

FROM STUMPS TO DUMPS

Wisconsin's Anti-Environmental Subsidies

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Introduction

The state of Wisconsin provides a variety of tax breaks, subsidies and regulatory exemptions which contradict and undermine Wisconsin's stated environmental policies. These largely obscure financial benefits to industry waste taxpayer money on environmental degradation. Environmental damage is costly, and those costs are almost always borne in the long run by the general public rather than the offending industry. Moreover, the costs of pollution and environmental damage are shifted in time, paid after the fact in the form of clean up and remediation costs, public health expenditures, and wasted infrastructure. More prudent fiscal policy would eliminate subsidies that cost taxpayers and the environment, internalize (that is, capture in the present) costs of environmentally harmful activity, and set aside funds now to cover future costs.

Wisconsin has a long tradition of conservation and environmental protection. We were the first state to ban DDT and more recently prohibited the additive MTBE from reformulated gasoline. Icons of America's conservation movement have their roots here in Wisconsin - from Aldo Leopold to former Governor and Earth Day founder Gaylord Nelson. Several sources define Wisconsin's stated environmental policies, including the legislative purpose of the Wisconsin Environmental Policy Act ("WEPA"), the DNR's Mission Statement and the Wisconsin-Bavaria Regulatory Reform Working Partnership. Taken as a whole, Wisconsin's stated goal is the promotion of environ-

mental welfare through sustainable economics. WEPA states,

It is the continuing policy of this state... to use all practicable means and measures... in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations.¹

The Department of Natural Resources further states that it is the agency's mission "to protect and enhance our natural resources: our air, land and water; our wildlife, fish and forests and the ecosystems that sustain life. To provide a healthy, sustainable environment..."² The State of Wisconsin and DNR also signed an agreement with the German state of Bavaria, the goal of which is "to reach a sustaining economic and environmental system in our states and beyond our states by way of self-responsibility of all parties..."³

These sources illustrate Wisconsin's stated policy goal of protecting the environment. However, a closer inspection of Wisconsin's laws, budget and regulations reveals numerous financial breaks that are given to industries around the state - fiscal policies that undermine our state's environmental policies. Most state residents, as well as many elected officials and environmental leaders, are entirely unaware of the benefits the state bestows on various industries and specific companies. Buried deep inside the 700-page state budget, impacted in the bowels of tax law, and often given a positive spin by our state's leaders, these subsidies amount to tens of millions, perhaps hundreds of millions, dollars a year.

Even more troubling is that, while more and more Wisconsinites - individuals, communities and companies - put forth extra effort to protect their environment, the state is making environmental compliance for industries more and more relaxed. The financial benefits of relaxed monitoring, enforcement and compliance are immeasurable only as much as they are truly gigantic.

The purpose of this report is to point out some tax breaks, subsidies and regulatory exemptions granted to industries under state law that contradict Wisconsin's stated environmental policies. These breaks waste tax-

payer money as well as harm the environment. They include: the tipping fee structures for dumping waste in landfills, forest tax laws, expansion of the highway system, subsidies for development, underwriting the exploitation of virgin materials, COMM 83, cranberry law exemptions, the DNR's proposed "Green Tier Program" and Ashley Furniture's wetland exemption included in the last state budget. These and others are likely only a representative sample of what may exist. Inclusiveness is not our goal. Rather, timing and providing information to the general public are our principal goals. As we enter a new budget season, serious questions of public policy will go ignored because of the imbalances of political power and because useful, policy-oriented information is largely unavailable to most Wisconsinites.

Some will argue that the benefits discussed in this report are necessary to sustain the economy of Wisconsin. They argue that removing these breaks could lead to unemployment or force industries to leave the state. With some of these arguments we might agree. However, environmental protection does not necessarily mean bad economics, nor does it lead to mass-layoffs.⁴ The costs to everyone from polluting the environment, including health problems and future environmental cleanup, are never factored into these short-term economic arguments. When the effects and long-term costs of environmental damage are added to the equation, it becomes apparent that environmental protection is not only feasible economically, but a better investment in the long run. We argue that environmental protection may in fact help the economy.

Wisconsin faces a potential current deficit of over \$500 million dollars. This figure grows considerably when we factor in the skyrocketing costs of our state's prison policy, debt service on our road building and the prospects of further tax breaks for business. Despite a statutory mandate to set aside money in a so-called "rainy day fund,"⁵ the Governor and the Legislature have never appropriated money specifically reserved to guard against unforeseen circumstances. Does it make sense, then, to continue underwriting activities that either harm the environment directly or at least frustrate attempts to promote resource, energy and economic efficiency?

