

## Green Tier Advisors

September 20, 2007

Legislation 3.0

**ISSUE SUMMARY:** This issue paper has contains the remaining issues to be addressed by the Advisors, having prepared recommendations for reauthorization, fine tuning and program expansion. These recommendations developed at the March 6, June 11 and August 3 meetings. The remaining elements of program expansion for consideration by the advisors are:

- Charters
- Incentives
- Other Agencies
- Limited Civil Immunity
- Local Government

The question before the Advisors is which of these items should be included in the recommendations for program expansion.

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### **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), the issue paper done for the June 11, 2007 meeting (Legislation 2.1 dated May 14, 2007) and the issue paper done for the August 3 meeting (Legislation 2.2 dated July 28, 2007). This issue paper has been developed for the next legislative discussion by the Green Tier Advisors and contains only the remaining issues with the other issues having been crafted into the first draft of the recommendations for separate consideration by the Advisors. Specific language has been developed to achieve the reauthorization and fine tuning elements from the March 6, 2007 and June 11, 2007 meetings. The goal with this discussion is develop recommended concepts that can be crafted into specific legislative language.

#### Program Expansion and Improvement.

##### 1. Charters

1.1. Changes to the language on Charters would be made to:

- 1.1.1. Extend to or create flexibility for other regulatory entities that are parties to a charter (e.g. municipalities, special districts and/or other agencies that may be working within delegated responsibilities from DNR that could be a part of the charter relationship even if the signatory to whom flexibility is extended is not a Tier 1 or Tier 2 participant).

**Description - For this measure of flexibility to apply, the party receiving the flexibility would have to be a signatory to the charter, remain a member in good standing of the charter, meet the basic compliance screening requirements for Tier 1 and the flexibility provisions would be subject to the same public notice and flexibility subject to consideration through that process. The party receiving the flexibility would have to have regulatory authority in the environmental area which is the subject of the charter and the flexibility to be granted through the charter. Specifically, the flexibility**

**provisions would need to be reflected in the charter would have to contribute to the intent of the charter.**

**Rationale – The reason for this proposed change is to give some practicality to the flexibility incentive, create a concrete situation in which flexibility can be granted, and yield greater results through charters. Charters pull together many parties who have something to contribute to the solution of environmental problems, to more efficiently administer environmental processes and/or more effectively address environmental issues. Co-regulators may be fully prepared to help improve environmental performance but would not have a need to pursue Tier 1 or Tier 2 participation. Their interests in the charter are related to the regulatory stake that they would have in the work of the charter and in many potential cases would relate to areas where there are overlapping decision making and may relate to the timing of regulatory decisions that are not well timed for those that are regulated.**

**Example – One working example exists in the Clear Waters Initiative in which the Cities of Madison and Sun Prairie along with Dane County and the Department work together to address storm water issues. While it is clear that the charter can extend flexibility to Tier 1 and Tier 2 parties to the charter, the charter would be limited in the ability to have the co-regulators set a methodology for decision making on the environmental issues that might have one of those co-regulators have an alternate or flexible way in making decisions. Specifically, one of the co-regulators might be able to be able to make decisions differently for the superior performers on issues that are a part of the overall regulatory scheme for storm water control.**

**Another more hypothetical example would be the provision of industrial waste water controls that are most frequently shared with the water treatment authorities. In this example, the Department and the Water Treatment Authority could set about to consider optional ways of dealing with superior environmental performers (Tier 1 or Tier 2 participants) that would need to be realized by the treatment authority meeting requirements from the Department for them in particular in different ways. Those could include the way that reports are done, the kind of monitoring that they do or the requirements that they are expected to apply to industrial clients.**

- 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).

