

2001 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB479)

Received: **01/29/2002**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Marc Duff (608) 266-1190**

By/Representing: **Tim Kalies**

This file may be shown to any legislator: **NO**

Drafter: **traderc**

May Contact:

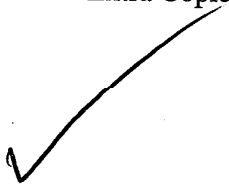
Addl. Drafters:

Subject: **Environment - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Duff@legis.state.wi.us**



Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Environmental improvement program and green tier program

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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Handwritten notes and signatures:

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/P1			haugeca 02/15/2002		lrb_docadmin 02/15/2002		

Handwritten notes below the table:

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Page 2

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FE Sent For:

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requestf.txt

From: Kalies, Tim
Date: Tuesday, January 29, 2002 10:52 AM
To: Tradewell, Becky
Cc:
Subject: request for substitute amendment for AB 479

Hi Becky,

If possible, can you begin a sub to AB 479, to which we would like to append the "Green Tier" proposal from the 2001-03 budget. As you might remember, the Governor conjoined the contents of AB 479 to Green Tier in the budget but in a combined program. I have attached a draft of the Green Tier program alone that DNR circulated last spring.

In the version we request, Green Tier and the contents of AB 479 will ride on the same vehicle (bill), and share some functions and definitions, but remain separate programs.

The definitions of both programs are presently under negotiation, so those sections can be left blank for the time being until they are resolved.

Thank you, and please call me if you have any questions.

Tim
TIMOTHY J. KALIES
Legislative Assistant / Budget Policy Advisor
Office of State Representative Marc Duff
Member, Joint Committee on Finance
Phone: (608) 266-1190 Fax: (608) 282-3698
E-mail: tim.kalies@legis.state.wi.us

Attachments:

GTPROP~1.DOC

DRL = 090003e98099789d

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

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

15.347 (3) **GREEN TIER COUNCIL.** There is created in the department of natural resources a green tier council consisting of 15 members appointed for staggered 5 year terms. The governor shall appoint members representing environmental organizations, businesses, and local governmental units and members that do not represent any of these entities. Council members shall be eligible for reimbursement for actual and necessary expenses while performing official duties. The council shall advise the department on the implementation of the green tier program, including the setting of program goals, evaluating the transaction costs of the program, assessing the proportionality of incentives with superior environmental performance, recommending procedures for program evaluation and sharing environmental performance information and recommending changes to the program.

SECTION 2. 20.143 (3) (z) of the statutes is created to read:

20.143 (3) (z) *Green tier and environmental management system grants.* Biennially, from the environmental fund, the amounts in the schedule for green tier and environmental management system grants under s. 560.125.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 2m. 20.379(9)(fm) of the statutes is created to read:

20.370(9)(fm). *Green Tier Program --- environmental fund.* Biennially, from the environmental fund, the amounts in the schedule for the implementation of the green tier program under s. 299.83.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats. [20.370(9)(fm) Green tier program SEG B 367,000 403,000]

SECTION 3. 299.83 of the statutes is created to read:

299.83 Green tier program. (1) PURPOSE AND INTENT. It is the intent of the legislature to authorize the department of natural resources to establish and administer a green tier program to promote, reward and sustain superior environmental performance

by covered facilities or activities in this state. The green tier program will establish a system for voluntary environmental performance that will exceed existing regulatory standards for health, safety and the environment and result in continuous improvement in the state's environment, economy and quality of life. The program will provide clear incentives for participation which will result in real benefits to participants. The green tier program will promote attention to unregulated environmental problems and provide opportunities for conservation and environmental restoration of resources by regulated and unregulated entities. The green tier program should be compatible with other federal programs which create incentives for achieving environmental performance beyond the regulatory requirements. The green tier program will be established and implemented to accomplish the following:

