

**Tradewell, Becky**

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**From:** Stolzenberg, John  
**Sent:** Monday, December 01, 2008 8:28 AM  
**To:** Tradewell, Becky  
**Subject:** FW: Green Tier Reauthorization

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**From:** Bochert, Linda H (22271) [mailto:LHBochert@michaelbest.com]  
**Sent:** Sunday, November 30, 2008 8:41 PM  
**To:** Paul Kent; Sen.Miller; McDermid, Mark - DNR; Voltz, Jeffrey R - DNR; Heinen, Paul H - DNR; Henderson, Patrick W - DNR; msimpson@reinhardt.com; Brian.borofka@wepco.com; Denny Caneff; hiniker@1kfriends.org; Andryk, Tim A - DNR; lgrant@wisconsinrivers.org  
**Cc:** Johnson, Dan; Osdene, Michelle; Stolzenberg, John; Bochert, Linda H (22271)  
**Subject:** RE: Green Tier Reauthorization

Senator Miller et al:

I add my thanks to Paul Kent's for the opportunity to review this initial draft legislation regarding the Green Tier program (Wis. Stat. 299.83) and the environmental audit program (Wis. Stat. 299.85).

Please consider these comments additions to those provided by Paul Kent in his email message below.

**A. Wis. Stat. 299.83: Green Tier (a/k/a/ Environmental Results Program):**

1. **Section 3:** Proposed amendment to s. 299.83(1)(dg)(1): Paul notes that the phrase "that is appropriate to the nature, scale and environmental impacts of the entity's activities, products and services" is new to (1)(dg)(1) and should be shown in underline. It is my understanding/recollection that the Advisors discussed that language in connection with the entirety of the "functionally equivalent environmental management system", rather than only the environmental policy to be adopted as part of an EMS.

Accordingly, I believe that phrase is better added to s. 299.83(1)(dg) so that section would be amended to read as follows:

(dg) "Functionally equivalent environmental management system" means an environmental management system that includes all of the following elements and any other elements that the department determines are essential elements of International Organization for Standardization standard 14001 in a manner that is appropriate to the nature, scale and environmental impacts of the entity's activities, products and services:

I believe that approach is also more consistent with the proposals later in the draft in Sections 10 and 14 to repeal similar language in ss. 299.83(3)(d)1.b. and (5)(c)1.b. – i.e., "Determined by the department to be appropriate to the nature, scale and environmental impacts of the applicant's operations related to each covered facility or activity." I agree that these sections aren't necessary if the language is incorporated into the definition of "functionally equivalent environmental management system".

2. **Section 9:** Proposed amendment to s. 299.83(3)(d)1.: The LRB Analysis states that the purpose of this amendment is to give an applicant for tier I one year from the date that DNR approves its application, rather than one year from the date of the application, to implement an EMS. I concur that was our intent, however the proposed amendment to this section doesn't yet capture it.

Accordingly, I suggest that s. 299.83(3)(d)1 be amended to read as follows:

“Demonstrate that it has implemented, or commit itself to implementing within one year of the department's approval of its application, an environmental management system . . .

3. I agree with Paul that the Advisors discussed, and I thought agreed to, two additional amendments as follows:

- a. Amend s. 299.83(6)(a)1 to read as follows:

“Describe the involvement of interested persons in developing and implementing the proposal for maintaining and improving the applicant's superior environmental performance, identify the interested persons, and describe the interests that those persons have in the applicant's participating in the program.”

- b. Amend s. 299.83(6)(j) to add the following at an appropriate location:

“The contract shall include a provision that describes how the parties to the contract will maintain interested persons' involvement during the implementation of the contract.”

**B. Wis. Stat. 299.85: Environmental audit program (a/k/a/ Environmental Improvement Program):**

4. I also agree with Paul that the Advisors discussed, and I thought agreed to, repeal of s. 299.85 (2)(f). This section is part of the Environmental Improvement Program which is designed to encourage the conduct of environmental audits.

Sec. 299.85(2)(f) currently reads as follows:

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

Rather than encouraging the conduct of environmental audits, this section acts as an impediment to the conduct of an environmental audit under the EIP for a facility that has a prior enforcement record. While it makes sense to me to require a “clean” enforcement record for Green Tier participation, I have trouble understanding why that is relevant to a facility that wants to conduct an environmental audit under this program. It has always seemed to me to be contrary to the spirit of the program and the goal of encouraging the conduct of audits. I also note that, as it is currently drafted, the determination of whether this enforcement record evaluation applies to a facility comes at an awkward time in the process – i.e., after the facility has decided to conduct the audit, has conducted it, and is submitting its audit report.

If I am mistaken in my recollection that the Advisors agreed to this amendment, I hope we can still discuss it and consider including it as part of the package.

5. I have one additional proposal for the group's consideration that I do not believe has ever been discussed by the Advisors. If it is off limits for this discussion because it has not been previously discussed, then never mind :)

My suggestion is to amend s. 299.85(6)(b) to delete the following phrase: "(b) The department may not approve or issue a compliance schedule that extends longer than 12 months beyond the date of approval of the compliance schedule." This section deals with the length of time a facility that has conducted an audit may be given to implement appropriate corrective actions for issues identified in the audit. Often corrective actions can be implemented relatively quickly; however, if significant capital expenditures are required, it may take some time. The remainder of this section lists the factors the department should consider in approving a compliance schedule, and those factors provide guidance to the department's exercise of its discretion. Ss. 299.85(3m) and (3)(e) of the current law already call for the shortest reasonable period of time for corrective action and require public notice and the opportunity for public comment for a compliance schedule that goes beyond 90 days, so there are built-in constraints on the allowable period of time. The limitation of a 12 month compliance schedule, with no mechanism to consider an extension of that period, seems unnecessary and artificial and I suggest we consider removing it.

I look forward to our meeting. Thank you again,

Linda B.

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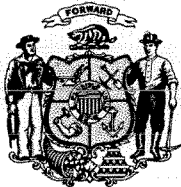
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**From:** Paul Kent [mailto:pkent@andersonkent.com]

**Sent:** Friday, November 28, 2008 11:20 AM

**To:** Sen. Miller; McDermid, Mark - DNR; Voltz, Jeffrey R - DNR; Heinen, Paul H - DNR; Henderson, Patrick W - DNR; Bochert, Linda H (22271); msimpson@reinhardt.com; Brian.borofka@wepco.com; Denny Caneff; hiniker@1kfriends.org; Andryk, Tim A - DNR; lgrant@wisconsinrivers.org

12/02/2008



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0139/P03

RCT:bjk:md

Wanted soon (in 12/3)

stays

vmr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Inserts

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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 (6) (j), 299.83 (6) (k), 299.83  
6 (6m) (b) 1., 299.83 (6m) (c), 299.83 (6m) (d) 1. a., 299.83 (6m) (d) 2. b., 299.83  
7 (7m), 299.83 (8) (h) and 299.85 (9m) (intro.); and **to create** 299.83 (1) (dg) 5m.,  
8 299.83 (1) (dg) 10g., 299.83 (1) (dg) 10r., 299.83 (6) (L), 299.83 (6m) (am) and  
9 299.83 (7j) of the statutes; **relating to:** changes to <sup>and extension of</sup> the Environmental Results  
10 Program, extension of the Environmental Improvement Program, and  
11 reporting requirements for certain environmental programs. <sup>and changing</sup>

**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

the maximum length of a compliance schedule

under that program

qualified participants agree to improve their environmental performance and implement environmental management systems in return for incentives provided by DNR. 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. 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 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.

