

Green Tier Advisors

August 3, 2007

Legislation 2.2

ISSUE SUMMARY: This issue paper has been modified to reflect the discussions at the March 6, and June 11, 2007 meetings as well as discussions with Advisors and Green Tier Coordinators. The basic issue remains the same – there is a need to reauthorize the Green Tier Law, make fine tuning modifications to the law and identify those program expansion components that the Advisors would like to have as a part of Green Tier amendments.

EDITORS: Mark McDermid, Jeremiah Born

BACKGROUND:

This issue paper supplements the issue paper that was done for the December meeting (Legislation 1.2 dated December 6, 2006), the issue paper done for the March 6, 2007 meeting (Legislation 2.0 dated March 6, 2007), and the issue paper done for the June 11, 2007 meeting (Legislation 2.1 dated May 14, 2007). This issue paper will serve as the basis for Legislation 3.0 that will be developed for the next legislative discussion by the Green Tier Advisors. Specific language has been developed to achieve the reauthorization and fine tuning elements from the March 6, 2007 and June 11, 2007 meetings.

Proposals for 299.83 of the Wisconsin Statutes for Green Tier:

- The following are all specific changes which can and should be made. For the next five suggestions, we are looking for any other changes which may need to be made to the language of the proposals, and, naturally, if something about any of them raises a red flag for.

Reauthorization:

❖ ~~(11) SUNSET. The department may not process or approve any application for participation in the program that it receives after July 1, 2009.~~

- Step to be taken > amend 299.83 to remove the sunset provision
- Why take it? > To allow Green Tier to accept new members ad inifinum as long as they meet the requirements

Fine Tuning: the following changes provide for updating references and procedural fixes

1. Amend 299.83 to change Environmental Management System starting time to 12 months from date of acceptance into Tier 1
 - (d) *Environmental management system.* To be eligible to participate in Tier I of the program, an applicant shall do all of the following:
 1. Demonstrate that it has implemented, or commit itself to implementing within one year of the letter from the Department indicating acceptance into Tier 1, an environmental management system, for each covered facility or activity, that is all of the following:
 - Step to be taken > changes it from within one year of application to within one year of acceptance into the program
 - Why take it? > The one year from date of application standard can lead to disproportionate time frames for different Green Tier Applicants to have an EMS in place, as some applications take longer to process from the application to acceptance

- Changes from Legislation 2.1 > “Secretary” has been changed to “Department” to be certain that should something arise that the Secretary hasn’t actually been involved in, now all the bases are covered. What’s more, many of the Secretary’s duties are often delegated, so this is more precise.
2. Amend 299.83 Environmental Management System requirements to align with 2004 ISO 14001 standards. Previously, there were two options based on the discussions at the last Advisors meeting. One was to have a generic equivalency statement and the other option was to specifically amend the statute to align with the 2004 standard. After internal discussions and discussions with Advisors, the generic equivalency statement no longer seems to be a viable option.

❖ Amended Definition Aligned to new ISO Standard and generic language to address changes in the standard since the original legislation was passed. Changes to the current statutes are underlined and shaded:

(dg) “Functionally equivalent environmental management system” means an environmental management system that includes all of the following elements and any other elements that the department determines are essential elements of International Organization for Standardization standard 14001:

1. Adoption of a publicly shared environmental policy appropriate to the nature scale and environmental impacts of its activities, products and services. The policy includes a commitment to compliance with environmental requirements, pollution prevention, and continual improvement in environmental performance.
2. An analysis of the environmental aspects and impacts of an entity’s activities.
3. Identify all environmental requirements and implement plans and procedures to achieve and maintain compliance..
4. A process for setting environmental objectives and developing appropriate action plans to meet the objectives.
5. Resources, roles and responsibilities to establish, implement, maintain and improve the environmental management system
7. An employee training program to develop awareness of and competence to manage environmental issues.
8. A communication plan for collaboration with employees, the public, and the department on the design of projects and activities to achieve continuous improvement in environmental performance.
9. Procedures for control of documents and for keeping records related to environmental performance.
10. Establishment of a structure for operational control and responsibility for environmental performance.
11. A plan for taking actions to prevent environmental problems and for taking emergency response and corrective actions when environmental problems occur.
12. Establish, implement and maintain procedures to monitor and measure, on a regular basis, key characteristics of its operations that can have a significant environmental impact.
13. Establish, implement and maintain procedures for periodically evaluating compliance with applicable legal requirements.
14. Environmental management system audits.
15. A plan for continually improving environmental performance and provision for senior management review of the plan.

