



State Senator
Neal J. Kedzie

11th Senate District

April 25, 2003

Governor James E. Doyle
115 East State Capitol
Madison, WI

Dear Governor Doyle,

Enclosed is a summary list of modifications to Senate Bill 61/Assembly Bill 228 I would like to offer for your review. As you know, SB61/AB228 create an Environmental Results and Environmental Improvement Program for regulated entities.

I understand and respect your concerns of the Environment Improvement Program and have been working diligently to address those concerns. Recently, State Representative Mark Miller informed me of his desire to assist in crafting and shepherding an agreeable amendment to the bill in the spirit of reaching consensus between the Legislature and the Executive branch. The enclosed modifications represent our collective efforts to that end.

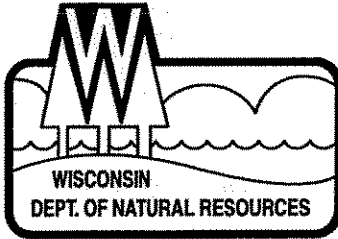
It is my hope you will have the opportunity to review these modifications and inform me of your position soon. If consensus can be reached, it is our intention to draft an amendment and adopt it to Senate Bill 61 in early May. The same would occur to Assembly Bill 228 and then advanced to your office. If consensus cannot be reached, then Senate Bill 61 will be advanced with no major amendments – essentially, as is.

Thank you for your review and consideration and I look forward to hearing from you.

Sincerely,

Neal Kedzie
State Senator
11th Senate District

NJK: dj



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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Darrell Bazzell, Secretary

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June 23, 2003

The Honorable Jon Erpenbach
Wisconsin Senate
Room 202 South

Dear Senator *Erpenbach*:

I am sorry to say that the Department of Natural Resources can no longer support the passage of Assembly Bill 228. The reason is the additional GPR cuts taken by the Joint Finance Committee in the DNR Administration and Technology and Community Assistance and External Relations Divisions. (CAER)

While we continue to have concerns about the audit immunity provisions in the bill, if the bill passed we could have implemented the program, even without additional resources, because the I felt that we could reallocate staff time to get the program underway. Once the law passed, I believed that we could attract grant money from new private and public sources to underwrite implementation of an expanded program.

However the size of the cuts in the current budget bill are so substantially greater than the Governor's proposed reductions that the provision of even the most basic services are called into question, let alone the additional workload associated with monitoring environmental audits would place on the DNR. We cannot accept the administration of these new programs, even if it means losing money from outside sources because we do not have the resources to manage or match these funds.

Given the nature and magnitude of the cuts, **the DNR cannot support the passage of Assembly Bill 228.**

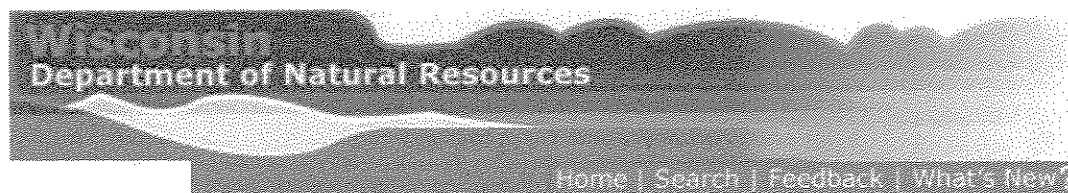
Sincerely,

Scott Hassett

Scott Hassett
Secretary

cc. Pat Henderson
Mark McDermid

Green Tree



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APPLETON, WISCONSIN 54912-0599

Neal — In my haste at leaving
I neglected to put this attachment
in the letter I sent to Senate
Committee members on Green
Tier. Could you please send it
to Committee members.

Thanks
George

" " (SB61) ??
O Fiscal Note

* Work load for DNR

* Committee not met
since Dec. 2000

- proportionality
- what will be funded?
- Chapter vague

Charlie Kempthorn, Sen. CMB
objections to SB61

Either adopt ^{nothing} ~~nothing~~
happens til next breunium
or postpone.

\$400,000 grants for Sen. Bus.
Taken out.



The Environmental Results Program Proposal

An Outline for Environment Improvement

The product of leaders from business, the environmental community, academia and government, Wisconsin now has the opportunity to consider and adopt legislation supporting environmental, economic and regulatory improvements. Continuing our state's history of environmental leadership, the proposed legislation provides an opportunity for Wisconsin to realize both business and environmental goals, supporting the Department of Natural Resources' mandate to protect and enhance our environment, and setting the stage for economic growth.

Purpose and Intent

The Environmental Results Program proposal will establish a system for voluntary environmental performance that will exceed existing standards. The program will provide recognition and incentives for participation, and strive to lower the overall transaction costs associated with environmental performance. Participants in the higher level of the two-tier program will be able to negotiate specific environmental improvements that may not be possible under the existing regulatory system. Groups of companies or public sector entities also may join together in an environmental charter with the state to pursue goals the state may be fiscally and administratively unable to address.

Participation Criteria

Participants in the proposed program would need to demonstrate:

- A strong environmental compliance record, with no recent civil or criminal judgements, or DNR citations.
- A formal environmental management system (EMS) that will either be adopted or has been implemented.
- Annual performance reviews, with the results submitted to the DNR.
- Prompt follow up action to any findings of non-compliance discovered during the annual reviews.
- Demonstrated continual improvement of environmental performance.
- Involvement of interested persons in the development of a negotiated agreement (Level 2).

Level 1 Participation

Incentives for Level 1 participation include:

- Initial and annual recognition of participation by the DNR.
- Use of the Environmental Results Program logo.
- Assignment of a specific DNR professional as the department's point of contact for the facility.
- Lowest level of inspection frequency once an EMS has been adopted.

Level 2 Participation

The participation criteria for Level 2 are more rigorous than Level 1. Prior implementation of an EMS and participation by interested stakeholders in any negotiated agreement is required. Stakeholder participation includes public meetings with interested stakeholders. Incentives for Level 2 include the ability to craft and negotiate a specific agreement that provides the optimal environmental and economic value. These specific agreements, carrying the force of law, may offer Wisconsin and the participants the greatest value of the Environmental Results Program program, allowing significant environmental improvements, supporting overall government efficiency and business competitiveness.

Deferred Civil Enforcement

Both Environmental Results Program levels allow for deferred enforcement by the DNR of any findings resulting from the annual performance reviews conducted by the participants. The DNR will not commence civil action if any violations are corrected within 90 days of the audit and possibly up to 12 months in some situations. Deferred enforcement is not applicable if there is an imminent threat to public health and the environment or if the DNR discovers the violations before an EMS is implemented.

Charters

The proposal allows the DNR to establish an environmental charter with an association of public or private entities (or a combination of public and private entities) to encourage and support their participation in either level of the Environmental Results Program proposal. This provides the opportunity for a business sector or a geographic association of parties to join together in establishing and reaching environmental goals.

Advisory Group

A Environmental Results Program advisory group would be created to advise the DNR on the implementation of the program, including setting program goals, evaluating transaction costs, assessing the proportionality of incentives provided, and recommending procedural and other changes in the program. Group representation would include business, local governments and environmental organizations.

Questions

If you have questions, please call (608) 267-3125.



The Environmental Case for the Environmental Results Program

Moving from Compliance to Performance

Significant environmental progress has been achieved since the first Earth Day over thirty years ago. The major environmental legislation passed by Congress and implemented by the U.S. Environmental Protection Agency and the Wisconsin Department of Natural Resources have improved and protected Wisconsin's air, land and water. However, the resulting programs, within both the agencies and the regulated community, often focus solely on compliance. The quantity and complexity of environmental challenges facing Wisconsin demands that we provide the opportunity to achieve more.

The proposed Environmental Results Program legislation offers the opportunity to better protect and manage both our natural resources, as well as our economic and institutional assets.

Under our current environmental regulatory system, we have utilized a "one size fits all" approach to environmental protection. We have set the goal as compliance, often making the achievement of that goal very ineffective and inefficient. Common approaches have been delineated by the current regulations, including defining the application of specific technologies in an attempt to address and control environmental behavior at a facility or production line level. Competitive pressures on Wisconsin's business community, combined with state budget deficits, compels us to seek a new model that can unite competitive pressure with environmental goals to achieve superior environmental performance.

Changes in Business Practice

Measurable Environmental Performance Improvement

Utilization of the Environmental Results Program legislation by Wisconsin's business community would promote the development and application of new environmental action that not only protects the environment, but also provides measurable environmental benefits. Actions may include the application of new pollution control technologies, production process changes, or introduction of sustainability strategies that yield both economic and environmental benefits. A key component of Environmental Results Program participation is the agreement that measurable environmental improvements will result. This is an improvement over the current steady state "compliance is the goal" approach that many companies pursue.

Higher Assurance of Compliance

Facilities enrolled in the Environmental Results Program will conduct annual assessments of their environmental performance, including their regulatory compliance status. Results of these assessments will be provided to the DNR. The utilization of these assessments will reduce significantly the potential for noncompliance, will help facilities move above the compliance threshold, and will improve overall environmental performance.

More Robust Environmental Management by Facilities

Participants in Environmental Results Program will implement formal environmental management systems (EMS). An EMS can make the environment an integral part of business decision making, challenging a company to move from continual compliance to continual improvement. EMS adoption will require proactive planning by management, attention to the environment by every employee, and an examination of business processes (even if they are not currently regulated) that pose a potentially significant environmental impact. Consequently, Environmental Results Program participants are likely to identify and minimize potential environmental risks that are not addressed by existing compliance-based programs.

Improvements Across Business Sectors

The Environmental Results Program will allow groups of businesses or public entities to join together in negotiating an agreement (or environmental charter) and setting environmental performance goals among several facilities and companies. Consequently, measurable environmental improvements can be made among several facilities across the state, thereby leveraging the efforts of the DNR.

Redirection of Agency Resources

Focusing on Facilities that Need Assistance

Companies demonstrating superior environmental performance can move into the Environmental Results Program and consequently reduce the burden placed on the DNR's resources. This can allow the DNR staff to focus on those facilities that need regulatory guidance to maintain or achieve compliance. DNR can focus efforts where staff expertise most needed.

