

FRIDAY

2001 - 2002 LEGISLATURE

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Friday 2/15/01 possible

LRB-104541

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Assembly Substitute Amendment

CS

to 2001 ASSEMBLY BILL 479

August 21, 2001 - Introduced by Representatives DUFF, ZIEGELBAUER, KEDZIE, OTT, HUEBSCH, ALBERS, LIPPERT, AINSWORTH, KRAWCZYK, POWERS, M. LEHMAN, SYKORA, TOWNSEND, GROTHMAN, VRAKAS, WARD, STONE and MUSSER, cosponsored by Senators WELCH, ROESSLER, DARLING and HUELSMAN. Referred to Committee on Environment.

regenerate

1 AN ACT to create 299.85 of the statutes; relating to: an environmental  
2 improvement program, environmental performance evaluations,  
3 environmental management systems providing incentives for improving environmental  
4 penalties for certain violations of environmental requirements, access to  
5 certain information, granting rule-making authority, making appropriations,  
and providing a penalty.

**Analysis by the Legislative Reference Bureau**

This bill creates the environmental improvement program, administered by the department of natural resources (DNR), under which a participant may be able to avoid forfeitures (civil monetary penalties) for an environmental violation that the participant reports to DNR.

A public or private entity that is subject to environmental laws (regulated entity) may participate in the environmental improvement program if the regulated entity satisfies several requirements. To participate, a regulated entity must conduct an environmental performance evaluation that satisfies requirements specified in the bill or have an environmental management system that satisfies requirements specified in the bill. An environmental performance evaluation is a systematic and objective review of the effects of a facility on the environment, including an evaluation of compliance with one or more environmental laws. An environmental management system is a set of procedures designed to evaluate the effects of a facility on the environment and to achieve improvements in those effects.

To participate in the program, the regulated entity must submit a report to DNR describing the results of the environmental performance evaluation or

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describing findings from the environmental management system. At the time of submitting the report, more than two years must have elapsed since the regulated entity was prosecuted or issued a citation for violating an environmental law. The report must describe all violations of environmental laws revealed by the environmental performance evaluation or environmental management system and the actions taken or proposed to be taken to correct the violations. If the regulated entity proposes to take more than 90-days to correct the violations, the regulated entity must submit a proposed compliance schedule and proposed penalties that the regulated entity would agree to accept (stipulated penalties) if it violates the compliance schedule.

The bill requires DNR to provide public notice and a period for public comment on any compliance schedule and stipulated penalties proposed by a regulated entity. After that period, DNR may approve the compliance schedule as submitted or propose a different compliance schedule. If the parties cannot agree on a compliance schedule, DNR may impose a compliance schedule, which may be appealed by the regulated entity. DNR also reviews proposed stipulated penalties. If the parties cannot agree on stipulated penalties, there are no stipulated penalties.

The bill generally prohibits this state from beginning an action to collect a forfeiture for a violation of an environmental law that is disclosed by a regulated entity that satisfies the requirements for participation in the environmental improvement program for at least 90 days after DNR receives the report of the violation. Similarly, the bill generally prohibits the state from beginning an action to collect a forfeiture while a regulated entity is complying with a compliance schedule. If the regulated entity corrects the violation within the 90 day period or within the time provided in the compliance schedule, the bill generally prohibits the state from bringing an action to collect forfeitures for the violation. If a regulated entity violates a compliance schedule and there are stipulated penalties, the regulated entity must pay the stipulated penalties. The bill authorizes this state to begin an action to collect forfeitures from a regulated entity that satisfies the requirements for participation in the environmental improvement program at any time under several circumstances, including cases in which a violation presents an imminent threat, or may cause serious harm, to public health or the environment or in which DNR discovers the violation before the regulated entity reports the violation.

The bill does not prevent the state from prosecuting a criminal violation by a regulated entity that qualifies for participation in the environmental improvement program, but the bill requires DNR and the department of justice to take into account the efforts of the regulated entity to comply with environmental laws in deciding whether to begin a criminal enforcement action and what penalty should be sought.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

INSERT  
1830-1

1           SECTION 1. 299.85 of the statutes is created to read:

2           **299.85 Environmental improvement program. (1) DEFINITIONS.** In this  
3 section:

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

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

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

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

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

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

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

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

**ASSEMBLY BILL 479****SECTION 1**

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

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

6 (a) The regulated entity conducts an environmental performance evaluation of  
7 the facility or submits findings from the facility's environmental management  
8 system.

9 (b) If the regulated entity conducts an environmental performance evaluation,  
10 the regulated entity notified the department in writing, no fewer than 30 days before  
11 beginning an environmental performance evaluation, of the date on which the  
12 environmental performance evaluation would begin, the site or facility or the  
13 operations or practices at a site or facility to be reviewed, and the general scope of  
14 the environmental performance evaluation.

15 (c) If the regulated entity conducts an environmental performance evaluation,  
16 the environmental performance evaluation complies with sub. (4).

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

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

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

1           (3) REPORT. To participate in the environmental improvement program with  
2 respect to a facility, a regulated entity that owns or operates the facility shall submit  
3 a report to the department within 45 days after the date of the final written report  
4 of findings of an environmental performance evaluation of the facility or within 45  
5 days after the date of findings from the facility's environmental management system  
6 if the findings identify a violation of an environmental requirement. The report shall  
7 include all of the following:

8           (a) 1. If the regulated entity conducted an environmental performance  
9 evaluation, a description of the environmental performance evaluation, including  
10 who conducted the environmental performance evaluation, when it was completed,  
11 what activities and operations were examined, and what was revealed by the  
12 environmental performance evaluation.

13           2. If the regulated entity submits findings from an environmental management  
14 system, a description of the environmental management system, of the activities and  
15 operations covered by the environmental management system, and of who made the  
16 findings and when the findings were made.

17           (b) A description of all violations of environmental requirements revealed by  
18 the environmental performance evaluation or the environmental management  
19 system and of the length of time that the violations may have continued.

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

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

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1 (e) If the regulated entity proposes to take more than 90 days to correct the  
2 violations of environmental requirements, a proposed compliance schedule that  
3 contains the shortest reasonable periods for correcting the violations of  
4 environmental requirements, a statement that justifies the proposed compliance  
5 schedule, and a description of measures that the regulated entity will take to  
6 minimize the effects of the violations of environmental requirements during the  
7 period of the compliance schedule.

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

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

14 **(3m) PUBLIC NOTICE; COMMENT PERIOD.** (a) The department shall provide at least  
15 30 days for public comment on a compliance schedule and stipulated penalties  
16 proposed in a report under sub. (3). The department may not approve or issue a  
17 compliance schedule under sub. (6) or approve stipulated penalties under sub. (6m)  
18 until after the end of the comment period.

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

22 1. Identifies the regulated entity that submitted the report under sub. (3), the  
23 facility at which the violation occurred, and the nature of the violation.

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

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

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

7           **(4) ENVIRONMENTAL PERFORMANCE EVALUATION.** If a regulated entity conducts an  
8 environmental performance evaluation under sub. (2) (a), the regulated entity does  
9 not qualify for participation in the environmental improvement program unless the  
10 final written report of findings of the environmental performance evaluation is  
11 labeled “environmental performance evaluation report,” is dated, and, if the  
12 environmental performance evaluation identifies violations of environmental  
13 requirements, includes a plan for corrective action. A regulated entity may use a  
14 form developed by the regulated entity, by a consultant, or by the department for the  
15 final written report of findings of the environmental performance evaluation.

16           **(5) ENVIRONMENTAL MANAGEMENT SYSTEM.** If a regulated entity submits findings  
17 from the facility’s environmental management system under sub. (2) (a), the  
18 regulated entity does not qualify for participation in the environmental  
19 improvement program unless the regulated entity’s efforts to prevent, detect, and  
20 correct violations of environmental requirements are appropriate to the size of the  
21 regulated entity and to the nature of its business and are consistent with any criteria  
22 used by the federal environmental protection agency to define due diligence in  
23 federal audit policies or regulations.