Note: ISO 14001 standards and certification information is available at <http://www.iso.org>

Further amend the language to provide a generic reference to the governing body and the

auditor standards so that statutory updates are not needed and adaptation can easily be made as auditor standards are revised (Note that this changes seldom, having only changed once since first published in 1996):

(7m) ENVIRONMENTAL AUDITORS. The department may not approve an outside environmental auditor for the purposes of sub. (3) (d) 4. or (5) (c) 2. unless the outside environmental auditor is certified by the recognized governing body for the International Organization for Standardization or meets criteria concerning education, training, experience, and performance that are ~~equal~~ equivalent to the published guidance and criteria from the governing body for the International Organization for Standardization guidance.

- Step to be taken > 1) update the statutes to fit with the new ISO 14001 2004 standards, 2) provide information as to where the ISO 14001 2004 standards can be found
 - Why take them? > We need to be holding participants to current standards and let them know where they can be found
 - Changes from Legislation 2.1 > the reference to where the new standards can be found has been added for the above reason, and “equal” has been changed to “equivalent” under (7m) in order to be consistent with the functional equivalency approach to the standard.
3. Amending Green Tier contracts and charters: In reviewing the current statutory language, it would appear we have the ability to amend contracts and charters in order to maintain flexibility which is proportional to the environmental benefits that will be provided by the participant under the participation contract or participation charter. It is key to have public notice for flexibility changes to contracts or charters in order to stay consistent with the intent of the law.
4. Report to the Legislature – move to a common due date and reporting period for the Environmental Cooperation Pilot Program (299.80 WisStats), Environmental Results Program (299.83 WisStats) and Environmental Improvement Program (299.85 WisStats) reports to the legislature on the progress of the program.

299.80

(16)REPORTS CONCERNING THE PROGRAM UNDER THIS SECTION. (a) Every two years, no later than the first day of ~~May~~ November, the ~~secretary~~ Department shall submit a progress report on the program under this section to the governor and , under s. 13.172 (3), the standing committees of the legislature with jurisdiction over environmental matters.

299.83

(8) POWERS AND DUTIES OF THE DEPARTMENT (h) Every two years, no later than the first day of ~~May~~ November, the ~~secretary~~ Department shall submit a progress report on the program under this section to the governor and, under s. 13.172 (3), the standing committees of the legislature with jurisdiction over environmental matters.

299.85

(9m) ANNUAL REPORT. Every two years, no later than the first day of ~~May~~ November, the ~~secretary~~ Department of natural resources shall submit a progress report on the program under this section to the governor and, under s. 13.172 (3), the standing committees of the legislature with jurisdiction over environmental matters. The department shall include all of the following in the report:

- (a) The number of reports received under sub. (3), including the number of reports by county of the facility involved and by whether the regulated entity is governmental or nongovernmental.
- (b) The number of violations reported by type, including the number of violations related to air, water, solid waste, hazardous waste, and to other specified aspects of

environmental regulation and the number of violations involving each of the following:

1. Failure to have a required permit or other approval.
2. Failure to have a required plan.
3. Violation of a condition of a permit or other approval.
4. Release of a substance to the environment.
5. Failure to report.

(c) The average time to correct the reported violations and the number of violations not yet corrected, by category under par. (b).

(d) The number of regulated entities requiring longer than 90 days to take corrective action and a description of the stipulated penalties associated with the compliance schedules for those corrective actions.

(e) Any recommendations for changes in the program based on discussions with interested persons, including legislators and members of the public.