**Description – For this measure of flexibility to apply, the party receiving the flexibility would have to be a signatory to the charter, remain a member in good standing of the charter, meet the basic compliance screening requirements for Tier 1 and the flexibility provisions would be subject to the same public notice and flexibility subject to consideration through that process. Specifically, the flexibility provisions would need to be reflected in the charter and would have to contribute to the intent of the charter. For the extension of flexibility to be available, superior environmental performance would have to be provided by a Tier 1 or Tier 2 participant.**

**Rationale – This proposed change would spur local growth and remove an obstacle to joining a charter for businesses working together or a conglomerate who may want to sign a charter but one step in the supply**

**chain, also wishing to be a party to the charter, has for some reason not exhibited superior environmental performance or may just be developing the capacity to deliver superior environmental performance through an environmental management system. It would lead to pressure from within the charter membership and within the industry being placed on the party without superior environmental performance to perform in a manner that would be environmentally superior. There can easily be a timeframe built in for the entity receiving the flexibility to come in line with whatever regulation or timeframe the flexibility was granted with regards to. Lateness in coming around to compliance could result in fines and removal from the charter**

**Example – a consortium of Tier 1 and Tier 2 participants who are essentially unregulated are interested in getting a premium price from the organization to who they sell their materials, which are manufactured into finished goods. By extending flexibility to the party receiving the goods there can be an economic savings realized without sacrificing environmental performance and creating the capacity to extend a premium price to the superior performers.**

- 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).

**Description – the provision would provide recognition for the program as a part of Green Tier thereby facilitating the exchange of environmental information by the participants and providing information on the DNR site that gives environmental performance information about the industry participants. The benefit for the organizations is expanded exposure for the programs and the benefit for the Department is the information obtained about that performance. Several organizations have programs in place that build the capacity of their members to, first, meet compliance requirements and, second, to go beyond compliance. In almost all instances, these programs allow for a progression in the development process but some may stop short of the development of a formal environmental management system.**

**Rationale – This provision would allow the use of the charters for capacity building and also would encourage the work with larger groups to build the capacity to take environmental performance management with the ultimate objective of getting participants eventually up to the Tier 1 and Tier 2 levels.**

**Example – At present, the Wisconsin Asphalt Pavement Association has an environmental performance program in place that reviews and documents the performance of participants every three years in collaboration with the Department. Many of the participants may not have the immediate capacity to develop and manage an environmental management system but could, over time, add incrementally to their programs to create the environmental management system and become participants in Tier 1. While that capacity is developing, the Department remains engaged with the association and participants in the development process.**

- 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.

**Description – In order to participate in the charter, parties would have to be a signatory to the charter, agreeing to the terms and conditions contained in the Charter. Once signatories, the expectation is that they would remain a member in good standing of the charter, meet the basic compliance screening requirements for Tier 1 and the provisions would be subject to the same public notice and flexibility subject to consideration through that process.**

**Rationale – 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. This would be ideal for creating specific incentives to address a specific problem.**

**Example – The top 25 or top 50 carbon emitters in the state could join into one program which does not require an EMS but contains other requirements and incentives tailored to those requirements and reducing their carbon emissions. There would be clear limits in place for the incentives and flexibility granted. In this instance, provisions may need to be considered if participants perform poorly regarding other media than the one addressed by the group. This could be addressed by a provision that currently applies in the case of Tier 1 and Tier 2 in which the Secretary has the discretion not to approve a participant or proceed with an agreement if it is not in the best overall interest of the program.**

- 1.2. One of the options available to the Advisors is to proceed with changes in the use of Charters which would be done through a pilot program. The use of the pilot approach could be applied to one or more of the options that have been cited above. Based upon past conversations with the Advisors, the following components were developed for the pilot program.
  - 1.2.1. Authorize up to 10 pilot charters within a specified time frame that would:
    - 1.2.1.1. meet the same entry level compliance requirements for Tier 1;
    - 1.2.1.2. require elements of superior environmental performance as stated in the definition (i.e. not just compliance);
    - 1.2.1.3. require reporting of results; and
    - 1.2.1.4. reserve statutory incentives for Tier 1 and Tier 2 participants.
    - 1.2.1.5. Limit the extension of flexibility to those circumstances specifically described above in the examples ;
    - 1.2.1.6. Require public involvement/participation and additional levels of review by the Secretary 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 development and providing incentives for improving the capacity of entities to better manage environmental performance and systematically deliver documented environmental compliance. Incentives would include recognition on the web site, publication of environmental results and ability to network with Green Tier participants and assistance in working through compliance issues done in accordance with 299.85 of the statutes.
  - 2.1. §299.87 would be a statute granting the Wisconsin DNR the authority to establish a pilot program to encourage the development of systematic management of compliance and active pursuit of performance beyond compliance, short of the formal environmental management systems in Tier 1 and Tier 2. The program would not require extensive review and would be designed to build capacity among participants. Participants would:
    - 2.1.1. Commit to 3 things that demonstrated measurable performance beyond compliance and let the Department know if the goals were changed

