



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0139/P45

RCT:bjk:rs

Wanted 2/13 (m 2/8)

stays / rwr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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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 (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.

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

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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.

Analysis
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B

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.

Also

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.

Analysis
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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.

authorizes
DNR to
approve
a longer

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:

16 299.83 (1) (dg) 1. Adoption of an environmental policy that includes a
17 commitment to compliance with environmental requirements, pollution prevention,
18 and continual improvement in environmental performance and that is available to
19 the public.

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

21 299.83 (1) (dg) 3. ~~Plans~~ Establishment and implementation of plans and
22 procedures to achieve compliance with environmental requirements and to maintain
23 that compliance.

24 **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 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~~ ^{may} 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

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11-12 →

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).

12 5 5

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 guidanee 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. ^{↑ unless the secretary of natural resources determines that a longer schedule} The department shall consider the following factors in ^{is}
7 determining whether to approve a compliance schedule: ^{necessary}

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.

24 (END)

1 **Analysis insert A**

¶ Currently under ERP, a participant 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 authorizes DNR to approve a longer compliance schedule if the secretary of natural resources determines that a longer schedule is necessary.

2 **Analysis insert B**

¶ Currently, under ERP, DNR may issue an environmental results charter to an association of entities to assist the entities to participate in tier I or tier II and to achieve improvements in the quality of the air, water, or other natural resources beyond that achieved through compliance with environmental laws (superior environmental performance). Under this bill, DNR may issue a charter to an association of entities to assist the entities to participate in tier I or tier II or to take actions that may lead to superior environmental performance.

3 **Analysis insert C**

¶ if the secretary of natural resources determines that a longer schedule is necessary.

4 **Insert 11-12**

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

6 299.83 **(6m)** (b) 2. (intro.) The department may not approve a compliance
7 schedule that extends longer than 12 months beyond the date of approval of the
8 compliance schedule, unless the secretary determines that a longer schedule is
9 necessary. The department shall consider the following factors in determining
10 whether to approve a compliance schedule:

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

11 **Insert 12-5**

12 **SECTION 2.** 299.83 (7e) (a) of the statutes is amended to read:

13 299.83 **(7e)** (a) The department may issue an environmental results charter to
14 an association of entities to assist the entities to participate in tier I or tier II of the
15 program ~~and to achieve~~ or to take actions that may lead to superior environmental

1 performance. An association to which a charter is issued may consist of private
2 entities, public entities, or a combination of private and public entities. An
3 association to which a charter is issued may be organized on any basis that helps to
4 achieve the entities to participate in tier I or tier II of the program or to take actions
5 that may lead to superior environmental performance.

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

Tradewell, Becky

From: Bier, Beth
Sent: Wednesday, February 25, 2009 1:53 PM
To: Bier, Beth; McDermid, Mark - DNR; Voltz, Jeffrey R - DNR; Henderson, Patrick W - DNR; Heinen, Paul H - DNR; Andryk, Tim A - DNR; 'lhbochert@michaelbest.com'; 'msimpson@reinhartlaw.com'; 'Paul Kent'; 'Brian.borofka@wepco.com'; 'Denny Caneff'; 'Lori Grant'; 'Steve Hiniker (hiniker@1kfriends.org)'; Sen.Kedzie
Cc: Stolzenberg, John; Tradewell, Becky; Johnson, Dan; Topp, Jessica; Kramer, Zac
Subject: Comments - Green Tier Draft

Please see the following comments on the draft submitted by Linda Bochert. We'll discuss at tomorrow's meeting. Please feel free to share any comments in advance of tomorrow. Thanks!
Beth

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

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

Comments from Linda Bochert:

Thank you for the opportunity to review and participate in a discussion of LRB-0139/P5 with respect to the Green Tier and Environmental Compliance Audit Programs in Wis. Stats. §§ 299.83 and 299.85.

From my notes and recollections, the revised draft accurately reflects prior discussion and agreement as to proposed amendments.

