

01-1830

Please copy drafting file

for 01-1830 and

put copies in file for

01-2295 (right behind e-mail that
follows request sheet)

2001 DRAFTING REQUEST

Bill

Received: 01/05/2001

Received By: traderc

Wanted: Soon

Identical to LRB:

For: Administration-Budget

By/Representing: Wong

This file may be shown to any legislator: NO

Drafter: traderc

May Contact:

Alt. Drafters:

Subject: Environment - miscellaneous

Extra Copies:

Pre Topic:

DOA:.....Wong -

Topic:

Green tier initiative

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|-----------------------|------------------------|-----------------------|----------------|----------------------------|-----------------|-----------------|
| /P1 | traderc 01/24/2001 | csicilia 01/24/2001 | martykr 01/24/2001 | _____ | lrb docadmin 01/24/2001 | | |

FE Sent For:

<END>

2001 DRAFTING REQUEST

Bill

Received: 01/05/2001

Received By: traderc

Wanted: Soon

Identical to LRB:

For: Administration-Budget

By/Representing: Wong

This file may be shown to any legislator: NO

Drafter: traderc

May Contact:

Alt. Drafters:

Subject: Environment - miscellaneous

Extra Copies:

Pre Topic:

DOA:.....Wong -

Topic:

Green tier initiative

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-------------------|--------------|-----------------|------------------|-----------------|-----------------|
| 1? | traderc | P1 cjs 1/24 01 | km 2/24 | 1/14 km 2/24 | | | |

FE Sent For:

<END>

Tradewell, Becky

From: Wong, Manyee
Sent: Friday, January 05, 2001 3:34 PM
To: Tradewell, Becky
Subject: Green Tier

Hi Becky,

I have been told that we will be briefing the Governor on the basic concepts of the Green Tier Initiative. As you know, the Green Tier Advisory Committee has been meeting the past few months to develop a new environmental management concept. I have been waiting for information from DNR regarding their formal proposal but nothing has happened. And I was kept pretty much in the dark as to what DNR plans to do. Anyway, I am suppose to use whatever information I have and brief the Governor on the initiative. And statutory language will have to drafted if the Governor wants to pursue the initiative.

I am sending over to the LRB some drafting instructions and a copy of DNR's concept paper for the Green Tier legislation. I checked off the instructions that I think should be drafted. Please work directly with DNR on this. I think that would be most effective. You could call Lance Potter (Management and Budget at 267-7418) or Mark McDermid (267-3125) for further instructions or questions on the language.

Thanks. I know you will probably not be happy about this. I apologize but it was out of my hands.
Manyee

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
101 East Wilson Street, Madison, Wisconsin

TOMMY G. THOMPSON
GOVERNOR

GEORGE LIGHTBOURN
SECRETARY



Division of Executive Budget and Finance
Post Office Box 7864
Madison, WI 53707-7864
Voice (608) 266-1736
Fax (608) 267-0372
TTY (608) 267-9629

Date: January 5, 2001
To: Steve Miller, LRB
From: Manyee Wong, DOA
266-7595
Subject: Green Tier Statutory Language

I'm forwarding statutory language requests based on Governor's recommendations:

1. Authorize DNR to implement the Green Tier Initiative developed by the Green Tier Advisory Committee. Please see the attachment titled "Concepts for Green Tier Legislation".
2. Create a biennial appropriation for a Green Tier Grant under the Department of Commerce. Provide \$200,000 GPR in FY02 and \$200,000 GPR in FY03 for grants to non-governmental organizations to develop capacity for stakeholder involvement and to provide technical assistance to businesses, organizations, and persons interested in the development of Environmental Management Systems. Require that at least \$150,000 of the appropriated amount be used to build NGO capacity.
3. Require the Departments of Commerce and Natural Resources to work together to introduce and provide consultation on the concepts of Environmental Management Systems to all relevant stakeholders and proceed with the implementation of the Green Tier Initiative.

SB 2125
20.143(1)(eg)

CONCEPTS FOR GREEN TIER LEGISLATION

(Revisions to the December 7th meeting draft are in *bold and italicized*)

The legislation should have sufficient details to be self-implementing. Green Tier legislation should not require that rules be developed by DNR before the program can be implemented. Program should be similar to the Stewardship Track of the EPA's Performance Track Program to allow for delegation of EPA program. *The legislation should include provisions authorizing the DNR to adopt administrative rules to adapt the Green Tier program to meet the criteria of EPA's Performance Track Program and federal farm programs.*