COWS, the Center on Wisconsin Strategy, is a research and policy center at the University of Wisconsin - Madison promoting strategies to improve economic performance and the quality of life in Wisconsin. We are concerned about the effects of state policy and corporate practice on long-term economic stability - the intersection of environmental protection and state fiscal policy being one such example. At COWS we take very seriously the Wisconsin Idea, of meaningful University contribution to public life in Wisconsin. By educating the public about issues that affect our collective future as a state, COWS seeks to improve civic participation

through the oldest Wisconsin idea of all - getting information and policy expertise out into the field on the assumption that an informed public will make wiser choices.

For more information on how you can get involved in local discussions about public policy and the future of Wisconsin, visit www.sustainingwisconsin.org, a project of COWS.

PROGRAM

Tipping Fee Structure: Wisconsin residents are paying for industries to produce and dispose of enormous amounts of their own waste.

Forest Tax Laws: The state subsidizes the timber and paper industries' exploitation of our forests by requiring them to pay minimal property taxes.

Expansion of State Highway System: Wisconsin will waste billions in the next twenty years on highway expansion at the expense of developing alternative forms of transportation.

Subsidies for Development: Cities and villages around the state use tax increment financing to develop what is left of the state's green spaces.

Underwriting Exploitation of Virgin Materials: Wisconsin, along with the federal government, subsidizes the exploitation of oil, gas and geothermal energy sources to the detriment of cleaner, more efficient alternatives.

COMM 83: The Department of Commerce will open up nearly 9 million more acres of green space for development through the enactment of a new septic regulation.

Cranberry Industry Exemptions: An 1867 law gives cranberry growers a complete exemption from the state's dams, ditches and dikes regulations.

Green Tier Program: The Department of Natural Resources proposes a system of self-enforcement for state industries, when many already are substantially out of compliance with environmental regulations.

Ashley Furniture: The state legislature underhandedly exempted the company from wetland regulations by burying a provision deep within the 1500-page state budget.

1. Tipping Fee Structure

Problem: In Wisconsin, industries produce the majority of waste that ends up in landfills. Waste produced in the state is 73.4% industrial garbage, while residents only produce 26.6%.⁶ Moreover, industrial waste is generally more hazardous than household trash. Yet industries do not pay their proportionate share to dispose of this waste. In fact, state residents pay up to six times what industries pay to dispose of their waste.⁷ Wisconsin exempts high volume industrial waste from the state's landfill surcharge, revenue from which covers the costs of local recycling programs. Industries are required to pay a recycling surcharge (the business income tax surcharge), but the state places a cap on the amount they are required to pay per year. Under Wis. Stat. §77.94, the state cannot charge industries more than \$9,800 in recycling surcharges. If this limit did not exist, \$28,700,000 would have been added to the fund in fiscal year 1998.⁸ The recycling surcharge was amended in the 1999 budget bill, maintaining the \$9,800 cap and limiting the surcharge assessment to corporations and businesses with gross receipts exceeding \$4 million. For Fiscal Year 2001, the estimated fiscal effect of the amended surcharge formula is a net revenue loss of \$15.4 million.

How does this affect the environment? The most obvious environmental effect is the increased need for landfills to accommodate the increasing amount of waste industries produce. The system also discourages recycling and materials efficiency by substantially reducing the costs associated with waste generation and disposal. Moreover, by limiting the amount of funds generated, the cap on industrial waste surcharges makes recycling programs more costly for local government.

Wisconsin's tipping fees, on average, are considerably lower than those in neighboring Minnesota and Illinois. As a consequence, Wisconsin has become the cheap option for waste haulers in search of landfill space. State Assemblyman Larry Balow (Eau Claire) recently proposed a significant tipping fee increase in order to deter out of state waste.

Proposed Solution: Fees for waste disposal must be proportional to the amount of waste produced, or the particular hazards posed by the waste. Wisconsin residents should not be required to carry the burden for industries that create far more waste. The state must encourage industries to reduce the amount of waste they produce, as well as provide more support to recycling. The state can accomplish this by forcing industries to pay for what they throw out, thereby creating an incentive to produce less waste. The state also can remove the recycling surcharge cap, providing more funding for the recycling industry and further encouraging industries to recycle. Lastly, producer responsibility policies not only internalize costs, but make end-of-life considerations part of the design process.