Increased Access to Information

Annual Reporting

Participants in the Environmental Results Program will report their environmental performance annually. This will include progress in meeting measurable performance improvements, any regulatory compliance issues and stakeholder involvement activities. Implementation of the EMS by these facilities will drive continual environmental performance improvements.

Providing Information, Seeking Feedback

Communities, nearby residents and other interested parties will have the opportunity of not only knowing more about the activities of facilities enrolled in the Environmental Results Program program, but also have greater access in providing their comments and concerns. Participating facilities will commit to working closer with their local communities and those potentially most affected by their operation.

Questions?

If you have further questions about the Environmental Results Program proposal, please call (608) 267-3125.



The Business Case for the Environmental Results Program

Realizing Business Value in Regulatory Innovation

While most companies have achieved consistent compliance with regulatory requirements, the on-going cost of compliance is increasing with the advent of new regulations, monitoring and reporting requirements. The result is that corporate and facility environmental programs focus on compliance rather than having the opportunity to realize both environmental and economic improvements within the existing system.

An opportunity for increasing the potential business value of environmental expenditures exists with the proposed Environmental Results Program legislation. Building on the experience of regulatory innovation programs in Wisconsin and elsewhere, the Environmental Results Program proposal offers the opportunity for proactive, high performance Wisconsin companies to modify their existing environmental programs in a manner that increases value.

What Is the Tangible Value?

The proposed provisions of the Environmental Results Program allow companies to tailor an innovative regulatory proposal specific to their particular operation and needs. The second level of the Environmental Results Program provides both the applicant and DNR an opportunity to negotiate an agreement that is unique to a specific business operation, and that has the potential of offering measurable business value through several means.

Permit and Decision Streamlining – Reducing the turn around time on permits or other decisions by the DNR can reduce internal environmental staff effort, legal counsel time, and consultant costs. For example, one pilot program participant was provided the opportunity to obtain a permit decision from the DNR within 30 days.

Permit Exemptions – Existing rules provide construction permit exemptions for very minor projects. Under a pilot program, one major facility was granted a broader construction permit exemption as long as certain emission parameters were not exceeded.

Testing and Installation of New Technologies – Approval and permit exemptions for the testing and installation of new technologies, especially where energy conservation or emission reductions may occur, have been granted. This may allow Wisconsin companies to modernize their production facilities, allowing them to remain competitive and more aggressively respond to new and developing markets.

More Efficient Monitoring, Recordkeeping and Reporting – If a facility has a strong compliance record combined with a robust environmental management program, there is the potential to negotiate more practical and effective monitoring and reporting than currently contained in permit requirements. One pilot program facility was able to reduce its monitoring and recordkeeping level of effort equal to approximately one half-time staff equivalent. Another pilot

was allowed to reduce annual monitoring submittals from approximately 230 pages per year to five.

Innovative Technical Solutions – The Environmental Results Program encourages companies to propose innovative environmental and production solutions. One imaginative proposal approved under a pilot program has allowed one company to reduce the purchase of fuel equivalent to the energy contained in over 825 railroad cars of coal. This was achieved in less than two years.

Each of the above opportunities has been demonstrated in a Wisconsin pilot program. The limits and value of other regulatory innovation proposals under an Environmental Results Program agreement may only be limited by imagination and specific business and facility needs.

The actual business value offered by the Environmental Results Program proposal, measured in simple economic terms, will vary according to the business. Success, whether in dollars or environmental quality, can only be measured if companies support the passage of the Environmental Results Program and then participate in the program.

What Is the Intangible Value?

Besides the potential for measurable economic and environmental returns stemming from Environmental Results Program participation, a company also may realize intangible benefits.

Regulatory Recognition – Participants in the Environmental Results Program will be recognized by the DNR, and the agency will publicize this fact.

Improved Agency Relations – Participation in a proactive environmental program usually improves environmental performance, and hence an improved perception of the facility by agency leadership and staff. Communication barriers may be breached, and there may be a greater appreciation of mutual goals.

Employee Pride – Facilities in Wisconsin and elsewhere that have participated in regulatory innovation programs often see an increased level of employee pride and ownership in environmental activities and overall business performance. What's good for the environment is good for employees and the business.

Branding – Superior environmental performance is increasingly an expectation of customers and the community. Recognition of Environmental Results Program participation can support the brand value of your company.

Questions

If you have questions, please call (608) 267-3125.

november 2002

news from P4

A NEWSLETTER TO THE COMMUNITY FROM PLEASANT PRAIRIE POWER PLANT

Up close and personal An invitation to P4

We're installing state-of-the-art pollution controls at Wisconsin's largest power plant, and you're invited to see it! Visit Pleasant Prairie Power Plant (P4) on Thursday evening, Nov. 14, at 7 p.m. for a tour of the plant including a look at the new \$80 million emission reduction system.

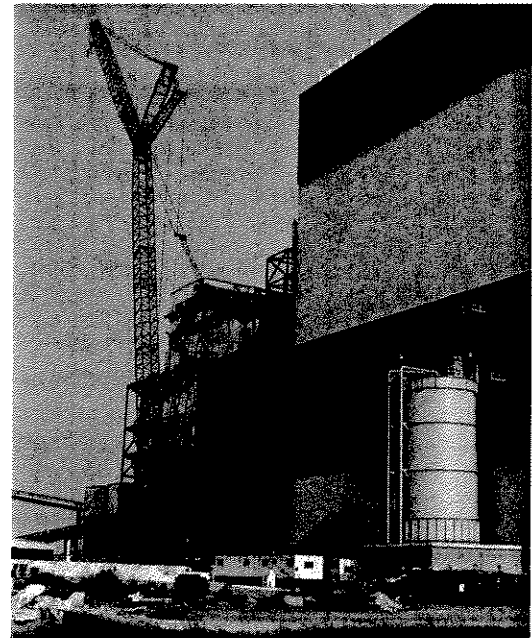
You'll also get a chance to hear about our environmental progress and other activities at the plant. Please call Ed Morris at 262-947-5625 by Nov. 13 if you plan to attend. **Be our guest for refreshments and mark your calendar for Nov. 14!**

Big cranes. Big project.

The presence of large cranes at the north end of Pleasant Prairie Power Plant (P4) means work is under way to reduce the plant's air emissions.

This construction activity is all part of an \$80 million project to install a new Selective Catalytic Reduction (or SCR) system on one of the plant's two boiler-generator units. "This system has a function similar to the catalytic converter on your car," explains Ed Morris, P4 environmental coordinator. "All of the hot exhaust gases from our plant boiler will pass through a structure constructed of a special material inside this SCR unit. Ammonia is added at the inlet of the SCR to create a reaction in the passages that will reduce the level of nitrogen oxide (NO_x) emissions."

When completely installed in 2003, the SCR is expected to reduce NO_x emissions by approximately 90 percent. Nitrogen oxides are a contributor to ground-level ozone (smog).



Large cranes are part of a project to install equipment that will reduce emissions.

"The installation of this new control system at P4 is a significant step in addressing this regional air quality issue," says Morris.

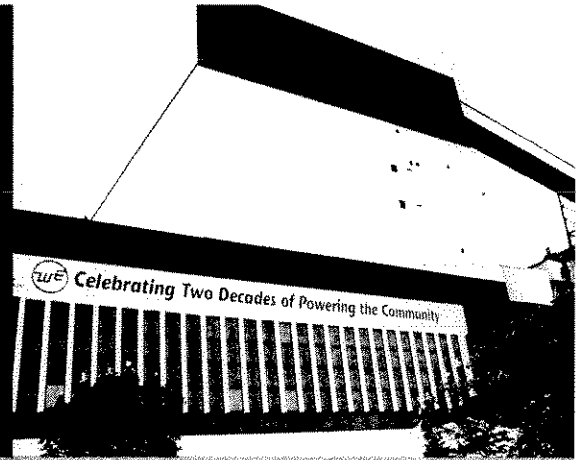
If you would like more information about the SCR project, please call Ed Morris, P4 environmental coordinator, at (262) 947-5625.

What's Inside

Prairie restoration • Falcon recovery program • Ash recovery
Environmental policy • Multi-Emission Cooperative Agreement

we energies





Putting the P

A small army of volunteers last spring began restoring the prairie at P4 by planting a prairie garden at the west entrance to the plant on 95th Street. Nearly two-thirds (7,000 plants) of the planting was completed despite cool weather and tough soil conditions. We Energies employees and family members were joined by volunteers from Wild Ones Root River, Kenosha Racine Land Trust, McKinley Middle School, Hoy Audubon Society, Pleasant Prairie Park Commission, Earth Project, Friends of Milwaukee's Rivers, Parks People of Milwaukee, and Denver-based Americorps volunteers.

"We hope that the prairie planting raises environmental awareness among our employees, extends our stewardship activities beyond regulatory requirements, and demonstrates our commitment to community outreach," says Ed Morris, P4 environmental coordinator.

P4 Fast Facts: Pleasant Prairie P



airie in Pleasant Prairie



Despite cool weather, volunteers last spring worked at a prairie garden site near the west entrance to P4 to plant about 7,000 plants.

The Burning Question: Why prairie restoration?

Where there's smoke, there's fire. But last spring, smoke and fire observed north of P4 had nothing to do with generating electricity. Instead, a prescribed burn on plant property in an area north of Bain Station Rd. was conducted to restore the prairie. "Prairie burns are a technique used to maintain the integrity of prairie lands by controlling woody vegetation and allowing prairie species to thrive," says Dave Cieplich, environmental technician. "We maintain two areas between the plant and Highway 50 where we are reducing unwanted nuisance species to allow the prairie ecosystem to thrive."

Botanist and prescribed burn expert Richard Barloga, discovered in the late 1980s several significant species in the area now called the Bain Station prairie. Recovery of the prairie began in 1996, when We Energies and The Nature Conservancy coordinated a volunteer brush removal and burn.

Prior to European settlement, prairie ecosystems once covered more than 15 percent of the U.S., including parts of Wisconsin. This "sea of grass" provided rich forage and habitat for a wealth of plants and animals. More importantly today, scientists are discovering that the deep roots of prairie plants (sometimes up to 6 feet deep or more) are also an effective way to capture and store carbon dioxide from the atmosphere.