For purposes of our meeting on Feb. 26 at 2:00, I offer the following additional thoughts for the group's discussion:

1. Line 1, page 11: newly created 299.83(6m)(am) 4. – add the phase “,if any,” between “penalties” and “to be imposed”

The effect of this edit is clarity; it does not change the current framework or expectations.

S. 299.83(6m)(am) is created to address the new circumstance of a violation discovered through a participant's environmental management system rather than through an audit. This language mirrors the existing section s. 299.83(6m)(a) which deals with violations discovered during an audit. Both address the following situation: a participant has discovered a violation through its environmental management system (or audit) and needs more than 90 days to correct it. The language calls upon the participant to provide certain information to the department to justify the proposed compliance schedule. That information may, but is not required to, include proposed stipulated penalties if the participant fails to comply with proposed compliance schedule.

My suggested edit would make it more clear in this section that the participant may but is not required to propose stipulated penalties. This edit is consistent with the language elsewhere in the current legislation that makes it clear that it is optional for the participant to propose stipulated penalties. See s. 299.83(6m)(c).

If this edit is acceptable, for the same reasons it should also be made in the following locations for the Green Tier and Environmental Compliance Audit Programs:

- s. 299.83(6m)(c)
- s. 299.85(6m)(a)

2. Line 6, p. 13: amended section s. 299.83(7m) – add the phrase “the department determines” after “that” and before “are equal”

The effect of this edit is to clarify that the department is the entity to decide whether the qualifications of the environmental auditor are “equivalent”. This section is part of the Green Tier program.

3. Add a new Section, probably Section 35 which would either repeal or amend existing s. 299.85(2)(f) in the Environmental Compliance Audit Program.

This is the section we discussed at the last meeting which creates the two-year “look back” at the enforcement record for a facility that wishes to participate in the Environmental Compliance Audit Program. It does not effect the Green Tier program enforcement record eligibility requirement.

A. In my email to the group for discussion at our December 1, 2008 meeting, I offered the following rationale:

This section is part of the Environmental Improvement Program [soon to be known as the Environmental Compliance Audit 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 it 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.

B. Following this group’s discussion on December 1, 2008, my proposal on this point was discussed with the Green Tier Advisors at their meeting on December 5, 2008.

The Advisors discussed three options – repeal and two variations of amendments. Following thorough discussion the Advisors agreed that we were “comfortable” with repeal of this section. For the benefit of the group’s discussion, the three options discussed at the Advisors meeting are set out below:

1. Option 1: Repeal s. 299.85(2)(f)

2. Option 2: Amend s. 299.85(2)(f) to read:

(f) The department of justice has not, within 2 years, filed a suit to enforce an environmental requirement, and the department has not, within 2 years, issued a citation to enforce an environmental requirement, because of a violation involving the facility.

3. Option 3: Renumber s. 299.85(2)(f) as (2)(br) and amend to read:

(br) Upon receipt of the notice under par. (b), the department ^{shall} ~~may~~ consider whether the department of justice has, within 2 years, filed a suit to enforce an environmental requirement because of a violation involving the facility. If the department determines that the violation involved in such a suit or citation is of a nature that the regulated entity's participation in the Environmental Improvement Program may damage the program integrity, the department shall notify the regulated entity that it is not eligible for participation.

C At the risk of completely overstaying my welcome on this question, I ask the group to consider including repeal of s. 299.85(2)(f) in this legislative proposal.

Thank you again for the opportunity to review and participate. Your leadership on these programs is much appreciated.

Linda Bochert

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2/26 Meeting with Beth Bier, Rep. Clark, Sen. Kedzie, John Stolzenberg, Mark McDevine, Tim Andryk, Linda Bockert and others

1. Page 10, line 11 - delete "through the environmental management system" because it would be an extra administrative step to determine whether it was through the system and the system permeates

2. Page 13, line 6: add "the department determines" after "that".

3. Regarding Linda Bockert's item 3 - go with the 3rd option except "shall" rather than "may" and delete reference to citation.

