



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-2295/2
RCT:cjs&jld:jf

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

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

1 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.

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.

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.

3 (f) *Compliance schedules.* 1. If the department receives a report under par. (b)
4 that contains a proposed compliance schedule under par. (b) 5., 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 does not agree to implement a compliance schedule proposed by the
8 department, the department shall schedule a meeting with the regulated entity to
9 attempt to reach an agreement on a compliance schedule. If the department and the
10 regulated entity do not reach an agreement on a compliance schedule, the
11 department may issue a compliance schedule. A compliance schedule under this
12 paragraph is subject to review under ch. 227.

13 2. The department may not approve or issue a compliance schedule that
14 extends longer than 12 months beyond the date of approval of the compliance
15 schedule. The department shall consider the following factors in determining
16 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 (g) *Stipulated penalties.* 1. If the department receives proposed stipulated
24 penalties under par. (b) 6., the department shall review the proposed stipulated
25 penalties. The department may approve the stipulated penalties as submitted or

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 b. If a regulated entity that qualifies under sub. (3) (a) for participation in tier
15 I 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 c. 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) (f) 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.

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 d. If the department approves a compliance schedule under sub. (3) (f) 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).

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

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 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.

15 **(7) 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.

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 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 II of the green tier program implements an
5 environmental management system that complies with sub. (5) (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 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.

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.

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).

21 **(10m) ENVIRONMENTAL AUDITORS.** The department may not approve an
22 environmental auditor for the purposes of sub. (5) (d) 4. or (8) (c) 2. unless the
23 environmental auditor is certified by the Registrar Accreditation Board of the
24 American National Standards Institute or meets criteria concerning education,
25 training, experience, and performance that are specified by the department.

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

4 (c) The department shall keep confidential any part of a record, report, or other
5 information obtained in the administration of this section, other than emission data
6 or discharge data, upon a showing satisfactory to the department by any person that
7 the part of a record, report, or other information would, if made public, divulge a
8 method or process that is entitled to protection as a trade secret, as defined in s.
9 134.90 (1) (c), of that person.

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

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

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

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 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

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.

3 (13) 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.

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:

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 those 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)