

Green Tier Advisors
August 3, 2007
Additional Information Requested at the June 11, 2007 Advisors' Meeting

At the June 11, 2007 meeting there was additional information requested about the uses of logo for various programs and the ways in which the pursuit of certification and participation is managed. There was considerable information accumulated and that information has been summarized below. Staff will be prepared to provide additional, specific information as needed at the meeting.

DNR's Forestry certification programs

Governor Doyle directed the Department to investigate forest certification to address the growing demand for certified wood from large purchasers of Wisconsin products (most notably in the paper and printing industry). These companies could face a competitive disadvantage in global markets if they do not have access to certified raw materials.

Forest certification is a process in which a forest landowner undergoes an audit of their practices by a third party organization. If the forest practices of the landowner meet the standards for long-term sustainability identified by the third party organization, then that organization will "certify" that the forest is "well managed." Wood products originating from that forest can be marketed as having been grown and harvested in a way that will assure long-term sustainability for biological, social and economic benefits.

The DNR pays for all license and accreditation fees for State forests, County forests and privately held land enrolled in the state's Managed Forest Law (MFL) Program. Approximately 37,500 private individuals (holding approximately two million acres, with no single holding exceeding 2,500 acres) participate in MFL. It should be noted that DNR does not pay any of the certification nor license fees for large scale commercial holdings. State Forests total about 513,000 acres and County Forests about 2.4 million acres.

Associated third-party audit costs for State, County and MFL holdings are also paid by DNR. If an audit identifies corrective actions are needed, DNR pays for the State and only limited County corrective actions, but none on private MFL holdings.

Since Fiscal Year 2004-2004 through July 2007, DNR has paid \$323,000 for certification registration for the state, county and private forestry programs, and required third party audits and some corrective actions (as explained above).

USEPA Programs Logo Usage

At present there are over 80 voluntary/partnership programs that are run by USEPA. Each has some form of logo and in over half of the programs the logo may be used by participants in the program. There is a mix of those that allow the use of the logo on consumer products but we did not delve into the details of all of the programs to be able to give a percentage of those that allow the use of the logo on consumer products. For purposes of responding to the information request, we looked more closely at the Energy Star Program and the Performance Track Program. It is important to note that the seal or logo for USEPA is expressly prohibited from use on products and is very tightly controlled for uses other than official USEPA business as directed in official USEPA policy and controlled by USEPA's Office of General Counsel.

Energy Star is probably the best known of the USEPA Certification Marks and has grown to an over 40% recognition factor in the American public during the 15 years of use. The label is expressly authorized by USEPA for use on products and that authorization is based on product performance. There is a promotional mark, certification mark, linkage phrase mark with two options and partnership mark. Each has, as the name implies, distinct uses and each may, with the exception of the partnership mark, be used with consumer products. Each expansion in the use of the logo is reviewed throughout EPA and by the trademark lawyer at EPA. While there are lawyers at EPA who deal with these issues, the conversations with them were not overly productive as their focus is on providing advice to their internal clients at EPA. Individual use decisions are made by the staff within the program based on the standards developed for the particular use. For participants using the logo, the use is governed by a formal partnership agreement signed by USEPA and the participant. A program also exists to monitor the use of the logo and a process also exists to manage the misuse of the logo when that is detected.

The Performance Track program is USEPA's environmental leadership program most similar to Tier 1 of the Green Tier program with a logo along with a standard set of other prescribed incentives. Performance Track is an EMS based program with eligibility requirements and performance expectations similar to Tier 1 of Green Tier. To date, the Performance Track Logo has not been used on consumer products and there is a predisposition within the Program to stay away from such use. Each use of the logo is monitored by the staff within the Performance Track program. Unlike Green Tier, there is not a statutory framework within which the logo use is managed and there was a general sense that use is primarily driven by what the program managers would like to accomplish rather than what the law would allow. At present, the logo is not used on consumer products and is managed by Performance Track staff according to guidelines that are referenced but not explicitly stated when organizations become participants of the Performance Track Program.

State Performance Programs Logo Usage

The usage in two states was examined, Texas and Virginia. Both states have multi level, EMS based programs that allow the use of the logo. The progression of participation is from a basic set of commitments in return for some standard incentives to customized working relationships although only Virginia has something akin to the participation contracts in Green Tier. Virginia and Texas are both programs that are based in law and they have somewhat different positions on logo usage based on direction from those laws. In both states the logo is accompanied by a tag line that indicates the level of participation in the program although it appears that participants may choose to use just the logo alone without the level designation.

The Virginia Environmental Excellence (VEEP) Program does not specifically prohibit the use of the logo on consumer products. In speaking with the program manager, the use on consumer products simply hasn't been an issue that anyone has raised and participants (mostly business to business producers) have not seen value in pursuing. Their law does not provide direction on the use of the logo. Consequently, this is done in collaboration between the state and the participants, largely managed by the participants as the program is staffed similar to Green Tier. The program manager also indicated an interest in seeing how Wisconsin addresses this issue as Virginia may encounter the situation and would look to Wisconsin to see how the issue is addressed.

CLEAN TEXAS is the environmental performance program for the state. In Texas case, the use of the logo on consumer products is expressly prohibited. The rationale is two-fold. First, by law they are prohibited from endorsing a consumer product and they have taken the position that this is the primary basis for their prohibition. The program manager went on to state that the program is an indication of facility performance and not product attributes which was the second reason cited for not having the logo on products. CLEAN TEXAS has a four page, very simple set of guidelines for the use of the logo and like Virginia manage the use of the logo in a collaborative process with the participants. Most of the guidance is how the graphics must be portrayed and the actual language governing use of the logo is covered with five bullet points concluding with a statement that the list is not exclusive and participants should call the CLEAN TEXAS program if they have questions.

Neither of the states has chosen to pursue state or federal registration of the certification mark. Both states also manage the certification mark through the respective offices assigned to manage the program and do not enter into any formal agreements about the use of the certification mark.