RIT

the entity's operations



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0139/P 6

RCT:bjk:rs

Wanted Mar 3/2

Stays

VMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA

Inserts

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

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

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.

other than 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 under ERP, a participant 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 authorizes DNR to approve a longer compliance schedule if the secretary of natural resources determines that a longer schedule is necessary.

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.

Currently, under ERP, DNR may issue an environmental results charter to an association of entities to assist the entities to participate in tier I or tier II and to achieve improvements in the quality of the air, water, or other natural resources beyond that achieved through compliance with environmental laws (superior environmental performance). Under this bill, DNR may issue a charter to an association of entities to assist the entities to participate in tier I or tier II or to take actions that may lead to superior environmental performance.

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 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 authorizes DNR to approve a longer compliance schedule if the secretary of natural resources determines that a longer schedule is necessary. The bill also changes the name of EIP to the Environmental Compliance Audit 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 (title) of the statutes is amended to read:

11 **299.83 (title) Environmental Results Green Tier Program.**

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

13 299.83 (1) (dg) (intro.) “Functionally equivalent environmental management
14 system” means an environmental management system that is appropriate to the
15 nature, scale, and environmental impacts of an entity’s activities, products, and
16 services and that includes all of the following elements and any other elements that
17 the department determines are essential elements of International Organization for
18 Standardization standard 14001:

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

20 299.83 (1) (dg) 1. Adoption of an environmental policy that includes a
21 commitment to compliance with environmental requirements, pollution prevention,
22 and continual improvement in environmental performance and that is available to
23 the public.

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

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 7.** [✓] 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 8.** [✓] 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 9.** [✓] 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 10.** [✓] 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.

20 **SECTION 11.** [✓] 299.83 (1) (f) of the statutes is amended to read:

21 299.83 (1) (f) "Program" means the ~~Environmental Results~~ Green Tier
22 Program under this section.

23 **SECTION 12.** [✓] 299.83 (3) (d) 1. (intro.) and a. of the statutes are consolidated,
24 renumbered 299.83 (3) (d) 1. and amended to read:

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

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

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

10 299.83 (3) (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 The secretary may not grant a waiver under this paragraph unless he or she finds
15 that the waiver is consistent with sub. (1m) and will not erode public confidence in
16 the integrity of the program.

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

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

25 **SECTION 16.** 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.

4 **SECTION 17.** 299.83 (5) (c) 1. (intro.) and a. of the statutes are consolidated,
5 renumbered 299.83 (5) (c) 1. and amended to read:

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

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

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

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

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

22 299.83 (6) (a) 1. Describe the involvement of interested persons in developing
23 and implementing the proposal for maintaining and improving the applicant's
24 superior environmental performance, identify the interested persons, and describe
25 the interests that those persons have in the applicant's participation in the program.

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

2 299.83 (6) (j) *Participation ~~contract~~ decision.* Within 30 days after providing
3 notice under par. (h) or, if the department holds a public informational meeting under
4 par. (i), within 30 days after that meeting, the department shall decide whether to
5 enter into a participation contract with an applicant, unless the applicant and the
6 department agree to an extension beyond 30 days.

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

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

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

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

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

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

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

22 3. The department shall provide public notice about a proposed participation
23 contract developed under subd. 2. in the area in which each covered facility or activity
24 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 may 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 24. 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 25.** 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 **SECTION 26.** 299.83 (6m) (b) 2. (intro.) of the statutes is amended to read:

18 299.83 **(6m)** (b) 2. (intro.) The department may not approve a compliance
19 schedule that extends longer than 12 months beyond the date of approval of the
20 compliance schedule, unless the secretary determines that a longer schedule is
21 necessary. The department shall consider the following factors in determining
22 whether to approve a compliance schedule:

23 **SECTION 27.** 299.83 (6m) (c) of the statutes is amended to read:

24 299.83 **(6m)** (c) *Stipulated penalties.* If the department receives a report under
25 par. (a) or (am) that contains proposed stipulated penalties under par. (a) 4. or (am)

1 4., the department shall review the proposed stipulated penalties. The department
2 may approve the stipulated penalties as submitted or propose different stipulated
3 penalties. If the participant does not agree to stipulated penalties proposed by the
4 department, the department shall schedule a meeting with the participant to
5 attempt to reach an agreement on stipulated penalties. If no agreement is reached,
6 there are no stipulated penalties for failure to comply with the compliance schedule.

