of the following in the annual report:

(a) The number of reports received under sub. (3), including the number of reports by county of the facility involved and by whether the regulated entity is governmental or nongovernmental.

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

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

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

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

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

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

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

History: 2003 a. 276, 326.

299.91 Hearings; procedure; review. The department shall hold a public hearing relating to alleged or potential environmental pollution upon the verified complaint of 6 or more citizens filed with the department. The complaint shall state the name and address of a person within the state authorized to receive service of answer and other papers in behalf of complainants. The department may order the complainants to file security for costs in a sum deemed to be adequate but not to exceed \$100 within 20 days after the service upon them of a copy of the order and all proceedings on the part of the complainants shall be stayed until the security is filed. The department shall serve a copy of the complaint and notice of the hearing upon the alleged or potential polluter either personally or by registered mail directed to the last-known post-office address at least 20 days prior to the time set for the hearing. The hearing shall be held not later than 90 days after the filing of the complaint. The respondent shall file a verified answer to the complaint with the department and serve a copy on the person designated by the complainants not later than 5 days prior to the date set for the hearing, unless the time for answering is extended by the department for cause shown. For purposes of any hearing under this section the hearing examiner may issue subpoenas and

administer oaths. Within 90 days after the closing of the hearing, the department shall make and file its findings of fact, conclusions of law and order, which shall be subject to review under ch. 227. If the department determines that any complaint was filed maliciously or in bad faith it shall issue a finding to that effect and the person complained against is entitled to recover the expenses of the hearing in a civil action. Any situation, project or activity which upon continuance or implementation would cause, beyond reasonable doubt, a degree of pollution that normally would require clean-up action if it already existed, shall be considered potential environmental pollution. This section does not apply to any part of the process for approving a feasibility report, plan of operation or license under subch. III of ch. 289 or s. 291.23 or 291.25.

History: 1979 c. 176; 1979 c. 221 s. 633; Stats. 1979 s. 144.975; 1981 c. 374, 403; 1995 a. 227 s. 826; Stats. 1995 s. 299.91.

299.93 Environmental surcharge. (1) If a court imposes a fine or forfeiture for a violation of a provision of this chapter or chs. 280 to 285 or 289 to 295 or a rule or order issued under this chapter or chs. 280 to 285 or 289 to 295, the court shall impose an environmental surcharge under ch. 814 equal to 10% of the amount of the fine or forfeiture.

(2) If a fine or forfeiture is suspended in whole or in part, the environmental surcharge shall be reduced in proportion to the suspension.

(3) If any deposit is made for an offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the environmental surcharge under this section. If the deposit is forfeited, the amount of the environmental surcharge shall be transmitted to the secretary of administration under sub. (4). If the deposit is returned, the environmental surcharge shall also be returned.

(4) The clerk of the court shall collect and transmit to the county treasurer the environmental surcharge and other amounts required under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (f) 2. The secretary of administration shall deposit the amount of the surcharge in the environmental fund.

History: 1991 a. 39; 1993 a. 27, 458; 1995 a. 201; 1995 a. 227 s. 831; Stats. 1995 s. 299.93; 2003 a. 33, 139, 326.

299.95 Enforcement; duty of department of justice; expenses. The attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except ss. 281.48, 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals, permits, and water quality certifications of the department, except those promulgated or issued under ss. 281.48, 285.57, 285.59, and 299.64 and except as provided in ss. 285.86 and 299.85 (7) (am). The circuit court for Dane county or for any other county where a violation occurred in whole or in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan approval, permit, or certification by injunctive and other relief appropriate for enforcement. For purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan approval, permit or certification prohibits in whole or in part any pollution, a violation is considered a public nuisance. The department of natural resources may enter into agreements with the department of justice to assist with the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid to the department of justice under these agreements shall be credited to the appropriation account under s. 20.455 (1) (k).

History: 1975 c. 39 s. 734; 1979 c. 34 s. 985g; 1979 c. 221; Stats. 1979 s. 144.98; 1981 c. 374; 1989 a. 284; 1993 a. 243; 1995 a. 27; 1995 a. 227 s. 829; Stats. 1995 s. 299.95; 1995 a. 290 s. 12; 1997 a. 35; 1999 a. 9; 2001 a. 6; 2003 a. 276.

That the violation of an order prohibiting pollution constitutes a public nuisance does not mean that there is no nuisance until an order is issued. *State v. Dairyland Power Coop.* 52 Wis. 2d 45, 187 N.W.2d 878 (1971).

The state need not show irreparable harm to obtain an injunction under this section. *State v. C. Spielvogel & Sons.* 193 Wis. 2d 464, 535 N.W.2d 28 (Ct. App. 1995).

299.97 Penalties and remedies. (1) Any person who violates this chapter, except s. 299.15 (1), 299.47 (2), 299.51 (4) (b),

299.53 (2) (a) or (3), 299.62 (2) or 299.64 (2), or any rule promulgated or any plan approval, license or special order issued under this chapter, except under those sections, shall forfeit not less than \$10 nor more than \$5,000, for each violation. Each day of continued violation is a separate offense. While the order is suspended, stayed or enjoined, this penalty does not accrue.

(2) In addition to the penalties provided under sub. (1), the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of the viola-

tion, including attorney fees. The department of justice shall deposit in the state treasury for deposit into the general fund all moneys that the court awards to the department or the state under this subsection. The costs of investigation and the expenses of prosecution, including attorney fees, shall be credited to the appropriation account under s. 20.455 (1) (gh).

History: 1979 c. 34 s. 987m; 1979 c. 221; Stats. 1979 s. 144.99; 1989 a. 336; 1991 a. 262, 300, 315; 1995 a. 27; 1995 a. 227 s. 830; Stats. 1995 s. 299.97; 1995 a. 290 s. 14; 1997 a. 35; 1999 a. 9; 2001 a. 109; 2003 a. 309.