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.

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 five 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

*The bill changes the name of ERP to the Green Tier Program*

implement environmental management systems or to improve their environmental management systems. DNR would recognize the organization as an environmental results partner and provide information to the organization and its members about environmental management systems and about the experience of participants in tier I and tier II of ERP.

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.

*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. This subsection does not  
8 apply after December 31, 2012.

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

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

11 299.83 (1) (dg) 1. Adoption of an environmental policy that is appropriate to the  
12 nature, scale, and environmental impacts of the entity's activities, products, and

*Insert  
3-9*

*text marked  
for deletion  
should be  
stricken instead*



1 services, that includes a commitment to compliance with environmental  
 2 requirements, pollution prevention, and continual improvement in environmental  
 3 performance, <sup>plain space</sup> and that is available to the public.

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

5 299.83 (1) (dg) 3. Plans Establishment and implementation of plans and  
 6 procedures to achieve compliance with environmental requirements and to maintain  
 7 that compliance.

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

9 299.83 (1) (dg) 5m. Establishment, implementation, and maintenance of  
 10 resources, roles, and responsibilities for establishing, implementing, maintaining,  
 11 and improving the environmental management system.

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

13 299.83 (1) (dg) 7. An Establishment, implementation, and maintenance of an  
 14 employee training program to develop awareness of and competence to manage  
 15 environmental issues.

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

17 299.83 (1) (dg) 10g. Establishment, implementation, and maintenance of  
 18 procedures to monitor and measure, on a regular basis, key characteristics of an  
 19 entity's operations that can have a significant environmental impact.

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

21 299.83 (1) (dg) 10r. Establishment, implementation, and maintenance of  
 22 procedures for periodically evaluating compliance with applicable environmental  
 23 requirements.

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

Insert  
 4-23

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

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

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

9           299.83 (3) (e) *Waiver of enforcement record requirements.* ~~Before January 1,~~  
10 ~~2007, the~~ The secretary of natural resources may waive requirements in par. (b) 2.  
11 or 3. based on the request of an applicant. The department shall provide public notice  
12 of the request and shall provide at least 30 days for public comment on the request.  
13 The secretary may not grant a waiver under this paragraph unless he or she finds  
14 that the waiver is consistent with sub. (1m) and will not erode public confidence in  
15 the integrity of the program.

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

17           299.83 (4) (c) The department shall approve or deny an application within 60  
18 days after providing notice under par. (a) or, if the department holds a public  
19 informational meeting under par. (b), within 60 days after that meeting, unless the  
20 department and the applicant agree to a longer period. The department may limit  
21 the number of participants in tier I of the program, or limit the extent of participation  
22 by a particular applicant, based on the department's determination that the  
23 limitation is in the best interest of the program.

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

Insert  
5-23 →



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.

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

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

8 299.83 (5) (e) *Waiver of enforcement record requirements.* ~~Before January 1,~~  
9 ~~2007,~~ the The secretary of natural resources may waive requirements in par. (b) 2.  
10 or 3. based on the request of an applicant. The department shall provide public notice  
11 of the request and shall provide at least 30 days for public comment on the request.  
12 This public comment period may be concurrent with the notice period under sub. (6)  
13 (c) to (f). The secretary may not grant a waiver under this paragraph unless he or  
14 she finds that the waiver is consistent with sub. (1m) and will not erode public  
15 confidence in the integrity of the program.

16 SECTION 16. 299.83 (6) (j) of the statutes is amended to read:

17 299.83 (6) (j) *Participation contract decision.* Within 30 days after providing  
18 notice under par. (h) or, if the department holds a public informational meeting under  
19 par. (i), within 30 days after that meeting, the department shall decide whether to  
20 enter into a participation contract with an applicant, unless the applicant and the  
21 department agree to an extension beyond 30 days.

22 (jm) Participation contract. 1. In a participation contract, the department shall  
23 require that the participant maintain the environmental management system  
24 described in sub. (5) (c) 1. and abide by the commitments in sub. (5) (c) 2. and 3. The  
25 department may not reduce the frequency of required inspections or monitoring as

Insert  
6-15

Insert 6-24

1 an incentive in a participation contract if the audit under sub. (5) (c) 3. is conducted  
2 by a person other than an outside environmental auditor. The department shall  
3 ensure that the incentives provided under a participation contract are proportional  
4 to the environmental benefits that will be provided by the participant under the  
5 participation contract. The department shall include in a participation contract  
6 remedies that apply if a party fails to comply with the participation contract.

7 2. The term of a participation contract may not be less than 3 years or more than  
8 10 years, with opportunity for renewal for additional terms of the same length as the  
9 original term upon agreement of the parties. The term of a participation contract  
10 may not exceed 5 years if the participation contract incorporates, modifies, or  
11 otherwise affects the terms or conditions of a permit issued under s. 283.31, 283.33,  
12 or 285.62, unless federal and state law authorize a longer term for the permit.

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

14 299.83 (6) (k) *Review of decision.* Notwithstanding s. 227.42, there is no right  
15 to an administrative hearing on the department's decision to enter into a  
16 participation contract under par. (j) or (L), but the decision is subject to judicial  
17 review.

18 **SECTION 18.** 299.83 (6) (L) of the statutes is created to read:

19 299.83 (6) (L) *Alternate process.* 1. A person participating in the program  
20 under s. 299.80 may choose to apply for participation in tier II using the process  
21 under this paragraph, rather than under pars. (a) to (j), by submitting a letter  
22 notifying the department of its choice, before the expiration of the cooperative  
23 agreement under s. 299.80, along with a copy of its most recent performance  
24 evaluation under s. 299.80 (3) (j).

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

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

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

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

21           SECTION 19. 299.83 (6m) (am) of the statutes is created to read:

22           299.83 (6m) (am) *Optional reports of violations.* If a participant discovers a  
23 violation through its environmental management system, other than through an  
24 audit under sub. (3) (d) 4. or (5) (c) 2. or 3., the participant may, no more than 30 days

1 after discovering the violation, submit a report to the department that includes all  
2 of the following:

3 1. A description of the violation and the date on which the participant  
4 discovered the violation.

5 2. A description of the actions taken or proposed to be taken to correct the  
6 violation.

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

9 4. If the participant proposes to take more than 90 days after submitting the  
10 report to correct the violation, a proposed compliance schedule that contains the  
11 shortest reasonable periods for correcting the violation, a statement that justifies the  
12 proposed compliance schedule, a description of measures that the participant will  
13 take to minimize the effects of the violation during the period of the compliance  
14 schedule, and proposed stipulated penalties to be imposed if the participant fails to  
15 comply with the proposed compliance schedule.