7 **SECTION 28.** 299.83 (6m) (d) 1. a. of the statutes is amended to read:

8 299.83 (6m) (d) 1. a. If a participant in the program corrects violations that are
9 disclosed in a report that meets the requirements of par. (a) or (am) within 90 days
10 after the department receives the report, this state may not bring a civil action to
11 collect forfeitures for the violations.

12 **SECTION 29.** 299.83 (6m) (d) 2. b. of the statutes is amended to read:

13 299.83 (6m) (d) 2. b. The department discovers the violation before submission
14 of a report that meets the requirement of par. (a) or (am).

15 **SECTION 30.** 299.83 (7e) (a) of the statutes is amended to read:

16 299.83 (7e) (a) The department may issue an environmental results charter to
17 an association of entities to assist the entities to participate in tier I or tier II of the
18 program ~~and to achieve~~ or to take actions that may lead to superior environmental
19 performance. An association to which a charter is issued may consist of private
20 entities, public entities, or a combination of private and public entities. An
21 association to which a charter is issued may be organized on any basis that helps to
22 achieve the entities to participate in tier I or tier II of the program or to take actions
23 that may lead to superior environmental performance.

24 **SECTION 31.** 299.83 (7m) of the statutes is amended to read:

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 Standardization for accreditation bodies or meets ^{determines}
 6 criteria concerning education, training, experience, and performance that ^{the department determines} 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 32. 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 33. 299.83 (11) of the statutes is repealed.

17 SECTION 34. 299.85 (title) of the statutes is amended to read:

18 **299.85 (title) Environmental Improvement Compliance Audit**
 19 **Program.**

20 SECTION 35. 299.85 (2) (intro.) of the statutes is amended to read:

21 299.85 (2) REQUIREMENTS FOR PARTICIPATION. (intro.) ~~A~~ ^{Subject to sub. (2m) 1/22} regulated entity
 22 qualifies for participation in the Environmental Improvement Compliance Audit
 23 Program with respect to a facility owned or operated by the regulated entity if all of
 24 the following apply:

25 SECTION 36. 299.85 (3) (intro.) of the statutes is amended to read:

Insert →
13-24

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:

9 **SECTION 37.** 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.

18 **SECTION 38.** 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 months beyond the date of approval of the
21 compliance schedule, unless the secretary of natural resources determines that a
22 longer schedule is necessary. The department shall consider the following factors in
23 determining whether to approve a compliance schedule:

24 **SECTION 39.** 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.

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.

19 **SECTION 40.** 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
25 actions of, and reasonable care taken by, the regulated entity to comply with

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

6 **SECTION 41.** 299.85 (9m) (intro.) of the statutes is amended to read:

7 299.85 (9m) ANNUAL REPORT. (intro.) The Every even-numbered year, no later
8 than December 15, the department shall submit an annual a progress report on the
9 program under this section to the governor and, under s. 13.172 (3) concerning the
10 Environmental Improvement Program, to the standing committees of the legislature
11 with jurisdiction over environmental matters. The department shall submit the first
12 annual report no later than May 1, 2006. The department shall include all of the
13 following in the annual report:

14 **SECTION 42.** 299.85 (11) of the statutes is repealed.