Tipping Fee Comparison (statewide averages)

STATE	AVERAGE
Wisconsin	\$ 38/ton
Illinois	44/ton
Minnesota	45/ton
Upper Peninsula Michigan	63/ton
Iowa	32/ton

2. Forest Tax Laws

Problem: The state gives two important tax breaks to the timber industry. The first of these is in the form of three property tax laws: the Forest Crop Law, Woodland Tax Law and Managed Forest Law. These laws levy property taxes on forestland which range from \$.10/acre to \$1.74/acre.⁹ This represents a significant reduction in property taxes relative to rates assessed for other lands. According to Department of Revenue data, the estimated net tax reduction in 1997 under the Forest Crop Law was \$6,721,722 in 1997 and \$2,714,000 in 1999; under the Woodland Tax Law, \$1,465,955 in 1997 and \$812,189 in 1999; and under the Managed Forest Law, \$7,009,335 in 1997 and \$15,284,996 in 1999.¹⁰ Nearly 40% of forestland in the state is owned by the timber and paper industries.¹¹ Thus, the forest tax laws operate as a significant tax advantage to industries that exploit virgin materials.

The state further helps the timber and paper industries by providing a sales tax exemption for equipment used to harvest/process raw timber.¹² Although the exemption does not provide a large tax break (\$470,000 in fiscal year 1998 and \$500,000 in FY00¹³) it is a significant additional break for the timber and paper industries.¹⁴

How does this affect the environment? The forest tax laws and sales tax exemptions provide considerable financial incentives to the timber and paper industries. Significantly reduced property taxes result in lower operating costs for these industries. At the same time, the state is underwriting the exploitation of virgin materials at the expense of the recycling industry and the efficient use of recyclable material. Rather than encouraging the use of recycled materials to make paper, the forest tax laws reduce the paper industry's costs to use virgin timber. Moreover, these forest tax laws are only available to growers who agree to harvest trees for the forest industry. A landowner who wants to preserve the forest for its ecological, scenic or other purposes is denied the benefits of these programs.

Proposed Solution: The intent of the original forest tax laws was to preserve and manage forests in the state. Steadily, these laws have changed to benefit those who

manage forests for harvest. Surely we need timber for construction and paper for our booming economy, but to underwrite continued production of virgin materials at the expense of re-use and materials efficiency (which remains grossly below potential, in part because of economics skewed by virgin material subsidies) is to undermine our state's own policies and the hopeful desire of every 8-year old recycler in Wisconsin. We should continue extending beneficial property tax rates for the preservation of woodland forests but reduce or substantially eliminate such breaks for forests harvested for virgin timber and paper.

Registrations Under the Forest Tax Laws

OWNER	ACRES
Consolidated Papers, Inc. (now Stora Enso)	313,940
Nekoosa Papers	228,098
Four States Timber Ventures	157,722
Mosinee Paper Co.	77,013
Lake Superior Land Co.	67,362
Tigerton Lumber Co.	47,119
Wausau Paper Mills	40,683
WISCO	30,450
Futurewood Corporation	12,824
USX Corp.	11,925
Champion International	9,952
Kretz Lumber Co.	9,740
Wisconsin River Power	9,137

Source: DNR, April 1999

3. Expansion of State Highway System

Problem: The Wisconsin State Highway Plan (“SHP 2020”) proposes to spend \$20 billion over the next 20 years, \$7.12 billion of which the Department of Transportation would specifically use for the Major Capacity Expansion Program.¹⁵ For the 1999 budget alone, the state appropriated \$439,518,300 to spend on state highway development.¹⁶ This is a significant amount of money, based on a false idea that building more highways will alleviate traffic congestion problems.¹⁷ New highway construction does not reduce the amount of traffic, but rather encourages people to drive more. Called “induced travel,” this effect actually leads us directly back to congested highways, despite a potential short term decrease in heavy traffic. The state could more efficiently spend this money on alternative transportation systems, of which Wisconsin has very few.

One noteworthy and questionable example of the use of taxpayer money on expansion of Wisconsin’s roads involves the General Motors Janesville plant.¹⁸ The legislature approved a \$7.68 million contribution to the construction of a road to improve deliveries for the plant. Concerned that GM may consider moving out of the area, the state agreed to provide this substantial portion of the \$12.6 million project.¹⁹ General Motors asserted that the road was necessary under the company’s new “just-in-time” delivery system, to assure the efficient transport of new vehicles.²⁰ However, some observers questioned the state’s appropriation of this large amount of taxpayer money to benefit one company’s facility (that has benefitted substantially in the recent past).

