



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 939 through 942 (as introduced 2-14-12)

Sponsor: Senator Arlan Meekhof (S.B. 939)
Senator Tom Casperson (S.B. 940)
Senator John Proos (S.B. 941)
Senator Mike Green (S.B. 942)

Committee: Natural Resources, Environment and Great Lakes

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CONTENT

Senate Bill 939 would add Part 14 (Environmental Leaders) to the Natural Resources and Environmental Protection Act (NREPA) to provide for an "environmental leader" designation that the operator of an establishment could receive from the Department of Environmental Quality (DEQ). Specifically, the bill would do the following:

- Prescribe criteria that an operator would have to meet to receive the designation, including environmental management system and pollution prevention requirements.**
- Require an environmental leader to submit an annual report on compliance activities.**
- Prescribe benefits that an environmental leader would receive, including reduced permit processing times, reduced regulatory fees, doubled permit duration, less frequent inspections, and a preference in State purchasing, grants, and loans.**
- Prohibit the DEQ from processing an application for a clean corporate citizen designation on or after the bill's effective date.**

Senate Bill 940 would amend the Management and Budget Act to include establishments operated by designated environmental leaders among the

entities given a preference in State purchasing decisions.

Senate Bills 941 and 942 would amend the Public Health Code and the Safe Drinking Water Act, respectively, to provide that Parts 135 (Radiation Control) and 138 (Medical Waste) of the Health Code and the Safe Drinking Water Act would be subject to proposed Part 14 of NREPA.

Senate Bills 940, 941, and 942 are tie-barred to Senate Bill 939. Senate Bills 939 and 940 are described below in further detail.

Senate Bill 939

Designation Requirements

To obtain an environmental leader designation with respect to an establishment, as well as the benefits prescribed in the bill, the operator would have to meet the qualifications set forth in the bill and submit an application to the DEQ.

"Environmental leader" would mean a person designated by the DEQ as operating an establishment at which the person had demonstrated environmental stewardship and a strong environmental ethic by meeting the criteria of proposed Part 14.

"Establishment" would mean one of the following that is situated in Michigan and is subject to an applicable State or Federal environmental requirement:

- A source as defined in Section 5501 (i.e., a stationary source of pollution).
- A public institution.
- A municipal facility.
- A commercial, industrial, or other business facility.

Environmental Management System. To qualify for an environmental leader designation, the operator would have to meet one of the following environmental management system requirements:

- Obtain and operate the establishment in accordance with registration or certification under an environmental management standard, such as ISO 14001:2004, approved by the DEQ Director.
- Develop, implement, and maintain a written environmental management system that was consistent with the requirements of that ISO standard and appropriate for the nature, scale, and potential environmental impact of the operation at the establishment.
- Adopt and maintain an environmental management system, approved by the DEQ Director, applicable to a specific group or classification of establishments that included that establishment.

With regard to the last requirement, the system would have to be consistent with the requirements of ISO 14001:2004 and be appropriate for the nature, scale, and potential environmental impact of the operation.

"Environmental management system" would mean the part of an overall management system that addresses environmental concerns through allocating resources, assigning responsibilities, and evaluating practices, procedures, and processes to achieve sound environmental performance.

"ISO 14001:2004" would mean the standard adopted by the International Organization for Standardization to prescribe uniform requirements for the purpose of certification or registration of an environmental management system.

Pollution Prevention. An establishment operator also would have to adopt and maintain a written environmental policy, signed by an authorized official of the operator, that promoted pollution prevention. In addition, the operator would have to establish and maintain a program specific to that establishment under which the operator did all of the following:

- Posted the environmental policy at the establishment.
- Conducted periodic assessments that identified opportunities for pollution prevention.
- Established goals for reducing or preventing pollution, indicating the types of pollution, whether each pollutant would affect the air, water, or land, pollution prevention or reduction measures to be undertaken, and projected time frames.
- Prepared and maintained reports to demonstrate progress toward attaining the goals.

