

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 even numbered year, 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299.83 Environmental Results Program. 299.83(11) is repealed.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.~~

Section 3

299.83 Environmental Results Program. 29983(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 date of the Department letter 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.

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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 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.

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3. Identification of all environmental requirements and implementation of 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.~~ Establishment, implementation and maintenance of resources, roles, and responsibilities to establish, implement, maintain, and improve the environmental management system.
7. Establishment, implementation and maintenance of 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.

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~~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.~~

~~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 from the governing body for the International Organization for Standardization 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

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the published guidance and criteria in from the governing body for the International Organization for Standardization guidance 19011.

Section 6

299.83 Environmental Results Program. 299.83(8)(h) is amended to read (h) ~~The department~~ Every even numbered year, 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

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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.

(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.

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).

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(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.
2. The Advisors are recommending that the provisions related to Green Tier Charters be expanded to include the following:
 - 2.1. 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).
 - 2.1.1. The following conditions would apply to the party receiving the flexibility:
 - 2.1.1.1. Signatory to the charter,
 - 2.1.1.2. Remain a member in good standing of the charter,
 - 2.1.1.3. Meet the basic compliance screening requirements for Tier 1

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- 2.1.1.4. The flexibility provisions would be subject to public notice
- 2.1.1.5. Flexibility would be subject to consideration through public hearing and comment through the charter development process.
- 2.1.1.6. 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.
- 2.1.2. The following conditions would apply to flexibility extended through the charter:
 - 2.1.2.1. The flexibility provisions in the charter would have to contribute to the intent of the charter.
 - 2.1.2.2. The flexibility would be limited to that which is needed to extend the terms of a Tier 2 participation contract
 - 2.1.2.3. The terms of the charter must identify how the flexibility will be monitored and results measured.
 - 2.1.2.4. The flexibility extended would be subject to a proportionality test.
- 2.2. [While included in this draft of the recommendations, the Advisors had strong reservations about this provision and need to have further discussions about whether this will be included in the final version of the recommendations.] Allow the extension of flexibility to a direct supplier to a Tier 2 participant even though the supplier receiving the flexibility may not be a Tier 1 or Tier 2 participant.
 - 2.2.1. The following conditions would apply to the supplier receiving the flexibility:
 - 2.2.1.1. Signatory to the charter,
 - 2.2.1.2. Remain a member in good standing of the charter,
 - 2.2.1.3. Be a direct supplier to a Tier 2 participant
 - 2.2.1.4. Meet the basic compliance screening requirements for Tier 1
 - 2.2.1.5. Commit to regularly evaluating compliance and remaining in compliance subject to loss of the flexibility extended if out of compliance.
 - 2.2.1.6. Commit to starting the process of managing all aspects of environmental performance that would include:
 - 2.2.1.6.1. Identifying their environmental aspects and impacts
 - 2.2.1.6.2. Setting objectives for those aspects for which environmental improvement can be achieved
 - 2.2.1.6.3. Measuring their environmental performance for objectives set and their use of the flexibility provided
 - 2.2.1.6.4. Reporting on both their objectives and the use of the flexibility extended
 - 2.2.1.7. The flexibility provisions would be subject to public notice
 - 2.2.1.8. Flexibility would be subject to consideration through public hearing and comment through the charter development process.
 - 2.2.2. The following conditions would apply to flexibility extended through the charter:
 - 2.2.2.1. The flexibility provisions extended to parties not participating in Tier 1 or Tier 2 would have to contribute to the intent of the charter.
 - 2.2.2.2. The terms of the charter must identify how the flexibility will be monitored and results measured.
 - 2.2.2.3. The flexibility extended would be subject to a proportionality test, in this case proportional to the superior environmental performance that is delivered by the Tier 2 participant.
 - 2.2.2.4. The Tier 2 participant would have to remain an active participant in the Green Tier program in order for the supplier to continue to receive the flexibility.
- 2.3. Allow the recognition of organized, systematic environmental management programs to be a recognized part of Green Tier (e.g. organizing chemical processors around their