- Step to be taken > Align all report dates to a common point of November
 - Why take it > Selecting a November due date will result in reports using 11 month old data. A May due date would require us to use data from 17 months before. The changes highlighted above would put the program on a consistent biennial reporting process with a consistent due date for the information.
 - Changes from Legislation 2.1 > “Secretary” has been changed to “Department” to be certain that should something arise that the Secretary hasn’t actually been involved in, now all the bases are covered. What’s more, many of the Secretary’s duties are often delegated, so this is more precise.
5. Public Notice requirements – this would amend the language so that there is recognition that the parties may agree to a time frame other than what is specified in the statutes for department decision making:

(4) PROCESS FOR TIER I. (a) Upon receipt of an application for participation in tier I of the program, the department shall provide public notice about the application in the area in which each covered facility or activity is located or performed.

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

(c) The department shall approve or deny an application within 60 days after providing notice under par. (a) or, if the department holds a public informational meeting under par. (b), within 60 days after that meeting. The parties may mutually agree to a time frame longer than that stated in this paragraph but shall not reduce any public comment period to less than 30 days.

Program Expansion and Improvement.

1. Charters

1.1. The objective of changes to the language on Charters would be to make clear that Charters could be used to:

- 1.1.1. extend to or create flexibility to other regulatory entities that are parties to a charter (e.g. municipalities that may be working within delegated responsibilities from DNR that could be a part of the charter relationship even if the municipality is not a Tier 1 participant).
- 1.1.2. allow the extension of flexibility to parts of the supply chain that may not be Tier 1 or Tier 2 participants (e.g. flexibility given to a dairy processor based upon superior environmental performance that is achieved by dairy producers who are parties to the same charter)
- 1.1.3. allow the recognition of organized, systematic environmental management programs to be a recognized part of Green Tier (e.g. organizing chemical processors

around their “Responsible Care” program to make and report on commitments to Superior Environmental Performance)

- 1.1.4. create a customized working relationship to address a given issue for which the department identifies the environmental management to be done by the voluntary participants, the recognition and flexibility that would be provided to participants and the reporting that would be done as a part of the program (e.g. several elements coming from the Climate Change task force are likely to rely upon voluntary approaches and Green Tier Charters could provide a legal framework within which a sustainable path is established. A similar example would be the organization of a by-product synergy group of businesses that move materials from one business to another as by products from one manufacturers process becomes the raw material for another manufacturers process).
- 1.2. In Issue Papers 1.1 to 2.1, there was a very general approach taken to changes which might be made to the Charter language. Based on specific interests expressed, a more limited set of initiatives has been proposed. Items 1.1.1 to 1.1.4 were developed with the understanding that there might need to be some further limitations on scope or the extent to which the expansion was approved. Specifically, in the absence of formal environmental management systems and some of the structure that is built into the participation requirements for Tier 1 and Tier 2, what might be prudent? There are suggested options below.
 - 1.2.1. Utilization of a pilot program approach – authorize up to 10 charters within a specified time frame that would (for example):
 - 1.2.1.1. meet the same entry level compliance requirements (choose either Tier 1 or Tier 2);
 - 1.2.1.2. require superior environmental performance as stated in the definition;
 - 1.2.1.3. require reporting of results; and
 - 1.2.1.4. statutory incentives would be reserved for Tier 1 and Tier 2 participants.
 - 1.2.2. Use of specific side boards or limits(for example):
 - 1.2.2.1. Limit the extension of flexibility only to those entities that are already in some fashion in a regulatory role;
 - 1.2.2.2. Require additional public involvement/participation and additional levels of review before any such Charter would be executed;
2. New point of entry: Include as part of proposed Act “to create 299.87 of the statutes; relating to: environmental compliance audits, environmental management systems, providing incentives for improving environmental performance, providing immunity from civil penalties for certain violations of environmental requirements, access to certain information, granting rulemaking authority, and providing a penalty.” (this could also be packaged as an amendment to §299.83 rather than the creation of a separate statute)
 - 2.1. §299.87 would be a statute granting the Wisconsin DNR the authority to establish a new point of entry program for Green Tier or a pilot program to try out a new point of entry program for Green Tier. The proposed act could leave the language as a broad boilerplate statement or it could offer the specific workings of the new program. The program could and/or would include the following under:
 - 2.2. Structure
 - 2.2.1. The Department may enter into non renewable three year agreements with business entities, municipalities, and other organizations subject to environmental regulation in order to help them to attain and maintain superior environmental performance.
 - 2.3. Eligibility requirements