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

18 **SECTION 20.** 299.83 (6m) (b) 1. of the statutes is amended to read:

19 299.83 (**6m**) (b) 1. If the department receives a report under par. (a) or (am) that  
20 contains a proposed compliance schedule under par. (a) 4. or (am) 4., the department  
21 shall review the proposed compliance schedule. The department may approve the  
22 compliance schedule as submitted or propose a different compliance schedule. If the  
23 participant does not agree to implement a compliance schedule proposed by the  
24 department, the department shall schedule a meeting with the participant to  
25 attempt to reach an agreement on a compliance schedule. If the department and the

1 participant do not reach an agreement on a compliance schedule, the department  
2 shall terminate the participation of the participant in the program. If the parties  
3 agree to a compliance schedule, the participant shall incorporate the compliance  
4 schedule into its environmental management system.

5 **SECTION 21.** 299.83 (6m) (c) of the statutes is amended to read:

6 299.83 (6m) (c) *Stipulated penalties.* If the department receives a report under  
7 par. (a) or (am) that contains proposed stipulated penalties under par. (a) 4. or (am)  
8 4., the department shall review the proposed stipulated penalties. The department  
9 may approve the stipulated penalties as submitted or propose different stipulated  
10 penalties. If the participant does not agree to stipulated penalties proposed by the  
11 department, the department shall schedule a meeting with the participant to  
12 attempt to reach an agreement on stipulated penalties. If no agreement is reached,  
13 there are no stipulated penalties for failure to comply with the compliance schedule.

14 **SECTION 22.** 299.83 (6m) (d) 1. a. of the statutes is amended to read:

15 299.83 (6m) (d) 1. a. If a participant in the program corrects violations that are  
16 disclosed in a report that meets the requirements of par. (a) or (am) within 90 days  
17 after the department receives the report, this state may not bring a civil action to  
18 collect forfeitures for the violations.

19 **SECTION 23.** 299.83 (6m) (d) 2. b. of the statutes is amended to read:

20 299.83 (6m) (d) 2. b. The department discovers the violation before submission  
21 of a report that meets the requirement of par. (a) or (am).

22 **SECTION 24.** 299.83 (7j) of the statutes is created to read:

23 **299.83 (7j)** ENVIRONMENTAL RESULTS PARTNERS <sup>Green tier</sup>. (a) The department may enter  
24 into an agreement with an association of entities under which the department

1 recognizes the association as an environmental results partner if the association  
2 agrees to do all of the following:

3 1. Assist its member entities to implement environmental management  
4 systems that comply with the standards for environmental management systems  
5 issued by the International Organization for Standardization or functionally  
6 equivalent management systems or to implement other environmental management  
7 systems and develop those other environmental management systems into  
8 environmental management systems that comply with the standards for  
9 environmental management systems issued by the International Organization for  
10 Standardization or functionally equivalent management systems.

11 2. Collect information on the environmental results achieved by its members  
12 through environmental management systems and report the information to the  
13 department.

14 3. Maintain an Internet site with links to information about environmental  
15 management systems that can be used by members and nonmembers.

16 (b) If the department enters into an agreement under par. (a) with an  
17 association, the department shall do all of the following:

18 1. Formally recognize the activities under par. (a) 1. and describe the results  
19 of those activities in reports that the department makes on the program.

20 2. Include the association and its members in meetings of participants in tier  
21 I and tier II of the program.

22 3. Supply information to the association and its members about environmental  
23 management systems and about the experiences of participants in tier I and tier II  
24 of the program.

1 4. Provide publicity, as specified in the agreement, about the activities of the  
2 association.

3 **SECTION 25.** 299.83 (7m) of the statutes is amended to read:

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

13 **SECTION 26.** 299.83 (8) (h) of the statutes is amended to read:

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

19 **SECTION 27.** 299.83 (11) of the statutes is repealed.

20 **SECTION 28.** 299.85 (9m) (intro.) of the statutes is amended to read:

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





1           **Analysis Insert**

~~PH~~ Currently under EIP, a qualifying entity is required to correct a violation within 90 days unless DNR approves a longer compliance schedule. The law prohibits DNR from approving a compliance schedule that is more than 12 months long. This bill extends the maximum length of a compliance schedule to 24 months. The bill also changes the name of EIP to the Environmental Compliance Audit Program. ✓

2           **Insert 3-9**           X

3           **SECTION 1.** 299.83 (title) of the statutes is amended to read:

4           **299.83** (title) ~~Environmental Results~~ **Green Tier Program**. ✓

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

6           **SECTION 2.** 299.83 (1) (dg) (intro.) of the statutes is amended to read:

7           299.83 (1) (dg) (intro.) “Functionally equivalent environmental management  
8           system” means an environmental management system that is appropriate to the  
9           nature, scale, and environmental impacts of an entity’s activities, products, and  
10          services and that includes all of the following elements and any other elements that  
11          the department determines are essential elements of International Organization for  
12          Standardization standard 14001: ✓

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

13          **Insert 4-23**           X

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

15          299.83 (1) (f) “Program” means the ~~Environmental Results~~ **Green Tier**  
16          Program under this section. ✓

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

17          **Insert 5-23**           X

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

1           299.83 (4m) (d) A participant in tier I of the program may use an  
2     ~~Environmental Results~~ a Green Tier Program logo selected by the department on  
3     written materials produced by the participant. ✓

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

4           **Insert 6-15**

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

6           299.83 (6) (a) 1. Describe the involvement of interested persons in developing  
7     and implementing the proposal for maintaining and improving the applicant's  
8     superior environmental performance, identify the interested persons, and describe  
9     the interests that those persons have in the applicant's participation in the program. ✓

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

10          **Insert 6-24**

11          <sup>NO</sup>RA The department shall include in a participation contract a provision that  
12          describes how the participant will maintain the involvement of interested parties  
13          during the term of the participation contract. ✓

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

14          **Insert 12-19**

15          **SECTION 6.** 299.85 (title) of the statutes is amended to read:

16          **299.85 (title)     Environmental Improvement Compliance Audit**  
17          **Program.** ✓

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

18          **SECTION 7.** 299.85 (2) (intro.) of the statutes is amended to read:

19          299.85 (2) REQUIREMENTS FOR PARTICIPATION. (intro.) A regulated entity  
20          qualifies for participation in the Environmental Improvement Compliance Audit  
21          Program with respect to a facility owned or operated by the regulated entity if all of  
22          the following apply: ✓

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

23          **SECTION 8.** 299.85 (3) (intro.) of the statutes is amended to read:

1           299.85 (3) AUDIT REPORT. (intro.) To participate in the Environmental  
 2 ~~Improvement~~ Compliance Audit Program with respect to a facility, the regulated  
 3 entity that owns or operates the facility shall submit a report to the department  
 4 within 45 days after the date of the final written report of findings of the  
 5 environmental compliance audit of the facility. The regulated entity shall complete  
 6 the environmental compliance audit, including the final written report of findings,  
 7 within 365 days after providing the notice under sub. (2) (b). The report submitted  
 8 to the department shall include all of the following: ✓