24           **(6) COMPLIANCE SCHEDULES.** (a) If the department receives a report under sub.  
25 (3) that contains a proposed compliance schedule under sub. (3) (e), the department

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1 shall review the proposed compliance schedule. The department may approve the  
2 compliance schedule as submitted or propose a different compliance schedule. If the  
3 regulated entity does not agree to implement a compliance schedule proposed by the  
4 department, the department shall schedule a meeting with the regulated entity to  
5 attempt to reach an agreement on a compliance schedule. If the department and the  
6 regulated entity do not reach an agreement on a compliance schedule, the  
7 department may issue a compliance schedule. A compliance schedule under this  
8 subsection is subject to review under ch. 227.

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

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

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

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

19 **(6m) STIPULATED PENALTIES.** (a) If the department receives proposed stipulated  
20 penalties under sub. (3) (em), the department shall review the proposed stipulated  
21 penalties. The department may approve the stipulated penalties as submitted or  
22 propose different stipulated penalties. If the regulated entity does not agree to  
23 stipulated penalties proposed by the department, the department shall schedule a  
24 meeting with the regulated entity to attempt to reach an agreement on stipulated



1 penalties. If no agreement is reached, there are no stipulated penalties for violations  
2 of the compliance schedule.

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

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

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

16 3. This state may not begin a civil action to collect forfeitures for violations  
17 covered by a compliance schedule that is approved under sub. (6) during the period  
18 of the compliance schedule if the regulated entity is not violating the compliance  
19 schedule. If the regulated entity violates the compliance schedule, the department  
20 may collect any stipulated penalties during the period in which the stipulated  
21 penalties apply. This state may begin civil action to collect forfeitures for violations  
22 of environmental requirements that are not corrected by the end of the period in  
23 which the stipulated penalties apply. If the regulated entity violates the compliance  
24 schedule and there are no stipulated penalties, this state may begin a civil action to  
25 collect forfeitures for the violations.

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

4           (b) Notwithstanding par. (a), this state may at any time begin a civil action to  
5 collect forfeitures for violations of environmental requirements if any of the following  
6 apply:

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

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

11           3. The violations resulted in a substantial economic benefit that gives the  
12 regulated entity a clear advantage over its business competitors.

13           4. The violations are identified through monitoring or sampling required by  
14 permit, statute, rule, regulation, judicial or administrative order, or consent  
15 agreement.

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

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

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

5           (c) That the regulated entity had a documented history of good faith efforts to  
6 comply with environmental requirements before implementing its environmental  
7 management system or before beginning to conduct environmental performance  
8 evaluations.

9           (d) That the regulated entity has promptly made appropriate efforts to achieve  
10 compliance with environmental requirements since implementing its  
11 environmental management system or since beginning to conduct environmental  
12 performance evaluations and that action was taken with due diligence.

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

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

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

21           (c) The department shall keep confidential any part of a record, report, or other  
22 information obtained in the administration of this section, other than emission data  
23 or discharge data, upon a showing satisfactory to the department by any person that  
24 the part of a record, report, or other information would, if made public, divulge a

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1 method or process that is entitled to protection as a trade secret, as defined in s.  
2 134.90 (1) (c), of that person.

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

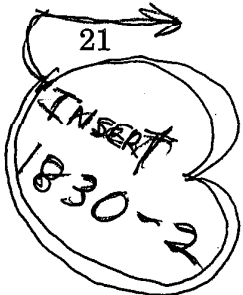
9 (e) Paragraph (c) does not prevent the disclosure of any information to a  
10 representative of the department for the purpose of administering this section or to  
11 an officer, employee or authorized representative of the federal government for the  
12 purpose of administering federal law. When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

15 (10) PENALTY. (a) Any person who knowingly makes a false statement in a  
16 report submitted under sub. (3) shall be fined not less than \$10 nor more than  
17 \$10,000 or imprisoned for not more than 6 months or both.

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

21

(END)



INSERT  
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SAW

DOA:.....Wong - Green tier program with environmental improvement program added

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

Inserts that start with 2295-

**AN ACT ...; relating to: the budget.**

*Analysis by the Legislative Reference Bureau*

**ENVIRONMENT**

**OTHER ENVIRONMENT**

This bill creates the green tier program, administered by DNR. The green tier program is designed to improve the environmental performance of public and private entities through the provision of incentives. There are three tiers in the green tier program. A participant may participate in more than one tier.

A public or private entity that is subject to environmental laws (regulated entity) may participate in tier I of the green tier program if the regulated entity satisfies several requirements. To participate, a regulated entity must conduct an environmental performance evaluation that satisfies requirements specified in the bill or have an environmental management system that satisfies requirements specified in the bill. An environmental performance evaluation is a systematic and objective review of the effects of a facility on the environment, including an evaluation of compliance with one or more environmental laws. An environmental management system is a set of procedures designed to evaluate the effects of a facility on the environment and to achieve improvements in those effects.

To participate in the program, the regulated entity must submit a report to DNR describing the results of the environmental performance evaluation or

describing findings from the environmental management system. At the time of submitting the report, more than two years must have elapsed since the regulated entity was prosecuted or issued a citation for violating an environmental law. The report must describe any violations of environmental laws revealed by the environmental performance evaluation or environmental management system and the actions taken or proposed to be taken to correct the violations. If the regulated entity proposes to take more than 90 days to correct the violations, the regulated entity must submit a proposed compliance schedule and proposed penalties that the regulated entity would agree to accept (stipulated penalties) if it violates the compliance schedule.

The bill requires DNR to provide public notice and a period for public comment on any compliance schedule and stipulated penalties proposed by a regulated entity. After that period, DNR may approve the compliance schedule as submitted or propose a different compliance schedule. If the parties cannot agree on a compliance schedule, DNR may impose a compliance schedule, but DNR's decision may be appealed by the regulated entity. DNR also reviews proposed stipulated penalties. If the parties cannot agree on stipulated penalties, there are no stipulated penalties.

The bill generally prohibits this state from beginning an action to collect a forfeiture for a violation of an environmental law that is disclosed by a regulated entity that satisfies the requirements for participation in tier I of the green tier program for at least 90 days after DNR receives the report of the violation. Similarly, the bill generally prohibits the state from beginning an action to collect a forfeiture while a regulated entity is complying with a compliance schedule. If the regulated entity corrects the violation within the 90-day period or within the time provided in the compliance schedule, the bill generally prohibits the state from bringing an action to collect forfeitures for the violation. If a regulated entity violates a compliance schedule, and there are stipulated penalties, the regulated entity must pay the stipulated penalties. If there are no stipulated penalties, the state may begin an action to collect forfeitures. The bill authorizes this state to begin an action to collect forfeitures from a regulated entity that satisfies the requirements for participation in tier I of the green tier program at any time under several circumstances, including cases in which a violation presents an imminent threat or may cause serious harm to public health or the environment or in which DNR discovers the violation before the regulated entity reports the violation.

The bill does not prevent the state from prosecuting a criminal violation by a regulated entity that qualifies for participation in tier I of the green tier program, but the bill requires DNR and DOJ to take into account the efforts of the regulated entity to comply with environmental laws in deciding whether to begin a criminal enforcement action and what penalty should be sought.

The bill requires DNR to provide public recognition to an entity that participates in tier I of the green tier program if the participant conducts an environmental performance evaluation at least every two years.

To participate in tier II of the green tier program, an applicant must satisfy several requirements. The bill authorizes groups of public or private entities to

participate in tier II. If a group applies, all of the requirements for participation apply to all of the members of the group.

At the time of application for tier II, more than five years must have elapsed since the applicant was convicted of a criminal violation of an environmental law that resulted in substantial harm to public health or the environment or that presented an imminent threat to public health or the environment; more than three years must have elapsed since a civil judgment was entered against the applicant for a civil violation of an environmental law that resulted in substantial harm to public health or the environment; and more than two years must have elapsed since the applicant was prosecuted or issued a citation for violating an environmental law.

To participate in tier II, an applicant must inform DNR about its past environmental performance and its current environmental performance. The applicant must also inform DNR of its plans for activities that enhance the environment.