- (a) Increase the levels of trust, communication and accountability among regulatory agencies, regulated entities and the public.
 - (b) Reduce the time and money spent by regulatory agencies, facilities and activities on tasks that do not benefit the environment by focusing on performing the necessary tasks more efficiently and eliminating the unnecessary tasks.
 - (c) Report environmental performance information and ambient environmental data to the public in a manner that is accurate, timely, credible, relevant and useable to interested parties.
 - (d) Provide for the measurement of environmental performance in terms of accomplishing goals and objectives and require the reporting of those results.
 - (e) Create an evaluation system which provides flexibility and affords some protection for experimentation by those participants who use innovative techniques to strive for superior environmental performance.
 - (f) Remove any disincentives to achieving environmental performance.
 - (g) Provide for sustained business success while achieving a comprehensive reduction in environmental pollution.
 - (h) Promote the transfer of technological and practical innovations which improve environmental performance in a more efficient, effective, or safe manner.
 - (i) Strive to lower transaction costs associated with environmental performance.
- (1m) DEFINITIONS.** In this section:

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

(b) “Environmental management system” means an organized set of procedures that conforms with International Organization for Standardization 14001 or that is determined by the department to be functionally equivalent to ISO 14001 which is used to evaluate environmental performance and to achieve measurable or noticeable improvements in that environmental performance through planning and changes in operations, based on a commitment to superior environmental performance.

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

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

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

(de) “Functionally equivalent” means an environmental management system that includes the essential elements of ISO 14001. Those elements include:

1. Adoption of an environmental policy that includes a commitment to compliance with environmental requirements, pollution prevention, continual improvement in environmental performance and superior environmental performance.
2. An analysis of the environmental aspects and impacts of the organization’s activities.
3. Plans and procedures to achieve, maintain and exceed environmental requirements.
4. Identification of all legal requirements applicable to the organization’s environmental performance.
5. A process for setting environmental objectives and developing appropriate action plans to meet the objectives.

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

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

8. A plan for taking preventive, corrective and emergency action to address environmental problems.

9. A communication plan to collaborate with employees, the public and department on the design of projects and activities to achieve superior environmental performance.

10. Document control and record keeping of environmental performance.

11. Audits of the management systems and environmental compliance.

12. A plan for continual environmental improvement, including senior management review of the plan.

(ds) "Green tier charter" means a formal document issued by the department under sub. (10w) to an association of public or private entities or both that collectively qualify for the green tier program, including the achievement of superior environmental performance. The green tier charter issued by the department shall identify the duties and responsibilities of the association to carry out their collective functions under the green tier program.

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

(f) "Green tier program" means the program under this section.

(fe) "Outside auditor" means an auditor who is functionally or administratively independent of the facility being audited, but who may be employed by the entity that owns the facility.

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

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(g) “Superior environmental performance” means environmental performance which results in measurable or discernible improvement in the quality of the air, water, land or natural resources or in the protection of the ecosystem beyond that which is achieved under current environmental requirements. Superior environmental performance may include, but is not limited to, any of the following:

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

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

3. That an entity voluntarily engages in restoring, reclaiming, enhancing, or preserving natural resources.

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

5. That an entity organizes segmented or uncoordinated entities that are producing environmental harm into a program that achieves positive environmental results.

6. That an entity reduces waste or hazardous or toxic materials in the design, production, delivery, use or reuse of goods and services.

7. That an entity conserves energy or non-renewable natural resources.

8. That an entity reduces its use of renewable natural resources through more efficient and sustainable methods.

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

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

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

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

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

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

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

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

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

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

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

1. Demonstrate that it has implemented, or commit itself to implementing

within one year of application, for each covered facility or activity, an environmental management system that is all of the following:

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

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

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

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

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

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

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

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

a. The audit report shall include a description of all violations revealed by the audit, a description of the actions taken or proposed to be taken to correct the violations, a commitment to correct the violations within 90 days of submitting the audit or within a

compliance schedule approved by the department, and a description of the measures that the participant has taken or will take to prevent future violations.

b. 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.

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

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

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

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

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

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

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

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

(d) A participant in tier I of the green tier program may use a green tier logo selected by the department on written materials produced by the participant.

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

(f) After a participant in tier I of the green tier program implements an environmental management system that complies with sub. (5) (d) 1., the department shall conduct any inspections of the participant's covered facilities or activities that are required under chs. 29 to 31, 160, and 280 to 295 at the lowest frequency permitted under those chapters, except that the department may conduct an inspection whenever it has reason to believe that the participant is out of compliance with a requirement in an approval or an environmental requirement.

(8) ELIGIBILITY FOR TIER II. (a) *General.* An applicant is eligible for tier II of the green tier program if the applicant satisfies the requirements in pars. (b) to (d). If an applicant consists of a group of public or private entities, each requirement in pars. (b) to (d) applies to each entity in the group.