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

9           **SECTION 9.** 299.85 (4) of the statutes is amended to read:

10           299.85 (4) ENVIRONMENTAL COMPLIANCE AUDIT. A regulated entity does not  
 11 qualify for participation in the Environmental ~~Improvement~~ Compliance Audit  
 12 Program unless the final written report of findings of the environmental compliance  
 13 audit is labeled "environmental compliance audit report," is dated, and, if the  
 14 environmental compliance audit identifies violations, includes a plan for corrective  
 15 action. A regulated entity may use a form developed by the regulated entity, by a  
 16 consultant, or by the department for the final written report of findings of the  
 17 environmental compliance audit. ✓

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

18           **SECTION 10.** 299.85 (6) (b) (intro.) of the statutes is amended to read:

19           299.85 (6) (b) (intro.) The department may not approve or issue a compliance  
 20 schedule that extends longer than ~~12~~ 24 months beyond the date of approval of the  
 21 compliance schedule. The department shall consider the following factors in  
 22 determining whether to approve a compliance schedule: ✓

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

23           **SECTION 11.** 299.85 (7) (a) 1. and 2. of the statutes are amended to read:

1           299.85 (7) (a) 1. For at least 90 days after the department receives a report that  
 2           meets the requirements in sub. (3), this state may not begin a civil action to collect  
 3           forfeitures for violations that are disclosed in the report by a regulated entity that  
 4           qualifies under sub. (2) for participation in the Environmental Improvement  
 5           Compliance Audit Program. ✓

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

6           2. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314  
 7           (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m)  
 8           (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and  
 9           (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57  
 10          (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a),  
 11          291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b)  
 12          1., 295.37 (2), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97  
 13          (1), if a regulated entity that qualifies under sub. (2) for participation in the  
 14          Environmental Improvement Compliance Audit Program corrects violations that it  
 15          discloses in a report that meets the requirements of sub. (3) within 90 days after the  
 16          department receives the report that meets the requirements of sub. (3), the regulated  
 17          entity may not be required to forfeit more than \$500 for each violation, regardless  
 18          of the number of days during which the violation continues. ✓

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

19           **SECTION 12.** 299.85 (8) (intro.) of the statutes is amended to read:

20          299.85 (8) CONSIDERATION OF ACTIONS BY REGULATED ENTITY. (intro.) If the  
 21          department receives a report that complies with sub. (3) from a regulated entity that  
 22          qualifies under sub. (2) for participation in the Environmental Improvement  
 23          Compliance Audit Program, and the report discloses a potential criminal violation,  
 24          the department and the department of justice shall take into account the diligent

1 actions of, and reasonable care taken by, the regulated entity to comply with  
2 environmental requirements in deciding whether to pursue a criminal enforcement  
3 action and what penalty should be sought. In determining whether a regulated  
4 entity acted with due diligence and reasonable care, the department and the  
5 department of justice shall consider whether the regulated entity has demonstrated  
6 any of the following: ✓

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

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

LRB-0139/P3dn  
RCT:.....

Lbjk

Date

Beth Bier:

This is another version of the proposal for changes in the Environmental Results Program (Green Tier) and in the Environmental Improvement Program. It adds changes based on the meeting of December 1, 2009, including changes in the names of both programs. ✓

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 Green Tier. See proposed s. 299.83 (6) (L). The draft requires the entity to begin the process before its cooperative agreement under s. 299.80 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 a green tier "partner." See proposed s. 299.83 (7j). If different terminology is desired, it can easily be changed in a later version. ✓

Please let me know if you have any questions.

Rebecca C. Tradewell  
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E-mail: becky.tradewell@legis.wisconsin.gov

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

LRB-0139/P3dn  
RCT:bjk:rs

December 4, 2008

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Please let me know if you have any questions.

Rebecca C. Tradewell  
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State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0139/P3

RCT:bjk:rs

Stays IMY

Wanted 12/9 or 10, if possible

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

sepa 4

Note

SAV

regen

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 (title), 299.83 (1) (dg) (intro.), 299.83 (1) (dg)  
5 1., 299.83 (1) (dg) 3., 299.83 (1) (dg) 7., 299.83 (1) (f), 299.83 (3) (e), 299.83 (4)  
6 (c), 299.83 (4m) (d), 299.83 (5) (e), 299.83 (6) (a) 1., 299.83 (6) (j), 299.83 (6) (k),  
7 299.83 (6m) (b) 1., 299.83 (6m) (c), 299.83 (6m) (d) 1. a., 299.83 (6m) (d) 2. b.,  
8 299.83 (7m), 299.83 (8) (h), 299.85 (title), 299.85 (2) (intro.), 299.85 (3) (intro.),  
9 299.85 (4), 299.85 (6) (b) (intro.), 299.85 (7) (a) 1. and 2., 299.85 (8) (intro.) and  
10 299.85 (9m) (intro.); and *to create* 299.83 (1) (dg) 5m., 299.83 (1) (dg) 10g.,  
11 299.83 (1) (dg) 10r., 299.83 (6) (L), 299.83 (6m) (am) and 299.83 (7j) of the  
12 statutes; **relating to:** changes to and extension of the Environmental Results  
13 Program, extension of the Environmental Improvement Program and changing



1 the maximum length of a compliance schedule under that program, and  
2 reporting requirements for certain environmental programs.

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*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. 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. 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 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.

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.

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 five 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 a program partner and provide information to the organization and its members about environmental management systems and about the experience of participants in tier I and tier II of ERP.

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 changes the name of ERP to the Green Tier Program.

### ***Environmental Improvement Program***

The Environmental Improvement Program (EIP), 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 EIP on July 1, 2009.

This bill eliminates the sunset of EIP.

Currently under EIP, a qualifying entity is required to correct a violation within 90 days unless DNR approves a longer compliance schedule. The law prohibits DNR from approving a compliance schedule that is more than 12 months long. This bill extends the maximum length of a compliance schedule to 24 months. The bill also changes the name of EIP to the Environmental Compliance Audit 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

1 department shall submit ~~an annual~~ a progress report on the program under this  
2 section to the governor and, under s. 13.172 (3), the standing committees of the  
3 legislature with jurisdiction over environmental matters. This subsection does not  
4 apply after December 31, 2012.

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

6 SECTION 3. 299.83 (title) of the statutes is amended to read:

7 299.83 (title) **Environmental Results Green Tier Program.**

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

9 299.83 (1) (dg) (intro.) "Functionally equivalent environmental management  
10 system" means an environmental management system that is appropriate to the  
11 nature, scale, and environmental impacts of an entity's activities, products, and  
12 services and that includes all of the following elements and any other elements that  
13 the department determines are essential elements of International Organization for  
14 Standardization standard 14001:

15 SECTION 5. 299.83 (1) (dg) 1. of the statutes is amended to read:

*part is not in  
stat. now*

16 299.83 (1) (dg) 1. Adoption of an environmental policy that is appropriate to the  
17 nature, scale, and environmental impacts of the entity's activities, products, and  
18 services, that includes a commitment to compliance with environmental  
19 requirements, pollution prevention, and continual improvement in environmental  
20 performance, and that is available to the public.

