

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

LRBs0303/P3dn  
RCT:cs:jf

March 1, 2002

Tim Kalies:

This is another revision of the substitute amendment to AB 479. The changes in this version are based on your written response to the drafter's note on /P1, on a conversation with Mark McDermid of DNR, on your email message of February 27, and on our conversations of February 28 and March 1.

Mark indicated to me that participants in tier I of the environmental results program should qualify for deferred civil enforcement based on their environmental management system audits and that those participants should not be required to perform environmental compliance audits. In this version of the draft, participants in tier I are required to perform environmental management system audits and participants in tier II are required to perform both environmental management system audits and environmental compliance audits. All participants may be eligible for deferred civil enforcement. It was necessary to modify point 11 of the definition of "functionally equivalent environmental management system" so that the definition would not require participants in tier I to conduct environmental compliance audits. Point 11 could be completely eliminated because both tier I and tier II require EMS audits.

I have modified the definition of "superior environmental performance" based on the Green Tier Committee draft. As drafted, the definition requires that, whatever method is chosen, environmental performance does not qualify as superior unless it results in measurable or discernible improvement in the quality of air, land, water, or natural resources or "in the protection of the environment" beyond that which is achieved under environmental laws. It is still unclear to me what a measurable or discernible improvement in the protection of the environment would be, so I find the definition to be vague. Also, I do not think that the definition itself requires that an entity go "beyond compliance" because it only requires going beyond what is "achieved" under current law, not beyond what is required.

You indicated to me that, under the environmental improvement portion of the draft, the participant is to complete the correction of environmental violations (not just submit its audit report) within one year of notifying DNR that it would conduct an audit, unless there is a compliance schedule. Therefore, I did not change the time limit in s. 299.85 (3) to one year. I did reword that provision to try to make it more clear that two reports are not required.

Please contact me if you have questions or redraft instructions or if you want me to convert the draft to introducible form.

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