How does this affect the environment? The expansion of highways affects the environment in multiple ways. First, new highway construction encourages people to drive more, rather than decreasing traffic. Besides leading to increased air pollution, new road construction encourages sprawl by making it easier for people to live far from the city and drive in to work. Second, the state could spend this \$20 billion much more efficiently by investing in alternative transportation. Wisconsin currently ranks 49th in the nation in

terms of money spent on alternative forms of transportation.²¹ Third, more roads and paved surfaces contribute to run-off and pollution of our surface and ground waters, not to mention urban flooding.

Proposed Solution: The state should examine its transportation strategy and critically evaluate what it actually accomplishes by spending so much money on new highway construction. A substantial portion of the state’s transportation budget should be diverted to alternative means of controlling traffic congestion, particularly alternative forms of transportation.

Federal Funds Spent on Alternative Modes of Transportation

STATE	1990-99 AVERAGE ANNUAL SPENDING PER CAPITA	
	BICYCLE & PEDESTRIANS	TRANSIT
Alaska	\$6.27	\$8.55
Wyoming	2.40	4.17
Montana	2.01	4.34
New Mexico	1.29	5.23
South Dakota	1.20	4.46
Iowa	0.65	6.70
Minnesota	0.45	7.00
Indiana	0.41	7.12
Wisconsin	0.31	7.58
Illinois	0.24	25.74

Source: Surface Transportation Policy Project, “*Changing Direction: Federal Transportation Spending in the 1990s*”.

4. Subsidies for Development

Problem: Municipalities across the state use tax increment financing (“TIF”) to subsidize development. Established in 1975 under §66.36 Wis. Stats., TIF is meant to help finance redevelopment of “blighted” urban areas. Once a potential area is identified as blighted, the city or village may use the tax increment (difference between the base value of the property before improvements and the value after improvement and development) to pay for infrastructure improvements. TIF has a clear public interest goal in mind: to aid cities and villages in the development of areas that need an economic boost. However, TIF is more often used to develop open spaces and promote sprawl. Rather than encouraging economic growth in a “blighted area,” TIF often supports developers who take advantage of green spaces for development. According to a recent 1,000 Friends of Wisconsin report, 45% of tax incremental financing districts have been used to develop open space land.²²

How does this affect the environment? By allowing cities and villages to use TIF in this way, the state is subsidizing sprawl. Rather than forcing developers to absorb the costs of building the infrastructure necessary to support new development, the misuse of TIF allows cities and villages to fund the exploitation of green spaces. Sprawl is detrimental to the environment because of erosion, polluted runoff and air pollution caused by the increase of impervious surfaces and traffic. Moreover, as the public becomes wary of TIF-financed projects, it is more difficult to use TIF constructively to redevelop areas actually characterized by blight.

Proposed Solution: The state and local governments must refocus TIF back to its original intent: redeveloping blighted areas. A number of strategies will accomplish this goal. First, the state must concentrate TIF in areas of existing infrastructure, instead of subsidizing the development of green spaces. Second, potential TIF benefactors must provide an explicit, positive assertion under the “but for” test. Developers who benefit from TIF must be able to prove that they would not be able to build without TIF. Further, the state must enforce stronger mandatory criteria, beyond the “but for” test.²³

Such criteria may include redevelopment and land use goals, job creation quality and retention, environmental protection and community benefit. Neither of these strategies is new, but rather a true reading of the law that recent TIF developments have successfully ignored. Third, TIF reform requires stronger public participation; people actually affected by TIF districts should be aware of the development and any public hearings being held. Finally, the state must require stronger reporting and accountability from developers who benefit from TIF, particularly in regards to the effect the development has on the community and environment.

A recent study by 1000 Friends of Wisconsin shined a light on the misuse of tax increment financing. Among other findings, their report indicated that 45 percent of tax increment financing districts have been used to develop open space land, resulting in more than 30,000 acres of open land converted to development with the aid of tax increment financing.

Examples of TIF-financed open space development - in some cases benefiting major retail corporations - include:

Pabst Farms

Located at the intersection of Highway 94 and State Highway 67, Pabst Farms is a 1,500-acre parcel of farmland in southeastern Wisconsin's Waukesha County. The Pabst family and WisPark, a commercial development firm, in their pursuit to develop the land requested that a TIF district be created to help pay for the infrastructure costs associated with developing the green space. These soybean fields may be susceptible to pests but they certainly aren't blighted.

