

2009 DRAFTING REQUEST

Bill

Received: **09/05/2008**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Miller (608) 266-9170**

By/Representing:

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

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - other**

Extra Copies:

Submit via email: **YES**

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Carbon copy (CC:) to: **JStolzen@legis.wisconsin.gov
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Changes to environmental cooperation pilot, environmental results (Green tier), and environmental improvement programs

Instructions:

See Attached, based in part on 07-3411

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<END>

Tradewell, Becky

From: Bier, Beth
Sent: Monday, July 07, 2008 3:54 PM
To: Stolzenberg, John; Tradewell, Becky; McDermid, Mark - DNR; Voltz, Jeffrey M - DNR
Cc: Libbey, Heather
Subject: Green Tier drafting meeting

Thursday, July 10th
9:00am
400 SE, Capitol

Thanks to all of you for participating in this meeting to discuss drafting Green Tier reauthorization and program expansion. I will send out a document soon as a base for our discussion.

Beth Bier
Office of Senator Mark Miller
PO Box 7882
Madison, WI 53707

Phone: (608) 266-9170
Email: Beth.Bier@legis.wisconsin.gov

Green Tier Legislation Background January 13, 2008

CHANGES TO LRB 3411/1:

- Remove the sunset provision contained in 299.85(11).
- On page 2, delete lines 10-13 and insert the following:
Adoption of a publicly shared environmental policy that is appropriate to the nature scale and environmental impacts of its activities, products, and services. The policy includes a commitment to compliance with environmental requirements, pollution prevention, and continual improvement in environmental performance
- On page 3, insert the following:
A process for setting environmental objectives and developing appropriate action plans to *-current law* meet the objectives
- On page 3, insert the following:
Establishment of a structure for operational control and responsibility for environmental *-also current law* performance

While I can appreciate the language that is used in the draft, the language above is what we believe we need to accomplish an accurate comparison to the current (i.e. 2004) ISO 14001 standard. We have vetted this with auditors and have been assured the Changes requested above accurately reflect what we need to align the statute and the standard.

NEW LANGUAGE TO BE ADDED TO THE DRAFT

This set of instructions is drawn from information that was used by the Advisors during their deliberations on these draft recommendations. Further information can also be found on the Green Tier Advisors web site which has the notes from the various meetings where this package was discussed. The background narrative below tries to capture some of the points and questions that came up during those discussions.

1. Include provisions which would enable the efficient transition of Environmental Cooperation Pilot Program Companies into the Green Tier Program. The question addressed by the Advisors was whether to include the Pilot Program Participants as a part of the reauthorization. There were two choices considered. One was an integration option that rolls the companies into the Green Tier program such as a grandfathering clause that would recognize the existing cooperative agreements under Tier 2 of the Green Tier program. The second was to have the Pilot Companies go through the full process outlined in 299.83 or some modification thereof to become a Tier 1 or Tier 2 company. Another potential option, although not considered beyond initial discussions, was to simply amend 299.80 to allow the cooperative agreements to go beyond a single renewal.

Based upon discussions with the Advisors, the decision was made that the entry into the Green Tier program would not simply be done through a grandfathering clause. Each of the elements listed below were set as conditions for pilot program companies seeking to make the transition to the Green Tier Program:

- Company submits letter of intent stating desire to transition from ECPP to Tier 2.
- DNR and company redraft ECA to conform to Green Tier program requirements and benefits, ensuring continuity in requirements and incentives from ECA contract and making minor changes so as to conform to Tier II requirements and incentives

- DNR provides public notice on redrafted participation contract. After providing public notice about a redrafted participation contract, the Department may hold a public informational meeting on the redrafted participation contract.
- Company shares the results of the last audit for purposes of establishing the audit baseline.
- If commitments are unchanged from ECA, redrafted contract presumed to be "proportional."
- Limitation and/or review of decision - DNR could not deny an application from an ECPP participant unless significant issues are raised during public comment that the company is unwilling or unable to address.

In compiling the draft, we want to make sure that the provisions as they get edited leave the ECPP participants with three choices: 1) let their environmental cooperative agreement expire; 2) apply for Green Tier and start from scratch with new negotiations; or 3) transition to Tier 2 as described above. To be clear, entry into Tier 1 would be through the traditional process.

2. Include provisions that would expand the potential use of Charters by:

Enabling the extension of flexibility to other regulatory entities that are parties to the charter in order to provide incentives for Tier 1 or Tier 2 participants in the Green Tier program.

Based on the discussions of the Advisors, the following elements would be expected in the legislative draft:

- The following conditions would apply to the party receiving the flexibility:
 - Signatory to the charter,
 - Remain a member in good standing of the charter,
 - Meet the basic compliance screening requirements for Tier 1
 - The flexibility provisions would be subject to public notice
 - Flexibility would be subject to consideration through public hearing and comment through the charter development process.
 - The party receiving the flexibility would have to have regulatory authority in the environmental area which is the subject of the charter and the flexibility to be granted through the charter.
- The following conditions would apply to flexibility extended through the charter:
 - The flexibility provisions in the charter would have to contribute to the intent of the charter.
 - The flexibility would be limited to that which is needed to extend the terms of a Tier 2 participation contract
 - The terms of the charter must identify how the flexibility will be monitored and results measured.
 - The flexibility extended would be subject to a proportionality test.

General Background:

The provisions would extend or create flexibility for other regulatory entities that are parties to a charter (e.g. municipalities, special districts and/or other agencies that may be working within delegated responsibilities from DNR that could be a part of the charter relationship even if the signatory to whom flexibility is extended is not a Tier 1 or Tier 2 participant). The presumption, however, is that this is for the purpose of providing incentives to Tier 1 and Tier 2 participants.

For this measure of flexibility to apply, the party receiving the flexibility would have to be a signatory to the charter, remain a member in good standing of the charter, and meet the basic compliance screening requirements for Tier 1 and the flexibility provisions would be subject to the same public notice and

flexibility subject to consideration through that process. The party receiving the flexibility would have to have regulatory authority in the environmental area which is the subject of the charter and the flexibility to be granted through the charter. Specifically, the flexibility provisions would need to be reflected in the charter and would have to contribute to the intent of the charter.

Rationale

The reason for this proposed change is to give some practicality to the flexibility incentive, create a concrete situation in which flexibility can be granted, and yield greater results through charters. Charters pull together many parties who have something to contribute to the solution of environmental problems, to more efficiently administer environmental processes and/or more effectively address environmental issues. Co-regulators may be fully prepared to help improve environmental performance but would not have a need to pursue Tier 1 or Tier 2 participation. Their interests in the charter are related to the regulatory stake that they would have in the work of the charter and in many potential cases would relate to areas where there is overlapping decision making and may relate to the timing of regulatory decisions that are not well timed for those that are regulated.

Example

One working example exists in the Clear Waters Initiative in which the Cities of Madison and Sun Prairie along with Dane County and the Department work together to address storm water issues. While it is clear that the charter can extend flexibility to Tier 1 and Tier 2 parties to the charter, the charter may be limited in the ability to have the co-regulators, other than DNR, set a different methodology for decision making because of requirements set by the Department. The new statutory authority would enable the use of charters to establish an alternate or flexible way in making decisions. Specifically, one of the co-regulators might be able to make decisions differently for the superior performers on issues that are a part of the overall regulatory scheme for storm water control.