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

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

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

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

department of natural resources has not issued a citation to enforce an environmental requirement, because of a violation involving a covered facility or activity.

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

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

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

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

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

3. Commit itself to annually conducting, or having an outside environmental auditor conduct, an audit of compliance with environmental requirements that are applicable to the covered facilities or activities and to submitting the results of the audit to the department.

a. The audit report shall include a description of all violations revealed by the audit, a description of the actions taken or proposed to be taken to correct the violations, a commitment to correct the violations within 90 days of submitting the audit or within a compliance schedule approved by the department, and a description of the measures that the participant has taken or will take to prevent future violations.

b. 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.

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

(9) PROCESS FOR TIER II. (a) *Letter of intent.* To apply for participation in tier II of the green tier program, an entity shall submit a letter of intent to the department. In addition to providing information necessary to show that the applicant satisfies the requirements in sub. (8), the applicant shall do all of the following in the letter of intent:

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

2. Outline the provisions that it proposes to include in the green tier contract, including a description of the proportionality between the proposed superior environmental performance measures and the incentives proposed.

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

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

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

(e) *Request to participate.* Within 30 days after the public notice under par. (c), interested persons may request that the department grant them authorization to participate in the negotiations under par. (f). A person who makes a request under

this paragraph shall describe the person's interests in the issues raised by the letter of intent. The department shall determine whether a person who makes a request under this paragraph may participate in the negotiations under par. (f) based on whether the person has demonstrated sufficient interest and ability to participate in the issues raised by the letter of intent to warrant that participation.

(f) *Negotiations.* If the department determines that an applicant satisfies the requirements in sub. (8), the department may begin negotiations concerning a green tier contract with the applicant and with any persons to whom the department granted permission under par. (e). The department may begin the negotiations no sooner than 30 days after providing public notice under par. (c) about the applicant's letter of intent.

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

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

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

(j) *Green tier contract.* Within 30 days after providing notice under par. (h) or, if the department holds a public informational meeting under par. (i), within 30 days after that meeting, the department shall decide whether to enter into a green tier contract with an applicant, unless the applicant and the department mutually agree to an extension beyond 30 days. In a green tier contract, the department shall require that the participant maintain the environmental management system described in sub. (8) (c) 1. and abide by the commitments in sub. (8) (c) 2. and 3. The green tier contract shall describe the superior environmental performance measures the participant

seeks to achieve and the incentives provided to the participant for making that commitment. The department may not provide reduced inspections or monitoring as an incentive in a green tier contract if the audit under sub. (8) (c) 3. is conducted by the participant. The department shall ensure that the incentives provided under a green tier contract are proportional to the environmental benefits that will be provided by the participant under the green tier contract. The department shall include in a green tier contract remedies that apply if a party to the contract fails to comply with the contract. The term of a green tier contract shall be fixed for a time of not less than 3 years and not more than 10 years, with an opportunity for renewal for a similar period of time. If the green tier contract incorporates, modifies or otherwise affects the terms or conditions of a permit issued under s. 283.31, 283.33 or 285.62, the term of the green tier contract may not exceed 5 years, with opportunity for renewal upon agreement of the parties for additional terms not to exceed 5 years for each renewal, unless federal and state law authorize a longer term for a permit issued under s. 283.31, 283.33 or 285.62.

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

(10) SUSPENSION OR TERMINATION OF PARTICIPATION. (a) The department may suspend or revoke the participation of a participant in the green tier program at the request of the participant.

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

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

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

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

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

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

(10m) ENVIRONMENTAL AUDITORS. The department may not approve an environmental auditor for the purposes of sub. (5) (d) 4. or (8) (c) 2. unless the environmental auditor is certified by the Registrar Accreditation Board of the American National Standards Institute or meets criteria concerning education, training, experience, and performance that are equal to ISO 14012 and the auditor is functionally or administratively independent of the facility or activity being audited.

(10r) DEFERRED CIVIL ENFORCEMENT. (a) 1. This state may not commence a civil action to collect forfeitures for violations at a facility covered by the green tier program which are disclosed in an environmental management system audit under sub. (5)(d)4. or sub. (8)(c) 3. if the violations are corrected within 90 days of the date of the audit.