Walmart Super Store

Located near the intersection of Highway 12 and County W in Baraboo, Walmart's proposed TIF district would cover \$5,678,000 in development costs. What is most eye-opening about this district is that. Walmart itself acknowledged they would continue the development with or without receiving TIF money. This project would appear to fail both the “but for” test and the blighted area requirement at the core of TIF law.

Target Warehouse

Located across the highway from Oconomowoc's Pabst Farms, the giant Target distribution warehouse benefited from tax increment financing to pay for infrastructure costs associated with their development. The warehouse's location, just south of Olympia Resort and ski facility, is former farmland, not a previously blighted area

Source: “Wisconsin's Tax Increment Financing Law: Lending a Hand to Blighted Areas or Turning Cornfields into Parking Lots?,” 1000 Friends of Wisconsin, October 1999.

5. Exploitation of Virgin Materials

Problem: Wisconsin generally mirrors the federal policies of underwriting the exploitation of virgin materials at the expense of finding alternative energy sources. Under the Internal Revenue Service Code, codified at 71.26(3) Wis. Stats., operators of oil, gas and geothermal wells may elect to expense tangible drilling and development costs. Likewise, the state gives deductions for the costs of exploring for energy and mineral deposits and developing such deposits. These breaks make it cheaper and therefore more lucrative to operate a company that uses virgin materials. The federal and state governments also subsidize the depletion of natural resources by providing so-called depletion allowances in the tax code. The code treats reserves of oil, gas and other resources as an asset that is depleted as the company sells the resource. Even though the sale of such resources provides income, the tax code allows the company to further deduct from its taxable income the depleted amount of this asset. The code thus provides a major incentive to companies who exploit virgin materials by paying companies twice in every transaction that depletes resources.

How does this affect the environment? These tax breaks further encourage the exploitation of natural resources and the use of traditional forms of energy. By making it so much cheaper to use virgin materials to produce energy, the state discourages the development of alternative sources.

Proposed Solution: Instead of providing tax breaks to extractive industries, the state should direct more funding toward the development of alternative energy sources and toward materials reuse and efficiency.

\$3.6 billion =

the amount, at the federal level, that taxpayers could save in the next five years if the government would eliminate the federal percentage depletion allowance for uranium and fossil fuels!

Source: Friends of the Earth, "Paying for Pollution: How Taxpayers Subsidize Dangerous and Polluting Energy Programs".

6. COMM 83

Problem: COMM 83 is a Department of Commerce regulation that permits the use of new types of septic systems previously not permitted. Previously, in order to install a septic system (which is required for any residential construction not connected to a central sewer system), the site needed at least 24 inches of topsoil. COMM83 eliminates this requirement and allows new septic systems to be installed above-ground, for instance. Unfortunately, the new regulation is likely to increase sprawl and development throughout the state. With the implementation of COMM 83, nearly nine million acres of open land will become open to development;²⁴ homes can be built where they could not be built before. Proponents of the regulation argue that new technology is needed and that zoning ordinances are used to regulate land use, not Department of Commerce regulations. However, the actual effect of the regulation is evident. By opening up nine million acres of previously undeveloped land, the department is subsidizing urban sprawl. The Department of Commerce's answer: "Urban sprawl is already with us."²⁵

How does this affect the environment? Whether or not it wants to fill this role, the Department of Commerce has controlled land use for years through regulations such as the plumbing and building codes. By allowing the potential development of nine million more acres of land around the state, sprawl will increase, as well as its concurrent environmental effects of erosion, polluted runoff and air pollution.

Proposed Solution: Effective land use policy must be multi-modal and multi-dimensional. There is no one problem, and no one solution. Therefore, a variety of solutions must be pursued to achieve our goals of controlling development and promoting efficient land use. First, the state must allow the new Comprehensive Plan to take effect before implementing COMM 83.²⁶ By allowing communities to develop their land use plans before implementing COMM 83, affected areas will retain their ability to control land use. Second, communities should be able to capture the costs of sprawled development through impact fees, stormwater charges,

pavement taxes and other mechanisms designed to rein in growth of the sort COMM 83 may invite. If communities are not themselves sponsoring urban sprawl in their area, developers will not be encouraged to develop green spaces.

NEW TECHNOLOGIES STILL REQUIRE OLD PRACTICES

Septic systems are used to treat and discharge wastewater from toilets, wash basins, bathtubs, washing machines, and other water consumptive items, many of which are a source of pollutants that can enter groundwater or surface water if not properly treated. Because of their widespread use and high-volume discharges, septic systems have the potential to pollute groundwater, lakes and streams if not properly sited, operated, and maintained. Nitrogen, phosphorus and compounds containing those elements are prevalent in the effluent from effective septic systems, even. Phosphorus and nitrogen compounds are responsible for the eutrophication of water bodies and the adverse health effects associated with drinking contaminated well water.