Another more hypothetical example would be the provision of industrial waste water controls that are most frequently shared with the water treatment authorities. In this example, the Department and the Water Treatment Authority could set about to consider optional ways of dealing with superior environmental performers (Tier 1 or Tier 2 participants). Flexibility would be given by the Department to the treatment authority so that they could treat superior performers (Tier 1 and Tier 2 participants) with different requirements in recognition of their superior environmental performance and recognize the capabilities of their environmental management systems. These could include the way that reports are done, the kind of monitoring that they do or the requirements that they are expected to apply to industrial clients.

3. Allow the recognition of organized, systematic environmental management programs. The provisions would allow the recognition of organized, systematic environmental management programs to be a recognized part of Green Tier (e.g. organizing chemical processors around their "Responsible Care" program to make and report on commitments to Superior Environmental Performance) but would not recognize individual companies as

Green Tier Participants. Based on the discussions of the Advisors, the following elements would be expected as a part of the legislation:

- Programs recognized through the charter would need to:
 - Utilize the standards identified for functionally equivalent environmental management systems or follow a development progression that leads participants to functional equivalency.
 - Capture and report on the environmental results that are being achieved by participants individually or in total for the program.
 - Provide links to web based information that could be used by members and non-members of the organization involved.
 - Contain provision(s) that meet or establish a progression to the development of an ISO 14000 or functionally equivalent environmental management system.
- The Department would:
 - Formally recognize the programs and publicly report the results of the programs.
 - Include participants in gatherings of Green Tier companies and provide information from Green Tier programs.
 - Supply information to potential participants through Green Tier staff and, where appropriate, regulatory staff.
 - Provide publicity for such programs as specified within the charter.
- The Department may not extend statutory incentives to participants in the programs unless such participants enroll in Tier 1 or Tier 2 independently or through the provisions of the charter.

General Background

The provision would provide recognition for the environmental program as a part of Green Tier thereby facilitating the exchange of environmental information by the participants and providing information on the DNR site that gives environmental performance information about industry participants. The benefit for the organizations is expanded exposure for the environmental programs, and the benefit for the Department is the information obtained about that performance. Several organizations have programs in place that build the capacity of their members to, first, meet compliance requirements and, second, to go beyond compliance. In almost all instances, these programs allow for a progression in the development process but some may stop short of the development of a formal environmental management system.

Rationale

This provision would allow the use of the charters for capacity building and also would encourage the work with larger groups to build the capacity to take on environmental performance management with the ultimate objective of getting participants eventually up to the Tier 1 and Tier 2 levels.

Example

At present, the Wisconsin Asphalt Pavement Association has an environmental performance program in place that reviews and documents the performance of participants every three years in collaboration with the Department. Many of the participants may not have the immediate capacity to develop and implement an environmental management system but could, over time, add incrementally to their programs to create the environmental management system and become participants in Tier 1. While that capacity is developing, the Department remains engaged with the association and participants in the development process.

4. Authorizing the creation of charters that systematically manage environmental performance on a specific issue and creation of flexibility/incentives for voluntary efforts to address the identified issue. Discussions with the Advisors anticipated the following elements in the legislation:
- The following conditions would apply to the party receiving the flexibility:
 - Signatory to the charter,
 - Remain a member in good standing of the charter,
 - Meet the basic compliance screening requirements for Tier 1
 - Remain in compliance with all state environmental requirements in order to continue receiving the flexibility.
 - Flexibility may be temporarily suspended until a participant comes back into compliance.
 - The flexibility provisions would be subject to public notice
 - Flexibility would be subject to consideration through public hearing and comment through the charter development process.
 - The following conditions would apply to flexibility extended through the charter:
 - The provisions in the charter must clearly identify the scope of both the environmental problem(s) being addressed and the terms and conditions under which the flexibility would be extended.
 - The terms of the charter must identify how the flexibility will be monitored
 - The terms of the charter must state the environmental outcomes to be achieved and contain the mechanism to measure and publicly report those outcomes.
 - The flexibility extended must be related to the environmental issue or problem that is being addressed by the charter.
 - The systematic environmental management done through the charter:
 - Would have to include planning, action, verification and correction that introduce the basic steps towards an environmental management system.
 - Contains specific commitments to accomplish the environmental outcomes sought by the charter through that system.
 - Have operational controls sufficient to communicate responsibilities, gather and report valid information and correct when progress towards goals is lagging.
 - Recognizes and provides a path towards an environmental management system functionally equivalent to ISO 14001.

General Background

The provisions would create a customized working relationship to address a given issue for which the department identifies the environmental management to be done by the voluntary participants, the recognition and flexibility that would be provided to participants and the reporting that would be done as a part of the program that would be directly related to the performance that was a commitment of the program.

In order to participate in the charter, parties would have to be a signatory to the charter, agreeing to the terms and conditions contained in the Charter. Once signatories, the expectation is that they would remain a member in good standing of the charter, meet the basic compliance screening requirements for Tier 1 and the provisions would be subject to the same public notice and flexibility subject to consideration through that process.

Rationale

Several elements coming from the Governor's Global Warming Task force are likely to rely upon voluntary approaches and Green Tier Charters could provide a legal framework within which a sustainable path is established. This would be ideal for creating specific incentives to address a specific problem.

Example

The top 25 or top 50 carbon emitters in the state could join into one program which does not require an EMS but contains other requirements and incentives tailored to those requirements and reducing their carbon emissions. There would be clear limits in place for the incentives and flexibility granted. In this instance, provisions may need to be considered if participants perform poorly regarding other media than the one addressed by the group. This could be addressed by a provision that currently applies in the case of Tier 1 and Tier 2 in which the Secretary has the discretion not to approve a participant or proceed with an agreement if it is not in the best overall interest of the program.

5. Challenge the department to extend the benefits of Green Tier by working specifically with other agencies to apply to state purchasing, the award of grants and administrative decisions by developing guidance. Discussions with the Advisors anticipate the following to be included in the legislation:
 - Amend section 299.83 (1m) to state that the Department shall attempt to do all of the following:
 - Recognize Green Tier participants through the state procurement process.
 - Recognize Green Tier participants in the award of state grants through the Departments of Natural Resources, Commerce, and Agriculture.
 - Recognize Green Tier participants through administrative decisions made by state bodies provided that the development of such recognition provides public notice and within 30 days after the public notice, interested persons may request the department to grant them authorization to participate in the negotiations. A person who makes a request under this provision shall describe their interests in the issues described in the public notice. The department shall determine whether a person who makes a request under this paragraph may participate in the negotiations based on whether the person has demonstrated sufficient interest in the issues in the public notice to warrant that participation.
 - Provisions developed under this section shall apply to both participants under 299.80 and 299.83 of the statutes.

General Background

When initially conceived, this was going to extend the ability to create the statutory ability to create incentives and grant flexibility through statutory authorities in other agencies. In order to capture the discussion from the Advisors, this was scaled back to be a recommendation that would add an expectation to what the department shall attempt to do through the existing incentive capabilities of the program by tapping into the capabilities of other agencies to offer incentives through the program by adding recognition for grants, purchasing and special consideration where those agencies currently have administrative discretion in each of three areas for multiple agencies:

- Green Tier companies recognized as a part of state procurement.

- Green Tier companies recognized as a part of state grant programs through Commerce, and Agriculture
- Green Tier companies recognized through administrative decisions made by state bodies – Transportation, PSC, Insurance, etc.

