



John Muir Chapter

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MEMO

TO: Senate Committee on the Environment

FROM: Eric Uram, Sierra Club- John Muir Chapter

RE: Comments regarding SB 126 - Relating to the Environmental Results and the Environmental Improvement Programs.

Thank you for the opportunity to provide our insights on SB 126 on behalf of the 15,000 Wisconsin members of John Muir Chapter of the Sierra Club.

SB 126 covers two very different programs. The Environmental Results Program, known as Green Tier that provides recognition for beyond compliance behavior and regulatory incentives for self-regulation. The other program, Environmental Improvement, known as the Compliance Audit Program, encourages self-regulation but without requiring participants to meet a clean slate (no recent violations) nor make a commitment to beyond compliance behavior.

Green Tier is the "high road" program. The Sierra Club joins others in commending Green Tier participants and the DNR for their commitments and successes. The Compliance Audit Program is the "low road" and causes the Sierra Club concern.

The Sierra Club has been actively involved in both the state and national dialogues on "beyond compliance" behaviors. Because of the legal and regulatory structure of permitting pollution as a right held by industry and consumer alike, environmental groups have always struggled with the challenge of how to advance the level of environmental protection and restoration significantly beyond what is achieved under current policy and practice. Sierra Club members generally typify the beyond compliance performer and we would like to see more of this behavior institutionalized.

The EPA has, at this time, decided to suspend the Performance Track Program. Green Tier was designed to promote and prepare Wisconsin entities for participation in this national program. Properly designed and implemented performance/leadership programs are valuable, possibly essential, tools to achieve a level of performance necessary for sustainability. At the end of this testimony, we have included principles that need to be applied for Green Tier to excel.

The Sierra Club makes the following specific comments on the Green Tier portion of SB 126, pages 4-13.

- The following sections are supported: 1-18, 20-29 and 31-33.
- Section 19 gives the DNR secretary authority to waive clean slate (no recent violations) eligibility requirements to participate in either Tier 1 or II of Green Tier. The original purpose of this section was to allow more participants to join the program in its early years. That is why the section begins with the words: "Before January 1, 2007." Since 2007, this waiver provision has been forbidden. Instead of removing the date,

provision to §299.83 (5) (e) of the statutes should be completely repealed. The Sierra Club is uncomfortable with giving this discretion to the DNR secretary given the fact the secretary is a political appointee and subject to the hire-fire decision of the Governor. As a result, the DNR secretary is subject to political pressures unrelated to protecting environmental and public health consequences of these waivers of violations.

- Section 23 provides a welcome addition to smooth the transition of participants in the predecessor program, the Environmental Cooperation Pilot Program, §299.80, Wis. Stats.
- Section 30 expands the Charter provisions of Green Tier without requiring the same eligibility requirements and participation commitments of participants to Tier 1 or 2. The Charter provision has attracted only a few participants, but they have performed rather well. The Sierra Club objects that section 30 appears to grandfather several pseudo-charters into the Green Tier program that are unworthy of Green Tier status without additional efforts to meet the transparency, EMS and beyond compliance behaviors of the current Green Tier charters. This dilutes the value of the Green Tier recognition incentives.

The portion of SB 126 from section 34 on page 13 through the end of the bill refers only to the Compliance Audit Program.

- Environmental permit holders should be encouraged to conduct their own compliance audits as a normal part of monitoring their activities and remaining in compliance with their permits. ISO 14001 and environmental management systems (EMSs) include compliance audits.
- However, §299.85 Wis. Stats. offers unwarranted protection for violators and the opportunity to “game the system” by substituting self-enforcement for a more pro-active DNR compliance monitoring and enforcement system. Many of the advantages of the Compliance Audit Program are already available to permittees under the DNR’s “stepped enforcement” procedures. But the normal DNR procedure does not offer the certainty of a safe harbor from forfeitures and penalties that is found in §299.85.
- The Sierra Club has consistently objected to §299.85 and again requests that it be repealed.
- Sections 34-35 and 37-42 make appropriate wording changes. Section 36 should not delete lines 6-8 because departmental citations are often serious violations of the law that can be quickly resolved.
- Review of the annual reports on this program indicate that additional categories need to be added to §299.85 (9m) (b), Wis. Stats., better identify the nature of violations reported to DNR. Currently the vast majority of violations are listed as “other” which is not informative.
- Also the reviews of the annual reports for this program indicate that data on the days to accomplish correction are not captured unless the corrective action exceeds 90 days. A requirement should be added to summarize the number of corrective actions that took less than 30 days, 30-59 and 60-90 days to correct.
- But the bottom-line is that program should be allowed to sunset per §299.85 (11).

Per internal discussions, please accept the following principles as necessary elements for programs like Green Tier and Performance Track to excel.

- Enforceable rule-based programs will be an essential foundation of any future environmental / sustainability policy regime.
- Sustainability encompasses consideration of resources, energy, public health, economics, and community..
- Achievement of sustainability will not be achieved solely by setting minimums for emissions and discharge.
- Environmental and sustainability considerations must be embedded in all decisions for material use, energy use, chemical use, waste generation, and end-of-life disposition.
- Achievement of sustainability will require a substantially higher level of performance in many areas beyond environmental protection and restoration.
- Community leaders can play a critically important role in demonstrating how such higher level of integrated performance can be achieved.
- Leaders should not be seen as permanent outliers from the community, but as leaders who show the way to the larger community.
- Government at all levels should create an environment that encourages, supports where necessary, and learns from the community of leaders as they achieve performance outcome beyond the status quo.

- Learning from the leadership community should be used to create new baselines for performance for the larger community as a whole.

The EPA Performance Track Program had its strengths and weaknesses, and certainly has its supporters and detractors within our community. Green Tier should not repeat the mistakes made by Performance Track. As of now, EPA is proposing to reanalyze their program. We feel this is an opportune time to review Green Tier and insure this program will achieve the desired results and not become a safe haven for political favoritism and meaningless dialogue that fails to invite all segments of the community-at-large to participate. For the reasons stated above, we believe that performance-based programs have great potential if they have the correct focus and are based on sound principles. These programs should never provide escape mechanisms from strict regulatory requirements or oversight. They should always support leadership that demonstrates what is truly possible. On the behalf of Sierra Club, we offer to assist in manners you and WDNR deem appropriate for enhancing the role of Green Tier as EPA considers the role of performance and leadership in the development of any extra-regulatory programs through their review of Performance Track.