



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBs0303/Pg 2

RCT:cs:ch

Thurs, 2/21, if possible

Stays

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2001 ASSEMBLY BILL 479

DN Note

Regan cut

1 AN ACT to create 15.347 (3), 20.143 (3) (z), 20.370 (9) (fr), 299.83, 299.85 and  
2 560.125 of the statutes; relating to: environmental <sup>compliance audits</sup> performance evaluations,  
3 environmental management systems, providing incentives for improving  
4 environmental performance, providing immunity from civil penalties for  
5 certain violations of environmental requirements, access to certain  
6 information, granting rule-making authority, making appropriations, and  
7 providing a penalty.

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

8 SECTION 1. 15.347 (3) of the statutes is created to read:

9 15.347 (3) <sup>(CS)</sup> Environmental results ~~GREEN DEPT~~ COUNCIL. There is created in the department of natural  
10 resources ~~a green tie~~ <sup>an environmental results</sup> council consisting of 15 members appointed for 5-year terms.

11 The governor shall appoint members representing environmental organizations,

1 businesses, and local governmental units and members who do not represent any of  
2 these entities.

3 SECTION 2. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert  
4 the following amounts for the purposes indicated:

				2001-02	2002-03
6	<b>20.143 Commerce, department of</b>				
7	(3) REGULATION OF INDUSTRY, SAFETY AND BUILDINGS				
8	(z) <del>Green tier</del> <sup>Environmental results</sup> and environmental				
9	management system grants	SEG	B	-0-	-0-

10 **20.370 Natural resources, department of**

11	(9) CUSTOMER ASSISTANCE AND EXTERNAL RELATIONS				
12	(fr) <del>Green tier</del> <sup>Environmental results</sup> program — environ-				
13	mental fund	SEG	B	367,000	403,000

14 SECTION 3. 20.143 (3) (z) of the statutes is created to read:

15 20.143 (3) (z) <sup>Environmental results</sup> ~~Green tier~~ and environmental management system grants.

16 Biennially, from the environmental fund, the amounts in the schedule for ~~Green tier~~ <sup>environmental results</sup>  
17 and environmental management system grants under s. 560.125.

18 SECTION 4. 20.370 (9) (fr) of the statutes is created to read:

19 20.370 (9) (fr) <sup>Environmental results</sup> ~~Green tier~~ program — environmental fund. Biennially, from the

20 environmental fund, the amounts in the schedule for the administration of the ~~green~~  
<sup>environmental results</sup>  
21 ~~tier~~ program under s. 299.83.

22 SECTION 5. 299.83 of the statutes is created to read:

23 299.83 <sup>Environmental results</sup> ~~Green tier~~ program. (1) DEFINITIONS. In this section:

1 (a) "Covered facility or activity" means a facility or activity that is included, or  
2 intended to be included, in the ~~green tier~~ program.

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

7 (bm) "Environmental management system audit" means a review, of an  
8 environmental management system, that is conducted in accordance with standards  
9 and guidelines issued by the International Organization for Standardization and the  
10 results of which are documented and communicated to employees of the participant.

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

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

17 (e) <sup>↓ a Participation</sup> ~~Green tier~~ contract" means a contract entered into by the department and  
18 a participant in tier II of the ~~green tier~~ program, and that may, with the approval of  
19 the department, be signed by other interested parties, that specifies the participant's  
20 commitment to superior environmental performance and the incentives to be  
21 provided to the participant.

22 (f) <sup>environmental results</sup> ~~Green tier~~ program" means the program under this section.

23 (g) "Superior environmental performance" means one of the following:

24 1. That an entity limits the discharges or emissions of pollutants from, or in  
25 some other way minimizes the negative effects on air, water, land, natural resources,

1 or human health of, a facility that is owned or operated by the entity or an activity  
2 that is performed by the entity to an extent that is greater than is required by  
3 applicable environmental requirements.

4 2. That an entity minimizes the negative effects on air, water, land, natural  
5 resources, or human health of the raw materials used by the entity or the products  
6 or services produced or provided by the entity to an extent that is greater than is  
7 required by applicable environmental requirements.

8 3. That an entity voluntarily engages in restoring or preserving natural  
9 resources.

10 4. That an entity helps other entities to comply with environmental  
11 requirements or to accomplish the results described in subd. 1. or 2.

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

13 (2) ELIGIBLE PARTICIPANTS. Any public or private entity may apply to the  
14 department to participate in tier I or tier II of the ~~green tier~~ program. A group of  
15 entities may together apply to the department to participate in tier I or tier II of the  
16 ~~green tier~~ program. An applicant for tier I or tier II of the ~~green tier~~ program shall  
17 identify the facilities or activities that it intends to include in the program.

18 (3) ELIGIBILITY FOR TIER I. (a) *General*. An applicant is eligible for tier I of the  
19 ~~green tier~~ program if the applicant satisfies the requirements in pars. (b) to (d). If  
20 an applicant consists of a group of entities, each requirement in pars. (b) to (d) applies  
21 to each entity in the group.

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

24 1. That, within 60 months before the date of application, no judgment of  
25 conviction was entered against the applicant, any managing operator of the

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

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

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

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

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

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

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

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

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

6 a. Based on the standards for environmental management systems issued by  
7 the International Organization for Standardization or determined by the  
8 department to be functionally equivalent to an environmental management system  
9 that is based on those standards.