1. Purpose and Intent. Use the intent language that was developed with the Green Tier Advisory Committee. Additional work on this component should wait until further development of the remaining legislative concepts. (Attachment 1)
- ✓ 2. Current regulatory programs ("control tier")
 - a. Continues as baseline program requirements (not directly affected by Green Tier).
 - b. Becomes "default" for those that leave the Green Tier.
- ✓ 3. Green Tier program would be developed as a 2-level program. Entity (company, organization, political subdivision, single facility or business sector) would apply for Green Tier program. Eligibility criteria applied to "entity/applicant", as described in application. Application for certification would demonstrate applicant's qualification for Green Tier. DNR would approve applications by certifying entities for entry into Green Tier. Certification enables an entity to participate in Level 1. Certification is a precondition to participation in Level 2, although the DNR may waive this precondition.
 - ✓ a. Green Tier (Level 1) entry criteria (enforcement-related). These enforcement criteria are applicable to the entity which applies for the Green Tier program (i.e., if a facility applies, the criteria apply to the facility; if a corporation applies for all of its WI facilities, the criteria apply to the corporation's WI facilities). Note: These criteria are not compatible with the "compliance screening criteria" for EPA Achievement Track. The Green Tier criteria are more "fact-based" ("bright line") criteria than the more "subjective" criteria used for the EPA Achievement Track Program.
 - ✓ (1) No criminal *judgment* in WI (by company, owners who have greater than a 25% interest in the entity, managing operators) for violations *that resulted in substantial harm to the public health or the environment or presented an imminent threat to public health or the environment* in the last 5 years
 - ✓ (2) No civil *judgment* in WI for violations that resulted in *substantial harm to the public health or the environment or presented an imminent threat to public health or the environment* in the last 3 years
 - ✓ (3) No ongoing (filed in court) state or federal enforcement action in WI *for a violation that resulted in substantial harm to the public health or the environment or presented an imminent threat to public health or the environment* at time of application
 - b. Green Tier (Level 1) application demonstrates

(1) What applicant has done: past environmental record

(2) What applicant currently has in place:

(3) What it plans for the future: beyond compliance goals; e.g., continual improvements or other activities that enhance the environment

c. EMS (doesn't need to be ISO 14001, but must be approved by the DNR as functionally equivalent to ISO 14001) The core elements of the EMS are:

- (1) environmental policy
- (2) planning and procedures to achieve, maintain and exceed compliance
- (3) implementation and operation
- (4) checking
- (5) corrective action
- (6) compliance assurance
- (7) pollution prevention
- (8) reports to the agency or public communication

The DNR will ensure that the EMS is appropriate to the nature, scale and environmental impacts of the entity's products, services or activities.

(1) Commit to full implementation of EMS within 1 year of application [Note: This criterion differs from EPA's Achievement Track which requires that the EMS be in place at time of facility reaching Achievement Track.]

(2) Annual audits of EMS, with every third audit by a third-party auditor, *subject to review and approval by DNR. The annual audit report shall be submitted to the DNR.* EMS contains goal setting for moving beyond compliance, in two or three areas:

- (a) Regulated aspects
- (b) Non-regulated aspects
- (c) Environmental/resources enhancement (stewardship)

(3) Must explain rationale for goal choices and describe any consultation with local stakeholders (neighbors, businesses, community)

(4) Annual reporting of progress toward meeting those goals *submitted to DNR.*

d. Incentives (promotional efforts conducted, supported or sponsored by state agencies)

(1) Recognition including:

- (a) A numbered certificate of recognition and acceptance into Green Tier;
- (b) Identification of the entity as a participant in Green Tier on the Department's Green Tier web site;
- (c) Identification of the entity as a participant in Green Tier in news releases that the Department will issue to local newspapers at least annually; and
- (d) Use of the Green Tier logo for public relations such as newsletters and brochures.

(2) Technical assistance and training: The Department will help the entity to develop its EMS, undertake stakeholder involvement activities, address regulatory implications of pollution

prevention options, and improve its system to assure future compliance and improved performance.

- (3) Single point of contact: The Department will assign a single contact to serve as the point of contact for all of the entity's media-specific permits (air, water and waste) and for technical assistance.
- (4) Inspection reduction: The Department will reduce the frequency of inspections to the lowest frequency that is available within each media-specific program. The Department retains the right to conduct an inspection if it becomes aware of noncompliance with a permit requirement. Reduced inspections would not "kick in" until EMS is active.

e. Process:

- (1) Application submitted
- (2) Local public notice of receipt of application
- (3) Opportunity for public informational meeting prior to DNR certification
- (4) DNR to decide on certification within 60 days of public notice or public meeting (if one is held). *The number of entities participating in the program, or the participation of a particular applicant, may be limited by the DNR Secretary based on the Secretary's determination that such limitation is in the best interest of the program.*
- (5) No administrative review of DNR certification determination (e.g., the determination will not be subject to a contested case hearing).

f. Assistance

- (1) Financial assistance is provided to small businesses, business associations, cooperatives and organizations chartered to participate in Green Tier (DOC grants).
- (2) EMS education (Dept. of Commerce and UW-Extension)
- (3) Financial assistance to non-governmental organizations (NGOs) for capacity-building to participate in Green Tier process

4. Green Star -Level 2: Entity (company, organization, political subdivision, single facility, community or business sector) would apply for Level 2 status. Application would demonstrate qualification for Level 2.

a. Green Star (Level 2) entry criteria

- (1) Demonstration that all of the Level 1 Green Tier eligibility criteria have been met (longer time frame for enforcement-related criteria - e.g., 10 years without criminal *judgment*; 5 years without a civil *judgment* for violations that resulted in substantial harm *to the public health or the environment or presented an imminent threat to public health or the environment.*)
- (2) EMS must be in place

b. EMS/Compliance Audits

- (1) EMS must be in place at time of application

(2) Annual third-party EMS audits. Certification that the audit was conducted and a copy of the audit report must be submitted to DNR.

(3) Annual compliance audits. Annual compliance audits must be conducted and the results of the audit disclosed to the DNR. If the compliance audit is a self-audit, the entity would not be eligible for reduced inspections or monitoring as an incentive under the program.

c. Local stakeholders, selected by the applicant, subject to approval by DNR, are involved in development of goals

d. Record of (and proposal for) Superior environmental performance in the following areas:

(1) Regulated aspects

(2) Non-regulated aspects

(3) Environmental/resources enhancement (stewardship)

(4) Enabling and assisting others in achieving environmental results

"Superior environmental performance" to be defined, described, criteria outlined or examples provided in legislation. Superior environmental performance is compared to what would have been achieved through compliance with otherwise applicable requirements., considering both qualitative and quantitative factors and would be proportional to the level of incentives sought and obtained through the contract.