The operator also would have to provide for the exchange of information concerning pollution prevention activities, such as any of the following:

- Attending or sponsoring workshops.
- Assisting in the development and dissemination of case studies.
- Establishing pollution prevention supplier networks.
- Giving the DEQ pollution prevention information for possible publication.

"Pollution prevention" would mean eliminating or minimizing the initial generation of waste at the source, reuse of waste, or using environmentally sound on-site or off-site recycling. The term would not include waste treatment, release, or disposal.

"Waste" would mean any environmental pollutant, waste, discharge, or emission, regardless of how it is regulated and whether it is released to the general environment or the workplace environment.

Disqualification. An operator could not be subject to any of the following with respect to the establishment within the three years before the application was filed:

- Conviction of a criminal violation of an applicable State environmental requirement.
- Assessment by a court of a civil fine, penalty, or damages of at least \$10,000 for a violation of an applicable State environmental requirement.
- A court determination of responsibility for an illegal action that substantially endangered the public health, safety, or welfare or the environment.
- Assessment, by DEQ order, a judicial consent decree, or an administrative consent order, of a fine or damages of at least \$32,500, excluding the cost of any supplemental environmental project used to offset a fine, for a violation of an applicable State environmental requirement.

"Supplemental environmental project" would mean an environmentally beneficial project that an alleged violator was not legally required to undertake, but agreed to undertake in settlement of an enforcement action.

"Applicable state environmental requirement" would mean any of the following or a rule promulgated or permit, order, or other legally binding document issued under any of the following:

- Article II (Pollution Control) or Chapter 1 (Habitat Protection) or 3 (Management of Nonrenewable Resources) of Article III (Natural Resources Management) of NREPA.
- The Safe Drinking Water Act.
- Part 135 (Radiation Control) or 138 (Medical Waste) of the Public Health Code.

Outstanding Violations. To qualify for an environmental leader designation, the operator would have to address any outstanding violation that was cited in a violation notice pertaining to the establishment and that, as determined by the DEQ, substantially endangered the public health, safety, or welfare or the environment, by doing one or more of the following:

- Resolving the violation promptly.
- Demonstrating to the DEQ, the U.S. Environmental Protection Agency (EPA), or the local enforcing agency that issued

the violation notice, that the violation did not occur.

- Adhering to a compliance schedule that was acceptable to the DEQ, the EPA, or the local enforcing agency that issued the violation notice, to correct the violation.

If an establishment obtained a new operator, the DEQ Director could choose to consider the environmental record of only the new operator in determining whether these requirements were met.

"Violation notice" would mean a written notice or formal enforcement action by the DEQ, the EPA, or the enforcing agency of a local unit of government, as applicable, in response to a violation of an applicable environmental requirement. A voluntary disclosure made under Part 148 (Environmental Audit Privilege and Immunity) would not constitute a violation notice.

"Applicable environmental requirement" would mean an applicable Federal or State environmental requirement, or an environmental requirement established by a local unit of government. "Applicable federal environmental requirement would mean any of the following:

- The Federal Water Pollution Control Act.
- The Clean Air Act.
- The Resource Conservation and Recovery Act.
- The Comprehensive Environmental Response, Compensation, and Liability Act.

Application

To obtain an environmental leader designation with respect to an establishment, an operator would have to submit to the DEQ an application, on a form provided by the Department, as well as all of the following:

- A certified statement that the applicant met the bill's requirements for an environmental leader designation.
- Information demonstrating the applicant's compliance with the requirements regarding the environmental management system and pollution prevention, including a detailed summary of each element of the

environmental management system and a copy of the applicant's environmental policy.

- A combined list of the significant goals established in the environmental management system and the pollution prevention program.
- A list of any criminal convictions or any civil fines, penalties, or damages assessed relative to applicable Federal environmental requirements arising out of operations at the establishment during the past three years.
- If the operator were a designated environmental leader with respect to that establishment when the application was filed, the latest required annual report (described below).