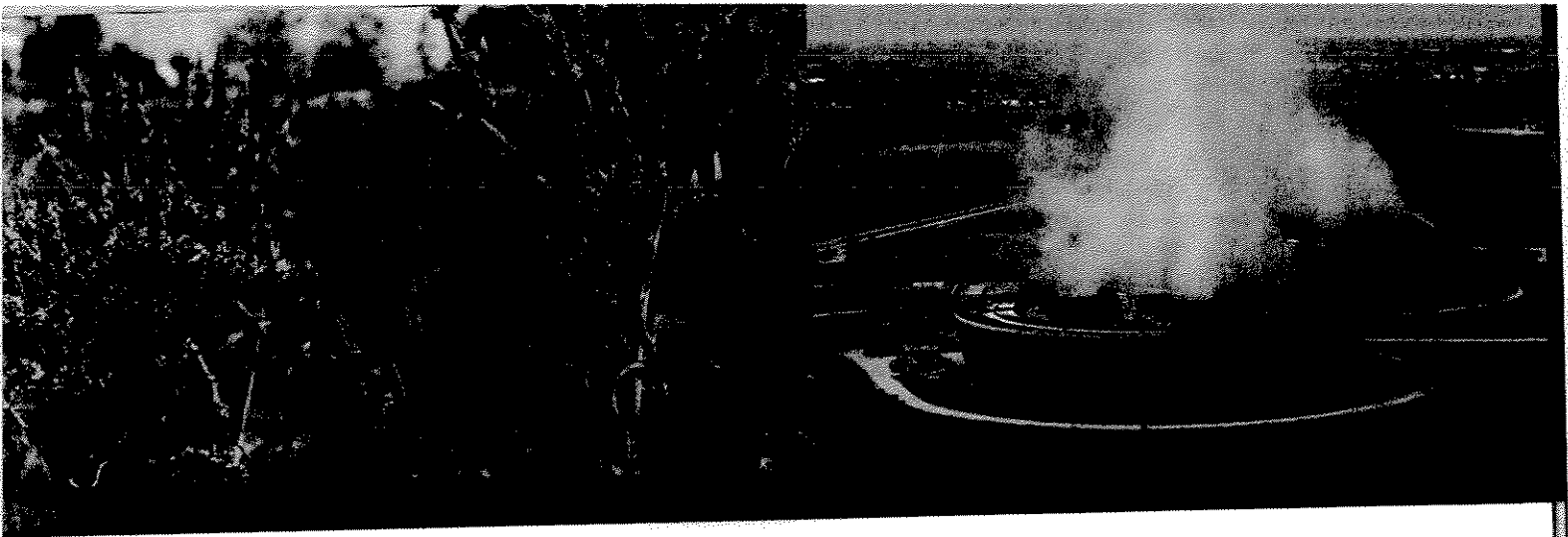
One of the first prairie restoration activities in Wisconsin occurred at the UW-Madison Arboretum in the 1930s under the leadership of Aldo Leopold, the renowned ecologist who discovered and promoted the value of habitat variety. The Madison prairie is now over 110 acres and provides habitat for a variety of threatened animals species. Hopefully, the efforts at P4 also will develop into an area that provides this local diversity.

P4 is a model for environmental innovation

The ongoing work on at P4 has caught the attention of members of the state Legislature. Members of the Senate's Environment and Natural Resources Committee visited the plant on a fact finding tour to learn more about the plant, the Environmental Cooperative Agreement, and the innovative environmental ideas, including the ash recovery for energy project.



P4 Environmental Coordinator, Ed Morris, shows off some of the plants used in last spring's community prairie planting day.



The visit stems from potential changes in Wisconsin's environmental law that would provide recognition and flexibility for those facilities with a strong environmental program and that demonstrate measurable improvements in environmental performance.

Environmental Policy – What we believe

The employees at P4 are the foundation of environmental performance for the plant. The development of a plant environmental policy statement was prompted by the creation of a formal environmental management system (EMS) under the terms of our Environmental Cooperative Agreement with the Wisconsin DNR. "The process of putting our beliefs in writing has been a good exercise in defining what we must do to protect the environment,

and meet the expectations of our customers and neighbors," explains Ed Morris, P4 environmental coordinator.

"This policy is more than just words on paper," says Morris. "We are eager to demonstrate our commitment to this policy everyday in how we perform our jobs at P4."

Recovering ash – Recovering energy

One of the innovations We Energies is testing under the terms of the Environmental Cooperative Agreement with the Wisconsin DNR is the recovery and burning of coal ash stored in company landfills. "The process of blending the ash with new coal allows us to extract the remaining energy in the ash in the more efficient boilers at P4 that was not

possible with older power plants," says Steve Downs, P4 plant manager.

In a first-in-the-nation project, P4 staff during 2001 recovered approximately 9,000 tons of ash previously stored at the landfill located at the north end of the plant property. "The energy recovered from this ash is equivalent to approximately 55 rail car loads of coal," says Downs. "And even better, we can sell the ash resulting from this process to the construction industry for several beneficial uses which means we don't put anything back into the landfill."

By the end of 2002, ash recovery equivalent to the energy of three full train loads (400 rail cars) of coal is expected, benefiting customers, the local community, and the environment.

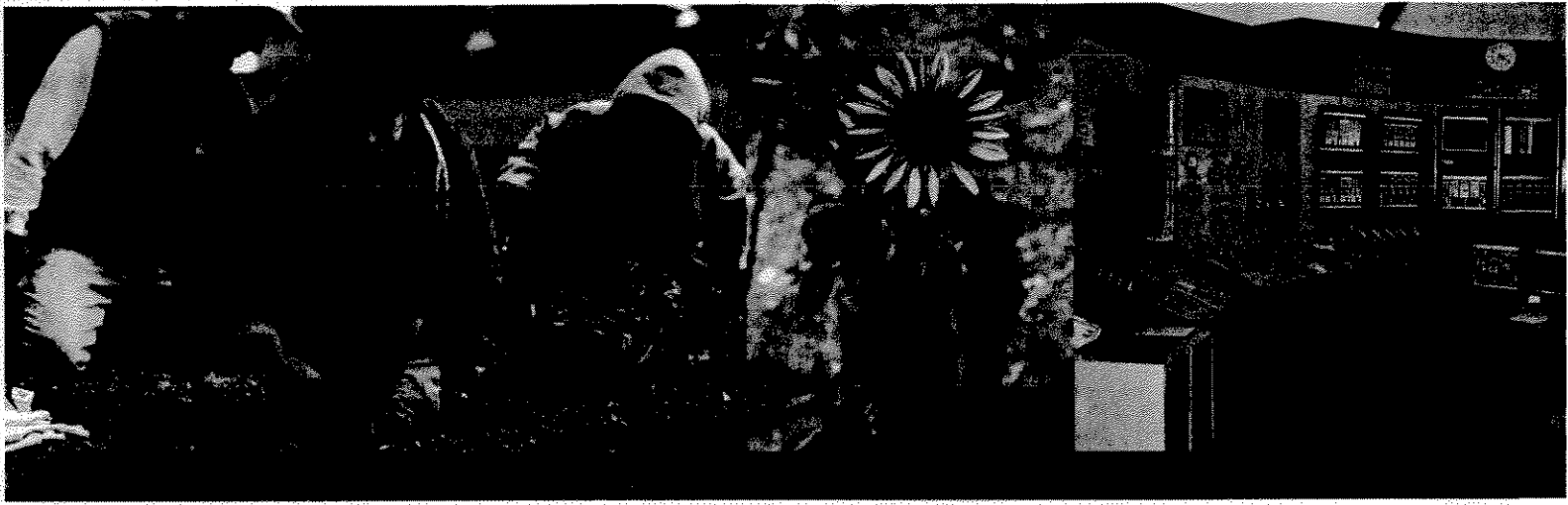
continued

Pleasant Prairie Power Plant Environmental Policy

As employees of Pleasant Prairie Power Plant, we understand the need to do our job in a manner that minimizes the potential impact on the environment. Therefore, we commit to the following actions to make sure that we are good stewards of the environment around us.

1. We will comply with all laws and regulations, and any company and plant requirements.
2. We will strive to minimize our impact, reducing pollution, and take practical steps to improve the total environment in and around Pleasant Prairie.
3. We will measure our environmental performance, seek to be more efficient, and not be limited to just what is required of us.
4. We will review our systems and performance and continually strive for improvement.
5. We will work with our managers, each other, suppliers, community and customers in seeking new and better ways of doing our work.
6. We will be aware and accountable for our environmental responsibilities, and ensure any necessary training is accomplished.
7. We will share information on our performance with our customers and community, seek their input, and respond to their inquiries.
8. We will strive to be a model for other facilities.

P4 produces almost 1,200 megawatts of electricity using boilers that reach temperatures of 3,000 degrees Fahrenheit.



Approval requested for ash storage building

We Energies has submitted a Site and Operational Plan and a Conditional Use Permit to the Village of Pleasant Prairie requesting the construction of a temporary conditioned ash storage building.

"Because we have been successful in demonstrating the effectiveness of recovering energy from the ash stored in our landfills, we want to make the whole process more efficient by constructing a temporary conditioned ash storage building," says Steve Down, P4 plant manager.

According to Downs, when ash is removed from landfills for re-combustion, the material is screened to remove particles larger than one inch. A small amount of moisture is added to make it more manageable. (The resulting product resembles a very dark screened topsoil that might be used for landscaping.) "We want to be able to keep it covered away from both precipitation and

excess drying," he says. "The conditioned ash storage building would provide us about three days of storage capacity before we blend this ash fuel with the coal."

A public notice and hearing is expected to be scheduled later in the fall. If approved, the storage building would be constructed close to the blending building shown left.

Company recognized for environmental innovation

P4 was recognized in March when it received a Governor's Award for Excellence in Environmental Performance. This award was prompted by We Energies ash recovery initiative. (see related article)

We Energies received a Business Friend of the Environment Award in May as a result of P4's Environmental Cooperative Agreement with the Wisconsin DNR and the environmental benefits resulting from this regulatory initiative.