"Superior environmental performance" would be determined from a menu of options, including:

- A commitment to the CERES principles
- A commitment to undertake measures consistent with international agreements
- ECO centered/related products system approach; *product stewardship*
- Ecological restoration and *land* stewardship
- Innovative technology surpassing requirements
- Energy reduction through innovative technology
- Continuous improvement through pollution prevention
- Multi-media approach beyond regulatory requirements (resulting in a percentage reduction against a benchmark)
- Mentoring others/Technical assistance to others (on a geographic, sector, supply chain basis). Environmental is only a starting point
- Significant, meaningful public involvement leading to addressing local community goals (Beyond CERES, "Sniff" test)

Superior environmental performance would be results-oriented. (Attachment 2 – EPA Guidance on Project XL)

e. Incentives (Outlined by entity in intent letter, or suggested by any party to the contract, based on the following):

(1) A statutory list of specific incentives, developed from input by the Advisory Committee. (Attachment 3)

(2) Additional incentives *may be* developed by Department by rule.

(3) Specific incentives proposed by the applicant or other party and negotiated during the process.

*DNR must ensure that the incentives would be "proportional" to the level of superior environmental performance proposed and obtained through the contract (e.g., "cap" on emissions/zero discharge to take advantage of full range of incentives). An accommodation would be made for risk-taking. Incentives would be determined from a menu of above listed sources. Secretary facilitation (in listed incentives) for projects above and beyond those in the Green Star contract. The real incentive is the ability to engage in risk-taking. An additional incentive will be added to provide for *deferred civil enforcement* for self-disclosed violations from audits, identical to the *deferred civil enforcement* authorized for the environmental cooperative agreement pilot project legislation. Compliance deadline flexibility is a primary incentive.*

f. Letter of intent submitted as application for Level 2 status

(a) Outline of stakeholders *involved to date* and *their* interests

(b) Identify incentives desired *and indicate how they are proportional to the superior environmental performance proposed.*

g. DNR will prioritize applications (i.e., letters of intent) - may limit number of applications processed based on DNR's ability to staff the program. Department will establish an annual list, based on stakeholder input, identifying aspects of superior environmental performance which merit prioritization of applications.

h. Contractual

(1) Enforceable contracts prepared to outline commitments to superior environmental performance and incentives. The DNR would develop "model" contract terms to reduce transaction costs. The process would allow for the applicant or DNR to take "lead" on the development of the contract.

(2) 5-year contracts with easy renewal

i. Process: This process is not designed to take into account the "permit" processes which may be affected by the terms of the contract (e.g., it does not try to accommodate differences in public participation). The contract would be negotiated according to this process--to the extent that the contract terms affected permit or approval provisions, those conditions would be revised in a parallel or subsequent process.

(1) Applicant establishes goals with stakeholders input

(2) Letter of intent is submitted

(3) Department public notices acceptance of letter of intent with public informational meeting option

(4) Stakeholders may request of the DNR Secretary authorization to participate in contract negotiations, with the Secretary deciding if a stakeholder has made a case for a level of interest in the issues to warrant participation as a party to the contract. Stakeholders seeking party status must notify the Department within 30 days of public notice of letter of intent. *DNR will set deadline for identification of interests and issues to be addressed.*

(5) Contract is negotiated with Department with notice and request for input.

(6) Public Informational meeting made available on contract

✓ (7) DNR makes decision within 90 days of submittal of letter of intent or within 30 days of public notice or public meeting, if public meeting is held.

✓ (8) Formal review of DNR's decision to enter into contract *would be available only under s. 227.52, Wis. Stats. (judicial review).*

5. De-certification;

✓ a. ✓ Certification in the Green Tier program (Level 1 or 2) *may* be revoked if *a judgment is entered against* applicant/entity in WI *for* a civil or criminal violation that resulted in substantial harm *to the public health or the environment or presented an imminent threat to public health or the environment.*

✓ b. ✓ Certification in the program *may* be suspended if applicant/entity is referred to *a state* or federal prosecutor in WI for a civil or criminal violation that resulted in substantial harm *to the public health or the environment or presented an imminent threat to public health or the environment.*

✓ c. ✓ Certification in the program may be suspended or revoked if applicant/entity requests a voluntary withdrawal from the program (e.g., if the applicant is unable, due to economic hardship, to complete the terms of its commitment under the program).

✓ d. ✓ Provisions from cooperative environmental agreement legislation for revocation (s. 299.80(7), Stats.) should be reviewed for inclusion in Green Tier legislation. (Attachment 4)

✓ e. ✓ When there is a contract, the contract shall identify the remedies if a party to the contract fails to perform.

Third party would have right to request Department initiate de-certification process.