2. This state may not commence a civil action to collect forfeitures for violations covered by a compliance schedule that is approved under this subsection during the period of the compliance schedule if the green tier program 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 suspend or terminate participation in the program. After the department terminates

participation in the program, the state may commence civil action to collect forfeitures for the violations.

a. If the department receives an environmental management system audit report under sub. (5)(d)4. or sub. (8)(c)3. that contains a proposed compliance schedule to correct violations disclosed in the audit, the department shall review the proposed compliance schedule. The department may approve the compliance schedule as submitted or propose a different compliance schedule. If the participant does not agree to implement a compliance schedule proposed by the department, the department shall schedule a meeting with the participant to attempt to reach an agreement on a compliance schedule. If the department and the participant do not reach an agreement on a compliance schedule, the department shall terminate participation of the participant in the green tier program. If the parties agree to a compliance schedule, the schedule shall be incorporated in the participant's environmental management system.

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.

3. If the department approves a compliance schedule under this subsection 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 an environmental management system audit under sub. (5)(d)4. or sub. (8)(c) 3.

(10w) GREEN TIER CHARTERS. (a) The department may issue a green tier charter to an association of public or private entities or a combination of public and private entities to encourage and support their participation in tier I or tier II of the green tier program. Chartered entities may be organized on any basis necessary to achieve superior environmental performance, including business sector, product line, supply chain, geographic location, watershed, or biological or scientific concept.

(b) The green tier charter shall describe the scope of responsibility, activities and services of the entities to achieve superior environmental performance and how they will collectively accomplish their goals. The term of a charter shall be fixed for a time of not less than 3 years and not more than 10 years, with an opportunity for renewal for a similar period of time.

(c) Prior to issuing a charter, the department shall determine that the entities have the resources to carry out the charter. If the department proposes to issue a charter, it shall provide public notice of the proposed charter in the areas in which the entities in the association are or will be operating. After providing public notice, the department shall hold a public informational meeting on the proposed charter prior to issuing it. A decision of the department to issue a green tier charter is not subject to review under ch. 227.

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

(e) The department may, after an opportunity for a hearing, terminate a charter if it finds that the entities are in substantial noncompliance with the charter. Any person who has evidence that a chartered entity is not fulfilling the conditions of the charter may request that the department terminate the charter.

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

(c) The department shall keep confidential any part of a record, report, or other information obtained in the administration of this section, other than emission data

or discharge data, upon 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.

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

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

(12) POWERS AND DUTIES OF THE DEPARTMENT. (a) To facilitate the process under sub. (9), the department shall develop and publish model terms that may be used in green tier contracts.

(b) After consultations with interested persons, the department shall annually establish a list identifying aspects of superior environmental performance that the department will use to identify which letters of intent it will process under sub. (9) in the following year and the order in which it will process the letters of intent.

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

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

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

(e) The department shall consult with the green tier council about the operation of the green tier program, priorities for the green tier program, and evaluation of the green tier program.

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

(g) The department shall collect, process, evaluate, and disseminate data, best practice information and innovative practices submitted by participants in the green tier program. The department may conduct or direct studies, experiments or research in cooperation with participants and other interested persons consistent with the intent expressed in sub. (1). The department may establish agreements with the La Follette School of Public Affairs or others to accomplish the intent of sub. (1).

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

(13) 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.

(14) SUNSET PROVISION. The department may not process or approve any applications for the green tier program received after **July 1, 2006**, unless the legislature extends this deadline or modifies this subsection. This subsection does not affect the processing of applications received by the department prior to July 1, 2006 or the validity of the terms or conditions of any application approved under sub. (6) or (9), the

validity of any contract entered into under sub. (9) or the validity of any green tier charter issued under sub. (10w).

SECTION 4. 560.125 of the statutes is created to read:

560.125 Green tier and environmental management system grant

program. (1) The department shall make grants from the appropriation under s. 20.143 (3) (z) to nongovernmental organizations to help those organizations develop the ability to participate as interested persons in the green tier program under s. 299.83. The department shall allocate at least \$150,000 in the 2001–03 fiscal biennium for grants under this subsection.

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

SECTION 9137 Nonstatutory provisions; natural resources.

(6) **GREEN TIER PROGRAM – POSITION AUTHORIZATION.** The authorized FTE positions for the department of natural resources are increased by 5.0 SEG positions for the implementation of the green tier program under s. 299.83.

(END)