Finally, to participate in tier II, an applicant must have implemented or commit itself to implementing an environmental management system that satisfies certain requirements. The applicant must specify, in its environmental management system, objectives for improving its environmental performance or voluntarily restoring, enhancing, or preserving natural resources. The applicant must also commit itself to conducting annual audits of its environmental management system and to submitting reports to DNR on those audits.

The bill requires DNR to provide public recognition to an entity that participates in tier II of the green tier program. The bill also requires DNR to assign one of its employees to serve as the contact with DNR for each participant in tier II for all licenses and permits that the participant must obtain from DNR. After a participant in tier II implements an environmental management system that satisfies the statutory requirements, DNR must conduct inspections of the participant's facilities that are covered under the program at the lowest frequency that is permitted under DNR's programs.

To participate in tier III of the green tier program, an applicant must satisfy several requirements. The bill authorizes groups of public or private entities to participate in tier III. If a group applies, all of the requirements for participation apply to all of the members of the group. A participant in tier III enters into a green tier contract with DNR. The contract specifies the participant's commitments and the incentives that will be provided to the participant.

At the time of application for tier III, more than ten years must have elapsed since the applicant was convicted of a criminal violation of an environmental law that resulted in substantial harm to public health or the environment or that presented an imminent threat to public health or the environment; more than five years must have elapsed since a civil judgment was entered against the applicant for a civil violation of an environmental law that resulted in substantial harm to public health or the environment; and more than two years must have elapsed since the applicant was prosecuted or issued a citation for violating an environmental law.

To participate in tier III, an applicant must have implemented an environmental management system that satisfies certain requirements. The

applicant must commit itself to having an outside environmental auditor approved by DNR conduct annual audits of the environmental management system and to submitting reports on those audits to DNR. The applicant must also commit itself to annually conducting, or having an outside auditor conduct, audits of its compliance with environmental laws and to submitting the results of those audits to DNR.

Finally, to participate in tier III, an applicant must demonstrate that it has a record of superior environmental performance and describe the measures that it proposes to take to maintain and improve its superior environmental performance. "Superior environmental performance" means that an entity limits the pollutants that it releases, or in some other way minimizes its negative effects on the environment or human health to an extent that is greater than is required by law; that an entity minimizes the negative effects that the raw materials it uses, or the products or services it produces or provides, have on the environment or human health to an extent that is greater than is required by law; or that an entity voluntarily engages in restoring, enhancing, or preserving natural resources.

If DNR determines that an applicant qualifies for participation in tier III, DNR may enter into negotiations with the applicant about a green tier contract. DNR may permit interested third parties to participate in the negotiations. If the parties reach an agreement, they may enter into a green tier contract with a term of not more than five years, subject to renewal for terms of not more than five years each. The bill authorizes DNR to promulgate rules specifying incentives that may be provided to participants in tier III.

The bill requires DNR and the department of commerce to provide information about environmental management systems to potential participants in the green tier program. The bill establishes a grant program under which the department of commerce makes grants to nongovernmental organizations to help those organizations develop the capacity to participate as interested third parties in the green tier program and makes grants to assist in the development of environmental management systems.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2           15.347 (3) GREEN TIER COUNCIL. There is created in the department of natural  
3 resources a green tier council consisting of 15 members. The governor shall appoint  
4 members representing environmental organizations, businesses, and local  
5 governmental units and members that do not represent any of these entities.



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

2 20.143 (3) (z) *Green tier and environmental management system grants.*

3 Biennially, from the environmental fund, the amounts in the schedule for green tier  
4 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.

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

6 **299.83 Green tier program. (1) DEFINITIONS.** In this section:

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

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

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

INS/ 2295-5

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

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

22 (cm) "Environmental performance evaluation" means a systematic,  
23 documented, and objective review, conducted by or on behalf of the owner or operator

1 of a facility, of the environmental performance of the facility, including an evaluation  
2 of compliance with one or more environmental requirements.

3 (d) "Environmental requirement" means a requirement in chs. 160 or 280 to  
4 299, a rule promulgated under one of those chapters, or a permit, license, other  
5 approval, or order issued by the department under one of those chapters.

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

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

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

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

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

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

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

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

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

4           (2) ELIGIBLE PARTICIPANTS. Any regulated entity may participate in tier I of the  
5 green tier program if the regulated entity qualifies for participation under sub. (3)

6           (a). Any public or private entity may apply to the department to participate in tier  
7 II or tier III of the green tier program. A group of public or private entities may  
8 together apply to the department to participate in tier II or tier III of the green tier  
9 program. An applicant for tier II or tier III of the green tier program shall identify  
10 the facilities or activities that it intends to include in the program.

11           (3) ELIGIBILITY AND PROCESS FOR TIER I. (a) *General eligibility.* A regulated  
12 entity qualifies for participation in tier I of the green tier program with respect to a  
13 facility owned or operated by the regulated entity if all of the following apply:

14           1. The regulated entity conducts an environmental performance evaluation of  
15 the facility or submits findings from the facility's environmental management  
16 system.

17           2. If the regulated entity conducts an environmental performance evaluation,  
18 the regulated entity notified the department in writing, no fewer than 30 days before  
19 beginning an environmental performance evaluation, of the date on which the  
20 environmental performance evaluation would begin, the site or facility or the  
21 operations or practices at a site or facility to be reviewed, and the general scope of  
22 the environmental performance evaluation.

23           3. If the regulated entity conducts an environmental performance evaluation,  
24 the environmental performance evaluation complies with par. (d).

1           4. If the regulated entity submits findings from the facility's environmental  
2 management system, the environmental management system complies with par. (e).

3           5. The regulated entity submits a report as required under par. (b).

4           6. At the time of submitting a report under par. (b), the department of justice  
5 has not, within 2 years, filed a suit to enforce an environmental requirement, and the  
6 department of natural resources has not, within 2 years, issued a citation to enforce  
7 an environmental requirement, because of a violation involving the facility.

8           (b) *Report.* To participate in tier I of the green tier program with respect to a  
9 facility, a regulated entity that owns or operates the facility shall submit a report to  
10 the department within 45 days after the date of the final written report of findings  
11 of an environmental performance evaluation of the facility or within 45 days after  
12 the date of findings from the facility's environmental management system. The  
13 report shall include all of the following:

14           1. a. If the regulated entity conducted an environmental performance  
15 evaluation, a description of the environmental performance evaluation, including  
16 the person who conducted the environmental performance evaluation, when it was  
17 completed, what activities and operations were examined, and what was revealed by  
18 the environmental performance evaluation.

19           b. If the regulated entity submits findings from an environmental management  
20 system, a description of the environmental management system, of the activities and  
21 operations covered by the environmental management system, and of who made the  
22 findings and when the findings were made.

23           2. If any violations were revealed by the environmental performance  
24 evaluation or the environmental management system, a description of those  
25 violations and of the length of time that the violations may have continued.

1           3. A description of actions taken or proposed to be taken to correct any  
2 violations described in subd. 2.

3           4. A commitment to correct any violations identified in subd. 2. within 90 days  
4 of submitting the report or according to a compliance schedule approved by the  
5 department.

6           5. If the regulated entity proposes to take more than 90 days to correct  
7 violations, a proposed compliance schedule that contains the shortest reasonable  
8 periods for correcting the violations, a statement that justifies the proposed  
9 compliance schedule, and a description of measures that the regulated entity will  
10 take to minimize the effects of the violations during the period of the compliance  
11 schedule.

12           6. If the regulated entity proposes to take more than 90 days to correct the  
13 violations, the proposed stipulated penalties to be imposed if the regulated entity  
14 violates the compliance schedule under subd. 5.

15           7. A description of the measures that the regulated entity has taken or will take  
16 to prevent future violations and a timetable for taking the measures that it has not  
17 yet taken.

18           (c) *Public notice; comment period.* 1. The department shall provide at least 30  
19 days for public comment on a compliance schedule and stipulated penalties proposed  
20 in a report under par. (b). The department may not approve or issue a compliance  
21 schedule under par. (f) or approve stipulated penalties under par. (g) until after the  
22 end of the comment period.