No septic system is perfect, and all septic systems rely on regular maintenance and cleaning to operate effectively. Unfortunately, regular maintenance and pump-outs are the exception rather than the rule. The new septic systems permitted under COMM 83 - so-called A+4 Mound Systems, aerobic systems, and sand filter systems - are new technologies but necessarily rely on old practices to operate. State and local governments must prioritize enforcement of privately owned septic system maintenance. Anything less poses a substantial threat to Wisconsin's water.

Septic failures are of great concern in states like Minnesota and Wisconsin, where water-rich rural areas are also home to increasing numbers of privately owned septic systems. If COMM83 promotes the amount of ex-urban development it possibly could, we must prioritize regular system inspections and enforcement of maintenance standards in order to protect our valuable water resources.

7. Special Mentions: Incalculable Dimensions

Several state initiatives deserve special mention for their unsound fiscal and environmental impacts. The effects of these exemptions are difficult to accurately quantify, yet the environmental impacts are impossible to ignore. These include the Cranberry Law exemption, DNR's Green Tier Program and the Ashley Furniture wetlands exemption buried deep in the pages of the last state budget.

The Granddaddy Whose Time Has Come: Wisconsin's Cranberry Law Exemption

The 1867 Cranberry Law exempts cranberry growers from dams, ditches and dikes regulations. These exemptions pose serious environmental risks for the state. Cranberry growers are exempt from the Chapter 30 and 31 permitting processes, allowing them to construct dams, ditches and dikes in public waterways generally without interference from the Department of Natural Resources.²⁷ The original goal of enacting the Cranberry Law was to help build up the cranberry industry within the state. Now, Wisconsin is the country's largest producer of cranberries in large part because of the relaxed regulatory atmosphere. The Cranberry Law is outdated and fails to recognize the serious environmental implications the exemption creates. Further, the industry currently has significant economic problems from overproduction of cranberries.²⁸ A substantial argument may therefore be made that the economic defense of the cranberry exemption no longer has any bearing. Subjecting the cranberry industry to wetland regulations would not be any more problematic, but would significantly benefit Wisconsin's most abundant resource - water.

Perhaps even more significant than the Cranberry Law exemption is the absence of water quality protections that apply to cranberry growers. Cranberry production can be particularly destructive to water quality because growers apply pesticides and fertilizers to the crop as they grow, and then flood the fields to create bogs for harvesting. This harvesting process creates a serious runoff problem as agricultural chemicals flow into other water bodies. In contrast to other cranberry producing states, like Maine, for example, Wisconsin has no law

protecting water quality from such pollution. Maine's regulation requires cranberry growers to take extra steps to protect water quality, stating "[A] tail water recovery system shall be established as necessary to protect water quality downstream ... A by-pass canal shall be constructed and maintained as necessary to isolate naturally flowing water away from the bog area."²⁹

Shaking Hands with Fingers Crossed: The Green Tier Program

Governor McCallum and the Department of Natural Resources have proposed a plan to revamp its environmental regulatory programs affecting business and industry in Wisconsin. Called "Green Tier," the new program is based on the idea that industries are more likely to comply with environmental regulations if they "self-regulate." Green Tier allows contractual rather than regulatory means of enforcement.³⁰ For example, the highest level of Green Tier companies, upon submission of an annual environmental audit and proof of no major compliance issues, would receive substantial regulatory relaxation. Such companies gain from the Department a waiver for new technology testing, accelerated permit changes, reduced inspections, enforcement discretion, reduced reporting, and the application of Level I (lowest level of Green Tier) benefits to any new facilities it opens.³¹ The concept of using contract instead of regulatory law to protect the environment has serious implications. Contract law, by its nature, is based on ideas that all parties should bargain from equal ground, upholds the ideal of protecting all parties' interests and awards remedies to make parties whole after a breach. Most importantly, inherent in contract law is the freedom to breach the contract, as long as one pays damages to the aggrieved party. This is the most significant distinction from regulation. Under a regulatory system, ideas of punishment and deterrence prevail over protecting the interests of both parties. In the environmental context, the breach of contract is degradation of the environment. But what damages could possibly be paid that would make the aggrieved party - the public - whole? There is an inherent problem in imposing a system of contracts in the regulatory field because the breach, which will inevitably occur,

cannot simply be remedied through the payment of damages. Further, parties are not necessarily deterred from breaching when they can simply pay; it may become cheaper to pay damages than to comply with environmental regulations. As it is, according to 1998 DNR records, the vast majority of industrial water permit holders had at least three violations.³²