15 (END)

1 **Analysis insert**

Currently, an entity does not qualify for EIP if within two years before it submits the environmental compliance audit the department of justice (DOJ) filed suit against the entity to enforce an environmental requirement or DNR or a local government issued a citation to the entity to enforce an environmental requirement.

requirement

This bill eliminates the automatic disqualification provision. Instead, under the bill, DNR must consider whether DOJ filed a suit against an entity to enforce an environmental within two years before the entity notifies DNR that it will conduct an environmental compliance audit. If DNR determines that, because of the nature of the violation involved in a suit, the entity's participation would damage the integrity of EIP, DNR must notify the entity that it is not eligible for participation.

2 **Insert 13-24**

3 **SECTION 1.** 299.85 (2) (f) of the statutes is renumbered 299.85 (2m) and
4 amended to read:

5 299.85 (2m) CONSIDERATION OF CERTAIN VIOLATIONS. At the time of submitting
6 a report under sub. (3), Upon the receipt of a notice under sub. (2) (b), the department
7 shall consider whether the department of justice has not, within 2 years, filed a suit
8 to enforce an environmental requirement, and the department or a local
9 governmental unit has not, within 2 years, issued a citation to enforce an
10 environmental requirement, because of a violation involving the facility. If the
11 department determines that, because of the nature of the violation involved in the
12 suit, participation by the regulated entity may damage the integrity of the
13 Environmental Compliance Audit Program, the department shall notify the
14 regulated entity that it is not eligible for participation.

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

3/2/09 Per Beth - Redraft to 13 - no changes
Ret



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0139/06-1

RCT:bjk:jf

Lstays

Today

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

no change

SA-

repeal

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

1 under that program, and reporting requirements for certain environmental
2 programs.

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, other than 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 under ERP, a participant 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 authorizes DNR to approve a longer compliance schedule if the secretary of natural resources determines that a longer schedule is necessary.

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.

Currently, under ERP, DNR may issue an environmental results charter to an association of entities to assist the entities to participate in tier I or tier II and to achieve improvements in the quality of the air, water, or other natural resources beyond that achieved through compliance with environmental laws (superior environmental performance). Under this bill, DNR may issue a charter to an association of entities to assist the entities to participate in tier I or tier II or to take actions that may lead to superior environmental performance.

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 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, an entity does not qualify for EIP if within two years before it submits the environmental compliance audit the Department of Justice (DOJ) filed suit against the entity to enforce an environmental requirement or DNR or a local government issued a citation to the entity to enforce an environmental requirement.

This bill eliminates the automatic disqualification provision. Instead, under the bill, DNR must consider whether DOJ filed a suit against an entity to enforce an environmental requirement within two years before the entity notifies DNR that it will conduct an environmental compliance audit. If DNR determines that, because of the nature of the violation involved in a suit, the entity's participation would damage the integrity of EIP, DNR must notify the entity that it is not eligible for participation.

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 authorizes DNR to approve a longer compliance schedule if the secretary of natural resources determines that a longer schedule is necessary. 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
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 (title) of the statutes is amended to read:

11 **299.83 (title)** ~~Environmental Results~~ Green Tier Program.

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

13 **299.83 (1) (dg.) (intro.)** “Functionally equivalent environmental management
14 system” means an environmental management system that is appropriate to the
15 nature, scale, and environmental impacts of an entity’s activities, products, and
16 services and that includes all of the following elements and any other elements that
17 the department determines are essential elements of International Organization for
18 Standardization standard 14001:

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

1 299.83 (1) (dg.) 1. Adoption of an environmental policy that includes a
2 commitment to compliance with environmental requirements, pollution prevention,
3 and continual improvement in environmental performance and that is available to
4 the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 299.83 (4) (c) The department shall approve or deny an application within 60
23 days after providing notice under par. (a) or, if the department holds a public
24 informational meeting under par. (b), within 60 days after that meeting, unless the
25 department and the applicant agree to a longer period. The department may limit

1 the number of participants in tier I of the program, or limit the extent of participation
2 by a particular applicant, based on the department's determination that the
3 limitation is in the best interest of the program.

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

5 299.83 (4m) (d) A participant in tier I of the program may use an
6 ~~Environmental Results~~ a Green Tier Program logo selected by the department on
7 written materials produced by the participant.

