

Legal questions regarding Green Tier 2017 Act 70

Q: Is it permissible for DNR to create a Green Tier Charter for Tier II status that accommodates varying industries without a specific source category or association?

R: Yes. Wisconsin Statutes § 299.83(7e) provides DNR the authority to issue an environmental results charter to an association of entities to assist the entities to participate in tier I or tier II of the program or to take actions that may lead to superior environmental performance. An association to which a charter is issued may consist of private entities, public entities, or a combination of private and public entities. Any association to which a charter is issued may be organized on any basis that helps the entities to participate in tier I or tier II of the program or to take actions that may lead to superior environmental performance.

Q: May the DNR create a ROP that exceeds 50 tons/year?

R: Yes. Section 285.60(2g)(am), Wis. Stats. requires DNR to create a 50 TPY ROP, but nothing precludes DNR from establishing a separate higher ROP up to 80 TPY.

Q: Do relevant codes or statutes inform the definition of manufacturing facility?

R: NR 422.02(53), Wis. Admin. Code defines “manufacturing plant” as a facility where parts are manufactured, finished or assembled for eventual inclusion into a finished product ready for sale to retailers. With respect to the manufacture of motor vehicles, customizers, body shops and other repairers are not included in this definition.

Q: Do relevant codes or statutes inform the definition of constructing? If so, do they limit the scope of that term to new facilities?

R: The legislation does not limit its scope to new facilities. A facility may be under construction without being new. “Construction” is defined in a number of Chapters of the Administrative Code, including NR 405, 408, 409, 411, 440, 460. Examples of the type of constructing that could be done under the Act 70 Pilot Program include:

- Construction of a brand new facility
- Construction of a new facility into an existing building(s)
- Relocation of a facility in whole or in part
- Resumption of operation of a previously shuttered existing facility where a new permit is required
- Expansion or modification of an existing facility

Q: Do relevant codes or statutes define minor source?

R: Yes, a minor source is defined in s. 285.01 Wis. Stats. (among other places) as a stationary source that is not a major source.