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

- 2.3.1. Programs recognized through the charter would need to:
 - 2.3.1.1. Utilized the standards identified for functionally equivalent environmental management systems or follow a development progression that leads participants to functional equivalency.
 - 2.3.1.2. Capture and report on the environmental results that are being achieved by participants individually or in total for the program.
 - 2.3.1.3. Provide links to web based information that could be used by members and non-members of the organization involved.
- 2.3.2. The Department would:
 - 2.3.2.1. Formally recognize the programs and publicly report the results of the programs.
 - 2.3.2.2. Include participants in gatherings of Green Tier companies and provide information from Green Tier programs.
 - 2.3.2.3. Supply information to potential participants through Green Tier staff and, where appropriate, regulatory staff.
 - 2.3.2.4. Provide publicity for such programs as specified within the charter.
- 2.3.3. The Department may not extend statutory incentives to participants in the programs unless such participants enroll in Tier 1 or Tier 2 independently or through the provisions of the charter.
- 2.4. Create a customized working relationship to address a given issue for which the Department identifies the systematic environmental management to be done by the voluntary participants along with the recognition and flexibility that would be provided to participants, and the reporting that would be done as a part of the program.
 - 2.4.1. The following conditions would apply to the party receiving the flexibility:
 - 2.4.1.1. Signatory to the charter,
 - 2.4.1.2. Remain a member in good standing of the charter,
 - 2.4.1.3. Meet the basic compliance screening requirements for Tier 1
 - 2.4.1.4. Remain in compliance with all state environmental requirements in order to continue receiving the flexibility.
 - 2.4.1.5. Flexibility may be temporarily suspended until a participant comes back into compliance.
 - 2.4.1.6. The flexibility provisions would be subject to public notice
 - 2.4.1.7. Flexibility would be subject to consideration through public hearing and comment through the charter development process.
 - 2.4.2. The following conditions would apply to flexibility extended through the charter:
 - 2.4.2.1. The provisions in the charter must clearly identify the scope of both the environmental problem(s) being addressed and the terms and conditions under which the flexibility would be extended.
 - 2.4.2.2. The terms of the charter must identify how the flexibility will be monitored
 - 2.4.2.3. The terms of the charter must state the environmental outcomes to be achieved and contain the mechanism to measure and publicly report those outcomes.
 - 2.4.2.4. The flexibility extended must be related to the environmental issue or problem that is being addressed by the charter.
 - 2.4.3. The systematic environmental management done through the charter:
 - 2.4.3.1. Would have to include planning, action, verification and correction that introduce the basic steps towards an environmental management system.
 - 2.4.3.2. Contains specific commitments to accomplish the environmental outcomes sought by the charter through that system.

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- 2.4.3.3. Has operational controls sufficient to communicate responsibilities, gather and report valid information and correct when progress towards goals is lagging.
- 2.4.3.4. Recognizes and provides a path towards an environmental management system functionally equivalent to ISO 14001.
3. Provide a process in the statutes for the creation of Alternate Compliance Methods as a part of Tier 2 Participation Contracts and provide general sanction for flexibility provided as a part of Tier 2 participation contracts.
 - 3.1. Process for identifying alternate compliance methods
 - 3.1.1. 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 program within the Department may obtain the approval of the federal agency responsible for such delegation or approval.
 - (d) The Department may, after an opportunity for⁴ a hearing amend or revoke the alternate compliance method for cause, including any of the following:
 - (1) A change in federal or state environmental laws or rules under which the approval was granted and the change directly affects the approved alternate compliance method
 - (2) A violation of the participation contract or other laws and rules

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- (3) Approval of the alternate compliance method was obtained by misrepresentation or failure to disclose information
 - (e) The Department may withdraw the alternate compliance method if the recipient has failed to comply with any of the alternative compliance method requirements.
 - (f) Upon approval of the alternative compliance method under this section, the alternative compliance method shall be incorporated into the participation contract and shall
 - (1) Be deemed to have modified the conditions under which the recipient is permitted;
 - (2) identify provisions that will go into effect in the event that the participant fails to fulfill its obligations under the alternate compliance method, or is removed from the program for reasons specified by the Department under §299.83(7); and
 - (3) Present the performance measures that will be used to report performance in the annual report prepared by the participant.
- 3.2. Provide recognition of the flexibility provided in the Participation Contract as satisfaction of compliance requirements
 - 3.2.1. 299.83(Insert number) Effect of participation contract.