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

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

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

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

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

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

1           4. Conduct, or commit itself to conducting, annual environmental management  
2 system audits, with every 3rd environmental management system audit performed  
3 by an outside <sup>environmental</sup> auditor approved by the department, and commit itself to submitting  
4 an annual report on the environmental management system audit to the  
5 department.

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

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

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

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

20           (d) A decision by the department under par. (c) to approve or deny an  
21 application is not subject to review under ch. 227.

22           (4m) INCENTIVES FOR TIER I. (a) The department shall issue a numbered  
23 certificate of recognition to each participant in tier I of the ~~green tier~~ program.

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

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

4 (d) A participant in tier I of the ~~green tier~~ program may use a ~~green tier~~ logo  
5 selected by the department on written materials produced by the participant. *an environmental results program*

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

9 (f) After a participant in tier I of the ~~green tier~~ program implements an  
10 environmental management system that complies with sub. (3) (d) 1., the  
11 department shall conduct any inspections of the participant's covered facilities or  
12 activities that are required under chs. 29 to 31, 160, and 280 to 295 at the lowest  
13 frequency permitted under those chapters, except that the department may conduct  
14 an inspection whenever it has reason to believe that a participant is out of compliance  
15 with a requirement in an approval or with an environmental requirement.

16 (5) ELIGIBILITY FOR TIER II. (a) *General.* An applicant is eligible for tier II of the  
17 ~~green tier~~ program if the applicant satisfies the requirements in pars. (b) to (d). If  
18 an applicant consists of a group of entities, each requirement in pars. (b) to (d) applies  
19 to each entity in the group.

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

22 1. That, within 120 months before the date of application, no judgment of  
23 conviction was entered against the applicant, any managing operator of the  
24 applicant, or any person with a 25% or more ownership interest in the applicant for  
25 a criminal violation involving a covered facility or activity that resulted in

1 substantial harm to public health or the environment or that presented an imminent  
2 threat to public health or the environment.

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

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

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

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

17 a. Based on the standards for environmental management systems issued by  
18 the International Organization for Standardization or determined by the  
19 department to be functionally equivalent to an environmental management system  
20 that is based on those standards.

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

24 2. Commit itself to having an outside environmental auditor approved by the  
25 department conduct an annual environmental management system audit and to

1 submitting an annual report on the environmental management system audit to the  
2 department.

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

7 (d) *Superior environmental performance.* To be eligible to participate in tier II  
8 of the ~~green tier~~ program, an applicant shall demonstrate a record of superior  
9 environmental performance, <sup>shall</sup> and describe the measures that it proposes to take to  
10 maintain and improve its superior environmental performance.

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

16 1. Describe the involvement of interested persons in developing the proposal  
17 for maintaining and improving the applicant's superior environmental performance,  
18 identify the interested persons, and describe the interests that those person have in  
19 the applicant's participation in the ~~green tier~~ program.

20 2. Outline the provisions that it proposes to include in the ~~green tier~~ <sup>of participation</sup> contract.

21 3. Explain how the measures that the applicant proposes to take to maintain  
22 and improve its superior environmental performance are proportional to the  
23 incentives that it proposes to receive under the ~~green tier~~ <sup>of participation</sup> contract.

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

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

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

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

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

22 (g) *Termination of negotiations.* The department may terminate negotiations  
23 with an applicant concerning a ~~grant~~ <sup>participation</sup> contract and the decision to terminate  
24 negotiations is not subject to review under ch. 227. The department shall conclude

1 negotiations within 12 months of beginning negotiations unless the applicant and  
2 the department agree to an extension.

3 (h) *Notice of proposed contract.* If negotiations under par. (f) result in a  
4 proposed ~~green tier~~ <sup>participation</sup> contract, the department shall provide public notice about the  
5 proposed ~~green tier~~ <sup>participation</sup> contract in the area in which each covered facility or activity is  
6 located or performed.

7 (i) *Meeting on proposed contract.* After providing public notice under par. (h)  
8 about a proposed ~~green tier~~ <sup>participation</sup> contract, the department may hold a public  
9 informational meeting on the proposed ~~green tier~~ <sup>participation</sup> contract.

10 (j) ~~green tier~~ <sup>Participation</sup> contract. Within 30 days after providing notice under par. (h) or,  
11 if the department holds a public informational meeting under par. (i), within 30 days  
12 after that meeting, the department shall decide whether to enter into a ~~green tier~~ <sup>participation</sup>  
13 contract with an applicant, unless the applicant and the department agree to an  
14 extension beyond 30 days. In a ~~green tier~~ <sup>participation</sup> contract, the department shall require that  
15 the participant maintain the environmental management system described in sub.  
16 (5) (c) 1. and abide by the commitments in sub. (5) (c) 2. and 3. The department may  
17 not reduce the frequency of required inspections or monitoring as an incentive in a  
18 ~~green tier~~ <sup>participation</sup> contract if the audit under sub. (5) (c) 3. is conducted by the participant.  
19 The department shall ensure that the incentives provided under a ~~green tier~~ <sup>participation</sup> contract  
20 are proportional to the environmental benefits that will be provided by the  
21 participant under the ~~green tier~~ <sup>participation</sup> contract. The department shall include in a ~~green~~  
22 ~~tier~~ <sup>participation</sup> contract remedies that apply if a party ~~to the contract~~ fails to comply with the  
23 <sup>participation</sup> contract. The term of a ~~green tier~~ <sup>participation</sup> contract may not be less than 3 years or more than  
24 10 years, with opportunity for renewal for additional terms of the same length as the  
25 original term upon agreement of the parties. The term of a ~~green tier~~ <sup>participation</sup> contract may

1 not exceed 5 years if the ~~green tier~~ <sup>participation</sup> contract incorporates, modifies, or otherwise  
2 affects the terms or conditions of a permit issued under s. 283.31, 283.33, or 285.62,  
3 unless federal and state law authorize a longer term for the permit.