23           2. Before the start of the public comment period under subd. 1., the department  
24 shall provide public notice of the proposed compliance schedule and stipulated  
25 penalties that does all of the following:

1 a. Identifies the regulated entity that submitted the report under par. (b), the  
2 facility at which the violation occurred, and the nature of the violation.

3 b. Describes the proposed compliance schedule and the proposed stipulated  
4 penalties.

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

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

11 (d) *Environmental performance evaluation.* If a regulated entity conducts an  
12 environmental performance evaluation under par. (a) 1., the regulated entity does  
13 not qualify for participation in tier I of the green tier program unless the final written  
14 report of findings of the environmental performance evaluation is labeled  
15 “environmental performance evaluation report,” is dated, and, if the environmental  
16 performance evaluation identifies violations, includes a plan for corrective action.  
17 A regulated entity may use a form developed by the regulated entity, by a consultant,  
18 or by the department for the final written report of findings of the environmental  
19 performance evaluation.

20 (e) *Environmental management system.* If a regulated entity submits findings  
21 from the facility’s environmental management system under par. (a) 1., the  
22 regulated entity does not qualify for participation in tier I of the green tier program  
23 unless the regulated entity’s efforts to prevent, detect, and correct violations are  
24 appropriate to the size of the regulated entity and to the nature of its business and

1 are consistent with any criteria used by the federal environmental protection agency  
2 to define due diligence in federal audit policies or regulations.

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3 <sup>b</sup> ~~(1)~~ Compliance schedules. 1. If the department receives a report under par. ~~(1)~~<sup>fa</sup>  
4 that contains a proposed compliance schedule under par. ~~(1)~~<sup>a 4</sup>, the department shall  
5 review the proposed compliance schedule. The department may approve the  
6 compliance schedule as submitted or propose a different compliance schedule. If the  
7 regulated entity <sup>participant</sup> does not agree to implement a compliance schedule proposed by the  
8 department, the department shall schedule a meeting with the <sup>participant</sup> regulated entity to  
9 attempt to reach an agreement on a compliance schedule. If the department and the  
10 regulated entity <sup>participant</sup> do not reach an agreement on a compliance schedule, the  
11 department <sup>shall terminate the participation of the participant in the green</sup> may issue a compliance schedule. A compliance schedule under this  
12 paragraph is subject to review under <sup>no R</sup> ch. 227. <sup>program</sup> If the parties agree to a compliance  
13 schedule, the <sup>participant</sup> shall incorporate the compliance schedule into its  
14 2. The department may not approve ~~or issue~~ a compliance schedule that <sup>environmental</sup>  
15 extends longer than 12 months beyond the date of approval of the compliance <sup>management</sup>  
16 schedule. The department shall consider the following factors in determining <sup>system.</sup>  
17 whether to approve a compliance schedule:

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

23 <sup>c</sup> ~~(1)~~ Stipulated penalties. 1. If the department receives proposed stipulated  
24 penalties under par. ~~(1)~~<sup>a 4</sup>, the department shall review the proposed stipulated  
25 penalties. The department may approve the stipulated penalties as submitted or



↓ Insert 2295-11, continued

1 propose different stipulated penalties. If the regulated entity does not agree to  
2 stipulated penalties proposed by the department, the department shall schedule a  
3 meeting with the regulated entity to attempt to reach an agreement on stipulated  
4 penalties. If no agreement is reached, there are no stipulated penalties for violations  
5 of the compliance schedule.

6 ~~2. Stipulated penalties approved under subd. 1 shall specify a period, not  
7 longer than 6 months beyond the end of the compliance schedule, during which the  
8 stipulated penalties will apply.~~

9 (4) INCENTIVES FOR TIER I. (a) *Deferred civil enforcement.* 1. a. For at least 90  
10 days after the department receives a report that meets the requirements in sub. (3)  
11 (b), this state may not begin a civil action to collect forfeitures for violations that are  
12 disclosed in the report by a regulated entity that qualifies under sub. (3) (a) for  
13 participation in tier I of the green tier program.

14 ~~If a regulated entity that qualifies under sub. (3) (a) for participation in tier  
15 of the green tier program corrects violations that are disclosed in a report that meets  
16 the requirements of sub. (3) (b) within 90 days after the department receives the  
17 report, this state may not bring a civil action to collect forfeitures for the violations.~~

18 ~~(b.) This state may not begin a civil action to collect forfeitures for violations  
19 covered by a compliance schedule that is approved under sub. (3) (b) during the period  
20 of the compliance schedule if the regulated entity is not violating the compliance  
21 schedule. If the regulated entity violates the compliance schedule, the department  
22 may collect any stipulated penalties during the period in which the stipulated  
23 penalties apply. This state may begin a civil action to collect forfeitures for violations  
24 that are not corrected by the end of the period in which the stipulated penalties apply.~~

participant

Deferred civil enforcement, 1, a.

If 9

par. (a) ✓

par. (b)

participant

participant

or may suspend terminate participation

in the program





↓ Inset 2295-11, continued

1 If the regulated entity violates the compliance schedule and there are no stipulated  
2 penalties, this state may begin a civil action to collect forfeitures for the violations.

3 C. If the department approves a compliance schedule under ~~sub. (3)(a)~~ and the  
4 regulated entity corrects the violations according to the compliance schedule, this  
5 state may not bring a civil action to collect forfeitures for the violations.

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

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

10 b. The department discovers the violations before submission of a report ~~under~~

11 ~~sub. (3)(b)~~ that meets the requirements of par. (a) ✓ **End of INIS 2295-11**

12 ~~c. The violations resulted in a substantial economic benefit that gives the  
13 regulated entity a clear advantage over its business competitors.~~

14 ~~d. The violations are identified through monitoring or sampling required by  
15 permit, statute, rule, regulation, judicial or administrative order, or consent  
16 agreement.~~

17 ~~(b) Consideration of actions by regulated entity. If the department receives a  
18 report that complies with sub. (3) (b) from a regulated entity that qualifies under sub.  
19 (3) (a) for participation in tier I of the green tier program, and the report discloses  
20 a potential criminal violation, the department and the department of justice shall  
21 take into account the diligent actions of, and reasonable care taken by, the regulated  
22 entity to comply with environmental requirements in deciding whether to pursue a  
23 criminal enforcement action and what penalty should be sought. In determining  
24 whether a regulated entity acted with due diligence and reasonable care, the~~

the department may terminate participation in the program. After the department terminates participation in the program,

par. (b) ✓  
sub. (3)(a)

1 department and the department of justice shall consider whether the regulated  
2 entity has demonstrated any of the following:

3 1. That the regulated entity took corrective action that was timely when the  
4 violation was discovered.

5 2. That the regulated entity exercised reasonable care in attempting to prevent  
6 the violation and to ensure compliance with environmental requirements.

7 3. That the regulated entity had a documented history of good faith efforts to  
8 comply with environmental requirements before implementing its environmental  
9 management system or before beginning to conduct environmental performance  
10 evaluations.

11 4. That the regulated entity has promptly made appropriate efforts to achieve  
12 compliance with environmental requirements since implementing its  
13 environmental management system or since beginning to conduct environmental  
14 performance evaluations and that action was taken with due diligence.

15 5. That the regulated entity exercised reasonable care in identifying violations  
16 in a timely manner.

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

20 (c) *Recognition.* If a regulated entity conducts an environmental performance  
21 evaluation that complies with sub. (3) (d) at least every 2 years, submits a report that  
22 complies with sub. (3) (b) for each environmental performance evaluation, corrects  
23 any violations described in those reports, and otherwise qualifies under sub. (3) (a)  
24 for participation in tier I of the green tier program, all of the following apply:

1           1. The department shall issue to the regulated entity a numbered certificate  
2 of recognition.

3           2. The department shall identify the regulated entity, on an Internet site  
4 maintained by the department, as a participant in tier I of the green tier program.

5           3. The department shall annually provide notice of the regulated entity's status  
6 as a participant in tier I of the green tier program to newspapers in the area in which  
7 facilities operated by the regulated entity are located.

8           4. The regulated entity may use a green tier logo selected by the department  
9 on written materials produced by the regulated entity.