6. Data Collection/Environmental Results Learning System:

a. Department shall create an environmental results learning system with goals of continuous environmental improvement and earned trust, involving business, governmental and environmental parties. *The Department shall collect data from Green Tier participants and non-participants to assist all in performance improvement as partners in an environmental results learning system.*

b. *The goal of the learning system will be to help all parties involved in Green Tier understand how goals were achieved and then share appropriate information about the practices and technologies used to achieve those goals so that others might learn.*

c. *Partners in the system shall include Department-selected stakeholders with an interest in continuous improvement through respectful collaboration, earned trust and sharing of best practices and technology.*

d. *Confidential business information voluntarily provided by partners (including data on unregulated aspects and data from unregulated entities or data from new technology being tested under a Green Tier contract) will be protected and costs may be shared by the state on data collection under the Green Tier program to obtain data of value in tracking progress toward priorities and goals established by the Statewide Stakeholders Group under #7.*

e. Department shall confer with citizens, business, government, *the financial sector* and environmental organizations *on data needs (including refocusing of data priorities to a performance system) and* to evaluate results and produce recommendations for system improvements, technology transfer and further testing of ideas.

f. Department shall every 2 years evaluate, *in consultation with participants and stakeholders, primary and secondary* data, recommendations and best practices produced by the system as applied to Department policies and programs, cooperating agencies *and Green Tier participants* .

g. Department shall report to the legislature 3 years after the program begins; following reports to the legislature are due every 2 years.

7. Statewide Stakeholder Group. DNR appoints a statewide stakeholder group representing environmental organizations, businesses and municipalities to advise on overall operation of the Green Tier system, to set priorities for direction of the system and to assist in evaluation of the system.
8. Environmental Charters. DNR will encourage organizations, including unregulated entities, *small business, agricultural organizations and local governments* to develop associations to work collaboratively on activities or projects to achieve superior environmental performance in the context of the Green Tier program.
9. Training: In conjunction with DNR, training would be provided through the UW Extension and Department of Commerce.
10. Capacity of NGO's: Money should be provided for NGO's and stakeholders to assist in their participation in Green Tier program.
11. Staffing in DNR and other agencies needs to be authorized by the Legislature. Adequacy of DNR resources is a critical issue for Green Tier implementation. It is estimated that realistically 4 or 5 FTE positions (perhaps on a "project basis") would be necessary for start-up. There would be some distinction between the level and type of technical support required for Level 1 and Level 2.

Tradewell, Becky

From: Wong, Manyee
Sent: Friday, January 05, 2001 3:37 PM
To: Tradewell, Becky
Subject: FW: Green Tier Language

Hi Becky,

Here is a statutory language request from DNR regarding the Green Tier Initiative. It was never submitted but I just received this from Lance Potter and it may help you with drafting the Green Tier Initiative.

Thanks.

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

From: Potter, Lance
Sent: Friday, January 05, 2001 3:30 PM
To: Wong, Manyee
Cc: McDermid, Mark; Felker-Donsing, Susan; Polasek jr., Joseph P
Subject: Green Tier Language

Manyee,

Please attach this document to the statutory language request you are sending to LRB.



GT-Statutory
Language.doc

Thanks,

Lance

2001-2003 Biennial Budget Request

Division: Customer Assistance and External Relations

Bureau: Cooperative Environmental Assistance

Topic: Green Tier Regulatory System

2001-2002

2002-2003

\$667,900 5 (FTE)

\$790,500 5 (FTE)

Problem Identification: Develop and implement a new Green Tier Regulatory System. This is a voluntary incentive program to reward "beyond compliance" companies through this alternate environmental regulatory track. Attributes include strong public involvement, regulatory flexibility, dealing with issues that are currently not regulated and linking better environmental and better economic performance.

Request: This request is for 5.00 FTE Permanent to develop and implement this program from rule development and solicitation of applicants to writing agreements and ensuring compliance. In addition there is grant money requested, which will be made available to NGOs and for technical assistance.

Statutory Lang. Change: There will need to be a statutory language change to Section 299.80 that authorizes the DNR to develop rules to implement a Green Tier Regulatory Program. This section currently contains the Environmental Cooperation Pilot Program. The goals of these two programs are identical and should be carried over. Other parts of the pilot program that met with success such as the handling of self-reported violations should also be continued. Other incentive clauses such as tax incentives should also be authorized in appropriate statutes.

From DNR

Tradewell, Becky

From: Wong, Manyee
Sent: Friday, January 05, 2001 4:01 PM
To: Tradewell, Becky
Subject: RE: Green Tier Language

Yup. But I do have a concept paper from the Green Tier Advisory Committee that is a lot more detailed. I have included it with the drafting instructions. I believe you should be able to work from that document a lot more effectively. DNR sent this probably just to show that they sent me something. I looked it over and it's not helpful at all. I guess you should just ignore it and use the concept paper developed by the Green Tier Advisory Committee.

You could share with DNR any statutes regarding program development. But don't share with them any fiscal items (i.e., amount of grant we are recommending).

Thanks again.

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

From: Tradewell, Becky
Sent: Friday, January 05, 2001 3:48 PM
To: Wong, Manyee
Subject: RE: Green Tier Language

Manyee,
Is this one page all that you got from DNR?

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

From: Wong, Manyee
Sent: Friday, January 05, 2001 3:37 PM
To: Tradewell, Becky
Subject: FW: Green Tier Language

Hi Becky,

Here is a statutory language request from DNR regarding the Green Tier Initiative. It was never submitted but I just received this from Lance Potter and it may help you with drafting the Green Tier Initiative.

Thanks.

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

From: Potter, Lance
Sent: Friday, January 05, 2001 3:30 PM
To: Wong, Manyee
Cc: McDermid, Mark; Felker-Donsing, Susan; Polasek jr., Joseph P
Subject: Green Tier Language

Manyee,

Please attach this document to the statutory language request you are sending to LRB.