- 2.3.1. Facilities and entities in the program must allow an independent third-party to conduct a compliance audit and must address any environmental compliance findings in a timely manner and move towards Green Tier participation.
- 2.3.2. Facilities and entities in the program must perform bi-annual self-inspections and submit to the Department any environmental compliance findings and a plan to address such findings.
- 2.3.3. Within four years, facilities and entities in the program must commit to implementing an ISO 14001 certified EMS or an EMS with demonstrated ISO 14001 functional equivalency subject to §299.83(1)(dg).
- 2.3.4. Enforcement Record
 - 2.3.4.1. To be eligible to participate in the Green Tier entry track, an applicant shall demonstrate all of the following, subject to enforcement record waiver requirements.
 - 2.3.4.2. That, within 36 months before the date of application, no judgment of conviction was entered against the applicant, any managing operator of the applicant, or any person with a 25% or more ownership interest in the applicant for a criminal violation involving a covered facility or activity that resulted in substantial harm to public health or the environment or that presented an imminent threat to public health or the environment.
 - 2.3.4.3. That, within 24 months before the date of application, no civil judgment was entered against the applicant, any managing operator of the applicant, or any person with a 25% or more ownership interest in the applicant for a violation involving a covered facility or activity that resulted in substantial harm to public health or the environment.
 - 2.3.4.4. That, within 24 months before the date of application, the department of justice has not filed a suit to enforce an environmental requirement, and the department of natural resources has not issued a citation to enforce an environmental requirement, because of a violation involving a covered facility or activity.
 - 2.3.4.5. Waiver of enforcement record requirements.
 - 2.3.4.5.1. The secretary of natural resources may waive the above requirements based on the request of an applicant. The department shall provide public notice of the request and shall provide at least 30 days for public comment on the request. The secretary may not grant a waiver under this paragraph unless he or she finds that the waiver is consistent with sub. (1m) and will not erode public confidence in the integrity of the program.
- 2.4. Incentives
 - 2.4.1. Each facility or entity within the program will be assigned a “top point of contact” (TPOC). This individual would be a liaison between the facility or entity and the department.
 - 2.4.2. The Department shall offer a one time rapid regulatory response, and may authorize the grant of future rapid regulatory responses.
 - 2.4.3. The Department shall offer state-sponsored training sessions for entry track participants.
 - 2.4.4. The Department shall organize a conference every two years where new point of entry participants may meet with Green Tier companies and others on the entry track to discuss new methods of superior environmental performance.
 - 2.4.5. The Department shall assist in gaining UW technical and research assistance.
 - 2.4.6. The Department shall provide regulatory benchmarking.

- 2.4.7. The Department shall provide funds or waive fees to offset cost of third party audits until the participating facility or entity has become a Green Tier participant or the three year agreement has lapsed.

2.5 Penalties

- 2.5.1 If at the end of the three year agreement the participant has not become a Green Tier participant, funds received or fees waived shall be paid back to The Department. The participant may reapply for the entry point program, but any funding or fee waivers will be unavailable.

3. Flexibility Language – Several very general options were suggested in the initial issue papers on flexibility. As a result those initial suggestions were set aside and two proposals were developed based upon existing law in another state and extending some current language used in the Air Permitting processes. Of the handful of states that have environmental results programs which are grounded in legislative authority, Virginia statutes establishing the Virginia Environmental Excellence Program provide what could be a useful way to address Green Tier flexibility. Concerns raised about initial flexibility proposals included clashes with federal law, a need for clearly defined boundaries within which we can be flexible, a way to compare values of emissions, emission reductions, etc. across media, and sideboards within the spheres of public health, public safety, and environmental sensitivity. The Virginia statute specifically addresses these issues, and has been adapted below for consideration for Green Tier:

299.83(Insert number)Approval of alternate compliance methods.