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

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

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

22           2. That, within 36 months before the date of application, no civil judgment was  
23 entered against the applicant, any managing operator of the applicant, or any person  
24 with a 25% or more ownership interest in the applicant for a violation involving a

1 covered facility or activity that resulted in substantial harm to public health or the  
2 environment.

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

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

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

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

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

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

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

23 a. Based on the standards for environmental management systems issued by  
24 the International Organization for Standardization or determined by the

1 department to be functionally equivalent to an environmental management system  
2 that is based on those standards.

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

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

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

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

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

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

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

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

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

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

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

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

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15 (b) (4)(m) INCENTIVES FOR TIER II (a) The department shall issue a numbered  
16 certificate of recognition to each participant in tier II of the green tier program.

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

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

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



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1 (e) The department shall assign an employee of the department to serve as the  
2 contact with the department for a participant in tier ~~II~~<sup>III</sup> of the green tier program for  
3 any approvals that the participant is required to obtain and for technical assistance.

4 (f) After a participant in tier ~~III~~<sup>III</sup> of the green tier program implements an  
5 environmental management system that complies with sub. (d) 1., the  
6 department shall conduct any inspections of the participant's covered facilities or  
7 activities that are required under chs. ~~280 to 295~~<sup>29 to 31, 160, and</sup> at the lowest frequency permitted

8 under those chapters, except that the department may conduct an inspection  
9 whenever it has reason to believe that a participant is out of compliance with a  
10 requirement in an approval <sup>or with an environmental requirement</sup> ~~(end of INS 2295-18)~~

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

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

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

23 2. That, within 60 months before the date of application, no civil judgment was  
24 entered against the applicant, any managing operator of the applicant, or any person  
25 with a 25% or more ownership interest in the applicant for a violation involving a

1 covered facility or activity that resulted in substantial harm to public health or the  
2 environment.

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

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

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

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

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

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

23 3. Commit itself to annually conducting, or having an outside environmental  
24 auditor conduct, an audit of compliance with environmental requirements that are



1 applicable to the covered facilities or activities and to submitting the results of the  
2 audit to the department.

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

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

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

16 2. Outline the provisions that it proposes to include in the green tier contract.

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

19 (c) *Notice.* When the department decides to process a letter of intent, the  
20 department shall provide public notice about the letter of intent in the area in which  
21 each covered facility or activity is located or performed.

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

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

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

15           (g) *Termination of negotiations.* The department may terminate negotiations  
16 with an applicant concerning a green tier contract and the decision to terminate  
17 negotiations is not subject to review under ch. 227.

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

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

1 (j) *Green tier contract.* Within 30 days after providing notice under par. (h) or,  
2 if the department holds a public informational meeting under par. (i), within 30 days  
3 after that meeting, the department shall decide whether to enter into a green tier  
4 contract with an applicant. In a green tier contract, the department shall require  
5 that the participant maintain the environmental management system described in  
6 sub. (8) (c) 1. and abide by the commitments in sub. (8) (c) 2. and 3. The department  
7 may not provide reduced inspections or monitoring as an incentive in a green tier  
8 contract if the audit under sub. (8) (c) 3. is conducted by the participant. The  
9 department shall ensure that the incentives provided under a green tier contract are  
10 proportional to the environmental benefits that will be provided by the participant  
11 under the green tier contract. The department shall include in a green tier contract  
12 remedies that apply if a party to the contract fails to comply with the contract. The  
13 term of a green tier contract may not exceed 5 years, with opportunity for renewal  
14 upon agreement of the parties for additional terms not to exceed 5 years for each  
15 renewal.

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

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

22 (b) The department may terminate the participation of a participant in the  
23 green tier program if a judgment is entered against the participant, any managing  
24 operator of the participant, or any person with a 25% or more ownership interest in  
25 the participant for a criminal or civil violation involving a covered facility or activity

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

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

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

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

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

INS  
22  
2295-24  
23

(10) ENVIRONMENTAL AUDITORS. The department may not approve an  
environmental auditor for the purposes of sub. (5) (d) 4. or (5) (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 specified by the department.

25

for standardization standard 14012

equal to the criteria in International Organization

(end INS)

INS  
2295-25

75B

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(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~~ <sup>participant</sup> of that challenge. Unless the ~~regulated entity~~ <sup>participant</sup> authorizes the department to release the information, the ~~regulated entity~~ <sup>participant</sup> 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~~ <sup>any materials provided to support the request</sup> for confidential status.

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

SECTION 3

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

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

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

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

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

17 (f) The department and the department of commerce shall jointly provide  
18 information about environmental management systems to potential participants in  
19 the green tier program and to other interested persons. The department shall  
20 consult with the department of commerce about the administration of the green tier  
21 program.

22 (g) The department shall collect, process, evaluate, and disseminate data  
23 and information about environmentally beneficial and innovative practices  
submitted by participants in the green tier program.

24 (h) The department shall submit a progress report on the green tier program  
25 to the legislature, in the manner provided in s. 13.172 (2), no later than the first day

INS  
2295-26

Insert A to insert 2295-26 (this is an electronic insert)



Insert 2295-26 ↓

1 of the 36th month beginning after the effective date of this paragraph .... [revisor  
2 inserts date], and every 2 years after it submits the first report. *(end of INS 2295-26)*

3 <sup>ⓑ</sup> ~~(a)~~ PENALTY. (a) Any person who knowingly makes a false statement in  
4 material submitted under this section shall be fined not less than \$10 nor more than  
5 \$10,000 or imprisoned for not more than 6 months or both. ✓

INS  
2295-27

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

9 SECTION 4. 560.125 of the statutes is created to read: *(end of INS)*

10 ~~560.125 Green tier and environmental management system grant  
11 program. (1) The department shall make grants from the appropriation under s.  
12 20.143 (3) (z) to nongovernmental organizations to help these organizations develop  
13 the ability to participate as interested persons in the green tier program under s.  
14 299.83. The department shall allocate at least \$150,000 in the 2001-03 fiscal  
15 biennium for grants under this subsection.~~

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

19 (END)

SAV

DOA:.....Wong - Green tier initiative

FOR 2001-03 BUDGET - NOT READY FOR INTRODUCTION

Insert 1830-1  
Starts here

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

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

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

3 15.347 (3) GREEN TIER COUNCIL. There is created in the department of natural  
4 resources a green tier council consisting of 15 members appointed <sup>for 5-year terms</sup> ~~by the secretary~~

5 ~~of natural resources~~. The <sup>governor</sup> ~~secretary~~ shall appoint members representing  
6 environmental organizations, businesses, and local governmental units. <sup>and members who do not represent any</sup>

\*\*\*NOTE: We usually specify a specific number of members to make it easier to keep track of membership and vacancies. Please let me know if you would prefer a different number of members or if you would like to specify the length of terms.

of these entities

7 SECTION 2. 20.143 <sup>(3) (2)</sup> ~~(1) (a)~~ of the statutes is created to read:

Insert  
1-6

Its the letter Z



①  
③ ②  
is the letter "Z"

20.143 ~~(1)(2)(3)~~ Green tier and environmental management system grants.

Biennially, <sup>from the environmental funds</sup> 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.

Insert  
2-3

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

**299.83 Green tier program.** (1) DEFINITIONS. In this section:

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

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

Insert  
12  
2295-5

(c) "Environmental performance," unless otherwise qualified, means the effects, whether regulated under <sup>29 to 31</sup> chs. 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 <sup>29 to 31</sup> chs. 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.

(e) "Green tier contract" means a contract entered into by the department and a participant in ~~level 2~~ <sup>tier II ← roman numeral II</sup> of the green tier program, and that may <sup>with the approval of the department</sup> 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.

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



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

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

10          3. That an entity voluntarily engages in restoring or preserving natural  
11 resources.

