

## **Green Tier Advisors** **Legislation Recommendation**

Draft 3.0 – January 10, 2008

**RECOMMENDATION:** The Green Tier Advisors recommend a series of changes to section 299.85 of the Wisconsin Statutes. The specific changes to the law along with a more detailed description of our general recommendations for program expansion is included in Appendix 1. At the end of each recommendation is a reference to the attached detail document that provides more specific language for or information about the recommendation. We recommend:

- Reauthorization of the Green Tier Program (Page 1 – Section 2)
- Fine Tuning of the Green Tier Program to:
  - Align and provide more comparable reporting on the Environmental Cooperation Pilot Program (299.80 Wis Stats), Environmental Results Program (299.83 WisStats) and Environmental Improvement Program (299.85 WisStats) by establishing a common reporting date of December 15 every other year; (Page 1 – Section 1 & Page 6 – Section 6 & Page 8 Section 10);
  - Amend the EMS development time frame for Tier 1 participants to start when the participant is accepted into the program (Pages 2-3 – Section 3);
  - Amend the definitions of functional equivalency for environmental management systems in order to reflect the 2004 standard for such systems (Pages 3-5 – Section 4);
  - Provide a generic rather than specific reference to the governing body which would certify environmental auditors (Pages 5-6 – Section 5).
  - Allow the process for enrollment in Tier 1 to go beyond 60 days based on the mutual consent of the parties (Pages 6-7 – Section 7); and
  - Reinstate the special conditions under which the Department Secretary could grant a waiver of the enforcement screening provisions for previous civil forfeitures and previous citations. (Page 7 – Section 8 & 9)
- Expand the Green Tier program by (note that numbering for these recommendation is the same as the numbering used in the detail document and page numbers are provided for those provisions):
  1. Including provisions which would enable the efficient transition of Environmental Cooperation Pilot Program Companies into the Green Tier Program (Page 9)
  2. Including provisions that would expand the potential use of Charters by (Page 9):
    - 2.1. Enabling the extension of flexibility to other regulatory entities that are parties to the charter (Page 9);
    - 2.2. The Advisors are not recommending provisions that would enable the extension of flexibility to charter signatories that are not in Tier 1 or Tier 2 of the program under special conditions established in the charter (Page 10);
    - 2.3. Allowing the recognition of organized, systematic environmental management programs (Pages 10); and
    - 2.4. Authorizing the creation of charters that systematically manage environmental performance on a specific issue and creation of flexibility/incentives for voluntary efforts to address the identified issue (Pages 10-11). While there still needs to be further discussion of the environmental management systems that would be used to accomplish environmental results through the charter, this provision should proceed to the drafting stage for the legislation and be a part of the legislative debate.

3. At this time, the Advisors are not recommending inclusion of the provisions which would result in new incentives for Tier 2 participants and provide assurances to participants for incentives contained in participation contracts (Pages 11). These items are in need of further development and discussion.
4. Challenge the department to extend the benefits of Green Tier by working specifically with other agencies to apply to state purchasing, the award of grants and administrative decisions (Pages 11-12)
  - 4.1. Encourage the Department to build recognition of Green Tier Companies through:
    - 4.1.1. State procurement (Page 11);
    - 4.1.2. Award of grants through the Departments of Natural Resources, Commerce and Agriculture (Page 11)
    - 4.1.3. Making administrative decisions about Green Tier companies along with special transparency provisions related to the development of those provisions and agreements between the agencies (Pages 11-12)
5. Clarify that the provisions that extend limited civil immunity to Tier 1 and Tier 2 participants apply to those violations that are discovered in the conduct of routine environmental management systems operations (Page 12).
6. At this time, the Advisors are not recommending inclusion of the provisions which would result in a modified process for incentives for Tier 2 to be available to local units of government. The provisions still need further research and discussion by the Advisors (Page 13).

## **HOW WILL THESE BE USED TO ADVANCE THE PROGRAM?**

Reauthorizatoin, fine tuning and expansion are being recommended to accomplish three objectives:

- Create higher levels of environmental performance and increased numbers of participants delivering superior environmental performance and realizing increased business value through recognition and flexibility.
- Create certainty about the future of the program and the requirements of the program while updating provisions of the law to reflect changes in standards and practice since the law's original passage.
- Improve the administrative efficiency of the program so that more staff resources can be directed to working with prospects for and participants in the program.

The most important and significant part of our recommendations is the reauthorization of the program. The initial development done through the program indicates that real results can be gained through the Green Tier approach. The Advisors had no difficulty reaching consensus on this point. By removing the sunset, as recommended by the advisors, a barrier to participation is also removed since prospective participants will know that the provisions will remain law unless a specific action is taken by the legislature. Prospective participants will know that their investment in the Environmental Management Systems and their commitments to superior along with the resulting incentives will not only have the force of law but will also have staying power.

Over the course of the last 3 years, much has been learned about the development of performance based programs generally and Green Tier specifically. Drawing upon the available information from other programs as well as the direct "day to day" experience here in Wisconsin, there are several items that have been recommended. We would anticipate that the fine tuning that is proposed for the program will make the expectations of the

program clearer as the standards are updated and more efficient and fair as the administrative provisions are adjusted. We also expect to not only improve the information about the program but also the efficiency of the program with the suggested revisions to the reporting periods for the three programs in question (the pilot program, green tier and the compliance audit program). It is particularly important to note that the date selected (December 15) and the biennial frequency of the report will enable the mining of data that the Department currently receives and the presentation of the most current validated data so that comparisons can be made and reporting burdens minimized.

Program expansion also draws from the lessons learned. The first of the recommendations on program expansion recognizes the pioneering work that has been done by the participants in the Environmental Cooperation Pilot Program with all of the original participants having exercised their option for renewal of the agreements. The addition of the provisions would enable pilot program participants to make the transition to the Green Tier program when it made the best business sense for them to do so. Correspondingly, the transition, over time, to the Green Tier program is a step to provide focus to the delivery and management of performance based programs. Provisions have been added to expand the potential use of and value derived from charters. The revisions hold the potential for drawing in more participants, delivering greater value for participants and using charters to address broad environmental problems. The recommendations will also Create higher levels of environmental performance and increased participation producing superior environmental performance as well as reinforce the continuous evaluation that takes place in environmental management systems.

### **HOW WERE THEY DEVELOPED?**

Just prior to the Advisors meeting on December 6, 2006, the Advisors started reviewing materials about potential changes to the Green Tier Legislation. In the course of developing the recommendations, there were consultations with participants, prospective participants, DNR's senior managers (Green Tier Coordinators) and Cooperative Environmental Assistance staff. In addition, there was also investigatory work done with other states, USEPA and Canada to ascertain where improvements could be made and ideas taken from the experience of those other parties and/or the research that has been done on performance based programs. Concepts were debated and the resulting recommendations developed at the March, June, August and December meetings in 2007.

At the Advisors meeting on December 6, the Advisors worked through the expansions that were being contemplated for charters and for local government. Subsequent to that discussion, further work was done with the Advisors, Legislative Staff and Department staff to see what might be possible for consideration during the current legislative session. There were several ideas, including elements of both the charters and local government provisions, that were not going to be ready for consideration due to the amount of time remaining in the legislative session and the work yet to be done on the recommendations. Based on the follow-up work after the December 6 meeting, the following recommendations were compiled and considered at a special phone conference call on January 10, 2008.