8 **SECTION 17.** 299.83 (5) (c) 1. (intro.) and a. of the statutes are consolidated,
9 renumbered 299.83 (5) (c) 1. and amended to read:

10 299.83 (5) (c) 1. Demonstrate that it has implemented an environmental
11 management system, for each covered facility or activity, that is ~~all of the following:~~
12 a. ~~In~~ in compliance with the standards for environmental management systems
13 issued by the International Organization for Standardization or determined by the
14 department to be a functionally equivalent environmental management system.

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

16 **SECTION 19.** 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 **SECTION 20.** 299.83 (6) (a) 1. of the statutes is amended to read:

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

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

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

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

24 2. The term of a participation contract may not be less than 3 years or more than
25 10 years, with opportunity for renewal for additional terms of the same length as the

1 original term upon agreement of the parties. The term of a participation contract
2 may not exceed 5 years if the participation contract incorporates, modifies, or
3 otherwise affects the terms or conditions of a permit issued under s. 283.31, 283.33,
4 or 285.62, unless federal and state law authorize a longer term for the permit.

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

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

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

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

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

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

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

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

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

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

17 1. A description of the violation and the date on which the participant
18 discovered the violation.

19 2. A description of the actions taken or proposed to be taken to correct the
20 violation.

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

23 4. If the participant proposes to take more than 90 days after submitting the
24 report to correct the violation, a proposed compliance schedule that contains the
25 shortest reasonable periods for correcting the violation, a statement that justifies the

1 proposed compliance schedule, a description of measures that the participant will
2 take to minimize the effects of the violation during the period of the compliance
3 schedule, and proposed stipulated penalties to be imposed if the participant fails to
4 comply with the proposed compliance schedule.

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

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

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

19 **SECTION 26.** 299.83 (6m) (b) 2. (intro.) of the statutes is amended to read:

20 299.83 **(6m)** (b) 2. (intro.) The department may not approve a compliance
21 schedule that extends longer than 12 months beyond the date of approval of the
22 compliance schedule, unless the secretary determines that a longer schedule is
23 necessary. The department shall consider the following factors in determining
24 whether to approve a compliance schedule:

25 **SECTION 27.** 299.83 (6m) (c) of the statutes is amended to read:

1 299.83 (6m) (c) *Stipulated penalties*. If the department receives a report under
2 par. (a) or (am) that contains proposed stipulated penalties under par. (a) 4. or (am)
3 4., the department shall review the proposed stipulated penalties. The department
4 may approve the stipulated penalties as submitted or propose different stipulated
5 penalties. If the participant does not agree to stipulated penalties proposed by the
6 department, the department shall schedule a meeting with the participant to
7 attempt to reach an agreement on stipulated penalties. If no agreement is reached,
8 there are no stipulated penalties for failure to comply with the compliance schedule.

9 **SECTION 28.** 299.83 (6m) (d) 1. a. of the statutes is amended to read:

10 299.83 (6m) (d) 1. a. If a participant in the program corrects violations that are
11 disclosed in a report that meets the requirements of par. (a) or (am) within 90 days
12 after the department receives the report, this state may not bring a civil action to
13 collect forfeitures for the violations.

14 **SECTION 29.** 299.83 (6m) (d) 2. b. of the statutes is amended to read:

15 299.83 (6m) (d) 2. b. The department discovers the violation before submission
16 of a report that meets the requirement of par. (a) or (am).

17 **SECTION 30.** 299.83 (7e) (a) of the statutes is amended to read:

18 299.83 (7e) (a) The department may issue an environmental results charter to
19 an association of entities to assist the entities to participate in tier I or tier II of the
20 program ~~and to achieve~~ or to take actions that may lead to superior environmental
21 performance. An association to which a charter is issued may consist of private
22 entities, public entities, or a combination of private and public entities. An
23 association to which a charter is issued may be organized on any basis that helps ~~to~~
24 achieve the entities to participate in tier I or tier II of the program or to take actions
25 that may lead to superior environmental performance.