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

7 (6m) COMPLIANCE REPORTS AND DEFERRED CIVIL ENFORCEMENT. (a) *Compliance*  
8 *reports.* If an audit under sub. (5) (c) reveals any violations of environmental  
9 requirements, the participant in tier II of the ~~green tier~~ program shall include all of  
10 the following in the report of the results of the audit:

11 1. A description of all of the violations.  
12 2. A description of the actions taken or proposed to be taken to correct the  
13 violations identified in subd. 1.

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

17 4. If the participant proposes to take more than 90 days after submitting the  
18 report to correct the violations identified in subd. 1., a proposed compliance schedule  
19 that contains the shortest reasonable periods for correcting the violations, a  
20 statement that justifies the proposed compliance schedule, a description of measures  
21 that the participant will take to minimize the effects of the violations during the  
22 period of the compliance schedule, and proposed stipulated penalties to be imposed  
23 if the participant violates the proposed compliance schedule.

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

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

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

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

22 (c) *Stipulated penalties.* 1. If the department receives proposed stipulated  
23 penalties under par. (a) 4., the department shall review the proposed stipulated  
24 penalties. The department may approve the stipulated penalties as submitted or  
25 propose different stipulated penalties. If the regulated entity does not agree to

1 stipulated penalties proposed by the department, the department shall schedule a  
2 meeting with the regulated entity to attempt to reach an agreement on stipulated  
3 penalties. If no agreement is reached, there are no stipulated penalties for violations  
4 of the compliance schedule.

5 (d) *Deferred civil enforcement.* 1. a. If a participant in tier II of the green tier  
6 program corrects violations that are disclosed in a report that meets the  
7 requirements of par. (a) within 90 days after the department receives the report, this  
8 state may not bring a civil action to collect forfeitures for the violations.

9 b. This state may not begin a civil action to collect forfeitures for violations  
10 covered by a compliance schedule that is approved under par. (b) during the period  
11 of the compliance schedule if the participant is not violating the compliance schedule.  
12 If the participant violates the compliance schedule, the department may collect any  
13 stipulated penalties or may terminate participation in the program. If the regulated  
14 entity violates the compliance schedule and there are no stipulated penalties, the  
15 department may terminate participation in the program. After the department  
16 terminates participation in the program, this state may begin a civil action to collect  
17 forfeitures for the violations.

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

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

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

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

3           (7) SUSPENSION OR TERMINATION OF PARTICIPATION. (a) The department may  
4 suspend or ~~revoke~~<sup>terminate</sup> the participation of a participant in the ~~green tier~~ program at the  
5 request of the participant.

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

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

19           (d) The department may suspend or ~~revoke~~<sup>terminate</sup> the participation of a ~~green tier~~  
20 participant in tier I of the ~~green tier~~ program if the participant does not implement,  
21 or fails to maintain, the environmental management system described in sub. (3) (d)  
22 1., fails to conduct annual audits described in sub. (3) (d) 4., or fails to submit annual  
23 reports described in sub. (3) (d) 5.

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(e) The department may, after an opportunity for a hearing, terminate a ~~green~~<sup>participation</sup> contract if the department determines that the participant is in substantial noncompliance with the ~~green tier~~<sup>participation</sup> contract.

(f) A person who is not a party to a ~~green tier~~<sup>participation</sup> contract, but who believes that a participant is in substantial noncompliance with a ~~green tier~~<sup>participation</sup> contract, may ask the department to ~~revoke~~<sup>terminate</sup> a ~~green tier~~<sup>participation</sup> contract under par. (e).

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

(b) In a ~~green tier~~ charter the department shall describe the goals of the association and the activities that the entities in the association will engage in to accomplish their goals. The term of a ~~green tier~~ 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 ~~green tier~~ charter unless the department determines that the entities in the association have the resources to carry out the charter. Before issuing a proposed ~~green tier~~ 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 ~~green tier~~ charter, the department shall hold a public informational

1 hearing on the proposed ~~green tier~~ charter. A decision by the department to issue a  
2 ~~green tier~~ charter is not subject to review under ch. 227.

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

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

11 (7m) ENVIRONMENTAL AUDITORS. The department may not approve an  
12 environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. or 3. unless the  
13 environmental auditor is certified by the Registrar Accreditation Board of the  
14 American National Standards Institute or meets criteria concerning education,  
15 training, experience, and performance that are equal to the criteria in International  
16 Organization for Standardization standard 14012.

17 (7s) ACCESS TO RECORDS. (a) Except as provided in par. (c), the department shall  
18 make any record, report, or other information obtained in the administration of this  
19 section available to the public.