- 2.1.2. Complete a compliance audit initially and then at least once every three years
- 2.1.3. Report annually on the results of their commitments and as completed on their compliance audits.
- 2.2. The Department would:
  - 2.2.1. Establish a site which recognizes the companies
  - 2.2.2. Include the participants in the annual working sessions for Green Tier Companies
  - 2.2.3. Annual workshops on environmental management systems and compliance management and/or establish a mentor relationship with a superior environmental performance company.
  - 2.2.4. Work with the company to assure that the protections under 299.85 on compliance audits are extended to the participant.
- 2.3. Administratively the program would:
  - 2.3.1. Require 24 months without citation but allow, based on discretion of the Department, participants who have had problems but have solid performance commitments that demonstrate credible efforts to get beyond their mistakes.
  - 2.3.2. Admit without public comment
  - 2.3.3. Not require an EMS
  - 2.3.4. Be subject to annual review and programs would be dropped if the reporting requirement was not met i.e. reporting is the requirement to remain in good standing.

**Description – this would create a new program component that links 299.83 that pursues superior environmental performance and 299.85 that pursues documented compliance. The provisions contained within are largely directed at capacity building by encouraging participants to take the next logical step towards systematic environmental management.**

**Rationale – the step to an environmental management system is going to be a very significant step for many organizations. Similarly, the step towards the new working relationship with the Department is going to be a large step. The program is designed to introduce the concepts behind continual improvement and systems management with having them presented as requirements and deadlines and providing access to those who have a good working knowledge of those systems approaches. The work is done in a way, however, that minimizes both the workload i.e. if they commit we will recognize them and make sure that their results are included in our presentation of overall performance.**

**Example – A potential participant is interested in being recognized but is not sure about an EMS and has ever really taken a close look at their compliance issues. They would apply for the program and begin the process of doing the compliance audit as well as looking introspectively at what they could commit to do based on the definition of superior environmental performance. In a matter of days they could be in the program and working on both their commitments and their verification of compliance.**

- 3. Flexibility Language – Two items are proposed that would provide for the general expansion of incentives, both of which would apply to Tier 2 participation contracts and would potentially be a part of charters that outline the terms for Tier 2 participation contracts. The first expansion would create a specific focus upon and process for pursuing alternate compliance methods. The second item is a more conceptual recommendation to use the idea of creating “permit shield” language that would apply to the contract provisions created through Tier 2.

- 3.1. Utilize existing statutory language from the Virginia Environmental Excellence Program to provide an incentive that delivers the opportunity for alternate compliance methods.

**Description – Create in statutes a specific provision that would enable the development, consideration and a decision to be made on a participant’s interest in a measure of flexibility available through Green Tier participation contracts. A participant would not have to know exactly what was sought through Green Tier at the outset in that this process would enable them to build the flexibility as their comfort with the working relationships in the program grew and they tapped the strength of their EMS to determine how best to utilize the flexibility.**

**Rationale – the proposed change would affirm that there can be additional incentives for participants in Tier 2 in the program. Feedback has indicated that additional incentives would be helpful but exploration of specific incentives has been difficult (lacking a context within which the incentive would be supplied) and the development of new incentives stated in general terms has left many wanting specifics. Thus, the recommendation suggests a process that addresses a general area (compliance methods) and a specific context for consideration of the flexibility requested. This change would also address one of the more difficult parts of the program, defining up front what customization the participants would like to have.**