We Energies signs second agreement

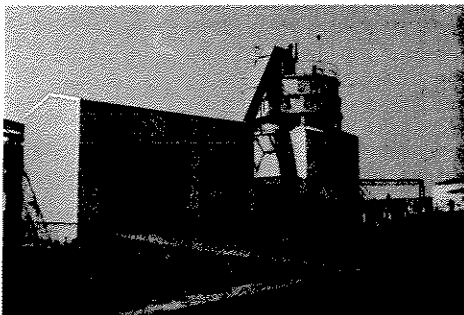
Leveraging the success and experience at P4, We Energies signed a second Environmental Cooperative Agreement with the Wisconsin DNR on Sept. 30. The Multi-Emission Cooperative Agreement (MECA) calls for We Energies to invest \$400 million – \$600 million in environmental improvements over the next ten years to reduce emissions from its power plants:

Emission	Reduction Goal
sulfur dioxide	45%-50%
nitrogen oxide	60%-65%
mercury	50%

The MECA is a groundbreaking voluntary agreement that sets a new goal for how a company, environmental regulatory agency and interested parties can achieve a cleaner environment.

"With this agreement, We Energies is pledging major investments in air quality that will generate significant environmental benefits," said Darrell Bazzell, Wisconsin DNR secretary. "It's not every day that a company volunteers to cut its air emissions in half. It's a terrific step in the right direction. I'm thrilled to see this company step forward voluntarily and demonstrate real leadership to help us address the significant problems we face."

In exchange for the voluntary emission reductions, the DNR will provide some regulatory flexibility including permit streamlining, reduced administrative requirements, and alternative monitoring and enhanced corrective action procedures. MECA is similar to the successful cooperative agreement that has been in place at P4 for the past two years. Emission reductions at We Energies' power plants may be achieved by adding emission control equipment, making changes in fuel choices, and re-powering some existing power plants.



Recovered ash is mixed with coal in this blending building to create an innovative fuel that extracts remaining energy contained in the ash.

Peddle Power a better choice

Walking from one part of P4 to another is often more than a short walk. And locating a truck or other motorized vehicle takes more time and energy than its worth.

The solution is an adult three-wheeled bike, complete with customized carrying basket on the back. It's an easier, faster, and less energy intensive way of getting around the plant.



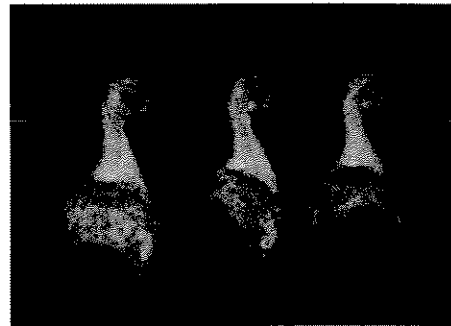
A three-wheeled bike is a quick and low-energy way to get around the P4 property.

Company Named "Climate Leader"

The Environmental Protection Agency (EPA) named We Energies a "Climate Leader" in a ceremony in Chicago on Sept. 30. This is in recognition of the company's commitment to reduce greenhouse gas emissions. We Energies continues to be at the forefront of the global climate change issue and is one of only four U.S. utilities to receive the "Climate Leader" distinction. As a participant in the U.S. Department of Energy's Climate Challenge, We Energies has recorded in excess of 27 million tons of greenhouse gas reductions since 1995.

Duck, Duck... Juice

We Energies has found another innovative and earth-friendly way to generate electricity. The company recently celebrated Wisconsin's first fully operational duck-manure-to-energy digester facility at Maple



Leaf Farms near Franksville in Racine County.

Maple Leaf Farms is the leading duck producer in North America. As animal waste decomposes, it releases methane gas – a potent greenhouse gas – that can be used to power a small power plant. A manure digester speeds up the process for capturing the methane. The Maple Leaf Farms facility produces about 200 kilowatts of electricity—enough to provide electricity to about 75 homes. We Energies purchases the power for distribution to its customers.

Your comments are welcome

If you have a question or concern about Pleasant Prairie Power Plant or would like more information about a topic in this newsletter, call either Steve Downs, plant manager at (262)947-5321, or Ed Morris, environmental coordinator at (262) 947-5625; or Clarise Zellner, assistant plant manager at (262)947-5651.

www.we-energies.com

we energies



Pleasant Prairie Power Plant
8000 - 95th St.
Kenosha, WI 53158

June 12, 2001

The Honorable Brian Burke, Co-chair Joint Finance Committee
The Honorable John Gard, Co-chair Joint Finance Committee
The Honorable James Baumgart, Chair Environmental Resources Committee
The Honorable Neal Kedzie, Chair Environment Committee
State Capitol
Madison, WI

Dear Senators Burke and Baumgart and Representatives Gard and Kedzie:

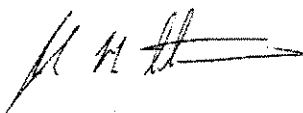
The signatories to this letter, representing large and small businesses, environmental groups, municipalities, law firms and community organizations have met seven times since July, 2000 to develop an initiative entitled "Green Tier". This proposal encourages entities subject to environmental regulations to adopt Environmental Management Systems, achieve superior environmental performance and obtain appropriate regulatory flexibility. The Departments of Natural Resources and Justice and the USEPA provided technical assistance to this group during its deliberations. The process that was used to develop Green Tier required substantial give and take by all involved and a solid trust relationship was built around the attached draft.

The language in the attached draft is different from the language initially contained in the 2001-2003 Biennial Budget Bill. In December, after a great deal of discussion and hard work we developed a consensus on concepts for a draft bill. This was prior to the 2001-2003 Budget's introduction. The proposed Budget Bill has a version of Green Tier that had some similarities to this draft but there is disagreement about that version. The primary difference is that the December conceptual agreement and this draft do not contain the limited audit immunity language, identified as Tier 1 in the Budget Bill. Some members on the committee have long supported and continue to support limited audit immunity. Several members on the committee are strongly opposed to it.

We respectfully submit to you this draft for your consideration and request that it be adopted by the legislature. In addition, we have carefully studied the fiscal and staff resources that would be required to make this program effective and we respectfully submit them for your consideration as well.

We would be glad to work with the Joint Finance Committee and its staff on this issue.

Sincerely yours,



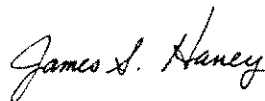
Mayor John Antaramian
City of Kenosha



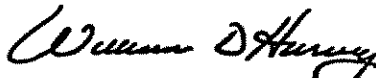
Linda H. Bochert
Michael Best & Friedrich, LLP



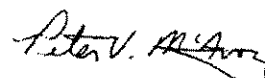
Thomas Estock
Quad Graphics



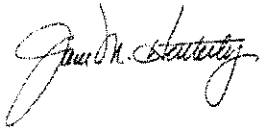
James S. Haney
Wis. Manufacturers & Commerce



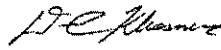
William Harvey
Alliant Energy



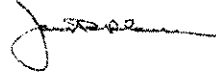
Peter McAvoy
Sixteenth Street
Community Health Center



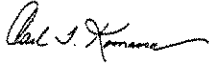
Jane M. Hutterly
S.C. Johnson & Son, Inc.



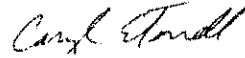
David Kluesner
International Paper



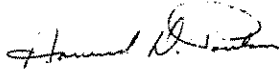
James R. Klauser
Wisconsin Energy



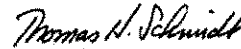
Carl T. Komassa
Small Business Environmental Council



Caryl Terrell
Sierra Club, John Muir Chapter

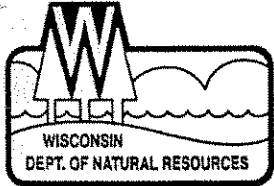


Howard D. Poulson
Wisconsin Farm Bureau Federation



Thomas H. Schmidt
Wisconsin Paper Council

cc: Governor Scott McCallum
Assembly Speaker Scott Jensen
Assembly Majority Leader Steven Foti
Senate President Fred Risser
Senate Majority Leader Charles Chvala
Wisconsin Natural Resources Board
Darrell Bazzell - DNR



Green Tier Program

A Proposal from the Green Tier Committee

Wisconsin has a strong record of complying with state and federal environmental regulations. Over the last 30 years pollution has been significantly reduced to benefit human health, welfare and the environment. Yet our laws do not cover all the environmental risks and impacts we face. Many sources of environmental harm are either largely or completely unregulated. Facilities that comply with laws still are permitted to release pollutants. Some facilities have yet to meet minimum environmental requirements. And many people want to improve the environment beyond what regulations require.

Given this situation today, how can more environmental gains be made? Regulation and enforcement will remain necessary. New regulations will be needed to address some environmental risks. But Wisconsin believes that even more environmental improvement can be achieved through innovative new programs that encourage businesses and communities to pursue superior environmental performance and share responsibility for protecting the environment.

The proposed **Green Tier Program** is a major innovation designed to achieve maximum levels of environmental protection. Green Tier offers a way for regulated and unregulated entities to go beyond compliance, address unregulated problems and restore natural resources in return for incentives that are in proportion to superior performance. The Green Tier concept was developed into a legislative proposal in 2000-01 by a committee of executives from business, agriculture, municipalities and environmental groups brought together by the Wisconsin Department of Natural Resources.

The **Green Tier Program** is designed to better focus environmental protection work with communities and industries and to provide legal standing for that work comparable to that of the current regulatory system. Under Green Tier, all organizations and sectors could enter into legally binding contracts that address multiple environmental goals. These entities would be able to set a series of commitments that go beyond the regulatory requirements set by local, state, and federal government agencies, and to put in place agreements that will make it easier for these entities to meet specified commitments while improving their operations. **Green Tier would use three major tools:**

- **Environmental Charters:** Environmental charters are granted to persons and define the scope of responsibility, activities, authorities and services to achieve superior environmental performance. They may be organized around land areas, watersheds, air-sheds, forests, political subdivisions, activities, trade or business sectors, products, occupations, supply chains, emission categories, species, biological concepts or on any other basis to achieve superior performance. Under Green Tier, the Charter is the empowering legal instrument that gives standing to a party to get things done.
- **Environmental Contracts:** Environmental contracts are enforceable contracts entered into by the state that specify the commitments to superior environmental performance on the part of the contracting parties. In some cases, the state or others might commit incentives or support that is proportional to the goals and accomplishments. Under Green Tier, the contract is the enabling and committing legal instrument used to trigger rewards for achievements or sanctions for shortfalls.
- **Environmental Management Systems:** Environmental management systems are business systems focused on achieving environmental results. They are organized sets of procedures that identify goals, commit resources to those goals, monitor progress and continuously improve performance. These systems will produce helpful performance data used to report progress toward Green Tier environmental goals. Under Green Tier, the EMS would be a legally-viable due diligence tool that protects all parties and helps businesses compete in international markets.