<< File: GT-Statutory Language.doc >>

Thanks,

Lance

Tradewell, Becky

From: Wong, Manyee
Sent: Monday, January 15, 2001 4:37 PM
To: Tradewell, Becky
Subject: RE: Green Tier

Yes. For now, require DNR to specify in administrative rules the incentives for participation in the program.

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

From: Tradewell, Becky
Sent: Monday, January 15, 2001 4:15 PM
To: Wong, Manyee
Subject: RE: Green Tier

If you want it done by rule, the draft should probably specify that. I think that would be fine, but everyone has to realize that DNR would be limited to incentives that do not conflict with existing statutes.

Becky

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

From: Wong, Manyee
Sent: Monday, January 15, 2001 4:06 PM
To: Tradewell, Becky
Subject: RE: Green Tier

I did not check any of the incentive provisions because I thought this could be done through DNR's administrative rules rather than specifying them in statutes. I need to think about how best to approach this further. Go ahead and draft the language without the incentives for now and I will let you know of any changes as soon as I can.

Thanks
Manyee

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

From: Tradewell, Becky
Sent: Monday, January 15, 2001 3:52 PM
To: Wong, Manyee
Subject: Green Tier

Manyee,

In the instructions for Green Tier, you did not put a check next to any of the provisions related to incentives for participating in the program. Some of the incentives that DNR's committee proposed are problematic, but perhaps the draft should specify some benefit for participating in the program, especially in level two. Under that part of the program, DNR and the participant are supposed to enter into a contract. Contracts usually have an exchange: each party provides something that the other wants. Also, the requirements for participating in level two are fairly demanding. If no benefits are specified, there may be no participants.

One possibility, included in the concept paper, is that the draft could provide deferred civil enforcement, as in the environmental cooperation pilot program (see s. 299.80 (12) to (14)). DNR could also promulgate rules that provide for incentives. It should be understood, however, that without specific authorization DNR may not provide any incentive that requires overriding any statutory requirement.

Please contact me if you would like to discuss this.

Becky

Tradewell, Becky

From: Hammer, Charles R
Sent: Monday, January 22, 2001 3:43 PM
To: Tradewell, Becky
Cc: Steidl, Thomas F; McDermid, Mark; Hammers, Mike (DNR); Smoller, Jeff; Potter, Lance
Subject: RE: Green Tier

Becky, don't worry, you didn't get us into any hot water. But, as you saw from Lance Potter's email, I am sending you today some thoughts anyway. I don't know whether they will help much, since tomorrow our green tier internal staff will meet at 9:00 to discuss your most recent draft, and we'll then be able to provide more comprehensive feedback. My comments will move from the beginning of the draft through to the end. You will see that I have jumped past some of your question that appear as annotations without comment. That is because I want to deal with those at our meeting tomorrow.

On both drafts sent to us, you had a note on the first page about extending the concept of "environmental requirement" to federal requirements. We don't want to include federal requirements. Its always dicey to put oneself in a position of determining whether an entity is complying with some other entity's requirements. Plus, we have delegation from the feds for the vast majority of environmental acitivity that takes place, so the state authority we have in place both covers our environmental concerns and is ours to interpret. You also questioned whether we would want to cite something like what appears in 293.37(2)(e) as "law for the protection of the natural environment." The answer is no; that language is too imprecise for this effort.

On page 3 you comment on the questionable fit that "managing operators" and persons with an ownership interest has for governmental or nonprofit entities. I think it is true that the language doesn't appear to be the best fit, but its probably okay. The reference to ownership would likely never confuse anyone with respect to municipal participation. There could be more of a problem with figuring out who is a "managing operator" giving the varied types of activities that municipalities are involved in. But, I think that we would be able to figure it out once the facts are known in any given situation. Plus, we are providing for an escape valve in (4)(c). You also asked whether the language should read in terms of "managing operator of a covered facility." That's probably better language, though the existing language is probably a bit more clear that the "applicant" is one entity, but that applicant's managing operators are also to be considered.

On page 5 you asked what it means to "limit an applicant's participation." The advisory committee wanted a kind of catch-all ability vested in the Department to preclude participation by someone who shouldn't be in the program, but who could get through the screen. One example was an entity under serious investigation for a criminal violation--but not yet charged or possibly not yet informed. So, the intent was as much to provide for the disallowance of participation as the limitation of participation. I wonder whether we can can "limit the extent of participation" which could go all the way to precluding any form of participation. We'll talk about this more tomorrow.

On page 10 you ask whether the intent is to not have contested case hearings available, only judicial review. Section 299.80(6)(d), notwithstanding, the intent here is to have the sole method of review being a judicial review.

More after our morning meeting.

From: Tradewell, Becky
Sent: Saturday, January 20, 2001 10:09 AM
To: Steidl, Thomas F; Hammer, Charles R
Subject: Green Tier

I am afraid that you will get leaned-on about reviewing Green Tier and I am sorry about that. In the course of responding to a DOA inquiry about Green Tier, I told the analyst that I had sent DNR attorneys some language. I guess that I was trying to defloot her pressure. She in turn contacted Lance Potter and asked him to get you to hurry. I have now told her that I did not mean that you were taking too long and that a proposal like this simply takes time.

Becky Tradewell

Becky -
DNR comments
on this draft.
Tom S.
60235

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
RCT:.....