**The Virginia statutes build in sideboards that have been suggested by the Advisors such as dedication to environmental standards and that the agencies involved with the flexibility work together and must come to an agreement before the flexibility is granted. The law also keeps in place public notice and comment requirements. Furthermore, Virginia has shared the implementation materials to provide a practical path for what is established in the statute in a streamlined and proven fashion. According to Sharon Baxter, the P2 manager in the Virginia program, this statute has reliably lead to a high degree of specificity in the flexibility, having also effectively managed the development of flexibility.**

**Example – In addition to providing an example, the specific language for a statutory change has been developed based upon the Virginia law and has been included below, having been adapted to align with Wisconsin statutory conventions. A participant could come into Tier 2 of the program without known what specific customized flexibility related to compliance methods they were seeking but would have access over the course of their participation to the development of the alternate compliance methods through the process. In year 2 of the program, the participant finds as a part of their continual environmental improvement that they have monitoring controls at a point in their process line that the monitor never changes and has not changed over 3 years but by putting a process monitor at another location in the process line that they will be able to more effectively control emissions in order to get them below permitted levels. The participant could use the compliance monitoring process to secure an alternate compliance method that would provide more effective monitoring and even better environmental results.**

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).
- 3.2. Create a general provision in statutes that would afford a "permit shield" for the provisions that are developed as a part of the contract with participants, thereby affording a greater sense of protection for the provisions that are developed through the contracts.

**Description – Permit shield language in the statutes would provide assurance to the participants in Tier 2 contracts that the provisions of those contracts constitute conformance to environmental regulations and that when**

**provisions are different from those applied to those in the control tier that the participant will not be opening themselves up to additional scrutiny. They will know that they have the protection of our interpretation of the law as they executed the terms and conditions of the participation contract. This kind of protection is afforded through permits in the air program i.e. once the Air Permit is in place, notwithstanding other interpretations; the permit lays out what the company needs to do. The language below has been adapted from the Wisconsin air standards regulation.**

**Rationale – One of the questions frequently asked about the flexibility offered through the program is what assurances the company has that the flexibility will be respected or whether the pursuit of flexibility will make the participant the target of greater regulatory scrutiny. The suggest provision works on the long standing and well accepted comment from the air program called the permit shield. The concept says that if a participant provides valid information that they will be given terms under which they can operate with some assurance that the department is not going to come back after them for doing what we had agreed was the correct way to proceed. The language proposed would be included in the participation contracts to provide an additional measure of assurance not just for air but also for the other media programs to assure that the flexible operating scenarios will be protected.**

**Example – A participant comes up with a standard set of operating practices that enable them to expand their operation without going through permitting processes. By inclusion of the language in the participation contract there is an implicit presumption that they participant has met the requirements of the permitting process. A similar example would follow from the compliance demonstration example given above. The participant has identified an alternative monitoring methodology. The permit shield language would presume that they have met their monitoring requirements not withstanding other regulatory provisions unless there was a specific exclusion by EPA or there was some specific environmental harm. We are not sure that we have the right combination of language below to accomplish that objective but have offered the language as a starting point to pursue the concept of 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 and any rules and provisions promulgated under authority granted within §299.83 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. When initially conceived, this was going to extend the ability to create the statutory ability to create incentives and grant flexibility through statutory authorities in other agencies. This has now been scaled back to be a recommendation that would add an expectation to what the department shall attempt to do through the incentives in the program in order to capture the

discussion from the Advisors about tapping into the capabilities of other agencies to offer incentives through the program by adding recognition for grants, purchasing and special consideration where those agencies currently have administrative discretion.

4.1. In satisfaction of the legislation adding the provision of incentives through the actions of multiple agencies, the following activity is recommended:

4.1.1. Green Tier companies recognized as a part of state procurement.

4.1.2. Green Tier companies recognized as a part of state grant programs through Commerce, and Agriculture

4.1.3. Green Tier companies recognized through administrative decisions made by state bodies – Transportation, PSC, Insurance, etc.