Unless precluded by the administrator of the federal environmental protection agency under 42 USC, compliance with all limitations included in the participation contract is considered to be compliance limitations established under the referenced statutory chapter incorporated as a part of the participation contract along with all relevant limitations established to implement that referenced section that are applicable to the participant as of the date issuance of the participation contract if the permit includes the applicable limitations or the department, in acting on the application for the participation contract, determines in writing that the limitations do not apply to the participation contract includes that determination.
4. Provide for recognition of Green Tier companies in state purchasing, grant awards and administrative decisions
 - 4.1. Amend section 299.83 (1m) to state that the Department shall attempt to do all of the following:
 - 4.1.1. Recognize Green Tier participants through the state procurement process.
 - 4.1.2. Recognize Green Tier participants in the award of state grants through the Departments of Natural Resources, Commerce, and Agriculture.
 - 4.1.3. Recognize Green Tier participants through administrative decisions made by state bodies provided that the development of such recognition provides public notice and within 30 days after the public notice, interested persons may request the department to grant them authorization to participate in the negotiations. A person who makes a request under this provision shall describe their interests in the issues described in the public notice. The department shall determine whether a person who makes a request under this paragraph may participate in the negotiations based on whether the person has demonstrated sufficient interest in the issues in the public notice to warrant that participation.
 - 4.1.4. Provisions developed under this section shall apply to both participants under 299.80 and 299.83 of the statutes.
5. Clarify that Limited Civil Immunity provisions in 299.83 apply to the discovery; disclosure and self reporting of violations apply to discoveries made in the administration of the EMS as well as those that are discovered through the annual audits that are specified in the statutes.
 - 5.1. Amending the language related to self disclosure of violations:

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

Compliance reports. If a violation is discovered through the environmental management system as defined under sub. (1) (dg), or through audits specified under sub. (3) (d) 4. or (5) (c) 2. or 3, the participant shall include all of the following in the report of the violation:

6. Provide the ability to extend flexibility to municipalities and to Tax Incremental Financing Districts with a modified requirements for the development and maintenance of an environmental management system
 - 6.1. Amend 299.83 (5) to enable the development of a Tier 2 participation contract with a unit of local government if that unit of local government meets the eligibility requirements specified in 299.83 (5)(b) on Enforcement Record and 299.83 (5) b.3. having a compliance audit done annually and have in place a plan that will ,within 3 years, result in an ISO 14000 Environmental Management System or functionally equivalent system that is appropriate to the nature, scale, and environmental impacts of the applicant’s operations related to each covered facility or activity. Any flexibility granted in the participation contract would have to be proportional to the superior environmental performance commitments also contained in the contract.
 - 6.2. Amend the current Tax Incremental Financing (TIF) district laws to extend green development and environmental performance to those districts through the use of Green Tier Contracts by:
 - 6.2.1. Allowing the development of environmental management systems as authorized project costs.
 - 6.2.2. Extending recognition and/or flexibility to a redevelopment area through Green Tier and requiring superior environmental/energy performance for the project area under a negotiated green tier participation contract with DNR, for example the whole project area could be required to be energy efficient, meet certain level of LEED certification, require certain rain garden and superior storm water management requirements that exceed applicable standards, green energy components, etc. (Itemized Superior Performance)
 - 6.2.3. Enabling special regulatory flexibility within the redevelopment zone in exchange for such superior environmental performance. E.g. more flexible cleanup requirements, relaxed chapter 30, storm water or wetland requirements, etc.
 - 6.2.4. Authorizing regulatory flexibility requirements to be transferred through to future developers in the project area if they agree to meet certain elements of the Itemized Superior Environmental Performance with the transfer mechanism and itemized requirements to be specified in the contract.