The actual change to the statutes would be to amend 299.83 (1m) – Administration of the program to indicate that the department shall attempt to create incentives that draw upon recognition provided by other state agencies through procurement, grants and administrative decision making that recognizes and in appropriate circumstances gives preference to Tier 1 and Tier 2 participants.

Rationale

While there might be value in amending the statutes to give the ability to use Green Tier flexibility in other agencies, the discussion has generally indicated that there has not been enough work done to develop the incentives with the use of existing administrative flexibilities. By setting expectation in the “Administration of the program” section of the law, there could be sufficient legislative direction for the department to work with other agencies in the establishment of incentives and working through those agencies to begin developing the working relationships to consider administrative decision making that might set the foundation for consideration of statutory flexibility in subsequent changes to the law. Currently the law presumes the development and delivery of incentives through the Department and the change would make clear that this can and should be a multi-agency endeavor.

Example

There are many different kinds of state procurement preferences that are given. By executive order or perhaps by working directly with the Department of Administration purchasing preference for Green Tier may be obtained. A second example would be in the development and administration of a grant program for areas such as business development for which there are options to recognize that a company is a Green Tier participant during the evaluation and selection process. A final example that would address the administrative decision making process would be decisions in which we work with Department of Transportation (DOT) on codes for culvert placements. We would have the flexibility to work with participant and DOT (for example) to make the decisions in an expedited fashion given the superior environmental performance of the participant.

6. Clarify that the provisions that extend limited civil immunity to Tier 1 and Tier 2 participants apply to those violations that are discovered in the conduct of routine environmental management systems operations. Discussions with the Advisors anticipated that the following would be included in the legislation:
 - Amending the language related to self disclosure of violations:
(6m) COMPLIANCE REPORTS AND DEFERRED CIVIL ENFORCEMENT. (a)
Compliance reports. If a violation is discovered through the environmental management system as defined under sub. (1) (dg), or through audits specified under sub. (3) (d) 4. or (5) (c) 2. or 3, the participant shall include all of the following in the report of the violation:

General Background

As currently worded the statute may limit the discovery, disclosure and self reporting of violations only to those discovered through the annual audits done to satisfy the requirements of 299.83. The current language does fail to recognize the continual auditing

and checking that occurs in a functioning environmental management system. The intent, when the original language was drafted, was to have compliance continually monitored and immediately corrected. The change would remove language that might limit this incentive only to problems discovered in audits prescribed to maintain eligibility and not address opportunities for immediate, continual improvement.

The provision would extend limited civil immunity to violations disclosed and corrected during the course of participation in the program and not just annually as a part of the report to the Department.

Rationale – the expectation of continual improvement and the presence of institutional controls is the continual review and immediate correction of problems discovered. There is little distinction that can be drawn between that which is disclosed in an annual audit and that which is disclosed by audits that occur on a regular basis and then annually disclosed. Managing this workload on a continual basis not only makes sense for the administrative overhead but also for the potential ongoing attention to managing environmental risks. Example – most audit protocols call for surveillance and follow up visits making the distinction between annual and other audits very blurry. Similarly, most EM S's in order to be judged effective have elements that require regular monitoring that can lead to early detection of problems that might languish if left for discovery as a part of the annual audit specified in the law.

HOW WILL THESE BE USED TO ADVANCE THE PROGRAM?

Reauthorization, fine tuning and expansion are being recommended to accomplish three objectives:

- Create higher levels of environmental performance and increased numbers of participants delivering superior environmental performance and realizing increased business value through recognition and flexibility.
- Create certainty about the future of the program and the requirements of the program while updating provisions of the law to reflect changes in standards and practice since the law's original passage.
- Improve the administrative efficiency of the program so that more staff resources can be directed to working with prospects for and participants in the program.

The most important and significant part of our recommendations is the reauthorization of the program. The initial development done through the program indicates that real results can be gained through the Green Tier approach. The Advisors had no difficulty reaching consensus on this point. By removing the sunset, as recommended by the advisors, a barrier to participation is also removed since prospective participants will know that the provisions will remain law unless a specific action is taken by the legislature. Prospective participants will know that their investment in the Environmental Management Systems and their commitments to superior along with the resulting incentives will not only have the force of law but will also have staying power.

Over the course of the last 3 years, much has been learned about the development of performance based programs generally and Green Tier specifically. Drawing upon the available information from other programs as well as the direct "day to day" experience here in Wisconsin, there are several items that have been recommended. We would anticipate that the fine tuning that is proposed for the program will make the expectations of the program clearer as the standards are updated and more efficient and fair as the

administrative provisions are adjusted. We also expect to not only improve the information about the program but also the efficiency of the program with the suggested revisions to the reporting periods for the three programs in question (the pilot program, green tier and the compliance audit program). It is particularly important to note that the date selected (December 15) and the biennial frequency of the report will enable the mining of data that the Department currently receives and the presentation of the most current validated data so that comparisons can be made and reporting burdens minimized.

Program expansion also draws from the lessons learned. The first of the recommendations on program expansion recognizes the pioneering work that has been done by the participants in the Environmental Cooperation Pilot Program with all of the original participants having exercised their option for renewal of the agreements. The addition of the provisions would enable pilot program participants to make the transition to the Green Tier program when it made the best business sense for them to do so. Correspondingly, the transition, over time, to the Green Tier program is a step to provide focus to the delivery and management of performance based programs. Provisions have been added to expand the potential use of and value derived from charters. The revisions hold the potential for drawing in more participants, delivering greater value for participants and using charters to address broad environmental problems. The recommendations will also create higher levels of environmental performance, increased participation that results in producing superior environmental performance as well as reinforce the continuous evaluation that takes place in environmental management systems.

HOW WERE THEY DEVELOPED?

Just prior to the Advisors meeting on December 7, 2006, the Advisors started reviewing materials about potential changes to the Green Tier Legislation. In the course of developing the recommendations, there were consultations with participants, prospective participants, DNR's senior managers (Green Tier Coordinators), environmental interest groups and Cooperative Environmental Assistance staff. In addition, there was also investigatory work done with other states, USEPA and Canada to ascertain where improvements could be made and ideas taken from the experience of those other parties and/or the research that has been done on performance based programs. Concepts were debated and the resulting recommendations developed at the March, August, September and December meetings in 2007.

At the Advisors meeting on December 3, 2007 the Advisors worked through the expansions that were being contemplated for charters and local government. Subsequent to that discussion, further work was done with the Advisors, Legislative Staff and Department staff to see what might be possible for consideration during the current legislative session. There were several ideas, including elements of both the charters and local government provisions that were not going to be ready for consideration due to the amount of time remaining in the legislative session and the work yet to be done on the recommendations. Based on the follow-up work after the December 3 meeting, the following recommendations were compiled and considered at a special meeting by conference call on January 10, 2008.

Tradewell, Becky

From: Bier, Beth
Sent: Monday, August 04, 2008 10:39 AM
To: McDermid, Mark - DNR; Tradewell, Becky; Stolzenberg, John
Cc: Heinen, Paul H - DNR; Voltz, Jeffrey M - DNR
Subject: RE: Legislation

I will discuss this with Mark, for the time being, please do not remove this part of the statutes. Thanks for the explanation Mark!