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

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

6 (e) Paragraph (c) does not prevent the disclosure of any information to a  
7 representative of the department for the purpose of administering this section or to  
8 an officer, employee, or authorized representative of the federal government for the  
9 purpose of administering federal law. When the department provides information  
10 that is confidential under par. (c) to the federal government, the department shall  
11 also provide a copy of ~~any materials provided to support the request~~ <sup>the application</sup> for confidential  
12 status.

13 (8) POWERS AND DUTIES OF THE DEPARTMENT. (a) To facilitate the process under  
14 sub. (6), the department shall develop model terms that may be used in ~~incentive~~ <sup>participation</sup>  
15 contracts.

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

20 (c) The department may promulgate rules for the administration of the ~~green~~ <sup>green</sup>  
21 ~~tree~~ program. In the rules, the department may specify incentives, that are  
22 consistent with federal laws and other state laws, that the department may provide  
23 to participants in tier II of the ~~green tree~~ program.

24 (d) The department shall encourage small businesses, agricultural  
25 organizations, entities that are not subject to environmental requirements, local

1 governments, and other entities to form groups to work cooperatively on projects to  
2 achieve superior environmental performance.

3 (dm) The department shall select a logo for the ~~green tier~~ program.

4 (e) The department shall consult with the ~~green tier~~ <sup>environmental results</sup> council about the operation  
5 of the ~~green tier~~ program, priorities for the ~~green tier~~ program, and evaluation of the  
6 ~~green tier~~ program.

7 (f) The department and the department of commerce shall jointly provide  
8 information about ~~green tier~~ <sup>participation</sup> contracts and environmental management systems to  
9 potential participants in the ~~green tier~~ program and to other interested persons. The  
10 department shall consult with the department of commerce about the  
11 administration of the ~~green tier~~ program.

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

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

24 (9) ~~GREEN TIER~~ <sup>Environmental results</sup> COUNCIL. The ~~green tier~~ <sup>environmental results</sup> council shall advise the department  
25 about all of the following:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9

(a) The implementation of the ~~green tier~~ program, including the setting of goals for the ~~green tier~~ program.

(b) Evaluating the costs of applying for the ~~green tier~~ program and of entering into a ~~green tier~~ <sup>participation</sup> contract or ~~green tier~~ <sup>a</sup> charter and the administrative costs of participating in the ~~green tier~~ program.

(c) Assessing whether incentives provided under a ~~green tier~~ <sup>participation</sup> contract are proportional to the environmental benefits committed to under a ~~green tier~~ <sup>participation</sup> contract.

(d) Procedures for evaluating the ~~green tier~~ program.

(e) Changes that should be made in the ~~green tier~~ program.

(10) PENALTY. (a) Any person who knowingly 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.

(b) For purposes of this subsection, an act is committed knowingly if it is done voluntarily and is not the result of negligence, mistake, accident, or circumstances that are beyond the control of the person.

(11) SUNSET. The department may not process or approve any application for participation in the ~~green tier~~ program that it receives after July 1, 200~~7~~.

SECTION 6. 299.85 of the statutes is created to read:

**299.85 Environmental improvement program.** (1) DEFINITIONS. In this section:

(a) "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.

MOVE

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

3 (b) "Environmental <sup>compliance audit</sup> ~~performance evaluation~~" means a systematic, documented,  
4 and objective review, conducted by or on behalf of the owner or operator of a facility,  
5 of the environmental performance of the facility, including an evaluation of  
6 compliance with one or more environmental requirements.

7 (c) "Environmental requirement" means a requirement in any of the following:

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

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

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

16 (e) "Local governmental unit" means a city, village, town, county, town sanitary  
17 district, or metropolitan sewerage district.

18 (f) "Regulated entity" means a public or private entity that is subject to  
19 environmental requirements.

20 (2) REQUIREMENTS FOR PARTICIPATION. A regulated entity qualifies for  
21 participation in the environmental improvement program with respect to a facility  
22 owned or operated by the regulated entity if all of the following apply:

23 (a) The regulated entity conducts an environmental ~~performance evaluation~~ <sup>compliance audit</sup> of  
24 the facility ~~or submits findings from the facility's environmental management~~  
25 ~~system~~

1 (b) ~~If the regulated entity conducts an environmental performance evaluation,~~

2 ~~The regulated entity notified the department in writing, no fewer than 30 days before~~

3 ~~beginning an environmental performance evaluation,~~ <sup>the compliance audit</sup> of the date on which the

4 ~~environmental performance evaluation~~ <sup>compliance audit</sup> would begin, the site or facility or the

5 operations or practices at a site or facility to be reviewed, and the general scope of

6 the ~~environmental performance evaluation.~~ <sup>compliance audit</sup>

7 (c) ~~If the regulated entity conducts an environmental performance evaluation,~~

8 ~~the environmental performance evaluation~~ <sup>compliance audit</sup> complies with sub. (4).