The existing regulatory system remains for those who want it or do not qualify for Green Tier. A credible compliance system is essential to "push" entities toward Green Tier.

Green Tier would be a two-level system. Level One would be an entry level. Regulated entities must meet "fact-based" criteria that bar participants with certain criminal judgments in the last five years and civil judgments in the last three years. Requirements exist for public involvement, audits, environmental management systems and reporting. Level Two, the Green Star level, uses contracts and requires superior environmental performance. Removal for cause would be possible at both levels.

Superior environmental performance means measurable or notable improvements in air, water, land or natural resources quality or ecosystem protection. The proposed Green Tier legislation would provide a menu of options to meet the needs of multiple parties and communities. All goals should go beyond minimum legal standards. They may include but are not limited to biodiversity, reduced environmental risk, damage mitigation, biosphere protection, energy and water management, comprehensive resource management, resource conservation, technology transfer, mentoring, sustainable community development and promoting civil discourse.

Green Tier's incentives include regulatory flexibility, streamlining, technical assistance, single point of DNR contact, recognition and use of Green Tier or Green Star logos for public relations and marketing purposes. In addition, Green Tier would align with the U.S. Environmental Protection Agency's new Performance Track that will provide federal regulatory incentives. In the intermediate future, officials in the Administration and Congress indicate Green Tier may influence a new generation of environmental law now under discussion. With a greater interest in the states, Green Tier would position Wisconsin to influence the national debate.

The Green Tier Committee

Committee members worked diligently to agree on the concepts used for drafting legislative language. The Committee will support the future law presuming two things:

1. That the statutory language accurately reflects their negotiated agreement;
2. That an appropriation accompanying the proposal enables businesses, environmentalists and agencies to credibly implement it and that resources are not inappropriately reassigned from other programs (which would unnecessarily invite the suggestion there was a relaxing of environmental protection).

Fiscal and staff resources needed to carry out the program include an increase of 5.0 FTE SEG positions in the Department of Natural Resources to implement the Green Tier Program as well as a \$300,000 grant program.

Next Steps for Green Tier Program - The Green Tier Committee's proposal was transmitted to the Legislature on June 12, 2001 for consideration as a separate bill to be introduced in the current session of the Legislature.

More Information - Details about the Green Tier proposal, its legislative progress and the Committee's work can be found on the DNR Web site at www.dnr.state.wi.us/org/caer/cea/green_tier/index.htm. Questions may be directed to to the Bureau of Cooperative Environmental Assistance, 608/267-3125.

How Wisconsin's Green Tier may be applied

Milwaukee's Menomonee Valley: A Green Tier Charter could give the valley an ability to set and address environmental priorities to build a sustainable community. The Chartered Valley then will use contracts to connect economic, environmental and community goals. The Joyce Foundation of Chicago is considering grant support to the valley, assuming Green Tier's progress.

Environmental goals: Green Tier could allow us to set and reach environmental goals, such as in the CERES Principles, that fall outside of regulations. Over time, it also will allow regulators to refocus on more serious compliance problems outside Green Tier.

Paper industry: A Green Tier Charter could allow mills to collectively reduce emissions, achieve sustainable forests and produce "Green Star" labeled products. Green Tier will impress new Scandinavian owners of our mills. Green Tier Contracts will allow better capital planning.

Dairy Business Association: Green Tier could allow dairy farmers to credibly manage many environmental issues on their own, conform with regulator and neighborly needs and provide the basis for "Green Star" branding of dairying that's "compatible with nature and neighbors."

Small business: Green Tier will provide technical help to meet small business environmental needs, help them organize for self help, empower larger companies to help and add marketing potential through "Green Star," promotion that also may attract new capital for growth.

Manure to energy: Manure is a water quality threat, producer cost and energy opportunity. Green Tier Charters and Contracts will allow livestock farmers, farm organizations and utilities to inventory, collect, transport and burn surplus manure using new Danish technology to produce "environmentally friendly" energy.

Municipalities: Cities could use Green Tier to manage watersheds, attract responsible businesses, revive community through creative brownfield initiatives, achieve efficiencies through cross-jurisdiction Green Tier Charters and get credit from bond firms for being better risks.

Mentoring for Sustainable Development: Organizations within communities engaged in sustainable development can use Green Tier to combine forces to achieve a sustainable city. The Green Tier Contract will provide incentives to leverage organizational capacity to help neighborhoods, small business and municipal government. A Green Tier Charter can guide activities of state and federal agencies toward focused sustainable-city goals.

Industry Mentoring: Firms within an industry can use a Green Tier Contract with incentives to help small printers meet and exceed environmental permit goals. World-class staff could be available to help Wisconsin small businesses be environmentally friendly and more efficient.

Beef industry: Green Tier could deliver a system that assures "Green Star" beef meets superior health, environmental, animal welfare and labor standards. Like our dairy producers who visited The Dutch, this initiative could anticipate consumer, activist and regulator pressure.

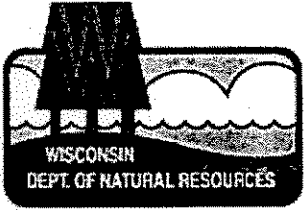
Financial sector consideration: The Green Tier learning system data will help businesses secure favored treatment from venture capitalists, insurers, lenders and analysts who want firms to better anticipate and avoid environmental

risk. Two East Coast investment firms will help Wisconsin develop a model that delivers business value.

[Top of page](#) || [CEA](#) || [Green Tier](#)

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Last Revised: August 20, 2001



**Summary of Support
By Small Business Environmental Council
For Environmental Improvement Program**

In summary, the Council supports the Environmental Improvement Program because:

1. It will encourage companies to look for and correct violations.
2. The company must meet more stringent requirements for regulatory relief than must be met under the U.S. EPA Audit Policy:
 - (a) Only civil violations discovered through compliance audits are eligible for regulatory relief, whereas any civil violation, no matter how discovered, is eligible for full or partial relief under the U.S. EPA Audit Policy;
 - (b) A company must have a "clean" environmental record for the prior two years, whereas the U.S. EPA Audit Policy only requires a "clean" environmental record for the same or similar violation for the prior three years.
3. The process to obtain regulatory relief is less secretive than the process under the U.S. EPA Audit Policy:
 - (a) The Company must give notice to the Department of Natural Resources that an audit will be performed, whereas the U.S. EPA Audit Policy does not require that any pre-notice be given;
 - (b) The Department is required to solicit public comment for any proposed compliance schedule or stipulated penalties, whereas no public input exists under the U.S. EPA Audit Policy prior to settlement.
4. The Environmental Improvement Program only applies to civil violations and is not applicable where:
 - (a) A criminal act is involved;
 - (b) The violation presents an imminent threat to public health or the environment; or
 - (c) The violation was first discovered by the Department or was discovered by the company through required monitoring or sampling.
5. It allows the Department to recover any substantial economic benefit a company realized from the violation.
6. A company agrees to be subject to enforcement if it does not timely correct the violation.

COMPARISON OF SB 61 ENVIRONMENTAL IMPROVEMENT PROGRAM
AND U.S. EPA AUDIT POLICY

Item	SB 61 Environmental Improvement Program	U.S. EPA Audit Policy
Eligible Participant	"regulated entity" is public or private entity that is subject to "environmental requirements" § 299.85(1)(f).	"regulated entity" means any entity regulated under Federal environmental laws. U.S. EPA Audit Policy § II.B.
Violations covered	Applies to civil violations discovered through an environmental compliance audit. § 299.85(2)(a)	Applies to any civil violation no matter how discovered. U.S. EPA Audit Policy § C.
Requirements for "regulated entity" to participate	<p>(a) 30-day pre-audit notice to DNR.</p> <p>(b) Audit report must be submitted to DNR within 45 days after report prepared and the audit must be performed within one year of the pre-notice.</p> <p>(c) Eligible to participate as long as no enforcement action for any violation occurred within last 2 years. § 299.85(2).</p>	<p>(a) No pre-notice required, but notice of violation must be given to U.S. EPA within 21 days of discovery. U.S. EPA Audit Policy § II.D.3.</p> <p>(b) Information to verify existence of audit program or compliance management system must be submitted to U.S. EPA if business is seeking waiver of 100% of gravity-based penalty. U.S. EPA Audit Policy § II.D.3.</p> <p>(c) Eligible to participate if the violation for which the business is seeking relief (or a similar violation) has not occurred in prior 3 years at same facility (5 years if multiple-facilities). U.S. EPA Audit Policy § II.D.7.</p>

Item	SB 61 Environmental Improvement Program	U.S. EPA Audit Policy
Documents that must be submitted to the agency	Audit report describing the audit, the violations discovered and the proposed corrective action. § 299.85(3).	U.S. EPA will request information on the business' audit program or compliance management system if 100% gravity-based penalty waiver is sought. Regulated entity must also disclose violation and proposed corrective action, including compliance schedule. U.S. EPA Audit Policy § II.D.1.
Correction of violation	90-days or approved compliance schedule, if longer but not exceeding 12 months. §§ 299.85(3)(e) and (9)(b).	60 days (U.S. EPA can mandate shorter period if necessary to protect the environment) or an approved compliance schedule, if longer. U.S. EPA Audit Policy § II.D.5.
Public notice and comment	Public input on compliance schedule and potential stipulated penalties. § 299.85(3m).	No public input during settlement process, but U.S. EPA makes settlement agreement publicly available.
Deferred enforcement	For 90 days or length of compliance schedule if no default. § 299.85(7)(a). No civil enforcement if violation is timely corrected.	For 60 days or length of compliance schedule if no default. U.S. EPA Audit Policy § II.C.1. No civil enforcement if violation timely corrected.
Exceptions to deferred enforcement	(a) Violation presents imminent threat (or may cause serious harm) to public health or the environment.	(a) Violation results in serious actual harm or presents imminent and substantial endangerment to human health or the environment or violates an order or term of a settlement agreement. U.S. EPA Audit Policy § II.D.8.

