New Environmental Leaders Legislation

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PRACTICE AREAS

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The Michigan Legislature in late December passed clean corporate citizenship legislation which was signed by Lt. Governor Calley in early January for execution. Here are some quick highlights:

SENATE BILL 939Senate Bill 939 codifies and enlarges some of the features of the current administrative clean corporate citizen program. Section 1407 excludes companies from consideration if during the immediate prior three years they:

1. have received criminal convictions of environmental requirements; civil fines, penalties and damages of $10,000 or more of an environmental requirement; an assessment, consent decree or administrative consent order resulting in a fine or damages of more than $32,500, excluding a supplemental environmental project; or a determination of illegal action that substantially endangers the public health, safety or welfare of the environment; or

2. have been found to be involved in a pattern of illegal actions by the MDEQ. A recipient seeking the determination is required to address any outstanding violations by promptly resolving them, demonstrating that they did not occur; or adhering to a compliance schedule imposed by a government agency to correct the violation.

Section 1409 spells out the qualifying criteria for the designation. These criteria essentially require the adoption of an environmental management system. Section 1411 spells out the requirements for seeking the designation:

1. adopting an environmental policy,

2. establishing a program that posts the environmental policy, conducts periodic assessments, and establishes environmental goals for pollution reduction or prevention and

3. preparing environmental reports on progress.

Section 1413 requires that the application show any criminal convictions or civil fines, penalties and damages over the past three years, a certified statement showing compliance with sections 1407,

1409 and 1411, information on the environmental management system, information about the company's environmental policy, a list of environmental goals, and an indication whether the company is already a clean corporate citizen. Section 1413 requires the MDEQ to make a decision within 90 days of receiving an administratively complete application, unless an extension is arranged.

According to Section 1415, the designation will last for five years, subject to termination by the MDEQ provided proper notification is given. Also, annual reports will be required 60 days before the annual anniversary of the current designation of the company's clean corporate citizenship. Under Section 1421, parties, in addition to the public relations aspect of the designation, can receive priority for compliance assistance from the retired engineers technical assistance program, priority processing of permits and licenses, free audit training by the MDEQ, benefits afforded under the safe drinking water act and public health code, less frequent MDEQ inspections, advance notice of inspections, benefits provided by other administrative regulations for such designation, and even avoidance of fines for prompt correction of any subsequent violations after discovery and 24 hour or other timely reporting of those violations. Benefits will not be provided if a facility's conduct creates a substantial endangerment to public health, safety, or welfare or involves an intentional or grossly negligent violation. Previous administrative rules governing the existing clean corporate citizenship program are rescinded by this act.

SENATE BILL 940amends the Management and Budget Act to include clean corporate citizen facilities as entities that will be given preference in purchasing decisions that the State makes.

SENATE BILL 941 AND 942Senate Bills 941 and 942 amend the Public Health Code and Safe Drinking Water Act in order to make them subject to the clean corporate citizen program.