9 ~~(d) If the regulated entity submits findings from the facility's environmental~~  
10 ~~management system, the environmental management system complies with sub. (5).~~

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

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

17 (3) <sup>audit (c5)</sup> ~~REPORT.~~ To participate in the environmental improvement program with

18 respect to a facility, <sup>the</sup> a regulated entity that owns or operates the facility shall submit

19 a report to the department within 45 days after the date of the final written report

20 of findings of <sup>the</sup> an ~~environmental performance evaluation~~ <sup>compliance audit</sup> of the facility ~~or within 45~~

21 ~~days after the date of findings from the facility's environmental management system~~

22 ~~if the findings identify a violation of an environmental requirements.~~ <sup>and within 270 days after providing</sup> The report shall

23 include all of the following:

24 (a) 1. ~~If the regulated entity conducted an environmental performance~~

25 ~~evaluation,~~ <sup>compliance audit</sup> a description of the ~~environmental performance evaluation,~~ including

*and within 270 days after providing notice under sub. (2) (b)*

1 who conducted the environmental <sup>compliance audit</sup> performance evaluation, when it was completed,  
2 what activities and operations were examined, and what was revealed by the  
3 environmental <sup>compliance audit</sup> performance evaluation.

4 ~~2. If the regulated entity submits findings from an environmental management~~  
5 ~~system, a description of the environmental management system, of the activities and~~  
6 ~~operations covered by the environmental management system, and of who made the~~  
7 ~~findings and when the findings were made.~~

8 (b) A description of all violations of environmental requirements revealed by  
9 the environmental <sup>compliance audit</sup> performance evaluation or the ~~environmental management~~  
10 ~~system~~ and of the length of time that the violations may have continued.

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

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

16 (e) If the regulated entity proposes to take more than 90 days to correct the  
17 violations of environmental requirements, a proposed compliance schedule that  
18 contains the shortest reasonable periods for correcting the violations of  
19 environmental requirements, a statement that justifies the proposed compliance  
20 schedule, and a description of measures that the regulated entity will take to  
21 minimize the effects of the violations of environmental requirements during the  
22 period of the compliance schedule.

23 (em) If the regulated entity proposes to take more than 90 days to correct the  
24 violations of environmental requirements, the proposed stipulated penalties to be  
25 imposed if the regulated entity violates the compliance schedule under par. (e).

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

4 (3m) PUBLIC NOTICE; COMMENT PERIOD. (a) The department shall provide at least  
5 30 days for public comment on a compliance schedule and stipulated penalties  
6 proposed in a report under sub. (3). The department may not approve or issue a  
7 compliance schedule under sub. (6) or approve stipulated penalties under sub. (6m)  
8 until after the end of the comment period.

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

12 1. Identifies the regulated entity that submitted the report under sub. (3), the  
13 facility at which the violation occurred, ~~and~~ the nature of the violation, <sup>and severity</sup> and whether the violation related to

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

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

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

22 (4) ENVIRONMENTAL PERFORMANCE EVALUATION. <sup>(c) compliance audit</sup> If a regulated entity conducts an  
23 environmental performance evaluation under sub. (2)(a), the regulated entity does  
24 not qualify for participation in the environmental improvement program unless the  
25 final written report of findings of the environmental <sup>compliance audit</sup> performance evaluation is

*and severity*  
*violation related to air, water, solid waste, hazardous waste, or another specified type of environmental regulation*

1 labeled "environmental <sup>compliance audit</sup> performance evaluation report," is dated, and, if the  
2 environmental <sup>compliance audit</sup> performance evaluation identifies violations of environmental  
3 requirements, includes a plan for corrective action. A regulated entity may use a  
4 form developed by the regulated entity, by a consultant, or by the department for the  
5 final written report of findings of the environmental <sup>compliance audit</sup> performance evaluation.

6 ~~(5) ENVIRONMENTAL MANAGEMENT SYSTEM. If a regulated entity submits findings~~  
7 ~~from the facility's environmental management system under sub. (2) (a), the~~  
8 ~~regulated entity does not qualify for participation in the environmental~~  
9 ~~improvement program unless the regulated entity's efforts to prevent, detect, and~~  
10 ~~correct violations of environmental requirements are appropriate to the size of the~~  
11 ~~regulated entity and to the nature of its business and are consistent with any criteria~~  
12 ~~used by the federal environmental protection agency to define due diligence in~~  
13 ~~federal audit policies or regulations.~~

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

24 (b) The department may not approve or issue a compliance schedule that  
25 extends longer than 12 months beyond the date of approval of the compliance

1 schedule. The department shall consider the following factors in determining  
2 whether to approve a compliance schedule:

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

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

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

9 **(6m) STIPULATED PENALTIES.** (a) If the department receives proposed stipulated  
10 penalties under sub. (3) (em), the department shall review the proposed stipulated  
11 penalties. The department may approve the stipulated penalties as submitted or  
12 propose different stipulated penalties. If the regulated entity does not agree to  
13 stipulated penalties proposed by the department, the department shall schedule a  
14 meeting with the regulated entity to attempt to reach an agreement on stipulated  
15 penalties. If no agreement is reached, there are no stipulated penalties for violations  
16 of the compliance schedule.

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

20 **(7) DEFERRED CIVIL ENFORCEMENT.** (a) 1. For at least 90 days after the  
21 department receives a report that meets the requirements in sub. (3), this state may  
22 not begin a civil action to collect forfeitures for violations of environmental  
23 requirements that are disclosed in the report by a regulated entity that qualifies  
24 under sub. (2) for participation in the environmental improvement program.

1           2. If the regulated entity corrects violations that are disclosed by a regulated  
2 entity that qualifies under sub. (2) for participation in the environmental  
3 improvement program in a report that meets the requirements of sub. (3) within 90  
4 days after the department receives a report that meets the requirements of sub. (3),  
5 this state may not bring a civil action to collect forfeitures for the violations.

