

Green Tier Advisors

September 20, 2007

Proportionality 2.0

ISSUE SUMMARY: The Department is tasked with working with the Advisors to: Assess “whether incentives provided under a participation contract are proportional to the environmental benefits committed to under a participation contract.” The selected path to consider and develop recommendations to the Department on proportionality is to have a process that includes advisors, Department staff, NGO’s, businesses and consultants to craft an initial set of recommendations for the Advisors to consider at the December meeting.

EDITOR: Mark McDermid, Rita Hayen, Rebecca Power

CONTRIBUTORS: Proportionality Sub-group and Green Tier Coordinators (senior DNR staff designated to coordinate Green Tier work.)

BACKGROUND:

At the August meeting, the Advisors considered a variety of ways that proportionality could be considered and recommendations developed for the Department. Advisors agreed that the best way to proceed would be to start by framing a process that could be used to develop a proposal for recommendations. That proposal would be developed by Rita Hayen, Rebecca Power and Mark McDermid for discussion at the September 20 meeting. The process framed in that proposal would be executed between September 20 and the next Advisors meeting on December 3. The purpose of the discussions on December 3 would be to develop information/recommendations that will be vetted with program participants at the working session in January. The goal would be to have the process completed so that recommendations are ready for the following meeting of the Advisors in spring 2008. Below is the proposal which was developed by Rita, Rebecca and Mark.

PROPOSAL

Advisors are asked at the September 20 meeting to review and finalize the three elements of the process outlined below.

- 1) What is the purpose
- 2) Who needs to participate
- 3) What conversations need to take place

Proportionality means that the incentives of Green Tier contract and/or charter participation are credible and proportional to the performance realized from the contract/charter. The expectation would be that there would be 2 or 3 meetings of a “Proportionality Working Group” between September 20 and December 6 in order to develop a first cut at recommendations that could be considered by the Advisors at the December meeting.

- 1) Purpose of the Proportionality Working Group
 - a. The group will help draft/outline a process to guide the Department and participants (applicant and stakeholders) in making decisions about proportionality including:
 - i. Write questions that need to be asked of the parties to the contract/charter [For example, what are the relationships between the flexibility and the superior environmental performance, is the flexibility necessary to achieve the superior

- environmental performance, what is the net environmental gain from the combination of the flexibility and the superior environmental performance, etc.]
- ii. Identify who should be involved in the process that results in a recommendation to the Secretary that the package of incentives in a contract or charter is proportional to the performance commitments.
 - iii. Develop methods to address the responses to the questions and measure the results of the responses.
- b. The goal of the process is to ensure that incentives or package of incentives is credible and acceptable for the performance commitments made along with being fair and open in the consideration of the proportionality question.
 - c. Consider existing materials that may be use as the basis for proportionality decisions such as the 'sniff test' paper (<http://dnr.wi.gov/org/caer/cea/innovation/paper.pdf>), existing cooperative agreements or others suggested by the group.
- 2) Suggestions for participants in the Proportionality Working Group (expected size would be between 8 and 15 participants)?
- a. The following is a list of potential participants representing the business, legal community, consultants, Advisors, environmental organizations, and the Department. Please note that these individuals have not agreed to participate and are only individuals whose names were recommended based on the brainstorming of the sub-group and some initial consultation with the Green Tier Coordinators.
 - i. Mark McDermid
 - ii. Rebecca Power
 - iii. Rita Hayen
 - iv. Steve Hiniker
 - v. Kevin Kessler, DNR Air Mgt
 - vi. Mark Giesfeldt, DNR R&R program
 - vii. Roger Larson, DNR Water Program
 - viii. Todd Palmer (DeWitt, Ross & Stevens)
 - ix. Vicki Elkin
 - x. Becky Abel, WWA
 - xi. Kevin Lehner (environmental consultant)
 - xii. David Crass (Michael Best & Friedrich LLP)
 - xiii. Don Esposito or Denis Leonard (Veridian Homes)
 - xiv. Brian Borofka (We Energies)
 - xv. Laurie Grant (Rivers Alliance of Wisconsin)
 - b. The following is a list of potential facilitators, since the proposal is to have a facilitated process for the discussions in order to make the best use of time:
 - i. Darren Harris
 - ii. Andy Morton
 - iii. Mary Hammel
 - iv. Dan Hill
 - c. For the Proportionality group define the process as outlined in #1 above by:
 - i. Defining questions to be asked
 - ii. Who poses questions
 - iii. How are questions evaluated (how is proportionality evaluated? What are the appropriate metrics for each contract/charter and are there metrics specific to a particular industry?)

DISCUSSION:

The purpose for this issue paper is to start a process that results in recommendations for implementing a decision making process to determine whether incentives provided by contracts and charters are proportional to the superior environmental performance commitments from the participants. The proposal above provides a relatively tight time line, diverse set of participants and precise purpose to accomplish that objective. The goal as developed at the August 3 meeting is to have something that the Advisors can consider in December and discuss with current participants in January.

DISCUSSION SYNOPSIS (from prior meetings):

The Advisors have reviewed their statutory charge to make recommendations to the department about “whether incentives provided under a participation contract are proportional to the environmental benefits committed to under a participation contract.” The department has authority to grant incentives for Tier 2 Contracts and may include provisions in Charters which relate to the delivery of incentives through contracts. The expectation is that two Tier 2 letters of intent currently in development may soon call the question of consideration for proportionality between incentives and performance. As a result there is a need to develop something that can help to make the proportionality decisions both efficient and effective.

Existing agreements through the cooperative agreement program have a wide variety of flexibility. Permit time frames and conditions have been modified. Reporting frequency and structure have been modified. Customized working relationships exist to develop sustainable products, consider business needs and develop joint approaches to environmental issues. As more consideration is given to questions of flexibility, there is a need for a process which can thoroughly and promptly consider such requests. The expectation is that the same kind of flexibility from those agreements is the kind of flexibility that would be developed through Green Tier participation, contracts and charters.

The Advisors agreed to design a process involving advisors and others for reviewing proportionality, having considered a number of other options that were outlined in the Proportionality 1.0 issue paper. A working group consisting of Rita Hayen, Rebecca Power, and Mark McDermid was formed to put together a recommendation for the entire group to consider. The working group was tasked to design a process that will draw in other parties and result in a recommendation for the Advisors at the December meeting. The goal is to have the method and an initial suggestion of participants ready for consideration at the September 20 meeting. The overall goal is to have a draft recommendation for proportionality, which can be discussed at the next Green Tier Working Session.