Item	SB 61 Environmental Improvement Program	U.S. EPA Audit Policy
	<p>(b) Department discovers violation prior to submission of audit report.</p> <p>(c) Violation results in substantial economic benefit that gives clear advantage over competitor.</p> <p>(d) Violation discovered through required monitoring or sampling.</p> <p>(e) Repeat violation unless caused by change in operation. § 299.85(7)(b).</p>	<p>(b) Violation is first discovered by U.S. EPA or regulated entity first receives an information request from the agency, notice of a citizen suit, a third-party complaint or there is imminent discovery of the violation by a regulatory agency. U.S. EPA Audit Policy, § II.D.4.</p> <p>(c) U.S. EPA reserves rights to collect any economic benefit realized by regulated entity. U.S. EPA Audit Policy § II.E.</p> <p>(d) Violation discovered through required monitoring or sampling. U.S. EPA Audit Policy § II.D.2.</p> <p>(e) Similar violation within prior three years. U.S. EPA Audit Policy § II.D.7.</p>
Obligation to Prevent recurrence	Audit report must include steps regulated entity will take to prevent recurrence. § 299.85(3)(f).	Regulated entity must prevent recurrence of violation in writing. U.S. EPA Audit Policy § II.D.6.
Impact on criminal prosecutions	State to take into account the actions taken by regulated entity to discover and correct violation to decide whether to pursue criminal charges. § 299.85(8).	U.S. EPA Audit Policy states that EPA will generally not recommend criminal prosecution when terms of policy are met, but EPA may recommend criminal prosecution for culpable individuals. U.S. EPA Audit Policy § II.D.3.

<p>Item</p> <p>False statement</p>	<p>SB 61 Environmental Improvement Program</p> <p>Intentional false statement subject to fine of \$10 to \$10,000 or up to 6 months in prison, or both. § 299.85(10).</p>	<p>U.S. EPA Audit Policy</p> <p>U.S. EPA may revoke settlement if based on intentionally false or inaccurate information. This provision is contained in settlement agreement with U.S. EPA.</p>
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ENVIRONMENTAL COOPERATION PILOT PROGRAM

1997 Wisconsin Act 27 created the Environmental Cooperation Pilot Program with the objective of encouraging innovation and experimentation in environmental regulation, while maintaining at least the current level of environmental protection. The legislation authorized the Department of Natural Resources (DNR) to establish up to ten cooperative agreements with businesses covered by environmental regulatory approvals or permits, such as water pollution discharge elimination permits or air pollution control permits. More than one facility of the same business may be covered under a single agreement. In agreements, which last five years and may be renewed for an additional five years, DNR agrees to reduce administrative requirements and to give businesses greater flexibility in meeting federal and state environmental regulations. In return, participants must evaluate their effect on the environment, establish goals to reduce their level of pollution, and document progress toward those goals.

The legislation creating the pilot program requires annual progress reports to the Legislature by DNR and directs the Legislative Audit Bureau to monitor the program. In performing this review we interviewed staff in DNR, analyzed the content of agreements, reviewed public comments regarding the agreements, evaluated DNR progress reports, and analyzed reports specific to each agreement.

Agreements

DNR negotiated seven signed agreements with six different companies, including four agreements signed between September 10, 2002 and October 1, 2002, which was the deadline for reaching new agreements. Table 1 provides the name of each participating company, the date signed, and the facilities covered under each agreement.

Table 1

Agreements Reached

<u>Participating Company</u>	<u>Date Signed</u>	<u>Facilities Covered</u>
Wisconsin Electric Power Company	February 5, 2001	Pleasant Prairie power plant
Cook Composites and Polymers Co.	October 1, 2001	Saukville facility
Northern Engraving Corporation	June 10, 2002	Sparta and Holmen facilities
Packaging Corporation of America	September 10, 2002	Tomahawk facility
Madison Gas and Electric Company	September 26, 2002	Blount generating station-Madison
Wisconsin Electric Power Company	September 30, 2002	Milwaukee County power plant-Wauwatosa Oak Creek power plant Pleasant Prairie power plant Port Washington power plant Valley power plant-Milwaukee Concord generating station-Watertown Germantown power plant Paris generating station-Union Grove
3M Company	October 1, 2002	Menomonie facility

Statutes require several major provisions to be included in each agreement. For example, each participating company is required to implement an environmental management system that is based on international standards or is acceptable to DNR. An environmental management system is intended to evaluate the environmental performance of a facility in order to achieve measurable improvements in environmental performance through planning and changes in operations. In addition, each participant is required to create an interested persons group, which consists of local citizens who comment on the company's environmental management system and baseline report, and review its performance under the agreement. Other requirements include:

- identification of the facilities covered by the agreement;
- specification of approvals that are replaced by the agreement;
- a commitment to achieve measurable or noticeable improvements in environmental performance and to reduce both natural resource usage and waste generation;
- pollution limits at least as stringent as current limits;
- submission of a baseline performance evaluation within 180 days;
- a description of the operational flexibility granted to the participant; and
- a commitment by the participant to correct any violations within 90 days of submitting a required report or within a time frame specified in a compliance schedule agreed to between DNR and the participant. In return, DNR will defer civil enforcement action of reported violations.

Although all the agreements have similar provisions, many terms are tailored to meet the goals and needs of each participant and DNR. The following is a brief summary of each agreement.

Wisconsin Electric Power Company—Pleasant Prairie

The agreement allows Wisconsin Electric to recover coal ash from its landfills and to mix it with coal for combustion at the Pleasant Prairie power plant. This process would not have been permitted under ordinary circumstances. The company estimates that it has recovered approximately 100,000 tons of coal ash from its landfills through December 2002, with the energy content of almost 300 railroad cars of coal. Additional benefits of removing coal ash from landfills include reducing the potential for groundwater contamination and restoring the landfills to a more desirable use. The agreement also provides a reduction in reporting requirements by the company and provides for a streamlined permitting process. For example, Wisconsin Electric may report discharge monitoring results in an annual report rather than in monthly reports. The company has used the streamlined permitting process twice during its first year. The first use allowed Wisconsin Electric to begin testing of mercury removal technologies with 30 days written notice to DNR for comment; in the past, obtaining the necessary approvals from DNR would have taken much longer. The second use allowed Wisconsin Electric to construct a building to hold ash that has been taken from the landfill but not yet burned in the power plant. Wisconsin Electric was only required to provide DNR with written notification detailing its plans. In the past, obtaining the necessary DNR approvals would have taken a considerable amount of time.

Environmental Audit Legislation:

Minnesota Statute 114C.20-28

Subd 1. **Deferred enforcement.** The state must **defer for at least 90 days enforcement** of an environmental requirement against the owner or operator of a facility if a report that meets the requirements of section 114C.22, subdivision 2, has been submitted to the commissioner. If the report includes a performance schedule, and the performance schedule is approved under section 114C.23, the state must defer enforcement for the term of the approved performance schedule unless the owner or operator of the facility fails to meet an interim performance date contained in the schedule.

Subd. 2. **Penalties waived.** If, **within 90 days** after the report required in section 114C.22, subdivision 2, is received by the commissioner or within the time specified in an approved performance schedule, the owner or operator of a facility corrects the violations identified in the audit or by the environmental management system and certifies to the commissioner that the violations have been corrected, **the state may not impose or bring an action for any administrative, civil, or criminal penalties against the owner** or operator of the facility for the reported violations.



2002 Annual Report

Wisconsin's Small Business Environmental Council

Who Are We?

- Small Business Environmental Council
- Began meeting in 1994
- One of the three components of the Small Business Clean Air Assistance Program administered by Department of Commerce
- Authorized under s. 507 of the Clean Air Act Amendments and implemented under s. 560.11, Wisconsin Statutes
- Nine members appointed for three year terms by either the majority and minority leaders of State Assembly and Senate, the Governor, and the Secretary of Commerce and WDNR
- Members represent small business owners and the public

How Are We Funded?

- Program receives no federal funding
- Supported by state air permit fees for expenses

What Are Our Responsibilities?

- Meet regularly to discuss environmental issues affecting small businesses in Wisconsin
- Review and comment on the effectiveness of information and assistance provided to small business by the Wisconsin Department of Natural Resources (WDNR)
- Comment on whether information is understandable to laypersons
- Review new regulations to see if they meet the Regulatory Paperwork Reduction Act criteria
- Convey difficulties encountered by small businesses trying to comply with regulations

2002 HIGHLIGHTS:

Organization

Beginning in 2000, the council nominated a council chair and vice-chair. Throughout 2001 structural elements, membership participation, and meeting schedules as well as other issues like potential outside activities and tools to solicit input from other small businesses have been defined and documented. The council guidelines will be approved by the members in early 2002.

Regulatory Input

Federal bills S. 207 and HR 203 raised concerns with council members. Letters were sent to the Congressional Representatives or Senators as appropriate to convey the council's concerns. S. 207, the Energy Efficient Buildings Incentives Act, while important because of energy resource issues today, was too prescriptive to work nation wide. The council suggested that block grants to states, to allow them to start programs that meet the needs of their geography and climate, would be more efficient. HR 203 was a proposal for a pilot program to provide regulatory assistance through the Small Business Development Centers. Such a proposal would be duplicative of the assistance currently provided by the Small Business Assistance Programs created under s. 507 of the Clean Air Act Amendments. The council proposed that duplication of these existing services would be inefficient and funding would be better spent helping all the Small Business Assistance Programs expand their programs.