6           3. This state may not begin a civil action to collect forfeitures for violations  
7 covered by a compliance schedule that is approved under sub. (6) during the period  
8 of the compliance schedule if the regulated entity is not violating the compliance  
9 schedule. If the regulated entity violates the compliance schedule, the department  
10 may collect any stipulated penalties during the period in which the stipulated  
11 penalties apply. This state may begin civil action to collect forfeitures for violations  
12 of environmental requirements that are not corrected by the end of the period in  
13 which the stipulated penalties apply. If the regulated entity violates the compliance  
14 schedule and there are no stipulated penalties, this state may begin a civil action to  
15 collect forfeitures for the violations.

16           4. If the department approves a compliance schedule under sub. (6) and the  
17 regulated entity corrects the violations according to the compliance schedule, this  
18 state may not bring a civil action to collect forfeitures for the violations.

19           (b) Notwithstanding par. (a), this state may at any time begin a civil action to  
20 collect forfeitures <sup>a</sup> for violation <sup>s</sup> of environmental requirements <sup>a</sup> if any of the following  
21 apply: <sup>an</sup>

22           1. The violation <sup>e</sup> present <sup>s</sup> an imminent threat to public health or the  
23 environment or may cause serious harm to public health or the environment.

24           2. The department discovers the violation <sup>p</sup> before submission of a report under  
25 sub. (3).

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

3 4. The violation ~~was~~ <sup>is</sup> identified through monitoring or sampling required by  
4 permit, statute, rule, regulation, judicial or administrative order, or consent  
5 agreement.

INSEAT →  
29-5

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

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

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

20 (c) That the regulated entity had a documented history of good faith efforts to  
21 comply with environmental requirements ~~before implementing its environmental~~  
22 ~~management system or before beginning to conduct environmental~~ <sup>compliance audits</sup>  
23 ~~evaluations.~~

24 (d) That the regulated entity has promptly made appropriate efforts to achieve  
25 compliance with environmental requirements since ~~implementing its~~

① ~~environmental management system or since~~ beginning to conduct environmental  
② *compliance audits* ~~performance evaluations~~ and that action was taken with due diligence.

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

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

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

11 (c) The department shall keep confidential any part of a record, report, or other  
12 information obtained in the administration of this section, other than emission data  
13 or discharge data, upon *receiving an application for confidential status* ~~a showing satisfactory to the department~~ by any person that  
14 the part of a record, report, or other information would, if made public, divulge a  
15 method or process that is entitled to protection as a trade secret, as defined in s.  
16 134.90 (1) (c), of that person.

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

23 (e) Paragraph (c) does not prevent the disclosure of any information to a  
24 representative of the department for the purpose of administering this section or to  
25 an officer, employee or authorized representative of the federal government for the

*containing a showing satisfactory to the department*

1 purpose of administering federal law. When the department provides information  
2 that is confidential under par. (c) to the federal government, the department shall  
3 also provide a copy of the application for confidential status.

*Insert* →  
31-3

4 (10) PENALTY. (a) Any person who knowingly makes a false statement in a  
5 report submitted under sub. (3) shall be fined not less than \$10 nor more than  
6 \$10,000 or imprisoned for not more than 6 months or both.

7 (b) For purposes of this subsection, an act is committed knowingly if it is done  
8 voluntarily and is not the result of negligence, mistake, accident, or circumstances  
9 that are beyond the control of the person.

*Insert* →  
31-9

10 SECTION 7. 560.125 of the statutes is created to read:

11

① Environmental results  
560.125 ~~Creation~~ and environmental management system grant

12 program. (1) The department shall make grants from the appropriation under s.  
13 20.143 (3) (z) to nongovernmental organizations to help those organizations develop  
14 the ability to participate as interested persons in the ~~creation~~ <sup>environmental results</sup> program under s.  
15 299.83. The department shall allocate at least \$150,000 in the 2001-03 fiscal  
16 biennium for grants under this subsection.

17 (2) The department shall make grants from the appropriation under s. 20.143  
18 (3) (z) to assist persons to develop environmental management systems, as defined  
19 in s. 299.83 (1) (b).

20 SECTION 8. Nonstatutory provisions.

22

21 (1) INITIAL TERMS OF COUNCIL. Notwithstanding the length of terms specified for  
22 the ~~creation~~ <sup>environmental results</sup> council under section 15.347 (3) of the statutes, as created by this act,  
23 3 of the initial members shall be appointed for terms that expire on July 1, 2003, 3  
24 of the initial members shall be appointed for terms that expire on July 1, 2004, 3 of  
25 the initial members shall be appointed for terms that expire on July 1, 2005, 3 of the

1 initial members shall be appointed for terms that expire on July 1, 2006, and 3 of the  
2 initial members shall be appointed for terms that expire on July 1, 2007.

3 (2) POSITION AUTHORIZATION. The authorized FTE positions for the department  
4 of natural resources are increased by 5.0 SEG positions to be funded from the  
5 appropriation under section 20.370 (9) (fr) of the statutes, as created by this act, for  
6 the administration of the ~~green~~ <sup>environmental results</sup> program.

7

(END)

*DNate*

**2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0303/P2ins  
RCT.....

**Insert 29-5**

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.