From: McDermid, Mark - DNR [mailto:Mark.McDermid@Wisconsin.gov]
Sent: Thursday, July 17, 2008 7:55 PM
To: Tradewell, Becky; Stolzenberg, John; Bier, Beth
Cc: Heinen, Paul H - DNR; Voltz, Jeffrey M - DNR
Subject: FW: Legislation

Jeffrey provided the questions below and here is my best attempt to answer them.

We have started the process of trying to come up with language to address the purchasing preference issue. We would hope to have something by mid August that could be used to start the drafting process for those particular provisions assuming that we can come up with a way to address reservations expressed by Senator Miller.

The existing problem is relatively straight forward in that the Advisors felt that the presence of the criteria in (2)(f) kept some of the most likely candidates from participating in the program. Those who may have gotten a citation are frequently ready to take a much closer look at the other parts of their operations that might have problems. The citation is likely only to address one portion of their operation (probably water) and it would be in both the company's and the DNR's interest if resources are directed to finding and correcting other problems that could exist. In many respects there are other provisions of the law which provide safeguards from abuse and we have actually found those safeguards to be effective. Those safeguards are both the provisions which exclude certain kinds of violations from being eligible, provisions within the law that allow us to issue citations in cases when we would not have that same authority if we had done the inspection and also the prior notice provisions which could be used if we really did suspect a measure of abuse. There is also the overriding protection that exists within the law that if we suspect a problem, we can go ahead and do an inspection.

A further dilemma is that the provisions in the law may actually (we have not yet experienced this first hand and might not even know if it is an impediment) serve as a deterrent in those instances in which another business looking to purchase a company would like to have an audit and to know that any possible violations are addressed prior to sale.

Removing this provision makes the statute administratively much more clean in that the question is not immediately about the company's eligibility but focuses specifically on the environmental problems, whether eligible for treatment under the law or subject to traditional enforcement and most importantly that the problem is corrected satisfactorily. All of those elements may go unaddressed if the provision stays in place.

Yes the Department has had one occurrence in which the applicant was not able to participate because of the citation. While we were ultimately able to address this outside 299.85, the party was very apprehensive about the approach, we invested considerably more administrative time at much higher levels and the outcome - discovery and correction of the problems - was the same as it would have been if (2)(g) had not been there.

With the other protections in place which have been effectively used and based on our experience with the program, removal of (2) (g) seems to make sense.

From: Voltz, Jeffrey R - DNR
Sent: Friday, July 11, 2008 11:21 AM
To: McDermid, Mark - DNR
Subject: Legislation

Mark-

The following issues arose in your absence re: Green Tier re-authorization:

- Closure on the issues surrounding procurement, so as to inform whether or not and the extent to which drafting on this issue may commence,
- Per 299.85 (2) (f), both Senator Miller's office and LRB are looking for a brief explanation/summary on the following issues:
 - What about other parts of 299.85 make removing this provision necessary?
 - What about 299.85 and administration of the program will be improved by removing this provision? and
 - Whether or not the department has experience situations in which a potential participant was deemed ineligible because this provision was in place?

Let's discuss how we might address this issues,

Jeffrey

7/10/08 "Green tier" meeting - Beth Brier, Mark Mc Dermid,
John Stabenberg

Working from document dated 1/13/08
(07)

Changes to LRB-3411/1 -

Instead of "publicly shared" use "is available to the public."

Move the language about scale from where it is in current law

I explained that the language proposed to be added to page 3 of the draft is current law (s. 299.83(1)(d) 5. and 6.) and therefore will not be in the draft.

New items

1. Looking for a less extensive process that could be used to allow pilot program participants to move into Green Tier
↳ (299.83)

2. only Tier 2

3. This is primarily intended to allow DNR to recognize entities that have environmental management systems. Probably need to use another term than "Charter" because they wouldn't necessarily assist entities to participate in Tier I or Tier II

4. This envisions a completely different kind of charter - to deal with specific environmental issues - for example climate change. It might involve managing an environmental issue "outside of governmental structure."

This could permit waivers (flexibility) for any DNR rule.

(environmental management systems need not be involved)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

5. Omit this part

6. I pointed out that there is no current requirement to report.
So - add an option to report within 30 days.

7. Omit this

RCT

0139/P1

Le bjk
rnr

SOEN (En 10/8)

2009 ~~2007~~ BILL

Please PWF

SAV
x-refv

ONote

please regenerate

1 AN ACT *to repeal* 299.80 (16) (b) and 299.83 (11); *to renumber and amend*

2 299.80 (16) (a); *to amend* 299.83 (1) (dg) 1., 299.83 (1) (dg) 3., 299.83 (1) (dg)

3 7., 299.83 (3) (d) 1. (intro.), 299.83 (3) (e), 299.83 (4) (c), 299.83 (5) (e), 299.83

4 (7m), 299.83 (8) (h) and 299.85 (9m) (intro.); and *to create* 299.83 (1) (dg) 5m.,

5 299.83 (1) (dg) 10g. and 299.83 (1) (dg) 10r. of the statutes; **relating to:** the

6 environmental results program and reporting requirements for certain *extending the environmental improvement program*

7 environmental programs.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) administers the Environmental Results Program (ERP, also called Green Tier) under which qualified participants agree to improve their environmental performance and implement environmental management systems in return for incentives provided by DNR. This bill makes various changes in ERP.

Under current law, DNR may not approve any application for participation in ERP after July 1, 2009. This bill eliminates that restriction.

Under current law, certain environmental enforcement actions taken against an entity disqualify the entity from acceptance into ERP for a specified period. The act that created ERP, in 2004, gave the secretary of natural resources temporary authority to waive the provisions concerning an entity's environmental enforcement

sub-sub
Environmental Results Program

BILL

record if the secretary determined that the waiver was consistent with the purposes of ERP and that the waiver would not erode public confidence in the integrity of ERP. The waiver authority expired at the end of 2006. This bill allows the secretary of natural resources to waive the provisions concerning an entity's environmental enforcement record based on the same criteria as under former law. The bill does not contain a termination date for the waiver authority.

The bill makes some changes in the required characteristics of an environmental management system and gives an applicant for tier I of ERP one year from the date that DNR approves its application, rather than one year from the date of application, to implement an environmental management system that complies with the law's requirements. The bill also coordinates requirements for DNR reports on ERP and two other related programs.

Analysis insert

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

1 SECTION 1. 299.80 (16) (a) of the statutes is renumbered 299.80 (16) and
2 amended to read:

3 ~~299.80 (16)~~ Beginning not later than November 1, 1998, the secretary of
4 natural resources ~~Every even-numbered year, no later than December 15, the~~
5 department shall submit ~~an annual~~ a progress report on the program under this
6 section to the governor and, under s. 13.172 (3), the standing committees of the
7 legislature with jurisdiction over environmental matters.

8 SECTION 2. 299.80 (16) (b) of the statutes is repealed.

9 SECTION 3. 299.83 (1) (dg) 1. of the statutes is amended to read:

Insert 2-10

10 ~~299.83 (1) (dg) 1.~~ Adoption of an environmental policy that includes a
11 commitment to compliance with environmental requirements, pollution prevention,
12 and continual improvement in environmental performance ~~and communication of~~
13 the plan to the public.

that is available

14 SECTION 4. 299.83 (1) (dg) 3. of the statutes is amended to read:

BILL

1 ✓ 299.83 (1) (dg) 3. Plans Establishment and implementation of plans and
2 procedures to achieve compliance with environmental requirements and to maintain
3 that compliance.