1 **SECTION 31.** 299.83 (7m) of the statutes is amended to read:

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

11 **SECTION 32.** 299.83 (8) (h) of the statutes is amended to read:

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

17 **SECTION 33.** 299.83 (11) of the statutes is repealed.

18 **SECTION 34.** 299.85 (title) of the statutes is amended to read:

19 **299.85 (title) Environmental Improvement Compliance Audit**
20 **Program.**

21 **SECTION 35.** 299.85 (2) (intro.) of the statutes is amended to read:

22 **299.85 (2) REQUIREMENTS FOR PARTICIPATION.** (intro.) ~~A- Subject to sub. (2m),~~
23 a regulated entity qualifies for participation in the Environmental Improvement
24 Compliance Audit Program with respect to a facility owned or operated by the
25 regulated entity if all of the following apply:

1 **SECTION 36.** 299.85 (2) (f) of the statutes is renumbered 299.85 (2m) and
2 amended to read:

3 **299.85 (2m) CONSIDERATION OF CERTAIN VIOLATIONS.** ~~At the time of submitting~~
4 ~~a report under sub. (3), Upon the receipt of a notice under sub. (2) (b), the department~~
5 ~~shall consider whether~~ the department of justice has not, within 2 years, filed a suit
6 to enforce an environmental requirement, ~~and the department or a local~~
7 ~~governmental unit has not, within 2 years, issued a citation to enforce an~~
8 ~~environmental requirement, because of a violation involving the facility. If the~~
9 ~~department determines that, because of the nature of the violation involved in the~~
10 ~~suit, participation by the regulated entity may damage the integrity of the~~
11 ~~Environmental Compliance Audit Program, the department shall notify the~~
12 ~~regulated entity that it is not eligible for participation.~~

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

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

22 **SECTION 38.** 299.85 (4) of the statutes is amended to read:

23 **299.85 (4) ENVIRONMENTAL COMPLIANCE AUDIT.** A regulated entity does not
24 qualify for participation in the Environmental Improvement Compliance Audit
25 Program unless the final written report of findings of the environmental compliance

1 audit is labeled "environmental compliance audit report," is dated, and, if the
2 environmental compliance audit identifies violations, includes a plan for corrective
3 action. A regulated entity may use a form developed by the regulated entity, by a
4 consultant, or by the department for the final written report of findings of the
5 environmental compliance audit.

6 **SECTION 39.** 299.85 (6) (b) (intro.) of the statutes is amended to read:

7 299.85 (6) (b) (intro.) The department may not approve or issue a compliance
8 schedule that extends longer than 12 months beyond the date of approval of the
9 compliance schedule, unless the secretary of natural resources determines that a
10 longer schedule is necessary. The department shall consider the following factors in
11 determining whether to approve a compliance schedule:

12 **SECTION 40.** 299.85 (7) (a) 1. and 2. of the statutes are amended to read:

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

18 2. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314
19 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m)
20 (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and
21 (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57
22 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a),
23 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b)
24 1., 295.37 (2), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97
25 (1), if a regulated entity that qualifies under sub. (2) for participation in the

1 Environmental ~~Improvement~~ Compliance Audit Program corrects violations that it
2 discloses in a report that meets the requirements of sub. (3) within 90 days after the
3 department receives the report that meets the requirements of sub. (3), the regulated
4 entity may not be required to forfeit more than \$500 for each violation, regardless
5 of the number of days during which the violation continues.

6 **SECTION 41.** 299.85 (8) (intro.) of the statutes is amended to read:

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

18 **SECTION 42.** 299.85 (9m) (intro.) of the statutes is amended to read:

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

Parisi, Lori

From: Bier, Beth
Sent: Monday, March 16, 2009 11:23 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-0139/1 Topic: Changes to environmental cooperation pilot, environmental results (Green tier), and environmental improvement programs

Please Jacket LRB 09-0139/1 for the SENATE.