One council member was selected to participate on the DNR's Green Tier Advisory Committee during 2000-2001. To provide a broader range of small business input to the Advisory Committee, the council initiated a focus group of small businesses to discuss the benefits and drawbacks to the proposed Green Tier concept. Elements important to small business were: financial and technical assistance for implementing an Environmental Management System (EMS); promoting benefits of EMS to small business and to communities to provide true incentive; and increasing time to test out and adopt innovative compliance solutions. The primary concern of the council this year was to ensure the legislation maintain the elements they had suggested to the Green Tier Advisory Committee making it beneficial to all businesses in Wisconsin.

Business Concerns

Many small businesses and municipalities have been provided free education on recycling programs through the UW Extension Solid and Hazardous Waste Education Center. Recent budget cuts eliminated the funding to UW Extension to provide such assistance. Since this was one key benefit businesses received from paying the business tax on recycling, the council expressed concern that funding was taken away. Other waste disposal fees could still provide for such assistance programs. The Council's Corner, a regular column in the Advisor Newsletter printed quarterly by the Small Business Clean Air Assistance Program, was used to request input from businesses on this issue.

Smaller businesses never before regulated by state or federal agencies may be impacted by the 1990 Clean Air Act Amendments. Steps have been taken to address the concerns of small businesses as regulations are created, promulgated and enforced.

The Wisconsin Small Business Environmental Council, a component of the state's Small Business Clean Air Assistance Program, provides a chance for small business owners to speak out. Appointed by the Governor, State Assembly and Senate, council members comment on the fairness and effectiveness of WDNR and EPA regulations pertaining to small businesses.

The Small Business Environmental Council provides a forum for rule makers to gain information on the impact rules have on smaller businesses. Many groups have come to value the opinions of the Council.

SMALL BUSINESS ENVIRONMENTAL COUNCIL

EVERY PROGRAM A PARTNERSHIP

Our Membership:

Council members want to assist other small businesses by acting as mentors. Based on their different experiences in dealing with environmental regulations, they can offer advice or refer a business to resources to help them find their way.

Bob Nicholson
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Member of National Compliance Advisory Panel
Appointed by Governor
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jmeili@moldeddimensions.com

Pete Van Horn, P.E.
Appointed by Governor
Van Horn Construction
President/Owner - Commercial/Industrial
Construction Company
Pewaukee, WI
262-691-1000

Each Small Business Assistance Program is comprised of three parts:

- A technical assistance component to provide the detailed help that small businesses need.
- An ombudsman to advocate on behalf of small businesses within the regulatory environment.
- A Compliance Assistance Panel made up of small business owners and representatives to consult and advise on program content.

Hampton Rothwell
Appointed by Secretary of Commerce
Deputy Administrator - Division of
Marketing, Advocacy & Technology
Development
Department of Commerce
P.O. Box 7970 - 6th floor
Madison, WI 53707-7970
608-267-0313
hrothwell@commerce.state.wi.us

Patricia Haskin
Appointed by Assembly Minority Leader
Tomahawk Monument Company
Owner, Cemetery memorial and other misc.
granite products company
Tomahawk, WI
715-453-6523
whaskin@gotousa.net

Jim Reynolds
Appointed by Senate Minority Leader
Cast Tools, Inc.
Company President and Foundry Trade
Association Representative
Racine, WI
262-633-6383
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Mark McDermid
Appointed by Secretary of WDNR
Director - Bureau of Cooperative Environmental
Assistance
Department of Natural Resources
P.O. Box 7921 - CO/8
Madison, WI 53707-7921
608-267-3125
mcderm@dnr.state.wi.us

Other WI programs with which we build working partnerships include:

- Trade Associations
- UW Extension Solid and Hazardous Waste Education
- Small Business Development Centers
- Other state and local agencies

Members reach out to other business organizations to share information about environmental programs and services. Chambers of Commerce have been one good resource to provide assistance to businesses on regulations, where one member is a volunteer consultant to a Chamber on regulatory issues. A council member, who also belongs to the Service Corps of Retired Executives (SCORE), presented information to that organization about environmental regulatory requirements, focusing on air regulations. One member has given presentations about the recently formed National Compliance Advisory Panel (CAP) to the national conferences for both the Small Business Assistance Programs/Small Business Ombudsmen and the Compliance Assistance Providers Forum. These presentations were performed as part of the member's role as Vice Chair of the National CAP. The council is exploring the development of new tools to reach a wider audience that needs to hear about regulatory assistance available to small businesses in Wisconsin. This will be a key focus for the council's activities in 2002.

Find out what is going on with the WI Small Business Environmental Council by visiting www.wienvirohelp.com, contacting CleanAir@commerce.state.wi.us or calling 1-800-HELP BUSINESS (1-800-435-7287).

Mike Simpson re. Sierra Objection
Soc. Bus. Enviro. Council

Mark Miller - ~~*~~ keep EPA & Green Tier ^{Standards} similar.

- One time only or once every 3/4 yrs. If you want it sooner they could be required to join Green Tier (I or II) ~~*~~
- Miller - get Gov. to stop thinking as a prosecutor.
- ~~NOT~~ A "Permit to POLLUTE"

Environmental Improvement Modification Proposa
(Draft)
Mark Miller

Redundant, already in language of the bill -

1. Tighten eligibility.

Can't do it over & over. Maybe again some time later.

- a. One time only (or no audit immunity within last ___ years)
- b. Stricter standards for clean record. — ie 5 yr clean period (see Sierra Club memo)
- c. No immunity if the violation was discovered through sources other than the audit. (SC 10, Simpson (c). Already in Pg 22 Line 3-4
- d. Participants currently under investigation not eligible. (SC 16, Simpson concurs)
- e.

you won't get it no matter who discovers.

Can't want other groups other than DNR discovery, who cares who discovers

Sierra Club vs. one or more

2. Tighten definition of Environmental Compliance Audit to include **ALL** environmental requirements. (SC 13, Simpson has no problem, but questions need) **TRACKS VS EPA**

NOTE: Currently closely matches EPA definition

Apply to both Green Tier & Enviro Imp Progs.

Tighten definition of "violation" to include all fed and state requirements under license, permit, other approval or order of the DNR, judicial consent decree, settlement agreement, for past **FIVE** years (SC item 14, Simpson concurrence)

Now → Violation of "environmental requirement" SC: EIP should not be more restrictive than Green Tier

4 Allow DNR to issue **immediate compliance orders** for violations that are an **imminent threat to human health or the environment**. (SC 17 & 19, Simpson 5 & 7(a), concurrence)

Intent is to correct problem w/ 90 days. Lose immunity if you don't meet deadline

Language in that will already

5. Assure that a violation of a compliance schedule is a violation of the immunity agreement. SC 29, Simpson 8, disagrees with SC reading, but agrees with concept..

This one is fussy. Look @ EPA language

6 Allow state to collect all the **economic benefit** derived from violation. (SC 21, Simpson 9)

This is under deferred civil enforcement

7. SC 22

Clear & substantial ← strike this language make it closer to EPA??

8. Additional requirements for 90 day extension

- a. Mentorship with Green Tier company
- b. Enter into an EMS
- c.

STIP. PENALTIES. DNR COULD CREATE SUCH A LIST OF ALTERNATIVES THROUGH RULES

NOTE: If more than 90 days add: Enter into EMS, Join Green Tier options & you must pick one (Miller)

Cell 920/265-6779

Memo from Mark McDermid (DNR) to the Green Tier Committee members:

On February 14, I met with Rose Smyrski from Representative Phil Montgomery's office. They are working on a version of the Green Tier Legislation that will be introduced in the Assembly.

At the meeting, I agreed to share the suggested changes for that version in order to get a response from the Green Tier Committee members. The question to you is whether you would be comfortable with the changes suggested?

The suggested change is to remove the formal, gubernatorial appointed Green Tier Council from the bill. In lieu of a council, the Department would be directed to establish a balanced public group and the duties that had been assigned to the council would become duties of the department and tied to the public process used to advise the department. To refresh your memory, those duties would be:

*Brian Warrenson
Speaker's office*

- The implementation of the program, including setting goals and priorities for the program.
- Evaluating the costs of applying for the program and of entering into a participating contract or a charter and the administrative costs of participating the program
- Assessing whether incentives provided under a participation contract are proportional to the environmental benefits committed to under a participation contract
- Procedures for evaluating the program
- Evaluating the results of the program
- Changes that should be made in the program

Consistent with the Senate version, this version will remove the appropriation language and will change the sunset date to 2009.

If you could get back to me with comments by 2/21, that would be extremely helpful. I will compile the comments over the weekend and share them with Representative Montgomery's office on 2/24.

- Rose called DJ on 2/12/03 inquiring about Green Tier
- Paul Hemin called DJ on 2/12/03 asking why Montgomery was on this?
- NP office has this in drafting already. Contacted Montgomery at concerns 2/18.
- NP called Montgomery 2/19 & left message on his cell. Called speaker's office late afternoon. Spoke w/ Speaker/Gard
- NP met w/ Montgomery 2/21. AOK re. SB

Neal,

I want to provide a quick update about what's going on with the Green Tier bill.

Last week, I made a couple of minor changes to the bill and was preparing a co-sponsor memo in the hopes I could launch something early this week. Then I got to thinking about an Assembly co-author and started racking my brain as to whom I should choose.

Well, as strange as this may sound, later that day I got a call from Rose in Montgomery's office. Totally out of nowhere, unsolicited and I had not talked to her or anyone else about the bill. She wanted to let me know that Phil was interested in being Assembly author.

So I said, "Great, in fact I was trying to come up with an Assembly author and you've just saved me a lot time." Okay, so everything was going along fine and Rose mentioned the Assembly was thinking about deleting the 'Green Tier Council' language in the bill. In lieu of a council, the Department would be directed to establish a balanced public group and the duties assigned to the council would become duties of the department and tied to the public process used to advise the department.

The Assembly felt that setting up an outside Council or commission would cost money and therefore it should be removed. The DNR seems okay with that change but my concern was what the members of the Green Tier committee would think of that.

Recall, they would support the 2001-02 bill with essentially no changes. I made some very minor changes, which I floated by the committee before doing so and they were fine with those changes. The Assembly, though, is bent on removing the Council and I didn't know how that would sit with members of the Green Tier committee. So, I instructed Rose to contact DNR and WMC and Brian Borofka and others for their input. We're still waiting to hear back from most of them on that change.