4 SECTION 5. 299.83 (1) (dg) 5m. of the statutes is created to read:

5 ✓ 299.83 (1) (dg) 5m. Establishment, implementation, and maintenance of
6 resources, roles, and responsibilities for establishing, implementing, maintaining,
7 and improving the environmental management system.

8 SECTION 6. 299.83 (1) (dg) 7. of the statutes is amended to read:

9 ✓ 299.83 (1) (dg) 7. An Establishment, implementation, and maintenance of an
10 employee training program to develop awareness of and competence to manage
11 environmental issues.

12 SECTION 7. 299.83 (1) (dg) 10g. of the statutes is created to read:

13 ✓ 299.83 (1) (dg) 10g. Establishment, implementation, and maintenance of
14 procedures to monitor and measure, on a regular basis, key characteristics of an
15 entity's operations that can have a significant environmental impact.

16 SECTION 8. 299.83 (1) (dg) 10r. of the statutes is created to read:

17 ✓ 299.83 (1) (dg) 10r. Establishment, implementation, and maintenance of
18 procedures for periodically evaluating compliance with applicable environmental
19 requirements.

✓
Insert
3-19

20 SECTION 9. 299.83 (3) (d) 1. (intro.) of the statutes is amended to read:

21 299.83 (3) (d) 1. (intro.) Demonstrate that it has implemented, or commit itself
22 to implementing within one year of application the date of the department's decision
23 to approve the applicant's application, an environmental management system, for
24 each covered facility or activity, that is all of the following:

25 SECTION 10. 299.83 (3) (e) of the statutes is amended to read:

BILL

1 [✓] 299.83 (3) (e) *Waiver of enforcement record requirements.* [✓] ~~Before January 1,~~
2 2007, the [✓] The secretary of natural resources may waive requirements in par. (b) 2.
3 or 3. based on the request of an applicant. The department shall provide public notice
4 of the request and shall provide at least 30 days for public comment on the request.
5 The secretary may not grant a waiver under this paragraph unless he or she finds
6 that the waiver is consistent with sub. (1m) and will not erode public confidence in
7 the integrity of the program.

8 ~~X~~ **SECTION 11.** 299.83 (4) (c) of the statutes is amended to read: [✓]

9 [✓] 299.83 (4) (c) The department shall approve or deny an application within 60
10 days after providing notice under par. (a) or, if the department holds a public
11 informational meeting under par. (b), within 60 days after that meeting, [✓] unless the
12 department and the applicant agree to a longer period. [✓] The department may limit
13 the number of participants in tier I of the program, or limit the extent of participation
14 by a particular applicant, based on the department's determination that the
15 limitation is in the best interest of the program.

[✓]
Insert
4-15

16 ~~X~~ **SECTION 12.** 299.83 (5) (e) of the statutes is amended to read: [✓]

17 [✓] 299.83 (5) (e) *Waiver of enforcement record requirements.* [✓] ~~Before January 1,~~
18 2007, the [✓] The secretary of natural resources may waive requirements in par. (b) 2.
19 or 3. based on the request of an applicant. The department shall provide public notice
20 of the request and shall provide at least 30 days for public comment on the request.
21 This public comment period may be concurrent with the notice period under sub. (6)
22 (c) to (f). The secretary may not grant a waiver under this paragraph unless he or
23 she finds that the waiver is consistent with sub. (1m) and will not erode public
24 confidence in the integrity of the program.

25 ~~X~~ **SECTION 13.** 299.83 (7m) of the statutes is amended to read: [✓]

BILL

Standardization

1 ✓ 299.83 (7m) ENVIRONMENTAL AUDITORS. The department may not approve an
 2 outside environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. unless the
 3 outside environmental auditor is certified by the Registrar Accreditation Board
 4 accredited by an accreditation body that complies with standards of the
 5 International Organization for Standards for accreditation bodies or meets criteria
 6 concerning education, training, experience, and performance that are equal
 7 equivalent to the criteria in the standards and guidance of the International
 8 Organization for Standardization guidance 19011 for entities providing audit and
 9 certification of environmental management systems.

10 SECTION 14. 299.83 (8) (h) of the statutes is amended to read:

11 ✓ 299.83 (8) (h) The Every even-numbered year, no later than December 15, the
 12 department shall submit a progress report on the program to the legislature, in the
 13 manner provided in s. 13.172 (2), no later than May 1, 2007, and every 2 years after
 14 it submits the first report governor and, under s. 13.172 (2), to the standing
 15 committees of the legislature with jurisdiction over environmental matters.

16 SECTION 15. 299.83 (11) of the statutes is repealed.

17 SECTION 16. 299.85 (9m) (intro.) of the statutes is amended to read:

18 ✓ 299.85 (9m) ANNUAL REPORT. (intro.) The Every even-numbered year, no later
 19 than December 15, the department shall submit an annual a progress report on the
 20 program under this section to the governor and, under s. 13.172 (3) concerning the
 21 Environmental Improvement Program to the standing committees of the legislature
 22 with jurisdiction over environmental matters. The department shall submit the first
 23 annual report no later than May 1, 2006. The department shall include all of the
 24 following in the annual report:

(END)

Insert
5-24 →

ONote

Lbjk

1 **Analysis insert**

Environmental Improvement Program

2 The Environmental Improvement Program, administered by DNR, limits to
3 \$500 the amount of a forfeiture (civil monetary penalty) that a qualifying entity can
4 be required to pay because of a violation of an environmental law if the entity
5 discovers the violation through an environmental compliance audit, reports the
6 violation to DNR, and corrects the violation within a specified time. Current law
7 sunsets the Environmental Improvement Program on July 1, 2009.

8 This bill eliminates the sunset of the Environmental Improvement Program.

9 **Insert 2-10**

10 that is appropriate to the nature, scale, and environmental impacts of the
11 entity's activities, products, and services,

12 **Insert 3-19**

13 * 6 SECTION 2. 299.83 (3) (d) 1. (intro.) and 1a. of the statutes are consolidated,
14 renumbered 299.83 (3) (d) 1. and amended to read:

15 299.83 (3) (d) 1. Demonstrate that it has implemented, or commit itself to
16 implementing within one year of application, an environmental management
17 system, for each covered facility or activity, that is all of the following: a. In in
18 compliance with the standards for environmental management systems issued by
19 the International Organization for Standardization or determined by the
20 department to be a functionally equivalent environmental management system.

History: 2003 a. 276, 326, 327; 2005 a. 253.

21 SECTION 2. 299.83 (3) (d) 1. b. of the statutes is repealed.

22 **Insert 4-15**

23 SECTION 3. 299.83 (5) (c) 1. (intro.) and a. of the statutes are consolidated,
24 renumbered 299.83 (5) (c) 1. and amended to read:

1 [✓]299.83 (5) (c) 1. Demonstrate that it has implemented an environmental
 2 management system, for each covered facility or activity, that is [✓]all of the following:
 3 a. [✓]In in compliance with the standards for environmental management systems
 4 issued by the International Organization for Standardization or determined by the
 5 department to be a functionally equivalent environmental management system.