SECTION 1. 299.83 of the statutes is created to read:

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

0 "Covered facility" means a facility^{or activity} that is included, or intended to be included, in the green tier program.

0 "Environmental management system" means an organized set of procedures implemented by the owner or operator of a facility^{or activity} to evaluate the environmental performance of the facility and to achieve measurable or noticeable improvements in that environmental performance through planning and changes in the facility's operations.

0 "Environmental performance," unless otherwise qualified, means the effects, whether regulated under chs. 160 and 280 to 295 or unregulated, of a facility^{or activity} on air, water, land, natural resources, and human health.

0 "Environmental requirement" means a requirement in 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.

****NOTE: Federal? The draft could use language something like s. 293.37 (2) (e) 1. b. (law for the protection of the natural environment) though it seems that specific statutory cross-references would leave less room for argument.

0 "Green tier contract" means a contract entered into by the department and a participant in level 2 of the green tier program^{and that may 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^{by the department}.

0 "Green tier program" means the program under this section.

0 "Superior environmental performance" means one of the following:

CERES
principles

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

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

****NOTE: Does this need to be here? ^{Yes} If so, does proposed sub. (5) ^{(A) (?)} need to be broadened to allow for this? Perhaps there is a problem with the language "at the covered facilities" in sub. (5) (e) 1. and 2., but I am not sure how to change that language. I have thought about "with respect to the covered facilities" or "at to the covered facilities or with respect to products produced or services provided at the covered facilities." Perhaps a separate subdivision in sub. (5) (e) would be better, if something is needed.

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

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

****NOTE: should the concept of helping others to comply be included in subd. 4 or should it be limited to helping others achieve superior environmental performance? ^{Both}

****NOTE: Should the definitions in s. 299.80 (or some other definitions) of "facility," "interested person," or any other terms be added? ^{No,}

(2) ELIGIBLE PARTICIPANTS. Any public or private entity may apply to the department to participate in the green tier program. A group of ^{public or} private entities ~~that~~ ~~are engaged in similar businesses~~ may together apply to the department to participate in the green tier program. An applicant for the green tier program shall identify the facilities ^{or activities} that it intends to include in the program.

(3) ELIGIBILITY FOR LEVEL ONE. (a) An applicant is eligible for level one of the green tier program if the applicant satisfies the requirements in pars. (b) to (d). If

an applicant consists of a group of ^{public or} private entities, each requirement in pars. (b) to (d) applies to each entity in the group.

(b) To be eligible to participate in level one, an applicant shall demonstrate all of the following:

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

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

3. That, at the time of application, no case is pending for a violation of an environmental requirement involving a covered facility ^{or activity} that resulted in substantial harm to public health or the environment or that presented an imminent threat to public health or the environment.

****NOTE: The references to managing operators and persons with ownership interests do not seem to fit well for governmental or nonprofit entities. Does that matter? ^{Nb} Should it be "managing operator of a covered facility"? ^{Nb}

(c) To be eligible to participate in level one, an applicant shall submit an application that describes all of the following:

- 1. The applicant's past environmental performance at the covered facilities ^{or activities}
- 2. The applicant's current environmental performance at the covered facilities ^{or activities}

3. The applicant's plans for activities that enhance the environment, such as improving the applicant's environmental performance at the covered facilities ^{or activities}

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

1. Have implemented, or commit itself to implementing within one year of application, at the covered facilities ^{or activities} 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 that is determined by the department to be functionally equivalent to an environmental management system that is based on those standards.

Functional
Equivalent
Criteria

b. Determined by the department to be appropriate to the nature, scale, and environmental impacts of the applicant's operations ^{or activities}

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

a. Improving the environmental performance of the applicant, at the covered facilities ^{or activities}, in aspects of environmental performance that are regulated under chs. 160 and 280 to 295.

b. Improving the environmental performance of the applicant, at the covered facilities ^{or activities}, in aspects of environmental performance that are not regulated under chs. 160 and 280 to 295.

c. Voluntarily restoring or preserving natural resources.

3. Explain to the department the rationale for the choices of goals under subd. 2. and describe any consultations with residents of the areas near the covered facilities ^{or activities} and other interested persons concerning those goals.

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

outside auditor qualifications

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

(4) PROCESS FOR LEVEL ONE. (a) Upon receipt of an application for participation in level one of the green tier program, the department shall provide public notice about the application in the area of the covered facilities;

or activities

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

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

limit the extent of

****NOTE: What does it mean to limit an applicant's participation?

varies. Could mean not able to participate at all or on a limited basis.

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

(5) ELIGIBILITY FOR LEVEL 2. (a) An applicant is eligible for level 2 of the green tier program if the applicant satisfies the requirements in pars. (b) to (d). If an applicant consists of a group of private entities, each requirement in pars. (b) to (d) applies to each entity in the group.

public or

(b) To be eligible to participate in level 2, an applicant shall demonstrate all of the following:

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

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

3. That, at the time of application, no case is pending for a violation of an environmental requirement, involving a covered facility, ^{or activity} that resulted in substantial harm to public health or the environment or that presented an imminent threat to public health or the environment.

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

1. Have implemented at the covered facilities, ^{or activities} 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 that is 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.

3. Agree to have an outside auditor approved by the department conduct annual audits of the environmental management system under subd. 1. and to submit an annual report on the audit to the department.

5. Agree to annually conduct an audit of compliance with environmental requirements that are applicable to the covered facilities and to submit the results of the audit to the department.