(a) To the extent consistent with federal law and notwithstanding any other provision of law, the Department may grant alternative compliance methods to the regulations adopted pursuant to the Department's authority, respectively, under chs. 29 to 31, 160, and 280 to 299 for persons or facilities that have been accepted by the Department as meeting the criteria for Green Tier facilities under §299.83 and §299.85, including but not limited to changes to monitoring and reporting requirements and schedules, streamlined submission requirements for permit renewals, the ability to make certain operational changes without prior approval, and other changes that would not increase a facility's impact on the environment. Such alternative compliance methods may allow alternative methods for achieving compliance with prescribed regulatory standards, provided that the person or facility requesting the alternative compliance method demonstrates that the method will

1. Meet the purpose of the applicable regulatory standard,
2. Promote achievement of those purposes through increased reliability, efficiency, or cost effectiveness, and
3. Afford environmental protection equal to or greater than that provided by the applicable regulatory standard. No alternative compliance method shall be approved that would alter an ambient air quality standard, ground water protection standard, or water quality standard and no alternative compliance method shall be approved that would increase the pollutants released to the environment, increase impacts to state waters, or otherwise result in negative environmental impacts.

(b) Notwithstanding any other provision of law, an alternate compliance method may be approved under this section after at least 30 days' public notice and opportunity for comment, and a determination that the alternative compliance method meets the requirements of this section.

(c) Nothing in this section shall be interpreted or applied in a manner inconsistent with the applicable federal law or other requirement necessary for the State to obtain or retain federal delegation or approval of any regulatory program. Before approving an alternate compliance method affecting any such program, each regulatory body within the Department may obtain

the approval of the federal agency responsible for such delegation or approval. Any one of the regulatory bodies within the Department may withdraw approval of the alternate compliance method at any time if any conditions under which the alternate compliance method was originally approved change, or if the recipient has failed to comply with any of the alternative compliance method requirements.

(d) Upon approval of the alternative compliance method under this section, the alternative compliance method shall be incorporated into the relevant permits as a minor permit modification with no associated fee. The permits shall also contain any such provisions that shall go into effect in the event that the participant fails to fulfill its obligations under the variance, or is removed from the program for reasons specified by the Department under §299.83(7).

The Virginia statutes build in some of the sideboards that there was some desire for with their mentions of standards not to be broken and the requirement that agencies involved with the flexibility work together and must both come to an agreement before the flexibility is granted. They also keep in place public notice and comment requirements. This language is a good starting block to tweak, refine, and build upon. Furthermore, Virginia has a fairly detailed form (attached) where participants request the flexibility they want and have to assess many things including the environmental impact. This form helps streamline the process and often the participants will be turned down. According to Sharon Baxter, the P2 manager in the Virginia program, this statute has not lead to many problems. It has lead to a high degree of specificity in the flexibility and has been the safeguard keeping one of the best incentives to join the program in check.

Permit shield option: In order to assure the viability of the flexibility Green Tier offers, a statutory “safety net” could be created based along the same lines as a permit shield. (insert number) Unless precluded by the administrator of the federal environmental protection agency, flexibility from environmental regulations not specifically included in a Green Tier contract or charter is considered to be implicit in the Green Tier contract or charter subject to the other provisions set forth by §299.83, §299.85, and any rules and provisions promulgated under authority granted within §299.83 and §299.85, when:

- (insert letter) the flexibility granted does not result in negative environmental impacts
- (insert letter) the flexibility granted is necessary to the operation of other regulatory flexibility benefits granted by the Department
- (insert letter) the flexibility granted follows the intent of the law and will not erode public confidence in the integrity of the program

4. Based on discussions since the last Issue Paper, this has been scaled back to a limited expansion of Green Tier as related to the Department of Commerce to explore how grant program preference, flexibility under specific regulatory provisions and working relationships with the agency could be developed in such a way as to provide incentives for Green Tier participants.
 - 4.1. In addition (outside the scope of the legislation) activity will be renewed for recognition given to Green Tier companies as a part of state procurement.
5. Environmental Cooperation Pilot Program Participants
 - 5.1. Tier 2 Process for environmental cooperation pilot program participants:
 - 5.1.1. Company submits letter of intent stating desire to transition from ECPP to Tier 2.
 - 5.1.2. DNR and company redraft ECA to conform to Green Tier program requirements and benefits