History: 2003 a. 276, 326, 327; 2005 a. 253. ^X

6 ~~SECTION 4.~~ [✓]299.83 (5) (c) 1. b. of the statutes is repealed. ✓

7 Insert 5-²⁴11

8 ~~SECTION 5.~~ ^X299.85 (11) of the statutes is repealed. ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0139/P1dn

RCT.....

Lbjk

Date

✓
Beth Bier:

①

> This is a first preliminary draft of the Green Tier proposal. This draft includes the
> changes to 07-3422/1 that we discussed this summer, but does not yet include the
> additions that DNR has requested. I decided to get this much out to allow interested
> persons to begin to review it. *while I continue to work on the additions.*

The treatments of s. 299.83 (3) (d) 1. and (5) (c) 1. are added in this version because of DNR's request to have the language about the scale of an environmental management system be included in the definition of "functionally equivalent management system."

In eliminating the sunset for s. 299.85, called the Environmental Improvement Program, I realized that s. 20.320 is also titled Environmental Improvement Program and the name is used to refer to programs funded from the segregated environmental improvement fund. DNR calls the program under s. 299.85 the Environmental Compliance Audit Program, which is certainly more descriptive. It seems like a good idea to change the name of the program under s. 299.85.

Please let me know if you have any questions.

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

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

LRB-0139/P1dn
RCT:bjk:jf

October 9, 2008

Beth Bier:

This is a first preliminary draft of the Green Tier proposal. This draft includes the changes to 07-3411/1 that we discussed this summer, but does not yet include the additions that DNR has requested. I decided to get this much out to allow interested persons to begin to review it, while I continue to work on the additions.

The treatments of s. 299.83 (3) (d) 1. and (5) (c) 1. are added in this version because of DNR's request to have the language about the scale of an environmental management system be included in the definition of "functionally equivalent management system."

In eliminating the sunset for s. 299.85, called the Environmental Improvement Program, I realized that s. 20.320 is also titled Environmental Improvement Program and the name is used to refer to programs funded from the segregated environmental improvement fund. DNR calls the program under s. 299.85 the Environmental Compliance Audit Program, which is certainly more descriptive. It seems like a good idea to change the name of the program under s. 299.85.

Please let me know if you have any questions.

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



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0139/P

RCT:bjk:ff

Wanted 11/24, if possible

stays RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Inserts

Note

SA ✓
X-ref ✓

regenerate

1 AN ACT to repeal 299.80 (16) (b), 299.83 (3) (d) 1. b., 299.83 (5) (c) 1. b., 299.83
 2 (11) and 299.85 (11); to renumber and amend 299.80 (16) (a); to consolidate,
 3 renumber and amend 299.83 (3) (d) 1. (intro.) and a. and 299.83 (5) (c) 1.
 4 (intro.) and a.; to amend 299.83 (1) (dg) 1., 299.83 (1) (dg) 3., 299.83 (1) (dg) 7.,
 5 299.83 (3) (e), 299.83 (4) (c), 299.83 (5) (e), 299.83 (7m), 299.83 (8) (h) and 299.85
 6 (9m) (intro.); and to create 299.83 (1) (dg) 5m., 299.83 (1) (dg) 10g. and 299.83
 7 (1) (dg) 10r. of the statutes; relating to: the Environmental Results Program,
 8 extending the Environmental Improvement Program, and reporting
 9 requirements for certain environmental programs.

changes to ✓

extension of ✓

Analysis by the Legislative Reference Bureau

Environmental Results Program

Under current law, the Department of Natural Resources (DNR) administers the Environmental Results Program (ERP, also called Green Tier) under which qualified participants agree to improve their environmental performance and implement environmental management systems in return for incentives provided by DNR. This bill makes various changes in ERP.

Under current law, DNR may not approve any application for participation in ERP after July 1, 2009. This bill eliminates that restriction.

Analysis
insert
2

Under current law, certain environmental enforcement actions taken against an entity disqualify the entity from acceptance into ERP for a specified period. The act that created ERP, in 2004, gave the secretary of natural resources temporary authority to waive the provisions concerning an entity's environmental enforcement record if the secretary determined that the waiver was consistent with the purposes of ERP and that the waiver would not erode public confidence in the integrity of ERP. The waiver authority expired at the end of 2006. This bill allows the secretary of natural resources to waive the provisions concerning an entity's environmental enforcement record based on the same criteria as under former law. The bill does not contain a termination date for the waiver authority.

The bill makes some changes in the required characteristics of an environmental management system and gives an applicant for tier I of ERP one year from the date that DNR approves its application, rather than one year from the date of application, to implement an environmental management system that complies with the law's requirements. The bill also coordinates requirements for DNR reports on ERP and two other related programs.

Environmental Improvement Program

The Environmental Improvement Program, administered by DNR, limits to \$500 the amount of a forfeiture (civil monetary penalty) that a qualifying entity can be required to pay because of a violation of an environmental law if the entity discovers the violation through an environmental compliance audit, reports the violation to DNR, and corrects the violation within a specified time. Current law sunsets the Environmental Improvement Program on July 1, 2009.

This bill eliminates the sunset of the Environmental Improvement Program.

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

1 SECTION 1. 299.80 (16) (a) of the statutes is renumbered 299.80 (16) and
2 amended to read:

3 299.80 (16) ~~Beginning not later than November 1, 1998, the secretary of~~
4 ~~natural resources~~ Every even-numbered year, no later than December 15, the
5 department shall submit ~~an annual~~ a progress report on the program under this
6 section to the governor and, under s. 13.172 (3), the standing committees of the
7 legislature with jurisdiction over environmental matters.

8 SECTION 2. 299.80 (16) (b) of the statutes is repealed.

9 SECTION 3. 299.83 (1) (dg) 1. of the statutes is amended to read:

Analysis
insert
2

This subsection does not apply
after December 31, 2012

1 **SECTION 9.** 299.83 (3) (d) 1. (intro.) and a. of the statutes are consolidated,
2 renumbered 299.83 (3) (d) 1. and amended to read:

3 ✓ 299.83 (3) (d) 1. Demonstrate that it has implemented, or commit itself to
4 implementing within one year of application, an environmental management
5 system, for each covered facility or activity, that is all of the following: a. ~~In in~~
6 compliance with the standards for environmental management systems issued by
7 the International Organization for Standardization or determined by the
8 department to be a functionally equivalent environmental management system.

9 **SECTION 10.** 299.83 (3) (d) 1. b. of the statutes is repealed. ✓

10 **SECTION 11.** 299.83 (3) (e) of the statutes is amended to read:

11 299.83 (3) (e) *Waiver of enforcement record requirements.* ~~Before January 1,~~
12 ~~2007, the~~ The secretary of natural resources may waive requirements in par. (b) 2.
13 or 3. based on the request of an applicant. The department shall provide public notice
14 of the request and shall provide at least 30 days for public comment on the request.
15 The secretary may not grant a waiver under this paragraph unless he or she finds
16 that the waiver is consistent with sub. (1m) and will not erode public confidence in
17 the integrity of the program.

18 **SECTION 12.** 299.83 (4) (c) of the statutes is amended to read:

19 ✓ 299.83 (4) (c) The department shall approve or deny an application within 60
20 days after providing notice under par. (a) or, if the department holds a public
21 informational meeting under par. (b), within 60 days after that meeting, unless the
22 department and the applicant agree to a longer period. The department may limit
23 the number of participants in tier I of the program, or limit the extent of participation
24 by a particular applicant, based on the department's determination that the
25 limitation is in the best interest of the program.

