

Green Tier Advisors

May 12, 2008

Legislation 3.0

ISSUE SUMMARY: This issue paper has been modified to reflect the discussions at the September 20, 2007 and January 10, 2008 meetings as well as legislation background from January 13, 2008. The same basic issues remain – the need to reauthorize the Green Tier Law, fine tuning the law for clarity and efficiency as well as adding provisions to enable the expansion of the Green Tier Program.

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BACKGROUND:

This issue paper supplements the issue papers:

- Legislation 1.2 dated December 6, 2006, from the December meeting,
- Legislation 2.0 dated March 6, 2007, from the March meeting,
- Legislation 2.1 dated May 14, 2007, from the June meeting and,
- Legislation 2.2 dated August 3, 2007, from the August meeting.

This issue paper will serve as the basis for the legislation that will be developed for the next legislative session. Specific language has been developed to achieve the reauthorization and fine tuning elements from the March 6, 2007 and June 11, 2007 meetings. A copy of the language that has been drafted thus far and the response to the Legislative Reference Bureau is attached.

Recent deliberations of the Advisors have set aside the expansion items of:

- Creating a grandfathering clause or “on ramp” program for ECPP participants,
- A provision to expand incentives of Green Tier to municipalities and non-Tier members unless specifically stated within a charter provision,
- The idea to create a separate statute (299.87) to give the WDNR the authority to establish a pilot program to encourage the development of systematic management of compliance, short of a formal EMS,

The recommendations and subsequently drafted language were not introduced in the current session of the legislature. In conversations subsequent to the end of the session, several legislators have talked about the need to move this legislation forward early in the next session of the legislature. The time line for that activity is such that the legislation would need to be introduced as soon as the Legislature convenes in order to have a chance for passage prior to the sunset date of July 2009. This means that the legislation will, in all likelihood, need to pass before the next biennial budget. Drafting would, therefore, need to be completed in the next several months.

Proposal for 299.80, 299.83 and 299.85 of the Wisconsin Statutes for Green Tier:
The following is a summary of the terms which have thus far been agreed upon by the Advisors as desired changes to the Green Tier law.

1. Reauthorize Green Tier Program
 - Eliminate sunset provision
2. Fine Tuning:
 - Common reporting date of December 15 (biannual) for Environmental Cooperation Pilot Program, Environmental Results Program, and Environmental Improvement Program
 - Revision of “secretary” to “department”
 - EMS development starts when the participant is accepted into the program
 - Update EMS definitions to 2004 standards
 - enrollment process may extend beyond 60 days with consent of the parties
3. Expansion of the Green Tier Program
 - Language revision to allow efficient transition from Environmental Pilot Program into the Green Tier Program
 - ECPP participants options: let environmental cooperative agreement expire; to apply for Green Tier and start from scratch; or use the transition to Tier 2
 - Create an expedited Tier 2 Process for ECPP participants
 - Expand the potential use of Charters to manage performance on specific issues and allow for flexibility/incentives for voluntary efforts
 - Extend flexibility to other regulatory entities that are parties to the Charter
 - Conditions for flexibility: signatory to charter; remain a member in good standing; meeting compliance screening requirements for Tier 1; the flexibility provisions would be subject to public notice, public hearing, and comment through the charter development process
 - Flexibility extended to charter signatories that are not in Tier 1 or Tier 2 of the program under special conditions established in the charter
 - Conditions for flexibility/charter must state: terms and conditions for flexibility, clear identification of the scope of the environmental problem(s); identify how the flexibility will be monitored; desired environmental outcomes with mechanism to measure and publicly report these outcomes; flexibility must be related to the environmental issue being addressed within the charter; subject to proportionality test
 - Allow recognition of organized, systematic environmental management programs
 - Recognized programs need to: utilize standards for functionally equivalent EMS or follow a development progression that leads to the equivalent; collect and report on the environmental results that are being achieved either individually or in total; contain provisions toward the development of an ISO 14000 or equivalent EMS
 - The department would: formally recognize the programs and publicly report their results; include participants in Green Tier

- gatherings; supply information to potential participants; provide publicity as specified within the charter
- Recognize Green Tier companies in state purchasing, grant awards, and administrative decisions
- Clarify that Limited Civil Immunity provisions in Tier 1 and Tier 2 apply to violations discovered in the conduct of routine EMS operations and annual audits
- include a provision for a modified process for incentives to be available to local units of government

DISCUSSION:

At the last meeting, the Advisors indicated that there was not an interest in making further adjustments to the final recommendations that were developed. Even though there were some items that were set aside, the Advisors felt that it was more important to review the final recommendations, proceed with drafting and begin the work to tee up a package in the early stages of the next Legislative Session. The purpose of the discussion at the Advisors meeting on June 6 is to agree upon the product and process that will serve up a package for consideration by the Legislature early in the next session as follows:

- Affirm the recommendations in January
- Review the LRB draft and the subsequent instructions back to affirm those instructions
- Establish a sub-group of Advisors to work with the bill sponsors and other parties to craft the version of the package that will be introduced in January.

Focusing on approach options for this legislative package leaves four likely avenues:

- The first with the least risk is strictly repealing the sunset provision in order to continue the Green Tier Program.
 - This option is also the most important, because without the repeal there is no reason to even discuss fine tuning and expansion of the Program.
 - On the other hand, if the repeal were granted, the Advisors could immediately pursue the technical changes and expansion ideas previously agreed upon.
- The second option would be to do reauthorization as well as the fine tuning
- The third option would be to create a bill which presents the full package including all of the elements (reauthorization, fine tuning, and expansion).

These three options have the greatest probability of success if presented and passed in the short window before the biennial budget discussions begin.

- The final option would be to do something within the biennial budget which could make the Program most vulnerable depending on the face of the new Legislation.

The Advisors should discuss and compare these options (there may be others) in deciding on an approach for presenting this legislation.

Armed with a final set of recommendations, it would be helpful to have a subset of the Advisors who would be interested in and willing to work on the creation of language for the 09-11 version of the bill. Given that there is going to be new dynamics for the creation of the language, the smaller group may need some latitude to proceed with the

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development of language i.e. the group may not always be able to bring the language back to the group for consensus. Similarly, there may be need for some quick review (as the Advisors did in January with the recommendations) if there are critical issues requiring further input from the Advisors. The Advisors may wish to consider leaving this “quick review” option open to those Advisors who become a part of the small group. Finally, the Advisors may want to begin consideration of the other elements needed to successfully move the legislation through the process – sponsors, lobbying, person to testify, materials needed, etc. Advisors may wish to have this as a part of the small group deliberations, assign the task to staff, defer to subsequent discussion of the full Advisors, etc. In short, there are two process considerations – drafting and shepherding.