But, regardless of what the committee thinks about removing the Council, it sounds like the Assembly is just going to go ahead and do it. So, whatever. Now, here's the new little item I've learned. The Assembly is trying to get this bill to the Assembly floor by March 18th. Neal, the damn thing isn't even out of drafting yet!

So I asked Rose, "What's the big rush, why is this being fast-tracked?" She replied that she was just doing what leadership wanted as part of their "reform" agenda, whatever that is. I got the sense from her that she wasn't being completely honest with me. But anyhow, she suggested and I strongly agreed that you and Phil should have a talk about this today and figure what the heck is going on.

I explained to Rose that we may not be on the same timeline as the Assembly and that we're trying to advance environmental legislation from the Environment committee Chair. But here's the rub: If the Assembly passes their environmental audit bill before us, they may be looking to the Senate to concur on their bill rather than this being a Senate bill.

That means that Rep. Montgomery gets the credit for this thing even though he hasn't lifted a finger or attended a meeting or even co-sponsored the bill last time around. Something kind of stinks here in my opinion. Not that we're really able to claim total ownership ourselves, but just understand, we had much more to do with this bill last session than Montgomery.

You were on the bill last time (second GOP member), you shepherded it through your Assembly Environment committee, and we worked closely with members of the Green Tier committee to get this thing done. Now, it feels like Montgomery wants to swoop down, grab this thing, run with it, and take credit for something he really had nothing to do with. I don't know, maybe I'm overreacting but something isn't sitting right with me on this one.

My thought is this: We get our Senate companion bill to our March 13th hearing and maybe move it out of committee quickly. Then ask our leadership to get the bill to the Senate floor no later than March 20th. Thus, both bills will be going through at about the same time and we look to DuWayne to concur on our bill when it gets there and move it through. Then, just sit on the Assembly bill.

I guess I'm more than a little nervous about what the Assembly and Montgomery are doing with this bill. And, I don't know why Montgomery is the one they chose to run with this bill. It all seems very odd to me. I would really like to see this bill be enacted as a Kedzie/Montgomery bill, not the other way around. But I fear that's what the Assembly is trying to do.

Dan

Johnson, Dan (Legislature)

Subject: Call Rep. Montgomery
Start: Wed 02/19/2003 2:00 PM
End: Wed 02/19/2003 2:30 PM
Recurrence: (none)

6-3387

Regarding green tier. Cell phone 920-265-6779



The Green Tier Proposal

An Outline for Environment Improvement

Reflecting the input of leaders from business, the environmental community, academia and government, Wisconsin now has the opportunity to consider and adopt legislation supporting environmental, economic and regulatory improvements. Building on our state's history of environmental leadership, the proposed legislation provides an opportunity for Wisconsin to merge both business and environmental goals, while at the same time supporting the Department of Natural Resources' mandate to protect and enhance our environment.

Purpose and Intent

The program will establish a system for voluntary environmental performance that will exceed existing standards. The program will provide recognition and incentives for participation, and strive to lower the overall transaction costs associated with environmental performance. Participants in the higher level of the two-tier program will be able to negotiate company-specific environmental programs that may not be possible under the existing regulatory system, and groups of companies or public sector entities also may join together in an environmental charter with the state.

Participation Criteria

Regulated parties that wish to participate in the proposed program would need to demonstrate:

- A strong environmental compliance record, with no recent civil or criminal judgements, or DNR citations.
- A formal environmental management system (EMS) that will either be implemented or has been implemented.
- Annual performance reviews, with the results submitted to the DNR.
- Prompt follow up action to any findings of non-compliance discovered during the annual reviews.
- Demonstrated continual improvement of environmental performance.
- Involvement of interested persons in the development of a specific proposal (Level 2).

Level 1 Participation

Incentives for Level 1 participation include:

- Initial and annual recognition of participation by the DNR.
- Use of the Green Tier logo.
- Assignment of a specific DNR professional as the department's point of contact for the facility.
- Lowest level of inspection frequency once an EMS has been adopted.

Level 2 Participation

The participation criteria for Level 2 are more rigorous than Level 1, and require prior implementation of an EMS and participation by interested stakeholders in any negotiated agreement. This level of participation includes public meetings with interested stakeholders. However, incentives for Level 2 include the ability to craft and negotiate a site or company-specific agreement that provides the optimal environmental and economic value. These specific agreements may offer Wisconsin and the participants the greatest value of the Green Tier program, allowing significant environmental improvements, and supporting overall government efficiency and business competitiveness.

Deferred Civil Enforcement

Both Green Tier levels allow for deferred enforcement by the DNR of any findings resulting from the annual performance reviews conducted by the participants. The DNR will not commence civil action if any violations are corrected within 90 days of the an audit and possibly up to 12 months in some situations. Deferred enforcement is not applicable if there is an imminent threat to public health and the environment or if the DNR discovers the violations before an EMS is implemented.

Charters

The proposal allows the DNR to establish an environmental charter with an association of public or private entities (or a combination of public and private entities) to encourage and support their participation in either level of the Green Tier proposal. This provides the opportunity for a business sector or a geographic association of facilities to join together in establishing and reaching environmental goals beyond current regulatory boundaries.

Green Tier Council (ASSM. WANTS TO DELETE)

A Green Tier Council would be created to advise the DNR on the implementation of the program, including setting program goals, evaluating transaction costs, assessing the proportionality of incentives provided, and recommending procedural and other changes in the program. Council representation would include business, local governments and environmental organizations.

Questions

If you have questions, please call (608) 267-3125.

Went DNR to appoint a public group (like a board)

NOTE:

(WAS ELIMINATED)

Definitions

Modify on Page 6, line 8 after “chapters” and on page 27, line 23 after “chapters” to read:

“Environmental requirement” means a requirement in any of the following:

1. Chapters 29 to 31, 160 or 280 to 299, a rule promulgated under one of those chapters, or a permit, license, other approval, or order issued by the department under one of those chapters; or any administrative order issued by United States Environmental Protection Agency; or a consent decree or settlement agreement with a citizen, state or federal government; or conviction for a false statement or obstructing justice

Requirements for Participation

On Page 29 line 2 after “facility”, insert

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

(h) ~~The regulated entity is not currently under state or federal agency investigation for a violation~~

(i) The regulated entity has not participated in the Environmental Improvement Program within the last four years unless the regulated entity is currently participating in the Environmental Results Program under s. 299.83

Stipulated Penalties

Change on Page 32, line 15, “reach an agreement” to “negotiate”

Delete on Page 32, on line 15-16, starting with “If” and ending with “schedule”

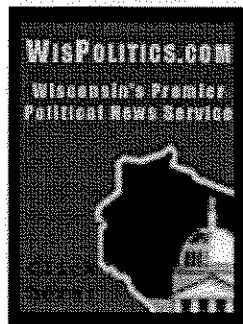
Deferred Civil Enforcement

Delete on Page 34, line 1, “substantial” (change “a” to “an”)

Delete on Page 34, line 2, “clear” (change “a” to “an”)

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March 18, 2002

GREEN TIER ON FAST TRACK

By Joanne M. Haas

MADISON -- Businesses boasting environmentally friendly and regulating-abiding histories would be rewarded under the "green tier" bill predicted for passage this spring by three legislators.

"With any luck, we will get this moved on this spring session before we take off this summer," said Republican Sen. Neal Kedzie of Elkhorn, the lead author of Senate Bill 61 and the chair of the Environment and Natural Resources Committee.

Known as Green Tier, the bill also is sought by Natural Resources Secretary Scott Hassett. He sees it as a tool to bring innovation and flexibility to the agency's regulatory ways, which are often blasted as heavy-handed, crippling and just plain arrogant. "I want to get away from command and control," Hassett said of the agency's current regulation methods that often require record-keeping blind to a company's record and strenuous to an agency undergoing streamlining.

"If you have good actors with good records, why do you need that level of scrutiny?" Hassett said, adding such checks can be done on a yearly basis.

Kedzie and Hassett were among the six panelists who participated in a WEI Environmental Policy Forum: "Striking a Balance for 2003 and Beyond." WisBusiness.com co-sponsored the event, which took place at the Monona Terrace convention center.

Also predicting passage of Green Tier by both houses was Democrat Rep. Mark Miller of Monona, who said the proposal was improved in the last session. Sen. Robert Cowles, R-Green Bay, chair of the Senate Energy and Utilities Committee, also predicted the bill would pass. But Cowles urged the audience not to see it as a silver bullet. Citing a handful of companies who have signed on to the self-regulating process won't lead to an overnight rush of participants, he warned. "That's not going to happen," he said. "It is more of a long-range solution."

Rod Nilsesteun, the secretary of the Department of Agriculture, Trade and Consumer Protection, listed land use among his top priorities, citing the rapid pace at which random developments are eating up precious farm lands. He also said it's in the best interest of the state to do everything possible to help improve the health of the state's struggling dairy industry, which comprises about half of Wisconsin's \$40 billion ag industry.

Another big topic with the panel was campaign finance reform. Some of the state's most important environmental initiatives occurred despite opposition by groups who wanted nothing to happen, Cowles said. He explained that legislators may not vote on a particular issue or project if they know that vote might "create massive amounts of soft money against them. ... That's what campaign finance reform is about. You neutralize the soft money." The Green Bay Republican applauded Alliant Energy's recent decision to "pull out of the soft money business. And I hope other utilities do the same."

Miller said he believes reform is essential, although the lack of progress on the issue has discouraged him. He said a good start would be 100 percent funding of judicial races.

Nilsestuen told the audience the state must work to repair its tarnished government history, which he says was "lost in a bipartisan way."

Peter Bock, the former Milwaukee Democratic representative recently named energy administrator in the Department of Administration, said reform is vital to level the playing field among all candidates.

In other comments, Hassett predicted water -- especially groundwater -- would become a top issue; he said Wisconsin is rich with the resource but needs protections to avoid the water wars being battled in other states.

Calls for recycling measures and more emphasis on renewable energy were also heard. Cowles said he is working on incentives to site plants in brownfields.