21 SECTION 6. 299.83 (1) (dg) 3. of the statutes is amended to read:

22 299.83 (1) (dg) 3. Plans Establishment and implementation of plans and  
23 procedures to achieve compliance with environmental requirements and to maintain  
24 that compliance.

25 SECTION 7. 299.83 (1) (dg) 5m. of the statutes is created to read:

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

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

5           299.83 (1) (dg) 7. ~~An~~ Establishment, implementation, and maintenance of an  
6 employee training program to develop awareness of and competence to manage  
7 environmental issues.

8           **SECTION 9.** 299.83 (1) (dg) 10g. of the statutes is created to read:

9           299.83 (1) (dg) 10g. Establishment, implementation, and maintenance of  
10 procedures to monitor and measure, on a regular basis, key characteristics of an  
11 entity's operations that can have a significant environmental impact.

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

13           299.83 (1) (dg) 10r. Establishment, implementation, and maintenance of  
14 procedures for periodically evaluating compliance with applicable environmental  
15 requirements.

16           **SECTION 11.** 299.83 (1) (f) of the statutes is amended to read:

17           299.83 (1) (f) "Program" means the ~~Environmental Results~~ Green Tier  
18 Program under this section.

19           **SECTION 12.** 299.83 (3) (d) 1. (intro.) and a. of the statutes are consolidated,  
20 renumbered 299.83 (3) (d) 1. and amended to read:

21           299.83 (3) (d) 1. Demonstrate that it has implemented, or commit itself to  
22 implementing within one year of the department's approval of its application, an  
23 environmental management system, for each covered facility or activity, that is all  
24 of the following: a. ~~In~~ in compliance with the standards for environmental  
25 management systems issued by the International Organization for Standardization

1 or determined by the department to be a functionally equivalent environmental  
2 management system.

3 **SECTION 13.** 299.83 (3) (d) 1. b. of the statutes is repealed.

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

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

12 **SECTION 15.** 299.83 (4) (c) of the statutes is amended to read:

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

20 **SECTION 16.** 299.83 (4m) (d) of the statutes is amended to read:

21 299.83 (4m) (d) A participant in tier I of the program may use ~~an~~  
22 ~~Environmental Results~~ a Green Tier Program logo selected by the department on  
23 written materials produced by the participant.

24 **SECTION 17.** 299.83 (5) (c) 1. (intro.) and a. of the statutes are consolidated,  
25 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.

6           **SECTION 18.** 299.83 (5) (c) 1. b. of the statutes is repealed.

7           **SECTION 19.** 299.83 (5) (e) of the statutes is amended to read:

8           299.83 (5) (e) *Waiver of enforcement record requirements.* ~~Before January 1,~~  
9 ~~2007, the~~ The secretary of natural resources may waive requirements in par. (b) 2.  
10 or 3. based on the request of an applicant. The department shall provide public notice  
11 of the request and shall provide at least 30 days for public comment on the request.  
12 This public comment period may be concurrent with the notice period under sub. (6)  
13 (c) to (f). The secretary may not grant a waiver under this paragraph unless he or  
14 she finds that the waiver is consistent with sub. (1m) and will not erode public  
15 confidence in the integrity of the program.

16           **SECTION 20.** 299.83 (6) (a) 1. of the statutes is amended to read:

17           299.83 (6) (a) 1. Describe the involvement of interested persons in developing  
18 and implementing the proposal for maintaining and improving the applicant's  
19 superior environmental performance, identify the interested persons, and describe  
20 the interests that those persons have in the applicant's participation in the program.

21           **SECTION 21.** 299.83 (6) (j) of the statutes is amended to read:

22           299.83 (6) (j) *Participation ~~contract~~ decision.* Within 30 days after providing  
23 notice under par. (h) or, if the department holds a public informational meeting under  
24 par. (i), within 30 days after that meeting, the department shall decide whether to

1 enter into a participation contract with an applicant, unless the applicant and the  
2 department agree to an extension beyond 30 days.

3 (jm) Participation contract. 1. In a participation contract, the department shall  
4 require that the participant maintain the environmental management system  
5 described in sub. (5) (c) 1. and abide by the commitments in sub. (5) (c) 2. and 3. The  
6 department may not reduce the frequency of required inspections or monitoring as  
7 an incentive in a participation contract if the audit under sub. (5) (c) 3. The  
8 department shall include in a participation contract a provision that describes how  
9 the participant will maintain the involvement of interested parties during the term  
10 of the participation contract. is conducted by a person other than an outside  
11 environmental auditor. The department shall ensure that the incentives provided  
12 under a participation contract are proportional to the environmental benefits that  
13 will be provided by the participant under the participation contract. The department  
14 shall include in a participation contract remedies that apply if a party fails to comply  
15 with the participation contract.

16 2. The term of a participation contract may not be less than 3 years or more than  
17 10 years, with opportunity for renewal for additional terms of the same length as the  
18 original term upon agreement of the parties. The term of a participation contract  
19 may not exceed 5 years if the participation contract incorporates, modifies, or  
20 otherwise affects the terms or conditions of a permit issued under s. 283.31, 283.33,  
21 or 285.62, unless federal and state law authorize a longer term for the permit.

22 **SECTION 22.** 299.83 (6) (k) of the statutes is amended to read:

23 299.83 (6) (k) *Review of decision.* Notwithstanding s. 227.42, there is no right  
24 to an administrative hearing on the department's decision to enter into a

1 participation contract under par. (j) or (L), but the decision is subject to judicial  
2 review.

3 **SECTION 23.** 299.83 (6) (L) of the statutes is created to read:

4 299.83 **(6)** (L) *Alternate process.* 1. A person participating in the program  
5 under s. 299.80 may choose to apply for participation in tier II using the process  
6 under this paragraph, rather than under pars. (a) to (j), by submitting a letter  
7 notifying the department of its choice, before the expiration of the cooperative  
8 agreement under s. 299.80, along with a copy of its most recent performance  
9 evaluation under s. 299.80 (3) (j).

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

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

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

24 5. The department shall enter into a participation contract under this  
25 paragraph with a person with whom the department has developed a proposed



1 participation contract unless significant concerns are raised in comments arising  
2 from public notice under subd. 3. or from an informational meeting under subd. 4.  
3 and the person is unable or unwilling to respond to the concerns to the department's  
4 satisfaction.

5 **SECTION 24.** 299.83 (6m) (am) of the statutes is created to read:

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

11 1. A description of the violation and the date on which the participant  
12 discovered the violation.

13 2. A description of the actions taken or proposed to be taken to correct the  
14 violation.