The Department argues that self-regulation is the key to increased industry compliance with environmental regulations. However, the entire program is based on an unfounded assertion: that most industries already do comply with environmental laws. In fact, regulatory inspection and enforcement through the current system have been too poor for any agency to suggest this. According to a recent Environmental Working Group study, 48.6% of facilities in Wisconsin were never inspected from 1997-1999.³³ Wisconsin ranked third worst nationally for the number of high priority violators of the Clean Air Act who were never inspected in 1998 or 1999.³⁴ The higher a state ranks on this list, the more high priority violators they have that were not inspected during the two-year period. Not surprisingly, of the top five in this list, three states advocate a less punitive style of enforcement. These states included Wisconsin, Ohio and Michigan.³⁵

The Green Tier Program, touted as a more efficient form of regulation, cannot work in a system where compliance is rarely checked and rarely attained, and where enforcement is a low priority. This style of regulation can only work when agency and industry are starting from a point of enforcement and compliance, respectively.

The economic benefits to companies around the state from Green Tier-style regulation are enormous. The Green Tier program reduces costs of compliance (including retaining adequate control and prevention technology, compliance experts, and monitoring costs) as well as the costs of non-compliance (attorney's fees, fines). By lowering the expense of protecting the environment, Green Tier increases the incentive to do only what is minimally necessary to retain Green Tier benefits. The program does not encourage companies to take the "high road" of environmental compliance, but rather to do whatever they can to stay out of DNR's regulatory arena.

Under the Table: The Ashley Furniture Exemption

The 1999 state budget provided an illustration of the "secret" regulatory exemptions handed out to state industries. The state budget has become the primary vehicle for policy enactment, not simply a balance sheet on how the state spends residents' tax dollars. However, it is particularly difficult for Wisconsin residents to know about these exemptions because the budget bill is onerous and the process is shrouded in mystery. The 1999-2000 budget bill was almost 1,500 pages long (the 2001-2003 is over 1,800 pages in length); it is very unlikely that "ordinary citizens" have the time to read the entire document. Also, many decisions regarding the budget are not made in the bright light of public scrutiny. Budget provisions that may have a profound impact on residents are negotiated privately and included in the document, not publicly debated. The budget has therefore become an evasive method of legislating in Wisconsin with little public scrutiny or input.

In §2487x, page 542 of the 1999 state budget, the legislature gave Ashley Furniture Company of Arcadia, WI a complete exemption from the state's wetland regulations. The exemption allows Ashley to fill in up to 15 acres of wetland, without a permit from DNR or the Army Corps of Engineers.³⁶ The budget does not specify the company itself in the provision, because it is unconstitutional for the budget to enact such specific private legislation. Instead, the budget gives a detailed description of a company in Trempealeau County that matches exactly the description of Ashley Furniture Company. Only people with historical knowledge of the company's attempts to have the state grant this exemption would know that the provision applies to Ashley. In the budget, the state underhandedly exempted a major company from important environmental regulations at the expense of our natural resources. At the same time, the way the legislature granted this exemption is equally disturbing. The state excluded the input of residents by burying the provision in the burdensome state budget and subverted the DNR, which in the past had actually denied Ashley Furniture the very permit given to them by the legislature. Similar to Green Tier, this exemption provides Ashley Furniture with a huge economic benefit because it relieves the company of both compliance- and non-compliance-related costs. Taxpayers are therefore subsidizing Ashley Furniture's destruction of more of the state's wetlands.

Conclusion

This report is not intended as an exhaustive critique of our state fiscal policy, but rather a first look at one of the many rarely discussed issues facing our state. The subsidies discussed here are not isolated examples. The state's agricultural policies, for example, also deserve criticism for subsidizing agricultural expansion at the expense of smaller family farms. The state gives large and expanding farms numerous benefits that provide a competitive advantage over small family farms. The Department of Agriculture, Trade and Consumer Protection ("DATCP") grants money to farms with environmental problems through their Regulatory Cost-Share Program. Despite the honorable intent of the program, often the grants are used to subsidize the expansion of large farms; the projects also often are not completed or may not actually remedy the underlying environmental problem. DATCP has granted hundreds of thousands of dollars to subsidize the expansion of large farms, while family farms slowly cease operation.