***NOTE: Is the language about goals that is in level one supposed to be here as well? Given the requirement about superior environmental performance, it seemed that it might be unnecessary.

Don't believe it's necessary to repeat here

(d) To participate in level 2, an applicant shall demonstrate a record of superior environmental performance, and describe the measures that it proposes to take to maintain or improve its superior environmental performance, ~~in at least 2 of the following areas:~~

***NOTE: Or all of these areas, or how many? Should the requirements be the same with respect to the entity's past and future performance? Are "good actors" required to become better? Perhaps there should be a division between the requirements concerning past performance and the requirements that apply once the entity is participating in the program.

1. Improving the environmental performance of the applicant, at the covered facilities, in aspects of environmental performance that are regulated under chs. 160 and 280 to 295.

2. Improving the environmental performance of the applicant, at the covered facilities, in aspects of environmental performance that are not regulated under chs. 160 and 280 to 295.

3. Voluntarily restoring or preserving natural resources.

4. Helping other entities to comply with environmental requirements or to accomplish the results described in subd. 1. or 2.

(6) PROCESS FOR LEVEL 2. (a) To apply for participation in level 2 of the green tier program, an entity shall submit a letter of intent to the department. In addition to providing information necessary to show that the applicant satisfies the requirements in sub. (5), the applicant shall do all of the following in the letter of intent:

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

****NOTE: The interests that those parties have in what? Is there another way to express this? Must DNR have approved of these interested parties in advance? (see point 4. c. of the concept paper.) If so, I think something will need to be added to sub. (5). *in the entity's participation in the Green Tier Program.*

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

(b) The department may limit the number of letters of intent that it processes based on the staff resources available. After consultations with interested persons,

Suggestion: Move this to sub. (6), RNR's powers and duties

the department shall annually establish a list identifying aspects of superior environmental performance that the department will use to identify which letters of intent it will process *in the following year* and the order in which it will process the letters of intent.

****NOTE: 1. The concept paper states that DNR makes its decision within 90 days of submittal letter or 30 days of public notice or public meeting. What decision does that mean? How would those deadlines work given this provision? *Move provision*

whether to enter into K.

2. Should the process first have DNR determine whether the applicant satisfies the requirements in sub. (5) and then enter into negotiations? *yes* if so, when should that determination be made, before or after the public notice and opportunity for informational meeting? *add 30 day deadline into par. (j)*

As indicated below

(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 of the covered facilities.

or activities

****NOTE: Section 299.80 (8) has much more detailed provisions about notice. Should any of the notice or informational meeting provisions in this proposal be "beefed-up"? *No*

(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.

(e) Within 30 days after the public notice under par. (c), interested persons may request the department to grant 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.

(f) No sooner than 30 days after providing public notice under par. (c) about a letter of intent, the department may begin negotiations concerning a green tier contract with the applicant that submitted the letter of intent and with any persons to whom the department granted permission under par. ^(e)~~(g)~~.

(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.

****NOTE: This is based on s. 299.80 (6) (c). Should it be included? *Yes*

(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 of the covered facilities.

or activities

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

Within 30 days after the public notice under par. (h) or the public hearing under par. (i), the department shall decide whether to enter into a green tier contract with an applicant
(j) The department may enter into a green tier contract with an applicant if the applicant satisfies the requirements in sub. (5). The department shall ensure that the incentives provided under the contract are proportional to the environmental benefits that will be provided by the participant under the green tier contract. The term of a green tier contract is 5 years, with opportunity for renewal for additional 5 year terms upon agreement of the parties.

****NOTE: The concept paper indicates that review of DNR's decision to enter inter contract would be available only under s. 227.52. Does that mean there is to be no administrative contested case hearing? See s. 299.80 (6) (d) concerning review of cooperative agreements.

Yes

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

Becky -

We assume that other elements of the concept paper (e.g., de-certification, the learning system, statewide stakeholder group, etc.) will be incorporated in subsequent versions of the draft. Please advise if that is not the case.

Thanks for all your work Call me (60235) or Chuck Hammer (60911) if you have qns.

Tom Steidl



State of Wisconsin
2001 - 2002 LEGISLATURE

Today (1/24)

LRB-1830/P1

RCT.:.....



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

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

DNok

JUST GEN

1 AN ACT ~~relating to~~; 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 by the secretary
5 of natural resources. The secretary shall appoint members representing
6 environmental organizations, businesses, and local governmental units. ✓

****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. ✓

7 SECTION 2. 20.143 (1) (eg) of the statutes is created to read:

1 20.143 (1) (eg) *Green tier and environmental management system grants.*
2 Biennially, the amounts in the schedule for green tier and environmental
3 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.

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

5 **299.83 Green tier program. (1) DEFINITIONS.** In this section:

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

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

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

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

18 (e) "Green tier contract" means a contract entered into by the department and
19 a participant in level 2 of the green tier program, and that may be signed by other
20 interested parties, that specifies the participant's commitment to superior
21 environmental performance and the incentives to be provided to the participant.

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

23 (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 the green tier program. A group of public or private
17 entities may together apply to the department to participate in the green tier
18 program. An applicant for the green tier program shall identify the facilities or
19 activities that it intends to include in the program.

20 (3) ELIGIBILITY FOR LEVEL ONE. (a) An applicant is eligible for 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) To be eligible to participate in 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.

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 (c) To be eligible to participate in level one, 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.