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

17 4. If the participant proposes to take more than 90 days after submitting the  
18 report to correct the violation, a proposed compliance schedule that contains the  
19 shortest reasonable periods for correcting the violation, a statement that justifies the  
20 proposed compliance schedule, a description of measures that the participant will  
21 take to minimize the effects of the violation during the period of the compliance  
22 schedule, and proposed stipulated penalties to be imposed if the participant fails to  
23 comply with the proposed compliance schedule.

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

1           **SECTION 25.** 299.83 (6m) (b) 1. of the statutes is amended to read:

2           299.83 **(6m)** (b) 1. If the department receives a report under par. (a) or (am) that  
3 contains a proposed compliance schedule under par. (a) 4. or (am) 4., the department  
4 shall review the proposed compliance schedule. The department may approve the  
5 compliance schedule as submitted or propose a different compliance schedule. If the  
6 participant does not agree to implement a compliance schedule proposed by the  
7 department, the department shall schedule a meeting with the participant to  
8 attempt to reach an agreement on a compliance schedule. If the department and the  
9 participant do not reach an agreement on a compliance schedule, the department  
10 shall terminate the participation of the participant in the program. If the parties  
11 agree to a compliance schedule, the participant shall incorporate the compliance  
12 schedule into its environmental management system.

13           **SECTION 26.** 299.83 (6m) (c) of the statutes is amended to read:

14           299.83 **(6m)** (c) *Stipulated penalties.* If the department receives a report under  
15 par. (a) or (am) that contains proposed stipulated penalties under par. (a) 4. or (am)  
16 4., the department shall review the proposed stipulated penalties. The department  
17 may approve the stipulated penalties as submitted or propose different stipulated  
18 penalties. If the participant does not agree to stipulated penalties proposed by the  
19 department, the department shall schedule a meeting with the participant to  
20 attempt to reach an agreement on stipulated penalties. If no agreement is reached,  
21 there are no stipulated penalties for failure to comply with the compliance schedule.

22           **SECTION 27.** 299.83 (6m) (d) 1. a. of the statutes is amended to read:

23           299.83 **(6m)** (d) 1. a. If a participant in the program corrects violations that are  
24 disclosed in a report that meets the requirements of par. (a) or (am) within 90 days

1 after the department receives the report, this state may not bring a civil action to  
2 collect forfeitures for the violations.

3 **SECTION 28.** 299.83 (6m) (d) 2. b. of the statutes is amended to read:

4 299.83 **(6m)** (d) 2. b. The department discovers the violation before submission  
5 of a report that meets the requirement of par. (a) or (am).

6 **SECTION 29.** 299.83 (7j) of the statutes is created to read:

7 299.83 **(7j)** GREEN TIER PARTNERS. (a) The department may enter into an  
8 agreement with an association of entities under which the department recognizes  
9 the association as a green tier partner if the association agrees to do all of the  
10 following:

11 1. Assist its member entities to implement environmental management  
12 systems that comply with the standards for environmental management systems  
13 issued by the International Organization for Standardization or functionally  
14 equivalent management systems or to implement other environmental management  
15 systems and develop those other environmental management systems into  
16 environmental management systems that comply with the standards for  
17 environmental management systems issued by the International Organization for  
18 Standardization or functionally equivalent management systems.

19 2. Collect information on the environmental results achieved by its members  
20 through environmental management systems and report the information to the  
21 department.

22 3. Maintain an Internet site with links to information about environmental  
23 management systems that can be used by members and nonmembers.

24 (b) If the department enters into an agreement under par. (a) with an  
25 association, the department shall do all of the following:

1           1. Formally recognize the activities under par. (a) 1. and describe the results  
2 of those activities in reports that the department makes on the program.

3           2. Include the association and its members in meetings of participants in tier  
4 I and tier II of the program.

5           3. Supply information to the association and its members about environmental  
6 management systems and about the experiences of participants in tier I and tier II  
7 of the program.

8           4. Provide publicity, as specified in the agreement, about the activities of the  
9 association.

10           **SECTION 30.** 299.83 (7m) of the statutes is amended to read:

11           299.83 (7m) ENVIRONMENTAL AUDITORS. The department may not approve an  
12 outside environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. unless the  
13 outside environmental auditor is ~~certified by the Registrar Accreditation Board~~  
14 accredited by an accreditation body that complies with standards of the  
15 International Organization for Standardization for accreditation bodies or meets  
16 criteria concerning education, training, experience, and performance that are equal  
17 equivalent to the criteria in the standards and guidance of the International  
18 Organization for Standardization guidance 19011 for entities providing audit and  
19 certification of environmental management systems.

20           **SECTION 31.** 299.83 (8) (h) of the statutes is amended to read:

21           299.83 (8) (h) ~~The~~ Every even-numbered year, no later than December 15, the  
22 department shall submit a progress report on the program to the legislature, in the  
23 manner provided in s. 13.172 (2), no later than May 1, 2007, and every 2 years after  
24 it submits the first report ~~governor and, under s. 13.172 (2), to the standing~~  
25 committees of the legislature with jurisdiction over environmental matters.

1           **SECTION 32.** 299.83 (11) of the statutes is repealed.

2           **SECTION 33.** 299.85 (title) of the statutes is amended to read:

3           **299.85** (title)    **Environmental Improvement Compliance Audit**  
4 **Program.**

5           **SECTION 34.** 299.85 (2) (intro.) of the statutes is amended to read:

6           **299.85 (2)** REQUIREMENTS FOR PARTICIPATION. (intro.) A regulated entity  
7 qualifies for participation in the Environmental Improvement Compliance Audit  
8 Program with respect to a facility owned or operated by the regulated entity if all of  
9 the following apply:

10          **SECTION 35.** 299.85 (3) (intro.) of the statutes is amended to read:

11          **299.85 (3)** AUDIT REPORT. (intro.) To participate in the Environmental  
12 Improvement Compliance Audit Program with respect to a facility, the regulated  
13 entity that owns or operates the facility shall submit a report to the department  
14 within 45 days after the date of the final written report of findings of the  
15 environmental compliance audit of the facility. The regulated entity shall complete  
16 the environmental compliance audit, including the final written report of findings,  
17 within 365 days after providing the notice under sub. (2) (b). The report submitted  
18 to the department shall include all of the following:

19          **SECTION 36.** 299.85 (4) of the statutes is amended to read:

20          **299.85 (4)** ENVIRONMENTAL COMPLIANCE AUDIT. A regulated entity does not  
21 qualify for participation in the Environmental Improvement Compliance Audit  
22 Program unless the final written report of findings of the environmental compliance  
23 audit is labeled "environmental compliance audit report," is dated, and, if the  
24 environmental compliance audit identifies violations, includes a plan for corrective  
25 action. A regulated entity may use a form developed by the regulated entity, by a

1 consultant, or by the department for the final written report of findings of the  
2 environmental compliance audit.