**Description – The actual change to the statutes would be to amend 299.83 (1m) – Administration of the program to indicate that the department shall attempt to create incentives that draw upon recognition provided by other state agencies through procurement, grants and administrative decision making that recognizes and in appropriate circumstances gives preference to Tier 1 and Tier 2 participants.**

**Rationale – While there might be value in amending the statutes to give the ability to use Green Tier flexibility in other agencies, the discussion has generally indicated that there has not been enough work done to develop the incentives with the use of existing administrative flexibilities. By setting expectation in the “Administration of the program” section of the law, there could be sufficient legislative direction for the department to work with other agencies in the establishment of incentives and working through those agencies begin developing the working relationships to consider administrative decision making that might set the foundation for considering statutory flexibility in subsequent changes to the law. Currently the law presumes the development and delivery of incentives through the Department and the change would make clear that this can and should be a multi-agency endeavor.**

**Example – there are many different kinds of state procurement preferences that are given. By executive order or perhaps by working directly with the Department of Administration purchasing preference for Green Tier may be obtained. A second example would be in the development and administration of grant program for areas such as business development for which there are options to recognize that a company is a Green Tier company during the evaluation for the selection process. A final example that would address the administrative decision making process would be decisions in which we work with Department of Transportation codes on culvert placements and we have the flexibility to work with participant and them to make the decisions in an expedited fashion given the superior environmental performance of the participant.**

5. 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.

5.1. 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:

**Description – the provision would extend limited civil immunity to violations disclosed and corrected during the course of participation in the program and not just annually as a part of the report to the Department.**

**Rationale – the expectation of continual improvement and the presence of institutional controls is the continual review and immediate correction of problems discovered. There is little distinction that can be drawn between that which is disclosed in an annual audit and that which is disclosed by audits that occur on a regular basis and then annually disclosed. Managing this workload on a continual basis not only make sense for the administrative overhead but also for the potential ongoing attention to managing environmental risks.**

**Example – most audit protocols call for surveillance and follow up visits making the distinction between annual and other audits very blurry. Similarly, most EM S's in order to be judged effective have elements that require regular monitoring that can lead to early detection of problems that might languish if left for discovery as a part of the annual audit specified in the law.**

6. 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.

**Description – the provision would give the Department the ability to extend regulatory flexibility through Green Tier without the presence of an environmental management system but with all of the other requirements contained in the law. The expectation is that the local government would have a defined plan that would eventually result in the presence of the system but would not have to meet the one year requirement and the Department could consider the pursuit of a participation contract even in the absence of a functioning environmental management system.**

**Rationale – There is a lack of municipalities in the Green Tier program, and creating a track specifically for them would hopefully increase their membership and, as a corollary increase the number of Wisconsin cities that operate in a manner that is environmentally superior. Local government lacks the resources to quickly develop an environmental management system but may be able to provide those resources over time. There is also the possibility that sufficient resources to develop that system could be secured through the flexibility provisions that could be afforded through a participation contract.**

**Example – The town of XYZ is on the edge of an urban area and has a high density development with a zero water discharge but there are some wetland issues for them as a town that would need to be addressed and cannot within the context of the current law. They would like to be able to move the development forward as a sound use of land and consistent with good development standards and the Department would like to provide them the**

**flexibility to do so but the town doesn't have the resources or the time to do the EMS development and implementation. Green Tier may afford the option to address this situation given that the flexibility is being afforded to another government unit. While this is similar to the Charter examples cited above, this approach would constitute a two party way to come at the issue rather than pulling in multiple parties as is described in the Charter example.**

## **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. Program expansion is the focus of this paper. Each of the elements has been developed based on the experience with the program to date and informed by discussions with the Advisors, program participants and other Department staff.

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.

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.

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.

## **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.

At the August 3 meeting, reauthorization and fine tuning were moved on as recommendations. ECPP, Waiver provisions and compliance screening were moved on as recommendations given the discussion of the program expansion provisions. The items remaining for discussion were developed further as requested by the Advisors by providing more specificity in the description, expanding the rationale and providing examples.