**Insert 31-3**

*\** (9m) ANNUAL REPORT. The department shall submit an annual report under s. 13.172 (3) <sup>concerning</sup> on 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 the first day of the 14th month beginning after the effective date of this subsection ... [revisor inserts date]. 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.

**4** 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.

**Insert 31-9**

(11) SUNSET. Subsections (7) and (8) do not apply to a regulated entity that submits a report under sub. (3) after July 1, 2007.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0303/P2dn

RCT.....

gjs

Tim Kalies:

This is a second preliminary version of the substitute amendment to AB 479. As we discussed, this version changes the name of the green tier program to the environmental results program but does not change the name of the environmental improvement program (EIP). This is because I could not see how it would work to have two separate programs with the same name.

I have eliminated the concept of environmental management systems from EIP and changed the term "environmental performance evaluation" to "environmental compliance audit." I have also added a sunset and an annual reporting requirement for EIP.

The instructions indicated that the total time allowed from the notification to DNR that an audit would be conducted until the violation is corrected should be 12 months (unless a compliance schedule was agreed to). The proposal already contains time limits for correcting violations once they are reported (see proposed s. 299.85 (2) (d), (6) (b), and (7) (a)). My impression was that what was intended was a time limit to prevent delay in completing an audit, which would delay reporting a violation to DNR. Therefore, I added a requirement to the introductory language to proposed s. 299.85 (3) stating that the report of the violations must be submitted to DNR within 270 days after the notice that an audit would be conducted. This, together with the 90 days required to correct a violation (assuming that there is no compliance schedule) adds up to 360 days from the initial notice to correction of the violation.

I added language about repeat violations as s. 299.85 (7) (b) 5., based on my understanding following our discussion of the redraft instructions.

Other than changing the name, this redraft only makes two changes to the language for the former green tier program. First it changes the sunset date to July 1, 2007, to provide for five years of operation. The other change relates to the concept of "single point of contact." Neither the version of green tier that was in the budget nor the green tier committee's draft used the term "single point of contact." I believe, however, that the concept that this term represents appears in proposed s. 299.83 (4m) (e). I have modified proposed s. 299.83 (4m) (e) based on the definition with which you provided me.

The issues raised in my drafter's note to the first version of this draft relating to green tier continue to exist with respect to what is now called the environmental results program.

Please let me know if you have any questions or redraft instructions.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.state.wi.us](mailto:becky.tradewell@legis.state.wi.us)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0303/P2dn  
RCT:cjs:kjf

February 21, 2002

Tim Kalies:

This is a second preliminary version of the substitute amendment to AB 479. As we discussed, this version changes the name of the green tier program to the environmental results program but does not change the name of the environmental improvement program (EIP). This is because I could not see how it would work to have two separate programs with the same name.

I have eliminated the concept of environmental management systems from EIP and changed the term "environmental performance evaluation" to "environmental compliance audit." I have also added a sunset and an annual reporting requirement for EIP.

The instructions indicated that the total time allowed from the notification to DNR that an audit would be conducted until the violation is corrected should be 12 months (unless a compliance schedule was agreed to). The proposal already contains time limits for correcting violations once they are reported (see proposed s. 299.85 (3) (d), (6) (b), and (7) (a)). My impression was that what was intended was a time limit to prevent delay in completing an audit, which would delay reporting a violation to DNR. Therefore, I added a requirement to the introductory language to proposed s. 299.85 (3) stating that the report of the violations must be submitted to DNR within 270 days after the notice that an audit would be conducted. This, together with the 90 days required to correct a violation (assuming that there is no compliance schedule) adds up to 360 days from the initial notice to correction of the violation.

I added language about repeat violations as s. 299.85 (7) (b) 5., based on my understanding following our discussion of the redraft instructions.

Other than changing the name, this redraft makes only two changes to the language for the former green tier program. First it changes the sunset date to July 1, 2007, to provide for five years of operation. The other change relates to the concept of "single point of contact." Neither the version of green tier that was in the budget nor the green tier committee's draft used the term "single point of contact." I believe, however, that the concept that this term represents appears in proposed s. 299.83 (4m) (e). I have modified proposed s. 299.83 (4m) (e) based on the definition with which you provided me.

The issues raised in my drafter's note to the first version of this draft relating to green tier continue to exist with respect to what is now called the environmental results program.

Please let me know if you have any questions or redraft instructions.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.state.wi.us](mailto:becky.tradewell@legis.state.wi.us)

## Tradewell, Becky

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**From:** Kalies, Tim  
**Sent:** Wednesday, February 20, 2002 1:34 PM  
**To:** Tradewell, Becky  
**Subject:** FW: enviro committee hearing

Hi Becky, I have attached some comments to your /1 drafter's note.



Response to  
drafters notes on ...

Please call or email back if there are further questions. Tim

-----Original Message-----

**From:** Johnson, Dan (Legislature)  
**Sent:** Wednesday, February 20, 2002 12:13 PM  
**To:** Kalies, Tim  
**Subject:** RE: enviro committee hearing

We'll need the /2 by tomorrow, if possible.