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

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

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

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

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

15 a. Improving the environmental performance of the applicant, with respect to
16 each covered facility or activity, in aspects of environmental performance that are
17 regulated under chs. 160 and 280 to ~~289~~ ²⁹⁹.

18 b. Improving the environmental performance of the applicant, with respect to
19 each covered facility or activity, in aspects of environmental performance that are not
20 regulated under chs. 160 and 280 to ~~289~~ ²⁹⁹.

21 c. Voluntarily restoring or preserving natural resources.

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

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

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

7 (4) PROCESS FOR LEVEL ONE. (a) Upon receipt of an application for participation
8 in level one of the green tier program, 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 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 (5) ELIGIBILITY FOR LEVEL 2. (a) An applicant is eligible for level 2 of the green
22 tier program if the applicant satisfies the requirements in pars. (b) to (d). If an
23 applicant consists of a group of public or private entities, each requirement in pars.
24 (b) to (d) applies to each entity in the group.

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.

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.

18 (c) To be eligible to participate in level 2, an applicant shall do all of the
19 following:

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

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 auditor approved by the department
5 conduct annual audits of the environmental management system under subd. 1. and
6 to submitting an annual report on the audit to the department.

7 3. Commit itself to annually conducting an audit of compliance with
8 environmental requirements that are applicable to the covered facilities and to
9 submitting the results of the audit to the department.

10 (d) To be eligible to participate in level 2, an applicant shall demonstrate a record of superior
11 environmental performance, and describe the measures that it proposes to take to
12 maintain and improve its superior environmental performance.

13 (6) PROCESS FOR LEVEL 2. (a) To apply for participation in level 2 of the green
14 tier program, an entity shall submit a letter of intent to the department. In addition
15 to providing information necessary to show that the applicant satisfies the
16 requirements in sub. (5), the applicant shall do all of the following in the letter of
17 intent:

18 1. Describe the involvement of interested persons in developing the proposal
19 for maintaining or 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) The department may limit the number of letters of intent that it processes
24 based on the staff resources available.

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

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

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

14 (f) If the department determines that an applicant satisfies the requirements
15 in sub. (5), the department may begin negotiations concerning a green tier contract
16 with the applicant and with any persons to whom the department granted
17 permission under par. (e). The department may begin the negotiations no sooner
18 than 30 days after providing public notice under par. (c) about the applicant's letter
19 of intent.

20 (g) The department may terminate negotiations with an applicant concerning
21 a green tier contract and the decision to terminate negotiations is not subject to
22 review under ch. 227.

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

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

4 (j) Within 30 days after providing notice under par. (h) or, if the department
5 holds a public informational meeting under par. (i), within 30 days after that
6 meeting, the department shall decide whether to enter into a green tier contract with
7 an applicant. In a green tier contract, the department shall require that the
8 participant maintain the environmental management system described in sub. (5)
9 (c) 1. and abide by the commitments in sub. (5) (c) 2. and 3. The department shall
10 ensure that the incentives provided under a green tier contract are proportional to
11 the environmental benefits that will be provided by the participant under the green
12 tier contract. The department shall include in a green tier contract remedies that
13 apply if a party to the contract fails to comply with the contract. The term of a green
14 tier contract is 5 years, with opportunity for renewal for additional 5 year terms upon
15 agreement of the parties.

16 (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 (7) 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 level one if the participant does not implement, or fails to maintain,
12 the ^eenvironmental management system described in sub. (3) (d) 1., fails to
13 conduct annual audits described in sub. (3) (d) 4., or fails to submit annual reports
14 described in sub. (3) (d) 5.

15 (e) The department may, after an opportunity for a hearing, revoke 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
20 department to revoke a green tier contract under par. (e).

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

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
5 consistent with federal laws and other state laws, ^{and} which the department may provide
6 to participants in the green tier program. _{that}

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.

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 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
18 program. ✓

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

20 **560.125 Green tier and environmental management system grant**
21 **program.** (1) The department shall make grants from the appropriation under s.
22 20.143 (1) (eg) to nongovernmental organizations to help those organizations develop
23 the ability to participate as interested persons in the green tier program under s.
24 299.83. The department shall allocate at least \$150,000 per year for grants under
25 this subsection. ✓

1

B

(2) The department shall make grants from the appropriation under s. 20.143

2

(1) (eg) to assist persons to develop environmental management systems, as defined

3

in s. 299.83 (1) (b).

4

(END)

Note

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

LRB-1830/P1dn

RCT:K.....
ej5

Manyee Wong:

This is a preliminary draft of the green tier proposal. I was thinking that the draft could use "tier" one and 2 (or I and II), rather than "level." Let me know what you think. ✓

DNR's instructions for this draft indicated that the decision to enter into a green tier contract should be subject to judicial review under s. 227.52. Because the provisions in ch. 227 for judicial review presuppose an administrative hearing, which is not available under the draft, this draft provides for judicial review but does not refer to s. 227.52. ✓

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

two
Let

2
2

✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1830/P1dn
RCT:cjs:km

January 24, 2001

Manyee Wong:

This is a preliminary draft of the green tier proposal. I was thinking that the draft could use "tier" one and 2 (or I and II), rather than "level." Let me know what you think.

DNR's instructions for this draft indicated that the decision to enter into a green tier contract should be subject to judicial review under s. 227.52. Because the provisions in ch. 227 for judicial review presuppose an administrative hearing, which is not available under the draft, this draft provides for judicial review but does not refer to s. 227.52.

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