1 **SECTION 13.** 299.83 (5) (c) 1. (intro.) and a. of the statutes are consolidated,
2 renumbered 299.83 (5) (c) 1. and amended to read:

3 ✓ 299.83 (5) (c) 1. Demonstrate that it has implemented an environmental
4 management system, for each covered facility or activity, that is ~~all of the following:~~
5 ~~a. In~~ in compliance with the standards for environmental management systems
6 issued by the International Organization for Standardization or determined by the
7 department to be a functionally equivalent environmental management system.

8 **SECTION 14.** 299.83 (5) (c) 1. b. of the statutes is repealed.

9 **SECTION 15.** 299.83 (5) (e) of the statutes is amended to read:

10 ✓ 299.83 (5) (e) *Waiver of enforcement record requirements.* ~~Before January 1,~~
11 2007, ~~the~~ The secretary of natural resources may waive requirements in par. (b) 2.
12 or 3. based on the request of an applicant. The department shall provide public notice
13 of the request and shall provide at least 30 days for public comment on the request.
14 This public comment period may be concurrent with the notice period under sub. (6)
15 (c) to (f). The secretary may not grant a waiver under this paragraph unless he or
16 she finds that the waiver is consistent with sub. (1m) and will not erode public
17 confidence in the integrity of the program.

18 **SECTION 16.** 299.83 (7m) of the statutes is amended to read:

19 ✓ 299.83 (7m) ENVIRONMENTAL AUDITORS. The department may not approve an
20 outside environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. unless the
21 outside environmental auditor is ~~certified by the Registrar Accreditation Board~~
22 accredited by an accreditation body that complies with standards of the
23 International Organization for Standardization for accreditation bodies or meets
24 criteria concerning education, training, experience, and performance that are equal
25 equivalent to the criteria in the standards and guidance of the International

✓
Insert
5-17

1 Organization for Standardization guidance ~~19011~~ for entities providing audit and
2 certification of environmental management systems.

3 SECTION 17. 299.83 (8) (h) of the statutes is amended to read:

4 299.83 (8) (h) The Every even-numbered year, no later than December 15, the
5 department shall submit a progress report on the program to the legislature, in the
6 manner provided in s. 13.172 (2), no later than May 1, 2007, and every 2 years after
7 it submits the first report governor and, under s. 13.172 (2), to the standing
8 committees of the legislature with jurisdiction over environmental matters.

9 SECTION 18. 299.83 (11) of the statutes is repealed.

10 SECTION 19. 299.85 (9m) (intro.) of the statutes is amended to read:

11 299.85 (9m) ANNUAL REPORT. (intro.) The Every even-numbered year, no later
12 than December 15, the department shall submit an annual a progress report on the
13 program under this section to the governor and, under s. 13.172 (3) concerning the
14 Environmental Improvement Program, to the standing committees of the legislature
15 with jurisdiction over environmental matters. The department shall submit the first
16 annual report no later than May 1, 2006. The department shall include all of the
17 following in the annual report:

18 SECTION 20. 299.85 (11) of the statutes is repealed.

19 (END)

Done

1 **Analysis insert 1**

no #

There are two tiers of participation in ERP. A participant in tier II enters into a participation contract with DNR that sets forth the commitments of the participant and the incentives that DNR will provide.

2

3 **Analysis insert 2**

Current law requires participants in ERP to conduct annual audits of their environmental management systems and, for participants in tier II, annual audits of their compliance with environmental laws and to report the results of those audits to DNR. Under the law, if an audit reveals a violation of an environmental law, the participant must provide information about the violation to DNR. If a participant complies with these requirements and corrects the violation within a specified period, the participant is generally exempt from paying a forfeiture (civil monetary penalty) for the violation.

This bill authorizes a participant in ERP to report to DNR a violation of an environmental law that it discovers through its environmental management system, but not through an annual audit. If the participant reports within 30 days of discovering the violation, provides required information about the violation, and corrects the violation within a specified period, the participant is generally exempt from paying a forfeiture (civil monetary penalty) for the violation.

five

Currently, DNR administers the Environmental Cooperation Pilot Program under which DNR was authorized, before October 1, 2002, to enter into not more than ten cooperative agreements with persons subject to environmental laws. The term of an agreement is 5 years with the possibility of one renewal for five years. In a cooperative agreement, a participant in the program is required to implement an environmental management system and to improve its environmental performance. In return, DNR may grant operational flexibility and, under specified circumstances, provide variances from requirements under environmental laws.

This bill provides a process under which a participant in the Environmental Cooperation Pilot Program may become a participant in tier II of ERP, using the cooperative agreement under the pilot program as a basis for a participation contract under ERP.

This bill authorizes DNR to enter into an agreement with an organization (of businesses, for example) under which the organization encourages its members to implement environmental management systems or to improve their environmental management systems. DNR would recognize the organization as an environmental results partner and provide information about environmental management systems and about the experience of participants in tier I and tier II of ERP.

4 **Insert 5-17**

to the organization and its members

1 ✓ 299.83 (6) (k) *Review of decision*. Notwithstanding s. 227.42, there is no right
2 to an administrative hearing on the department's decision to enter into a
3 participation contract under par. (j) or (L), but the decision is subject to judicial
4 review.

History: 2003 a. 276, 326, 327; 2005 a. 253.

5 **SECTION 3.** 299.83 (6) (L) of the statutes is created to read:

6 ✓ 299.83 (6) (L) *Alternate process*. 1. A person participating in the program
7 under s. 299.80 may choose to apply for participation in tier II using the process
8 under this paragraph, rather than under pars. (a) to (j), by submitting a letter
9 notifying the department of its choice, before the expiration of the cooperative
10 agreement under s. 299.80, along with a copy of its most recent performance
11 evaluation under s. 299.80 (3) (j).

12 2. The department shall enter into discussions with a person submitting a
13 letter under subd. 1. to develop a proposed participation contract that is based on the
14 cooperative agreement under s. 299.80, making the changes necessary to ensure that
15 the participation contract complies with par. (jm). For the purposes of par. (jm) 1.,
16 if the person agrees to include in the participation contract the measures to maintain
17 and improve its environmental performance that were included in the cooperative
18 agreement, the operational flexibility and variances provided to the person in the
19 cooperative agreement are presumed to be proportional to the environmental
20 benefits that will be provided by the participant.

granted

21 3. The department shall provide public notice about a proposed participation
22 contract developed under subd. 2. in the area in which each covered facility or activity
23 is located or performed.

1 4. After providing public notice under subd. 3., the department may hold a
2 public informational meeting about a proposed participation contract.

3 5. The department shall enter into a participation contract under this
4 paragraph with a person with whom the department has developed a proposed
5 participation contract unless significant concerns are raised in comments arising
6 from public notice under subd. 3. or from an informational meeting under subd. 4.
7 and the person is unable or unwilling to respond to the concerns to the department's
8 satisfaction.

9 SECTION 4. 299.83 (6m) (am) of the statutes is created to read:

10 299.83 (6m) (am) *Optional reports of violations.* If a participant discovers a
11 violation through its environmental management system, other than through an
12 audit under sub. (3) (d) 4. or (5) (c) 2. or 3., the participant may, no more than 30 days
13 after discovering the violation, submit a report to the department that includes all
14 of the following:

15 1. A description of the violation and the date on which the participant
16 discovered the violation.