3 **SECTION 37.** 299.85 (6) (b) (intro.) of the statutes is amended to read:

4 299.85 (6) (b) (intro.) The department may not approve or issue a compliance  
5 schedule that extends longer than ~~12~~ 24 months beyond the date of approval of the  
6 compliance schedule. The department shall consider the following factors in  
7 determining whether to approve a compliance schedule:

8 **SECTION 38.** 299.85 (7) (a) 1. and 2. of the statutes are amended to read:

9 299.85 (7) (a) 1. For at least 90 days after the department receives a report that  
10 meets the requirements in sub. (3), this state may not begin a civil action to collect  
11 forfeitures for violations that are disclosed in the report by a regulated entity that  
12 qualifies under sub. (2) for participation in the Environmental Improvement  
13 Compliance Audit Program.

14 2. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314  
15 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m)  
16 (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and  
17 (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57  
18 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a),  
19 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b)  
20 1., 295.37 (2), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97  
21 (1), if a regulated entity that qualifies under sub. (2) for participation in the  
22 Environmental Improvement Compliance Audit Program corrects violations that it  
23 discloses in a report that meets the requirements of sub. (3) within 90 days after the  
24 department receives the report that meets the requirements of sub. (3), the regulated

1 entity may not be required to forfeit more than \$500 for each violation, regardless  
2 of the number of days during which the violation continues.

3 **SECTION 39.** 299.85 (8) (intro.) of the statutes is amended to read:

4 299.85 (8) CONSIDERATION OF ACTIONS BY REGULATED ENTITY. (intro.) If the  
5 department receives a report that complies with sub. (3) from a regulated entity that  
6 qualifies under sub. (2) for participation in the Environmental Improvement  
7 Compliance Audit Program, and the report discloses a potential criminal violation,  
8 the department and the department of justice shall take into account the diligent  
9 actions of, and reasonable care taken by, the regulated entity to comply with  
10 environmental requirements in deciding whether to pursue a criminal enforcement  
11 action and what penalty should be sought. In determining whether a regulated  
12 entity acted with due diligence and reasonable care, the department and the  
13 department of justice shall consider whether the regulated entity has demonstrated  
14 any of the following:

15 **SECTION 40.** 299.85 (9m) (intro.) of the statutes is amended to read:

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

23 **SECTION 41.** 299.85 (11) of the statutes is repealed.

*ONote*

24 (END)

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

LRB-0139/P3dn  
RCT:bjkars

December 4, 2008

stays

Beth Bier:

This is another version of the proposal for changes in the Environmental Results Program (Green Tier) and in the Environmental Improvement Program. It adds changes based on the meeting of December 1, 2009, including changes in the names of both programs.

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 Green Tier. See proposed s. 299.83 (6) (L). The draft requires the entity to begin the process before its cooperative agreement under s. 299.80 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 a green tier "partner." See proposed s. 299.83 (7j). If different terminology is desired, it can easily be changed in a later version.

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/P4dn  
RCT:bjk:rs

December 9, 2008

Beth Bier:

This is another version of the proposal for changes in the Environmental Results Program (Green Tier) and in the Environmental Improvement Program. It adds changes based on the meeting of December 1, 2009, including changes in the names of both programs.

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 Green Tier. See proposed s. 299.83 (6) (L). The draft requires the entity to begin the process before its cooperative agreement under s. 299.80 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 a green tier "partner." See proposed s. 299.83 (7j). If different terminology is desired, it can easily be changed in a later version.

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](mailto:becky.tradewell@legis.wisconsin.gov)

**Tradewell, Becky**

**From:** Bier, Beth  
**Sent:** Tuesday, December 30, 2008 9:59 AM  
**To:** Tradewell, Becky; Stolzenberg, John  
**Subject:** FW: New Green Tier Draft

Hi Becky,

Please go ahead and make the changes requested by Mark McDermid. With respect to #5, let's change it to the newly recommended idea of the advisors for 12 months (back to the original) but with discretion for the Secretary to extend, and make the change to Green Tier as well. Please let me (or Mark at the DNR) know any questions.

Thanks,  
 Beth

---

**From:** McDermid, Mark - DNR [mailto:Mark.McDermid@Wisconsin.gov]  
**Sent:** Monday, December 22, 2008 1:01 PM  
**To:** Bier, Beth  
**Cc:** Voltz, Jeffrey R - DNR; Andryk, Tim A - DNR; Heinen, Paul H - DNR; Scott, Michael D - DNR; Shea, Allen K - DNR; Henderson, Patrick W - DNR  
**Subject:** RE: New Green Tier Draft

Sorry for the delay in getting back to you. Here are some comments but note that we understand that you haven't had a chance to speak with Mark about the Green Tier Advisors discussions.

- ✓ 1. There's a minor typo on page 8, line 10, where there is a hanging phrase "is conducted by a person ..." that needs to be reconnected with line 7 on the same page.
- ✓ 2. Page 9 is where the language starts that allows those in the pilot program to enter into Tier 2 contracts before their cooperative agreement expires. On lines 16 to 18, the operational flexibility and variance limits granted in the Tier 2 contract to those in the cooperative agreements and presumptive proportionality determination language captures the language in the Advisors recommendation quite well.
- ✓ 3. Page 9, line 5, it says the Department "shall" enter into a Tier 2 contract with a pilot program cooperator unless significant concerns are raised by the public and not satisfactorily responded to. This does not leave the Department with much discretion, if the Department for some reason does not want them in Tier 2. We may want to consider replacing the "shall" with a "may" since the Secretary still needs to make a decision on the contract.
- ✓ 4. Page 12 and 13, Green Tier Partners. First, the language in "1" needs to be modified so that there is the ability to have partner participants that may be less than ISO certified or functionally equivalent. This part of the program is about capacity building. Second, the mechanism for accomplishing this needs to be the charter, not just a separate program. Third, the Department needs to link to and to maintain its own web presence for these partners.  
*see email of 1/25/09 later note in file*
- ✓ 5. Page 15, line 5. Compliance schedule was extended from a maximum of 12 to 24 months, not adopting the proposal recommended by the advisors and drafted by Linda Bochert, ie., 12 months with additional time as determined necessary by the Department (no cap). There also is not corresponding change to the 12 month maximum in Green Tier, s. 299.83(6m)(b)(2), Stats., which should be consistent with the language in the compliance audit program, s. 299.85(6)(b). Stats. *secy. make decision as necessary*
6. Overall, we like the draft although we continue to be concerned that we not have too many issue in the draft and this is something that we will need to discuss at some point down the road in order to take the best path to reauthorization by July 1.

---

**From:** Bier, Beth [mailto: Beth.Bier@legis.wisconsin.gov]  
**Sent:** Tuesday, December 16, 2008 12:01 PM  
**To:** McDermid, Mark - DNR; Voltz, Jeffrey R - DNR  
**Cc:** Heinen, Paul H - DNR; Andryk, Tim A - DNR  
**Subject:** RE: New Green Tier Draft

No, that's fine. Thank you!!

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**From:** McDermid, Mark - DNR [mailto: Mark.McDermid@Wisconsin.gov]  
**Sent:** Tuesday, December 16, 2008 12:01 PM  
**To:** Bier, Beth; Bier, Beth; Voltz, Jeffrey R - DNR  
**Cc:** Heinen, Paul H - DNR; Andryk, Tim A - DNR  
**Subject:** RE: New Green Tier Draft

You will have feedback from us by COB Thursday unless you need it sooner in the day.