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

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

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

20          (3) ELIGIBILITY FOR <sup>tier I</sup> ~~participation~~. (a) <sup>General.</sup> An applicant is eligible for <sup>tier I</sup> ~~level one~~ of the  
21 green tier program if the applicant satisfies the requirements in pars. (b) to (d). If  
22 an applicant consists of a group of ~~private~~ entities, each requirement in pars. (b) to  
23 (d) applies to each entity in the group. ✓

24          (b) <sup>Enforcement record.</sup> To be eligible to participate in <sup>tier I of the green tier program</sup> ~~level one~~, an applicant shall demonstrate all  
25 of the following:





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

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

INS 11  
 2295-16  
 12

12           3. That, at the time of application, no case is pending for a violation involving  
 13 a covered facility or activity that resulted in substantial harm to public health or the  
 14 environment or that presented an imminent threat to public health or the  
 15 environment.

16

*Environmental performance.*  
 (c) To be eligible to participate in ~~level 1000~~ *tier I of the green tier program* an applicant shall submit an

17 application that describes all of the 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.



*Environmental management system*  
*tier I of the green tier program*

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(d) To be eligible to participate in ~~level one~~, an applicant shall do all of the following:

1. *Demonstrate that it has* ~~have~~ 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* ~~goals~~ 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 *enhancing* or preserving natural resources. *objectives*

3. Explain to the department the rationale for the choices of *objectives* ~~goals~~ 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* ~~goals~~.



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

5 5. Commit itself to submitting to the department an annual report on progress  
 6 toward meeting the <sup>objectives</sup> goals under subd. 2.

7 (4) PROCESS FOR ~~LEVEL ONE~~ <sup>tier I</sup> (a) Upon receipt of an application for participation  
 8 in ~~level one~~ <sup>tier I</sup> of the green tier program, <sup>capital exp</sup> the department shall provide public notice  
 9 about the application in the area in which each covered facility or activity is located  
 10 or performed.

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

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

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

21  
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 INSERT  
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 2295-18

23 (5) ELIGIBILITY FOR ~~LEVEL 2~~ <sup>tier II</sup> (a) An applicant is eligible for ~~level 2~~ <sup>tier II</sup> of the green  
 24 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.





*Enforcement record*

*tier II of the green tier program*

1

(b) To be eligible to participate in ~~level 2~~ an applicant shall demonstrate all of

2 the following:

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

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

Insert  
2295-20

14 3. That, at the time of application, no case is pending for a violation involving  
15 a covered facility or activity that resulted in substantial harm to public health or the  
16 environment or that presented an imminent threat to public health or the  
17 environment.

*Environmental management system*

*tier II of the green tier program*

18

(c) To be eligible to participate in ~~level 2~~, an applicant shall do all of the

19 following:

20

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

21

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





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

4 2. Commit itself to having an outside <sup>environmental</sup> auditor approved by the department  
5 conduct <sup>an</sup> annual ~~audits of the~~ environmental management system <sup>audit</sup> ~~under subd. 1~~ and  
6 to submitting an annual report on the <sup>environmental management system</sup> audit to the department

7 3. Commit itself to annually conducting <sup>or having an outside environmental auditor</sup> an audit of compliance with <sup>conducting</sup>  
8 environmental requirements that are applicable to the covered facilities and to  
9 ~~submitting~~ <sup>reporting</sup> the results of the audit to the department <sup>in compliance with sub. (6m) (a)</sup>

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

13 (6) PROCESS FOR <sup>Letter of intent. Tier II</sup> (a) To apply for participation in ~~the~~ <sup>of the green</sup> tier program, an entity shall submit a letter of intent to the department. In addition  
14 to providing information necessary to show that the applicant satisfies the  
15 requirements in sub. (5), the applicant shall do all of the following in the letter of  
16 intent:  
17

18 1. Describe the involvement of interested persons in developing the proposal  
19 for maintaining <sup>and</sup> improving the applicant's superior environmental performance,  
20 identify the interested persons, and describe the interests that those person have in  
21 the applicant's participation in the green tier program.

22 2. Outline the provisions that it proposes to include in the green tier contract.  
23 (b) <sup>Limitation.</sup> The department may limit the number of letters of intent that it processes  
24 based on the staff resources available.

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



1

① Notice. IF

within 90 days of receiving the letter of intent

2

(c) When the department decides to process a letter of intent, the department shall provide public notice about the letter of intent in the area in which each covered facility or activity is located or performed.

4

① Public meeting.

5

(d) 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.

6

① Request to participate.

7

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

14

① Negotiations.

15

(f) If the department determines that an applicant satisfies the requirements in sub. (5), 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.

20

① Termination of negotiations.

21

(g) 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. <sup>not</sup> The department shall conclude negotiations within 12 months

22

① Notice of proposed contract.

23

(h) 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 area in which each covered facility or activity is located or performed.

unless the applicant and the department agree to an extension.





Meeting on proposed contract.

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(i) 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.

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Green tier contract.

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(j) 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

5

6

*unless the applicant and the department agree to an extension beyond 30 days*

7

an applicant. In a green tier contract, the department shall require that the participant maintain the environmental management system described in sub. (5)

8

9

(c) 1. and abide by the commitments in sub. (5) (c) 2. and 3. The department shall

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ensure that the incentives provided under a green tier contract are proportional to

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the environmental benefits that will be provided by the participant under the green

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tier contract. The department shall include in a green tier contract remedies that

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apply if a party to the contract fails to comply with the contract. The term of a green

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tier contract ~~is 6 years~~ *May not be less than 3 years or more than 10 years* with opportunity for renewal for additional ~~6 year~~ terms upon

15

agreement of the parties. Insert 10-14

16

Review of decision. (k) Notwithstanding s. 227.42, there is no right to an administrative hearing

17

on the department's decision to enter into a contract under par. (j), but the decision

18

is subject to judicial review.

19

Inserts  
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2295711

(7) SUSPENSION OR TERMINATION OF PARTICIPATION. (a) The department may

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suspend or revoke the participation of a participant in the green tier program at the

21

request of the participant.

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(b) The department may terminate the participation of a participant in the

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green tier program if a judgment is entered against the participant, any managing

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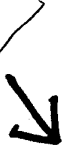
operator of the participant, or any person with a 25% or more ownership interest in

25

the participant for a criminal or civil violation involving a covered facility or activity

The department may not reduce the frequency of required inspections or monitoring as an incentive in a green tier contract if the audit under sub (5)(c) 3. is conducted by the participant.

of the same length as the original term



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

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

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

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

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

Insert  
11-20  
2295-24 ✓  
22  
2295-25 ✓

20 (8) POWERS AND DUTIES OF THE DEPARTMENT. (a) To facilitate the process under  
21 sub. (6), the department shall develop model terms that may be used in green tier  
22 contracts.  
23

24 (b) After consultations with interested persons, the department shall annually  
25 establish a list identifying aspects of superior environmental performance that the



1 department will use to identify which letters of intent it will process under sub. (6)  
2 in the following year and the order in which it will process the letters of intent.

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

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

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

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

14 (f) The department and the department of commerce shall jointly provide  
15 information about <sup>green tier contracts and</sup> environmental management systems to potential participants in  
16 the green tier program and to other interested persons. The department shall  
17 consult with the department of commerce about the administration of the green tier  
program.

Inserts  
2295-26  
12-18-A  
2295-27  
12-18-B

← End of INS 1830-1

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

INSERT 1830-2

560.125 Green tier and environmental management system grant

22 program. (1) The department shall make grants from the appropriation under s.  
23 20.143 <sup>3</sup> <sup>2</sup> to nongovernmental organizations to help those organizations develop  
24 299.83. The department shall allocate at least \$150,000 <sup>per year</sup> for grants under  
25 this subsection.

in the 2001-03 fiscal biennium



1 (2) The department shall make grants from the appropriation under s. 20.143  
2 ~~(1)~~ <sup>3-2</sup> to assist persons to develop environmental management systems, as defined  
3 in s. 299.83 (1) (b). ✓

Insert 4 →  
13-3

<END of  
INSERT 1830-2>

2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0303/P1ins  
RCT:.....