- 5.1.3. DNR provides public notice on redrafted participation contract. After providing public notice about a redrafted participation contract, the Department may hold a public informational meeting on the redrafted participation contract.
 - 5.1.4. Company shares the results of the last audit for purposes of establishing the audit baseline.
 - 5.1.5. If commitments are unchanged from ECA, redrafted contract presumed to be “proportional.”
 - 5.1.6. Limitation and/or review of decision - DNR could not deny an application from an ECPP participant unless significant issues are raised during public comment that the company is unwilling or unable to address.
 - 5.2. ECPP participants would still have a choice: 1) let their environmental cooperative agreement expire; 2) apply for Green Tier and start from scratch with new negotiations; or 3) transition to Tier 2 as described above.
6. Amend 299.83 to restore the ability of the Secretary of DNR to waive the citation and civil judgment provisions to enable a company into Tier 1 or Tier 2.
 - 6.1. Tier 1

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

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

 - To Consider > Some have questioned if we need this or should be doing it at all. The question posed was this: If we do this are we opening a door for participants that have not necessarily shown that they deserve it? Is the “not erode public confidence in the integrity of the program” safeguard strong enough?
 7. Enforcement Record – It is our understanding that the law as written now applies to all of the environmental regulations, because the language does not specify federal, state or city ordinances and so on. Therefore a change is not needed. Were we to include in legislation a list of what the law does apply to, simply by missing and omitting one regulation we run the risk of creating a loophole.
 8. Limited Civil Immunity – as currently worded the statute may limit the discovery, disclosure and self reporting of violations only to those through the annual audits done at the facility to satisfy the requirements of 299.83. The language, however, fails to recognize the continual auditing and checking that occurs in a functioning environmental management system. The intent, when the original language was drafted, was to have compliance continually monitored and immediately corrected. The change would remove language that might limit this incentive only to problems discovered in audits prescribed to maintain eligibility and not address opportunities for immediate, continual improvement.
 - 8.1. Amending the language related to self disclosure of violations:

(6m) COMPLIANCE REPORTS AND DEFERRED CIVIL ENFORCEMENT. (a)

Compliance reports. If an audit under sub. (1) (dg), (3) (d) 4. or (5) (c) 2. or 3. reveals any violations, the participant shall include all of the following in the report of the results of the audit:

- To Consider > Will this result in more civil immunity for issues outside of a contract or charter? If so, how does public participation and public comment figure in?

9. Local Government Track – give the department the ability to grant a conditional functional equivalency determination to local units of government that have engaged in the development of systems that define the overall environmental footprint, a series of programs that will reduce that footprint, audits to assure compliance and a plan to reach functional equivalency over a defined period with interim benchmarks. In return, the department could provide specific flexibility. Examples might include storm water management, “development” decision making and direct permitting of government operations.

DISCUSSION:

The purpose of the review is to identify those concepts that would be drafted and included in a package of recommendations for changes to the Green Tier law. Reauthorization, fine tuning and program expansion are the general categories where changes are contemplated. Each is driven by experience with the program to date. Each has also been informed by discussions with the Advisors, program participants and Department staff.

Reauthorization would provide both certainty that the program is going to continue to develop and affirmation that performance based relationships can yield environmental results within a legal framework that compliments traditional approaches to managing environmental risk. By addressing reauthorization in the current legislative session, the door is open to work through the legislative process but also leaves the door open to reintroduction in the 2009-2011 Legislative session should there be a need to do so. The general sense of discussions with Advisors, participants and staff has been that reauthorization is the basic component of the Green Tier package and should proceed in the current legislative session.

Fine tuning addresses the experience of the program to date. The changes that are included in the options above will address questions of processing and the timing of decisions and reporting that were not anticipated at the time that the original language was addressed. In addition, the changes suggested will also bring the references in the statutes up to date with changes in standards that have occurred since the original language was drafted in 2000.

Program expansion suggests several changes that could expand the depth and scope of the program. The suggestions for charters recognize that little was known about charters at the time that the language was crafted in the initial legislation. What has emerged is a realization that charters have the potential to reach many new participants to contribute environmental results and provide a new legal framework for getting results. The concepts suggested would expand “what” charters might do as a tool on their own, the “scope” of charters to reach larger groups in an organized way and enable charters to package incentives.