17 2. A description of the actions taken or proposed to be taken to correct the
18 violation.

19 3. A commitment to correct the violation within 90 days of submitting the
20 report or according to a compliance schedule approved by the department.

21 4. If the participant proposes to take more than 90 days after submitting the
22 report to correct the violation, a proposed compliance schedule that contains the
23 shortest reasonable periods for correcting the violation, a statement that justifies the
24 proposed compliance schedule, a description of measures that the participant will
25 take to minimize the effects of the violation during the period of the compliance

1 schedule, and proposed stipulated penalties to be imposed if the participant fails to
2 comply with the proposed compliance schedule.

3 5. A description of the measures that the participant has taken or will take to
4 prevent future violations.

5 **SECTION 5.** 299.83 (6m) (b) 1. of the statutes is amended to read:

6 299.83 (6m) (b) 1. If the department receives a report under par. (a) or (am) that
7 contains a proposed compliance schedule under par. (a) 4. or (am) 4., the department
8 shall review the proposed compliance schedule. The department may approve the
9 compliance schedule as submitted or propose a different compliance schedule. If the
10 participant does not agree to implement a compliance schedule proposed by the
11 department, the department shall schedule a meeting with the participant to
12 attempt to reach an agreement on a compliance schedule. If the department and the
13 participant do not reach an agreement on a compliance schedule, the department
14 shall terminate the participation of the participant in the program. If the parties
15 agree to a compliance schedule, the participant shall incorporate the compliance
16 schedule into its environmental management system.

17 History: 2003 a. 276, 326, 327; 2005 a. 253.

17 **SECTION 6.** 299.83 (6m) (c) of the statutes is amended to read:

18 299.83 (6m) (c) *Stipulated penalties.* If the department receives a report under
19 par. (a) ^{or (am)} that contains proposed stipulated penalties under par. (a) 4. or (am) 4., the
20 department shall review the proposed stipulated penalties. The department may
21 approve the stipulated penalties as submitted or propose different stipulated
22 penalties. If the participant does not agree to stipulated penalties proposed by the
23 department, the department shall schedule a meeting with the participant to

1 attempt to reach an agreement on stipulated penalties. If no agreement is reached,
2 there are no stipulated penalties for failure to comply with the compliance schedule.

3 History: 2003 a. 276, 326, 327; 2005 a. 253. X

3 SECTION 7. 299.83 (6m) (d) 1. a. of the statutes is amended to read: ✓

4 ✓ 299.83 (6m) (d) 1. a. If a participant in the program corrects violations that are
5 disclosed in a report that meets the requirements of par. (a) or (am) within 90 days
6 after the department receives the report, this state may not bring a civil action to
7 collect forfeitures for the violations.

8 History: 2003 a. 276, 326, 327; 2005 a. 253. X

8 SECTION 8. 299.83 (6m) (d) 2. b. of the statutes is amended to read: ✓

9 ✓ 299.83 (6m) (d) 2. b. The department discovers the violation before submission
10 of a report that meets the requirement of par. (a) or (am).

11 History: 2003 a. 276, 326, 327; 2005 a. 253. X

11 SECTION 9. 299.83 (7j) of the statutes is created to read: ✓

12 ✓ 299.83 (7j) ENVIRONMENTAL RESULTS PARTNERS. (a) The department may enter
13 into an agreement with an association of entities under which the department
14 recognizes the association as an environmental results partner if the association
15 agrees to do all of the following: ✓

- 16 1. Assist its member entities to implement environmental management
17 systems that comply with the standards for environmental management systems
18 issued by the International Organization for Standardization or functionally
19 equivalent management systems or to implement other environmental management
20 systems and develop those other environmental management systems into
21 environmental management systems that comply with the standards for
22 environmental management systems issued by the International Organization for
23 Standardization or functionally equivalent management systems. ✓

- 1 ✓
2 2. Collect information on the environmental results achieved by its members
3 through environmental management systems and report the information to the
4 department. ✓
5 ✓ ✓
6 3. Maintain an Internet site with links to information about environmental
7 management systems that can be used by members and nonmembers. ✓
8 ✓ ✓ ✓ ✓
9 (b) If the department enters into an agreement under par. (a) with an
10 association, the department shall do all of the following: ✓
11 ✓ ✓
12 1. Formally recognize the activities under par. (a) 1. and describe the results
13 of those activities in reports that the department makes on the program. ✓
14 ✓
15 2. Include the association and its members in meetings of participants in tier
16 I and tier II of the program. ✓
1 ✓
2 3. Supply information to the association and its members about environmental
3 management systems and about the experiences of participants in tier I and tier II
4 of the program. ✓
5 ✓ ✓ ✓
6 4. Provide publicity, as specified in the agreement, about the activities of the
7 association. ✓

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0139/P2dn
RCT:.....

Lbjk

Date

Beth Bier:

This is another version of the proposal for changes in the Environmental Results Program (ERP).

This draft includes a process for an entity participating in the Environmental Cooperation Pilot Program under s. 299.80 to become a participant in tier II of ERP. See proposed s. 299.83 (6) (L). The draft requires the entity to begin the process before its cooperative agreement under s. 299.70 expires. As a practical matter, the entity will have to begin the process some time before the cooperative agreement expires to avoid a gap between its participation in the two programs.

Point 3 of the January 13, 2008, document called for the creation of another kind of charter. However, the kind of agreement called for in that point would not have the fundamental objectives of a charter under current law and calling it a charter would be confusing. The main purpose of point 3, as I understand it, is to allow DNR to recognize organizations that assist their members to implement and improve environmental management systems. This draft authorizes such an organization to become an ERP "partner." See proposed s. 299.83 (7j). If different terminology is desired, it can easily be changed in a later version.

The treatments of s. 299.83 (3) (d) 1. and (5) (c) 1. are included because of DNR's request to have the language about the scale of an environmental management system be included in the definition of "functionally equivalent management system."

In eliminating the sunset for s. 299.85, called the Environmental Improvement Program, I realized that s. 20.320 is also titled Environmental Improvement Program and the name is used to refer to the group of programs (including the Clean Water Fund Program) funded from the segregated environmental improvement fund. DNR calls the program under s. 299.85 the Environmental Compliance Audit Program, which is certainly more descriptive than the current statutory name. It seems like a good idea to change the name of the program under s. 299.85. For that matter, since everyone refers to ERP as "Green Tier," it might make sense to make that name change in the statutes as well.

Please let me know if you have any questions.

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0139/P2dn
RCT:bjk:md

November 19, 2008

Beth Bier:

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Please let me know if you have any questions.

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

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

12/1/08 Meeting with Sen. Miller, Beth Bier, Sen. Kedzie, Dan Johnson, John Stabenbeck, Linda Bockert, Paul Kent, Linda Grant, Michael Simpson, Mark McBernid, Jeff Volte, Tim Andryk

Re: points in Linda Bockert's email

✓ 1. No

✓ 2. Fix

3. No

4. Sen. Miller leans toward keeping 299.85 (2) (f) but will consider changes in that provision including changes in the timing (when one counts back from).

✓ 5. Tentatively change to two years

✓ Also - Change name of s. 299.85 as suggested in my DNate to IPI. Change name of s. 299.83 to Green Tier.

Next meeting probably early next year. Will need a draft before meeting.

RLT