

APPENDIX 1 – LEGISLATION RECOMMENDATION

PROPOSED LEGISLATIVE PROVISIONS

Legislative Bill XXX

An Act, to amend 299.80, 299.83, and 299.85; relating to: changes in the Environmental cooperation pilot program, Environmental Results Program, and Environmental Improvement Program in order to address the viability and better function of those programs.

Section 1

299.80 Environmental cooperation Pilot Program. 299.80(16) is amended to read REPORTS CONCERNING THE PROGRAM UNDER THIS SECTION. (a) ~~Beginning not later than November 1, 1998~~ Every two years, no later than the fifteenth day of December, the ~~secretary~~ Department shall submit an annual a progress report ~~of~~ 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. (b) ~~Not later than October 1, 2001, the secretary of natural resources shall submit a report to the governor and, under s. 13.172 (2) the legislature on the success of the program under this section. The report shall include recommendations concerning the continuation of the program under this section and any changes that should be made to the program.~~

Section 2

299.83 Environmental Results Program. 299.83(11) is repealed. ~~(11) SUNSET. The department may not process or approve any application for participation in the program that it receives after July 1, 2009.~~

APPENDIX 1 – LEGISLATION RECOMMENDATION

Section 3

299.83 Environmental Results Program. 299.83(3)(d) is amended to read (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 ~~application~~ 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:

a. In compliance with the standards for environmental management systems issued by the International Organization for Standardization or determined by the department to be a functionally equivalent environmental management system.

b. Determined by the department to be appropriate to the nature, scale, and environmental impacts of the applicant's operations related to each covered facility or activity.

2. Include, in the environmental management system under subd. 1., objectives in at least 2 of the following areas:

a. Improving the environmental performance of the applicant, with respect to each covered facility or activity, in aspects of environmental performance that are regulated under chs. 29 to 31, 160, or 280 to 299.

b. Improving the environmental performance of the applicant, with respect to each covered facility or activity, in aspects of environmental performance that are not regulated under chs. 29 to 31, 160, or 280 to 299.

c. Voluntarily restoring, enhancing, or preserving natural resources.

APPENDIX 1 – LEGISLATION RECOMMENDATION

3. Explain to the department the rationale for the choices of objectives under subd. 2. and describe any consultations with residents of the areas in which each covered facility or activity is located or performed and with other interested persons concerning those objectives.
4. Conduct, or commit itself to conducting, annual environmental management system audits, with every 3rd environmental management system audit performed by an outside environmental auditor approved by the department, and commit itself to submitting to the department an annual report on the environmental management system audit that is in compliance with sub. (6m) (a).
5. Commit itself to submitting to the department an annual report on progress toward meeting the objectives under subd. 2.

Section 4

299.83 Environmental Results Program. 299.83(1)(dg) is amended and renumbered to read (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 ~~an~~ a publicly shared environmental policy that 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.

APPENDIX 1 – LEGISLATION RECOMMENDATION

3. Identify all environmental requirements and implement plans and procedures to achieve and maintain compliance. ~~with environmental requirements and to maintain that compliance.~~
4. ~~Identification of all environmental requirements applicable to the entity.~~
- 5 4 A process for setting environmental objectives and developing appropriate action plans to meet the objectives.
- 6 5. Establishment of a structure for operational control and responsibility for environmental performance. 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.
8. 11. A plan for taking actions to prevent environmental problems and for taking emergency response and corrective actions when environmental problems occur.
9. ~~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.~~

APPENDIX 1 – LEGISLATION RECOMMENDATION

~~10. Procedures for control of documents and for keeping records related to environmental performance.~~

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.

~~11.~~ 14. Environmental management system audits.

~~12.~~ 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>

Section 5

299.83 Environmental Results Program. 299.83(7m) is amended to read (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 ~~Registrar Accreditation Board~~ 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 in from the governing body for the International Organization for Standardization guidance 19011.

APPENDIX 1 – LEGISLATION RECOMMENDATION

Section 6

299.83 Environmental Results Program. 299.83(8)(h) is amended to read (h) ~~The department~~ Every two years, no later than the fifteenth day of December, the Department shall submit a progress report on the program under this section to the legislature, in the manner provided in s. 13.172 (2), no later than May 1, 2007, and every 2 years after it submits the first report. governor and, under s. 13.172 (3), the standing committees of the legislature with jurisdiction over environmental matters.

Section 7

299.83 Environmental Results Program. 299.83(4) is amended to read (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. The department may limit the number of participants in tier I of the program, or limit the extent of participation by a particular applicant, based on the department's determination that the limitation is in the best interest of the program.

APPENDIX 1 – LEGISLATION RECOMMENDATION

(d) Notwithstanding s. 227.42 (1), a decision by the department under par. (c) to approve or deny an application is not subject to review under ch. 227.

Section 8

299.83 Environmental Results Program. 299.83(3)(e) is amended to read (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.

Section 9

299.83 Environmental Results Program. 299(5)(e) is amended to read (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. 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.

APPENDIX 1 – LEGISLATION RECOMMENDATION

Section 10

299.85 Environmental Improvement Program. 299.85(9m) is amended to read (9m) ANNUAL REPORT. Every two years, no later than the fifteenth day of December, the Department shall submit ~~an annual~~ a progress report on the program under this section to the governor and under s. 13.172 (3) ~~concerning the Environmental Improvement Program~~ to the standing committees of the legislature with jurisdiction over environmental matters. ~~The department shall submit the first annual report no later than May 1, 2006.~~ The department shall include all of the following in the annual 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).

APPENDIX 1 – LEGISLATION RECOMMENDATION

(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.

PROGRAM EXPANSION CONCEPTS

In addition to the recommendation drafted above, the Green Tier Advisors are recommending the following concepts to be drafted for and included in the Green Tier proposed legislation:

1. The Advisors are recommending that language be included in the Green Tier revisions which would allow for the smooth and efficient transition of the current participants in the Environmental Cooperation Pilot Program to make the transition to Tier 2 of the Green Tier program with the current Cooperative Agreements becoming Participation Contracts.
 - 1.1. Tier 2 Process for environmental cooperation pilot program participants:
 - 1.1.1. Company submits letter of intent stating desire to transition from ECPP to Tier 2.
 - 1.1.2. DNR and company redraft ECA to conform to Green Tier program requirements and benefits, ensuring continuity in requirements and incentives from ECA contract and making minor changes so as to conform to Tier II requirements and incentives
 - 1.1.3. 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.
 - 1.1.4. Company shares the results of the last audit for purposes of establishing the audit baseline.
 - 1.1.5. If commitments are unchanged from ECA, redrafted contract presumed to be “proportional.”
 - 1.1.6. 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.
 - 1.2. 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.