

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 the first day of the 60th month beginning after the effective date of this paragraph [revisor inserts date].

(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 employe of the department and an employe 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, employe 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 the first day of the 13th month beginning after the effective date of this paragraph [revisor inserts date], the secretary of natural resources shall submit an annual progress report on the program under this section to the governor, the environmental performance council and, under s. 13.172 (3), the standing committees of the legislature with jurisdiction

over environmental matters.

(b) Not later than the first day of the 48th month beginning after the effective date of this paragraph [revisor inserts date], the secretary of natural resources shall submit a report to the governor, the environmental performance council 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.