---

r, Beth [mailto: Beth.Bier@legis.wisconsin.gov]  
day, December 16, 2008 11:57 AM  
Beth - LEGIS; McDermid, Mark - DNR; Voltz, Jeffrey R - DNR  
n, Paul H - DNR; Andryk, Tim A - DNR  
RE: New Green Tier Draft

Any chance I can get your feedback by Thursday? I'd like to get this sent to the group by next week so we can meet again in early January. Thanks!

---

**From:** Bier, Beth  
**Sent:** Tuesday, December 09, 2008 1:52 PM  
**To:** McDermid, Mark - DNR; Voltz, Jeffrey R - DNR  
**Cc:** Heinen, Paul H - DNR  
**Subject:** New Green Tier Draft

Hi Mark,

Attached is the latest draft of the Green Tier bill. It includes changes made based on our Dec. 1<sup>st</sup> meeting and the first two aspects of expansion - #1 and #2 from the Jan. 13<sup>th</sup> legislative recommendation paper from the Advisors. It does not include any additional changes Mark may make based on the discussion from the Advisors meeting on Dec. 6<sup>th</sup>. With respect to the 2 remaining issues from the Dec. 1 and Dec. 6 meeting, 299.85(2)(f) is still in place and 299.85(6)(b) was changed to 24 months. I still need to talk with Mark about the Advisors recommendations and additional changes to those provisions may be made before a new draft is sent to the working group. Mark would like you to take a look at this draft and let me know any concerns or changes that you see necessary before we send it to the larger group.

Thanks,  
Beth

<< File: 09-0139P4.pdf >> << File: 09-0139P4dn.pdf >>

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

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



**Tradewell, Becky**

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**From:** Stolzenberg, John  
**Sent:** Wednesday, January 28, 2009 6:11 PM  
**To:** McDermid, Mark - DNR  
**Cc:** Bier, Beth; Tradewell, Becky  
**Subject:** RE: Green Tier Legislation

Mark,

In this note, I would like to get your reaction to an approach for placing the provisions on "Green Tier Partners" in proposed s. 299.83 (7j) in LRB-0139/P4 in the current subsection on charters, s. 299.83 (7e), Stats. I'll also comment on your suggestion in your January 26 note to me to accommodate single issue charters in the amendment.

Expanded purposes of a charter

With respect to the placement of the Green Tier Partners proposal in the current statutory text on charters, I'd suggest, based on our conversation, that this be done by broadening the purpose of a charter so that an association of entities may do any of the following under a charter:

- Assist the member entities in participating in tier I; **or**
- Assist the member entities in participating in tier II; **or**
- Assist the member entities in implementing environmental management systems.

Does this capture your intent?

I appreciate that during our discussion you had used language along the lines of "assisting the member entities to create capacity to achieve [superior] environmental performance." I feel that the phrase "create capacity" is too vague to specifically request as part of the drafting instructions.

If I understand you correctly, the capacity that you are referring to is the development of environmental management systems (EMS). Furthermore, I understand that these EMS do not have to be systems that comply with ISO standards for EMS (or functionally equivalent EMS) or systems that result in superior environmental performance.

A related question - if an association has been issued a charter for the third type of purpose (i.e., assisting its members in implementing an EMS), and the initial EMS falls short of being ISO compliant or resulting in superior environmental performance, should the statutes direct DNR to work with the association holding the charter to improve those EMS so that over time the system(s) become ISO compliant or result in superior environmental performance?

Treatment of other provisions in the Green Tier Partners text on pages 12 and 13 in LRB-0139/P4

1. Subd. 2 on page 12, lines 19 to 21 in LRB-0139/P4: I don't see the need to carry over the reporting language in this subd., as all associations to which a charter has been issued must already report annually to DNR under s. 299.83 (7e) (d).

2. Subd 3. on page 12, lines 22 and 23 in LRB-0139/P4: I don't see the need to carry over this requirement for maintaining an Internet site, as other associations to which a charter has been issued under current law do not have this requirement but could do so under s. 299.83 (7e) (b).
3. Subd. 1 on page 13, lines 1 and 2 in LRB-0139/P4: I do not see the need to carry over this directive to DNR, as the department recognizes and publicizes Green Tier accomplishments and success stories as part of its administration of the Green Tier program and should include the activities of these new types of charter associations in its progress reports required under s. 299.83 (7e) (h).
4. Subds. 2 to 4 on page 13, lines 3 to 9 in LRB-0139/P4: I do not see the need to carry over these directives to DNR, as the current statute on charters does not explicitly direct DNR to do these activities for other charter associations. Nothing precludes the department from doing these activities for the new type of charter associations.

Do you agree with my proposed treatment of these 4 items?

#### Single issue charters

I understand that you intend that a single issue charter could be issued to either an association or to multiple individual businesses or other types of entities and that a single issue charter could contain incentives that are proportional to the environmental benefits that will be provided by the association or entity under the charter.

Assuming my understanding is correct, it would not be a "minor tweak" to expand the amendments for EMS charters, described above, to also include single issue charters. This is because the current statute on charters is limited to associations being issued a charter, and the current statute does not address the granting of an incentive to any type of entity to which a charter has been issued, either an association or multiple separate entities. The former concern is more technical in nature; the latter raises policy and legal issues that I feel should be addressed before single issue charter language could be drafted.

John

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John Stolzenberg,  
Legislative Council  
266-2988

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**From:** McDermid, Mark - DNR [mailto:Mark.McDermid@Wisconsin.gov]  
**Sent:** Monday, January 26, 2009 11:36 AM  
**To:** Stolzenberg, John  
**Cc:** Bier, Beth  
**Subject:** Green Tier Legislation

Let me plant a seed but please don't let this one germinate if you think that will add to the time frame for drafting. Given the excellent suggestions that you had for the charter language to address the EMS development item, might it be possible with some minor tweaks in your language or perhaps even using the same language to accommodate the expansion recommendation for charters to apply to single issues. With what you had suggested as an approach to the EMS piece, my sense is that the other charter expansion provision might fit logically with that. I was thinking about it over the weekend and thought that I would pass it along for your consideration as you put pen to paper. Thanks, in advance, for thinking about it.

01/29/2009

 *Mark McDermid*

Bureau Director, Cooperative Environmental Assistance

Wisconsin Department of Natural Resources

(☎) phone: (608) 267-3125

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(✉) e-mail: [mark.mcdermid@wisconsin.gov](mailto:mark.mcdermid@wisconsin.gov)

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

2/6 Per John S.:

1. Delete the Green Tier Partner language.

2. Mark McDermid has decided that the new purpose for a charter should not be assisting in implementing environmental management systems, but instead be assisting member entities to take actions that may lead to superior environmental performance.

RTA



Help members work on one or more of the elements that lead to superior env. performance -

don't need green tier partner language - at all  
in taking actions that address one of the <sup>one or more elements</sup> aspects of  
that may lead to s.e.p. by entity