-----Original Message-----

**From:** Kalies, Tim  
**Sent:** Wednesday, February 20, 2002 12:11 PM  
**To:** Johnson, Dan (Legislature)  
**Subject:** RE: enviro committee hearing

We have a /1 with requested changes. we may have a /2 coming soon?  
Tim

-----Original Message-----

**From:** Johnson, Dan (Legislature)  
**Sent:** Wednesday, February 20, 2002 11:21 AM  
**To:** Kalies, Tim  
**Subject:** enviro committee hearing

Tim,

I'm going to arrange for a Environment committee hearing on Tuesday the 26th. How close are you to getting a LRB for us to add to the agenda?

**Dan Johnson**

Policy Advisor  
Clerk, Assembly Environment Committee  
**State Representative Neal Kedzie**  
43rd Assembly District

(608) 266-9650  
(608) 282-3643 - fax

On the World Wide Web at: <http://www.legis.state.wi.us/assembly/asm43/news/>

Response to drafters notes on 303/P1.

1. Use Green Tier definitions from the committee draft.

✓2. Good Change. No problem.

?  
3. Use \$150,000 per biennium

✓4. This is something DNR is insisting on keeping in some form. Can we tinker with that purpose and intent language enough that we won't be legislating "superior performance," *per se*, but to the effect that we are legislating a program whose objective is to promote "superior performance," and so on.

✓5. Perhaps just defining EMS within the definitions is enough. If necessary, other areas can reference the definition.

6. a. You're right, collaboration with DNR is not part of ISO. So I propose that we leave "functional equivalency" in, but take those elaborations out. Have it read something like, "...In addition to the requirements of ISO 14001, an EMS must do x, y, and z..." It is not acceptable to redraft the requirements of what an EMS must have, as it will take too long to redraft.

✓7. Eliminate "regulated entity" definition

8. Please use the committee version of "superior environmental performance"

9. The section is not needed given the covered facility definition. With the definition in it makes the case that a group of organizations could come in without getting chartered and there would be no way to manage the relationship with that group.

✓10. What you have is ok.

✓11. What you have is ok.

✓12. The charter organization participates in Tier 1 or 2 and the Charter organizations craft a different working relationship with the department and with each other to achieve environmental goals. The department does not describe the goals and activities, the parties to the charter do. I would suggest using (a) and (b) from the Committee recommendation and (c), (d) and (e) from the LRB draft.

✓13. In Tier 1 and Tier 2, the EMS takes over and the deferred enforcement recognizes that both systems and compliance audits will be a regular part of facility operations. The criteria and standards for the two programs are different for a reason. AB479 companies aren't sure if they comply. Green Tier companies should have systems that continually manage compliance. As a result you would treat them differently and not require additional auditing.

✓14. What you have is ok.

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**\*\*\* Additional \*\*\* For both programs, we should add language saying that the Department may limit participation based on the resources provided for the program.**

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**Tradewell, Becky**

**From:** Kalies, Tim  
**Sent:** Wednesday, February 27, 2002 2:49 PM  
**To:** Tradewell, Becky  
**Subject:** AB479 drafting  
Hi Becky,

In addition to whatever Mark McDermid has requested for the Green Tier section of the bill, WMC has offered up a few more technical issues for the /3 of the Green Tier draft.

✓ Page 22, line 7. Sec. 299.85(1) (c) - Definitions. The definition of "environmental requirement" should include chapters 29-31, as in Green Tier. (An omission in AB-479).

✓ Page 23, lines 13-18. Sec. 299.85(3) - Audit Report. The agreement was that the audit must be completed in one year after the notice of the intent to conduct an audit. This provision does not appear to capture this intent, but instead appears to require two reports. They have suggested the following:

(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 environmental compliance audit of the facility, including the final written report of findings, shall be completed and within one year ~~270 days~~ after providing the notice under sub. (2) (b). The report shall include all of the following:

*see attached note*

✓ Page 25, lines 4-7. Sec. 299.85(3m) (b) 1 - Public Notice. Please remove "the nature and severity of the violation", and in its place, insert something like "a description of the environmental requirement that was violated" In addition, just requiring a listing of whether it relates to water, air, etc. can still be pretty vague. They pointed out as an example that a late Discharge Monitoring Report is a paperwork violation not affecting the environment, but one that relates to water. Can we add something in there to the effect that the notice must report whether the violation was "administrative paperwork", or whatever the correct statutory term for that would be, in addition to the type of media?

✓ Page 30, lines 16-21. Sec. 299.85(9) – Annual Report. Change the first annual report to 2 years.

✓ Page 21, lines 15-20; and also Page 31, lines 17-22. Sec. 299.85(10) (b) – Penalty. While not changed, a question arose at the hearing on Sec. 299.85(10), second paragraph, defining what is knowingly. The Sierra Club has a real problem with how this is drafted, because it isn't the regular standard. This has been in the bill for a couple of sessions now, and WMC says it was drafted to address a court case the broadly defined "willful" for the purpose of criminal liability. Under their reading of that case, the act of writing an incorrect statement is a willful or knowing act, even if it was an honest mistake.

Rather than attempting to address the court case in the broader aspect of what is a criminal violation, Rep Duff agreed to clarify what is considered knowingly only for the purpose of this subsection. I feel that it might be a better definition of knowingly that the others in statutes. Being as you are an attorney, I am curious what you think.

*Leave alone*

Thank you for all you help keeping this legislation moving.

Tim Kalies

2/28/07 TC with Tim Kalies -

1. He will get back to me on #
2. It should be a year to complete clean-up,  
not just to submission of report
3. leave def. of knowingly alone

RET