Incentives have been a fundamental part of the development of the program. While the general “proportionality” language has provided a virtually open book for incentives development, there has been a consistently stated interest in seeing incentives or suggestions of incentives listed in the law. The changes suggested would provide a basic outline for incentives in much the same

way as was done for the pilot program. One key question is whether some or all of these incentives should also be extended to Tier 1 of the program given that some have felt that more was needed for the kind of investment that organizations are making on the front end of Green Tier.

Local units of government represent major potential for the program but generally lack some of the resources necessary to bring about systems implementation across the breadth of the local government. Similarly, governments tend to have projects (brownfields development, innovative land use development, economic development initiatives, etc.) that might benefit from the kind of flexibility that Green Tier envisions and the projects align well with the environmental results that Green Tier expects. The suggestion is to find a way to enable the flexibility and realize the results through a modified use of Green Tier with local units of government.

Other agencies have worked with the Department in the development of Green Tier, notwithstanding the limitation that only DNR statutory provisions are the subject of recognition, adaptation and flexibility. How far to engage other agencies will be a strategic question as the legislative package is pulled together. Several approaches from case specific recognition (e.g. just looking at the Uniform Dwelling Code) to overall recognition in other agencies have been suggested. Some direction is needed in how narrow or broad provisions should be crafted.

The Environmental Cooperation Pilot Program (ECPP) has been invaluable in demonstrating what flexibility can yield in the form of significant environmental results and the kind of performers that differentiate themselves through Green Tier programs. With resources limited and the term of the original pilot program coming to an end, a proposal has been set out that would allow the companies, at their pace, to avail themselves of the Green Tier program. With limited administrative investment, the companies would be able to protect their investment in the current agreements and continue to be recognized for their environmental results.

A suggestion has been made that there is a need for an entry level for program participation. This would be a level of participation that would start short of the significant EMS commitment that goes with Tier 1. There have also been discussions about companies that have problems being prime for consideration of “systems” approaches that would keep them out of trouble. In short, is there a logical way to engage “reformed sinners”? Another very significant group is those that are companies just starting out and companies just coming into the state that are prime for consideration of flexibility and especially well suited for getting their operations environmentally “right” from the start.

At the March 6 meeting there were several items that were added to the program expansion discussion. Those were the items moved from the fine tuning list. The expectation is that those will be considered along with the package of substantive items discussed in greater detail above.

DISCUSSION SYNOPSIS (from prior meetings):

There was no formal discussion at the meeting on December 6, 2006 but there was an issue brief prepared and distributed (Legislation 1.2). Advisors were encouraged to review the brief and provide comments to staff for a more specific analysis that would be done for the March 6, 2007 meeting.

At the March 6, 2007 meeting, the advisors provided direction on the changes to the law that would address reauthorization and the fine tuning of the law. The Advisors felt that the removal of the sunset provision would be the best course. In addition, the Advisors felt that specific

provisions could be crafted to review for those changes related to fine tuning the law. Those provisions included:

- Start date for Tier 1 participants implementing an EMS
- Alignment with changes made to ISO 14,001 with a generic and a specific option
- Addition of a process to amend charters and contracts
- Alignment of reporting dates for beyond compliance programs
- Creation of a mutual consent option for time frames beyond those specified for Tier 1

Specific amendment language has been crafted and is included in the text above for both reauthorization and fine tuning.

Based upon the discussion at the March 6, 2007 meeting, the following items were moved from the list of elements for fine tuning to the list of program improvements and expansion:

- Enforcement Exemption - (specific language was crafted and included in the text above since this may be a relatively simple change)
- Use of the logo
- Logo's (to be combined with the item above for a more comprehensive discussion of logo's)
- Enforcement Record - (specific language was crafted and included in the text above since this may be a relatively simple change)
- Limited Civil Immunity - (specific language was crafted and included in the text above since this may be a relatively simple change)

The Advisors asked that staff follow up with them prior to the next meeting to discuss how the concepts prepare for the March 6, 2007 meeting could be further fleshed out for the meeting in June.