SW

Insert 1-6

SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

			2001-02	2002-03	
✓ 20.143	Commerce, department of				
✓ (3)	REGULATION OF INDUSTRY, SAFETY AND BUILDINGS				
✓ (z)	Green tier and environmental				
	management system grants	✓ SEG	✓ B	↓ 0	↓ 0
✓ 20.370	Natural resources, department of				
✓ (9)	CUSTOMER ASSISTANCE AND EXTERNAL RELATIONS				
✓ (fr)	Green tier program — environ-				
	mental fund	✓ SEG	✓ B	367,000	403,000 ✓

Insert 2-3

SECTION 2. 20.370 (9) (fr) of the statutes is created to read:

20.370 (9) (fr) *Green tier program — environmental fund.* Biennially, from the environmental fund, the amounts in the schedule for the administration of the green tier program under s. 299.83.

Insert 10-14

no The term of a green tier contract may not exceed 5 years 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, unless federal and state law authorize a longer term for the permit.

**Insert 10-18**

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

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

**Insert 11-20**

(7e) GREEN TIER 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 hearing on the proposed green tier charter. A decision by the department to issue a green tier charter is not subject to review under ch. 227.

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

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

**Insert A to insert 2295-26**



WR

The department may conduct or direct studies, experiments, or research related to the green tier program in cooperation with participants and other interested persons. The department may enter into agreements with the Robert M. La Follette Institute of Public Affairs at the University of Wisconsin-Madison to assist in the promotion, administration, or evaluation of the green tier program. ✓

**Insert 12-18-A**

(9) GREEN TIER COUNCIL. The green tier council shall advise the department about all of the following:

(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 contract or green tier charter and the administrative costs of participating in the green tier program.

(c) Assessing whether incentives provided under a green tier contract are proportional to the environmental benefits committed to under a green tier contract.

(d) Procedures for evaluating the green tier program.

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

**Insert 12-18-B**

(11) SUNSET. The department may not process or approve any application for participation in the green tier program that it receives after July 1, 2006. ✓

**Insert 13-3**

**SECTION 3. Nonstatutory provisions.**

(1) INITIAL TERMS OF COUNCIL. Notwithstanding the length of terms specified for the green tier council under section 15.347 (3) of the statutes, as created by this act, 3 of the initial members shall be appointed for terms that expire on July 1, 2003, 3 ✓



of the initial members shall be appointed for terms that expire on July 1, 2004, 3 of  
the initial members shall be appointed for terms that expire on July 1, 2005, 3 of the  
initial members shall be appointed for terms that expire on July 1, 2006, and 3 of the  
initial members shall be appointed for terms that expire on July 1, 2007.

(2) POSITION AUTHORIZATION. The authorized FTE positions for the department  
of natural resources are increased by 5.0 SEG positions to be funded from the  
appropriation under section 20.370 (9) (fr) of the statutes, as created by this act, for  
the administration of the green tier program.

✓

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

LRBs0303/P1dn

RCT/.....

cjs

Tim Kalies:

1. This is a preliminary version of the substitute amendment to AB 479 that you requested. It includes the environmental improvement program language from AB 479 without change. The green tier language is based on the draft from the green tier committee, which you provided to me. As we discussed, in some respects the committee's draft is similar to the green tier language that was in the budget bill as introduced, but there are a number of differences from the budget version.

Your request indicated that the definitions for the two programs are still being discussed. Rather than omit the definitions from this draft, I have left the environmental improvement program definitions unchanged and have included the green tier definitions from the budget with only minor changes.

The rest of this note relates to the green tier proposal. One purpose of the following comments is to explain some of the reasons that this draft differs from the green tier committee proposal.

2. I made several changes to the proposed green tier language as it relates to the council. The language that staggers the terms of the members is in a nonstatutory provision near the end of the draft. It is not necessary to include language about reimbursement for the members because that is current law under s. 15.09 (6). Duties of councils are placed outside of ch. 15, in this case in proposed s. 299.83 (9).

3. The green tier committee draft did not indicate how much should be appropriated for the department of commerce grant program, so I put zeros in the appropriation schedule and will include any amount that you want in a redraft. For the green tier administrative appropriation, I used the amounts indicated in the green tier committee draft.

4. The green tier committee's proposed language includes a long subsection titled "purpose and intent." For a number of reasons, we ordinarily do not include intent or purpose statements in statutes. If a draft includes all of the legally binding provisions that are needed to carry out the intent of the requester, as it should, an intent statement is unnecessary and redundant. Courts often state that the legislature intends every word in the statutes to have legal effect. Sometimes when they apply this rule, courts give intent statements substantive effects that the legislature never

intended. As is often the case with proposed intent statements, this proposal includes language that appears to be simply promotional, such as: "The green tier program will . . . result in continuous improvement in the state's environment, economy, and quality of life." We can hope that it will do so, but we cannot make it happen by including the proposed intent statement. If it is considered to be necessary to include something like an intent statement to ensure that DNR administers the program in the way that is consistent with the green tier committee's intent, the draft could include a provision like s. 299.80 (2), which requires DNR to seek to accomplish various things in administering the environmental cooperation program.

5. The definition of "environmental management system" in the green tier committee's proposal requires conformance with ISO 14001 or a determination by DNR that the system is functionally equivalent to ISO 14001. The requirement for conformance with the ISO standard or functional equivalency is already in the green tier program language (in proposed s. 299.83 (3) (d) 1. and (5) (c) 1.). Including the requirement in the definition as well would be redundant.

*the standard*  
6. The green tier committee's proposal adds a very detailed definition of "functionally equivalent," including a list of essential elements of ISO 14001. I am not an expert on ISO 14001, but I think that ~~it~~ may not include all of the elements in the proposed definition of "functionally equivalent." For example, I think that the standard may not require superior environmental performance or collaboration with DNR. If ISO 14001 does not include all of the elements of the proposed definition, it would be better to use a different approach than using a definition of functional equivalency, such as including the requirements that an environmental management system must have in the body of the statute.

7. The green tier committee's proposal includes a definition of "regulated entity." That term is used in the environmental improvement program, but I do not think it is needed for green tier.

8. The definition of "superior environmental performance" in the green tier committee proposal is quite different from the definition in the budget and I have some questions about it. Under the proposed definition, superior environmental performance would include environmental performance that results in "measurable or discernible improvement . . . in the protection of the ecosystem." I do not understand what that means. I will need help understanding this concept if it is to be included in the definition. Under the proposed definition, superior environmental performance requires improvement beyond what is achieved under current environmental requirements. I wonder whether using "achieved" accomplishes the intent behind this definition. Because entities sometimes do not comply with current environmental requirements, what is achieved is sometimes less than what should be achieved. An alternative would be to require improvement beyond what is required under current environmental requirements.

The proposed definition adds four items to the list of actions that constitute superior environmental performance. The new items do not seem to include the concept that the applicant must go beyond what the law requires. Except for that omission, some of the items appear to already be covered by the items in the definition from the budget

version of green tier. For example, proposed item 5 may be a subset of item 4 and item 6 may be a subset of items 1 and 2. If the first sentence of the proposed definition is retained, to ensure that the definition is internally consistent it will be important that all of the ways in which an entity may achieve superior environmental performance that are listed in the definition require measurable or discernible improvement in environmental quality.

9. The green tier committee draft deleted the subsection on eligible participants, sub. (2), from the budget version of green tier, but I do not understand why. I think that at least the last sentence of that subsection is needed.

10. The green tier committee proposal adds a sentence to the provision about green tier contracts stating that a contract shall describe the superior environmental performance measures and the incentives under the contract. It is not necessary to add this sentence because under the definition of "green tier contract" these things must be in the contract.