Other government subsidies also are helping to change the face of agriculture in Wisconsin, benefiting primarily large factory farms and further encouraging the consolidation of the farming industry. In the 1999-2000 state budget, for example, the legislature extended a sales tax exemption for electricity purchased by farmers.³⁷ The statute formerly exempted farmers only during the winter months (November-April); through the budget provision, farmers' electricity purchases now are exempt year-round.³⁸ Again, this benefit has a good intention of aiding farmers around the state with tax relief. However, business interests and organizations representing large farm operations lobbied heavily for this provision and benefit the most from it. Organizations such as the Wisconsin Agribusiness Council, Wisconsin Farm Bureau Federation and Wisconsin Manufacturers and Commerce all lobbied for the sales tax exemption.³⁹ It is no secret why these groups would so aggressively seek the exemption; the break provides an enormous subsidy for large-scale farms, permitting their continued expansion.

This report is intended to point out problems and raise awareness among taxpayers and voters. As the new budget starts its tortured trip through the Legislature and new attention is focused on our state's policy choices, COWS' goal is to educate Wisconsin residents by providing basic information about these choices and the challenges facing our state. A more informed public can ask questions and call for greater accountability from public officials, and assert greater control over how their tax dollars are spent.

Endnotes

1. Ch. 274 §1(2).
2. DNR Mission Statement.
3. Memorandum of Understanding to create the Wisconsin-Bavaria Regulatory Reform Working Partnership.
4. See Institute for Southern Studies: Gold and Green 2000.
5. Wis. Stat. sec. 25.60.
6. Wisconsin Department of Natural Resources, Wisconsin Recycles: Citizens Speak Out in Words and Actions, 1999.
7. Legislative Council Staff Memorandum to Members of the Special Committee on the Future of Recycling, Future of Recycling Memo No. 10, November 12, 1996.
8. Department of Revenue: Temporary Recycling Surcharge -- Summary of Tax Exemption Devices. (FY98).
9. Department of Revenue: Forest Crop, Woodland Tax and Managed Forest Laws - Summary of Tax Exemption Devices 1999-2001 and 2001-2003.
10. See id.
11. See id.
12. Department of Revenue: Sales and Use Tax - Summary of Tax Exemption Devices 1999-2001 and 2001-2003.
13. See id.
14. Wisconsin Department of Revenue, "Forest Crop, Woodland Tax, and Managed Forest Laws," Summary of Tax Exemption Devices, <http://www.dor.state.wi.us/ra/sum98fst.html>.
15. Department of Transportation: Wisconsin State Highway Plan 2020 - A Summary Report, February 2000.
16. 1999-2000 state budget, Wis. Act. 9.
17. Surface Transportation Policy Project: Why Are the Roads so Congested? November 1999.
18. "Panel Oks bill for state to help pay for GM road," Milwaukee Journal-Sentinel, 3/8/00.
19. See id.
20. See id.
21. Surface Transportation Policy Project: Changing Direction: Federal Transportation Spending in the 1990's.
22. 1000 Friends of Wisconsin: Wisconsin's Tax Increment Finance Law: Lending a Hand to Blighted Areas or Turning Cornfields into Parking Lots?, October 1999.
23. Department of Revenue: TIF Working Group Draft Summary Document of Proposals, October 2000.
24. "Battle lines drawn over proposed septic rules," Milwaukee Journal-Sentinel, March 21, 1999.
25. "COMM 83: New Options for Improved Land Use," Phil Albert, Acting Secretary of Commerce, August 6, 1999.
26. The Comprehensive Plan was established in Wis. Stats. §66.1001 and requires that any program or action of a local government that affects land use be consistent with that local government's comprehensive plan.
27. See Wis. Stat. §94.26.
28. See "In the Red," Milwaukee Journal-Sentinel, October 15, 2000.
29. Maine Department of Environmental Regulation, 310 CMR sec. 23.05(3).
30. Secretary George Meyer: "Wisconsin's Green Tier System for Exemplary Environmental Performance", May 12, 1999.
31. DNR: Green Tier Multiple Level Program, www.dnr.state.wi.us.
32. COWS' independent review of 1999 WPDES permits and discharge monitoring reports.
33. See Coequyt, John and Wiles, Richard, Prime Suspects: The Law Breaking Polluters America Fails to Inspect, Environmental Working Group, July 2000.
34. See id.
35. See id.

36. See Wis. Stat. §281.165.
37. See 1999 Wis. Act 9 §1812p.
38. See Wis. Stat. §77.54(30)(a)3.
39. Wisconsin Ethics Board, www.ethics.state.wi.us.