

June 9, 2008

## Proportionality Process 1.2

Changes reflect requests made by the Advisor's at the June 2008 meeting

- Added interested persons as having a meaningful role within the feedback loops
- Clarified participant responsibilities to stakeholders
- Revised the wording of the role of the state regulatory agency-facilitator
- Added a clause to address the case of a net environmental gain in transferring pollutants
- Add the issue of addressing risks as well as providing environmental goals

The proportionality process is based on the following factors:

- The baseline for evaluation of environmental benefit is "compliance"; those actions taken above that line are eligible for consideration
- Proportionality gives consideration to the ongoing costs associated with the maintenance of the environmental management system
- A separate process exists for consideration of those entities that don't yet have an EMS and would need to implement an EMS in order to participate in Green Tier
- The focus of the proportionality process is on economics, environmental performance and social interaction prospectively occurring upon acceptance to Green Tier
- In compiling the economics, a narrative will serve to describe aspects concerning costs and benefits of the commitments and incentives in order to capture qualitative/quantitative features
- Being that most information is prospective, the assumptions need to be tested and reported during implementation

The proposed process keys on the existing process defined in the statutes and the associated transparency for the development of a participation contract for Tier 2 participants. The proposed process is as follows:

1. Prospective Tier 2 participant develops a "notice of intent" with their application. The purpose of that work is to provide tangible, verifiable environmental, institutional and economic improvements that form the basis for public notice and subsequent contract negotiations. The framework for collaboration between Department and participant is as follows:

- Real, verifiable environmental improvements
  - Cheaper, smarter, really cleaner
  - Clearly stated, realistic goals
    - DNR and prospective participant consider examples of incentive/performance relationships that could yield both environmental and economic value, leaving room for innovation and provide a format to identify the variables that would enable comparisons among participants
  - Beyond compliance in meaningful ways
    - Project addresses environmental impacts of production, use and disposal of products, beyond process line, or "housekeeping" types of pollution prevention
    - DNR supplies the "areas of emphasis" in a way that does not limit proposal to these concepts

- Goals of the project can best be achieved under the program framework
  - Necessity; demonstrating that barriers to environmental progress exist, and that the laws are not fundamentally changed or significantly eroded by the concessions granted
  - Not shift environmental benefits and burdens among environmental media and/or social sectors
    - Transfers of pollutants, populations or geographical areas subject to greater emissions of pollutants, create or resolve environmental injustices, displace cleanup of environmental problems to future generations
      - In the instance that a transfer would result in a net environmental gain, the gain must be demonstrated to the Department and weighed against any risks relating to the transfer
- Corresponding public benefits
  - Types and amounts of pollutants are being decreased in return for commitments
- Role of the state regulatory agency-facilitator
  - Green Tier works to negotiate and enhance the relationship between the regulatory agency and participant
- Agreement enforceable
  - Legally binding, rights of the plant neighbors protected, agency resources and willingness to enforce, citizens right to petition
  - Agency and public costs
    - No further erosion of enforcement programs
- Stakeholders are provided the resources, training and information to effectively participate
  - Stakeholders are brought up to speed on the key issues and have access to adequate data for evaluating those issues
  - Stakeholders consulted, aggressive goals, “doable”, appropriate timeline, neighbors will know that the participant is achieving environmental improvements
- Resources to assure successful completion
  - Participants commitment of enough resources to see the project through a complete cycle, including evaluation and feedback
  - Transferability of the lessons learned
    - Applicable to many facilities and commit to sharing the lessons learned along with a mechanism for sharing those lessons
- Measurement, evaluation and feedback loops
  - Evaluation of ecological institutional and socio-economic issues with a reasonable baseline for comparison
  - Citizens/interested persons have a meaningful role
    - Mix of employees, neighbors, community members and resources identified and recruited to participate

2. With the application and notice of intent the Department works with the applicant to develop a narrative that outlines their initial proposal. This narrative would have a basic structure that describes the following and addresses the issue of proportionality. Documents submitted to the Department are subject to the open records law:

- Economic aspects
  - Transaction costs for application
  - Operations costs for the EMS and meeting program requirements (reporting, auditing, etc.)
  - Implementation costs – costs associated with accomplishing the environmental goals specified in the commitments to superior environmental performance
  - Risks that may be introduced by the experimental nature of some action that is being proposed
  - Prospective benefits (savings/pay back) – measurability of these
  - Collateral savings – benefits that derived from doing the EMS that may not have been part of the initial commitment but accrued once the entity got into the implementation of the EMS
  - Administration benefits – time saved, unnecessary permits avoided, reporting efficiencies, monitoring effectiveness, etc.
- Environmental goals
  - Expected benefits – carbon costs, material savings, land protection etc.
  - Measurability of these goals
  - Environmental risks associated with this agreement
- Social interaction/transparency features
  - The necessity of granting requested flexibility to achieve the superior environmental performance goals
  - Intangible business values – brand participation, social license, customer impact and improved working relationships
  - Marketability
  - Business networking
  - Process of reporting results (website, newsletter, yearly report, etc)

3. The Department, at the end of the negotiation process and as a part of the public notice, issues a finding of potential for proportionality using the information from the letter of intent and narrative.

- Proportionality questions could then be raised during the 1<sup>st</sup> public notice period. Negotiations would proceed between the parties and the Narrative would be further refined as part of the development of the participation contract

4. At the time of the final public notice for the participation contract, the corresponding finalized narrative would also be made available:

- The analyzed narrative with consideration from comments received would be included in the package for the final determination on the participation contract.

5. Final determination on proportionality would be made by the Secretary as is specified currently in the statutes giving consideration to all information submitted throughout this process.