11. The green tier committee draft adds a requirement that an applicant for tier II demonstrate a record of environmental compliance to the requirement in the budget draft that an applicant demonstrate a record of superior environmental performance (see proposed s. 299.83 (5) (d)). It is not clear what a "record of compliance with environmental requirements" would be. I suppose it could be interpreted to mean that the applicant may have no violations of environmental requirements on its "record," but I doubt that is what is intended. The green tier proposal has quite specific requirements about an applicant's enforcement record. If some additional requirement about an applicant's compliance record is intended, the draft will need to be more specific about what the compliance record must be. ✓

12. The green tier committee proposal includes green tier charters. I have tried to include this concept in proposed s. 299.83 (7e), but I am not certain that I have succeeded. It seems to me that a green tier charter is an agreement among various entities to work together to achieve some environmental goal and that the entities could enter into such an agreement now, without any legislation. I do not see the advantage to the entities of getting DNR's approval. If I am missing something, perhaps someone could explain this to me more fully. ✓ *it seems*

13. The green tier committee draft adds deferred civil enforcement for participants in both tier I and tier II. Deferred civil enforcement was originally part of the environmental improvement program, but not part of green tier. Green tier provides for two kinds of audits. One is an audit of the environmental management system and the other is an environmental compliance audit. In the first kind of audit, the participant does not have to report violations of environmental requirements, that is what the second kind of audit is for. In tier I, participants only have to do the first kind of audit, while in tier II they must do both kinds. This draft only provides deferred civil enforcement for participants in tier II because they are the only ones who must report violations, see s. 299.83 (6m). Alternatives would be to require participants in both tiers to do both kinds of audits or to provide for only one kind of audit, required of participants in both tiers, that would require reporting of violations. ✓

There is another difference to consider between the environmental improvement program and green tier related to deferred civil enforcement. The committee's green tier proposal only requires a participant in tier II to report about its violations of environmental requirements annually. Under the environmental improvement program, if an entity discovers an environmental violation through its environmental management system, it must report the violation to DNR within 45 days after the date of findings from the facility's environmental management system. Under the environmental improvement program, if an entity discovers a violation through an environmental performance evaluation, the entity must report the violation within 45 days after the date of the final written report of findings of the environmental performance evaluation.

14. I have modified the green tier committee's proposed sunset provision (see proposed s. 299.83 (11)). It goes without saying that the law is what the statutes say it is until the legislature changes the statutes. Also, it is unnecessary to say that the sunset does not affect various things other than applications received after the sunset date because the sunset provision could not be interpreted to affect those other things.

Please feel free to contact me with questions or comments about this note or about the draft.

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

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

LRBs0303/P1dn  
RCT:cjs:ch

February 14, 2002

Tim Kalies:

1. This is a preliminary version of the substitute amendment to AB 479 that you requested. It includes the environmental improvement program language from AB 479 without change. The green tier language is based on the draft from the green tier committee, which you provided to me. As we discussed, in some respects the committee's draft is similar to the green tier language that was in the budget bill as introduced, but there are a number of differences from the budget version.

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Please feel free to contact me with questions or comments about this note or about the draft.

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:** Tuesday, February 12, 2002 10:17 AM  
**To:** Tradewell, Becky  
**Subject:** Suggested Changes to AB 479 draft

Hi Becky,

Here are the changes that have been requested to be made to the AB 479/Green Tier single vehicle amendment. If you have any questions, please call or email me. I will be sending over the definition of single vehicle as soon as I come up with something. Thanks again for your help.

Tim

PS: How is the redraft of green Tier & cobbling of the two proposals going? I have received notice from both Rep Kedzie and Sen. Baumgart that they would like to move on this this as soon as it is available.

**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](mailto:tim.kalies@legis.state.wi.us)

02/12/2002

Suggested Changes to Both Sections,

- ✓ • The contents of AB 479 and Green Tier should be considered separate chapters.
- ✓ • The names “environmental improvement program” and “Green Tier” should be eliminated, and all references should be changed to “Wisconsin Environmental Results Program.”
- ✓ • Sunset: Make both chapters subject to a 5 year sunset provision.

Under the AB 479 Chapter,

- ✓ • We want to make the distinction between a regulatory compliance audit and what is described as an “Environmental Management System” in the bill. Please delete all references to “environmental management systems” and associated audits thereof, so that all that remains is the “environmental performance evaluations.” Change the term “environmental performance evaluation” to “environmental compliance audit.”
- J • **TIME PERIOD.** Except as negotiated under sub. (3m), the total time allowed for a regulated entity from the initial notification under sub. (2)(b) to report the findings of any violations, and completion of corrective and preventive actions under sub. (3) shall not be more than 12 months. *Write*
- J • **REPEAT FINDINGS.** If the regulated entity reports findings from an environmental performance evaluation that were the same as those reported and corrected from a previous environmental performance evaluation under the provisions of sub. (2), (3), (6) and (7), then the regulated entity is not entitled to the benefits described under sub. (7), and the Department shall take action against such repeat findings as violations. (basically says that if an entity reports a violation, then they can't take advantage of deferred enforcement provisions for another 2 years because they do not meet the criteria for being 2 years violation-free)
  - The exception is: any findings reported by an entity conducting a second or subsequent audit that are due to a change in business processes or activities, or from an examination of a different environmental media (air, water, etc) are allowed the provisions provided under sub. (7).
- ✓ • Under Public Notice, (3m)(b)1. “Identifies...the facility at which the violation occurred, and the nature of the violation.” Perhaps in this clause can this be written to read “...and the media, nature, and severity of the violation”?. (sort of self-explanatory)

- ✓ • **ANNUAL SUMMARY REPORT.** The Department must prepare an annual summary report of this program to the chairs of the Legislatures' environment committees within 60 days of the anniversary date of the program authorization. The summary report shall contain the following information:
  - number of notices of intent received, including distribution by country and type, whether private or public entity.
  - number of violations by violation type, including by media, failure to have a permit, release to the environment, failure to have a required plan, violation of a permit condition or rule, or failure to report.
  - time to achieve compliance for each of the items listed in (b) above, unless the item is in progress, which shall be indicated as well.
  - A listing of the stipulated penalties and associated corrective actions by those facilities requiring longer than 90 days to take corrective and preventive action.
  - Recommendations for any changes in the program resulting from discussions with key stakeholders, which must include the legislative author(s) and legislative environment committee chairpersons, the DNR, and public representatives.

Under the formerly known "Green Tier" Chapter:

- **DEFINITIONS:** Keep the Green Tier set of definitions and maintain them independently of the AB 479 definitions.
- ✓ • **DEFINITION OF SINGLE POINT OF CONTACT.** Language to be submitted soon.

**Tradewell, Becky**

---

**From:** Kalies, Tim  
**Sent:** Tuesday, February 12, 2002 10:37 AM  
**To:** Tradewell, Becky  
**Subject:** FW: need definition for single point of contact, if possible

Becky,  
Here is the single point of contact definition. Feel free to contact Brian Borofka if you have questions about this, as he is the expert in this area.  
Tim

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

**From:** Borofka.Brian [mailto:Brian.Borofka@wepco.com]  
**Sent:** Tuesday, February 12, 2002 10:27 AM  
**To:** 'Kalie, Tim'  
**Cc:** McNulty.Barry  
**Subject:** RE: need definition for single point of contact, if possible

Tim,

Here's a shot:

*Single point of contact - A knowledgeable employee identified by the Department, and mutually agreed upon with the regulated entity, that shall oversee and facilitate communications and timely decisions between the Department and the regulated entity, and having the mission of achieving the goals and objectives of the Green Tier program identified in Sec. 299.83(1) [Purpose and Intent].*

This gives the DNR the first shot at identifying their person, but it must be agreeable with the regulated entity. Communication and timely decisions are key goals. If we had not been assigned the right point of contact for negotiating our Cooperative Agreement, it would not have happened.

Hope this helps.

- Brian Borofka  
(414) 221-4872

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

**From:** Kalies, Tim [mailto:Tim.Kalies@legis.state.wi.us]  
**Sent:** Tuesday, February 12, 2002 10:03 AM  
**To:** Barry McNulty (E-mail); Borofka, Brian  
**Subject:** need definition for single point of contact, if possible

Hi Barry & Brian, can you guys come up with a quick and dirty definition of single point of contact for the draft? I think DNR passed on it.

BTW, the rest of the instructions for changes to the draft are in the hopper. (Attachment below)  
Let's hope for a speedy turnaround.  
Tim

**TIMOTHY J. KALIES**  
Legislative Assistant / Budget Policy Advisor  
Office of State Representative Marc Duff  
Member, Joint Committee on Finance

02/12/2002

**Phone: (608) 266-1190 Fax: (608) 282-3698**  
**E-mail: [tim.kalies@legis.state.wi.us](mailto:tim.kalies@legis.state.wi.us)**