The DEQ would have to determine whether the application was administratively complete within 14 days after receiving it. If the application were complete, the DEQ would have to publish in the Department calendar and post on its website a notice of receipt of the application and related documentation, and of their availability for public review and comment. The notice would have to include the DEQ's electronic mail and postal mailing addresses for receiving comments. Comments would have to be received for at least 30 days after notice was given.

Within 90 days after receiving an administratively complete application, unless the applicant requested an extension, the DEQ Director would have to approve or disapprove it and notify the applicant. The Director would have to approve the application if it met the requirements of Part 14. Otherwise, the Director would have to disapprove the application. A notice of disapproval would have to state the reasons for it.

If the application were disapproved, the applicant could reapply for an environmental leader designation at any time.

If the DEQ already had a document otherwise required to be submitted to the Department with an application or an annual report, the application or annual report could incorporate the document by reference without including a copy of it.

The term of an environmental leader designation would be two years. If the

operator were certified under ISO 14001:2004 when the designation was granted, however, the term would be three years.

Termination of Designation

The DEQ Director would have to terminate an operator's environmental leader designation with respect to an establishment if, after notice and an opportunity for an evidentiary hearing under the Administrative Procedures Act, the Director determined that the operator did not meet the applicable requirements of the bill.

The Director would have to advise an operator of his or her intent to terminate the designation at least 30 days before the termination.

Upon termination of an environmental leader designation with respect to an establishment, all benefits provided to the former environmental leader for that establishment would terminate.

A person operating an establishment could reapply for the designation at any time.

Annual Report

An environmental leader would have to submit an annual report at least 60 days before the annual anniversary date of the current designation. The report would have to summarize the activities undertaken over the past year to do the following:

- Identify and report on implementation of standardized pollution prevention measures consistent with the bill's requirements, on a form provided by the DEQ.
- Set, revise, and attain objectives and implement measures in the environmental leader's environmental management system and pollution prevention programs.

In addition, the report would have to include a statement by a responsible official that the environmental leader was in compliance with the bill's requirements for the designation.

Environmental Leader Benefits

If an establishment operator were an environmental leader with respect to that

establishment, the DEQ would have to give the operator priority over people who were not environmental leaders in all of the following:

- Compliance assistance programs applicable to the establishment, such as the Retired Engineers Technical Assistance Program under NREPA.
- Processing permit or operating license renewal applications for the establishment.

In addition, the DEQ would have to give the environmental leader free training on performing environmental audits under Part 148 (Environmental Audit Privilege and Immunity).

The term of a permit issued by the DEQ for the environmental leader's establishment would be twice the term that would otherwise apply.

The operator would receive a preference for State purchases as provided in Section 261 of the Management and Budget Act (which Senate Bill 940 would amend as described below), as well as a preference for State grants and loans related to operations at that establishment.

The operator could use establishment-wide applicable limitations and interline averaging or trading programs to the extent allowed by Federal and State rules to maintain overall emissions levels and environmental discharges, if the emissions or discharges remained within permitted and allowed rates for the establishment and were determined previously to be acceptable through permitting or other regulatory actions.

Also, the operator would qualify for any additional environmental leader benefits for the establishment set forth in rules promulgated under any of the following:

- Article II and Chapters 1 and 3 of Article III of NREPA.
- The Safe Drinking Water Act.
- Parts 135 and 138 of the Public Health Code.

The DEQ would have to conduct routine inspections of the establishment half as frequently as they would be conducted if the operator were not an environmental leader, and give the operator at least 72 hours'

advance notice of any routine inspection of the establishment.

During the first year of the operator's designation as an environmental leader, the DEQ would have to waive 15% of the total of all permit, license, or other fees that the operator would otherwise be required to pay the Department with respect to operations at the establishment.

In addition, the operator would not be responsible for damage to natural resources resulting from a violation of an applicable State or Federal environmental requirement at the establishment unless the operator's responsibility were established by a preponderance of the evidence.

The operator would not be subject to a civil fine for a violation of applicable State environmental requirements at that establishment if the operator acted promptly to correct the violation after discovery and reported the violation to the DEQ within 24 hours after the discovery, or within any shorter time period otherwise required by law. This provision would not apply if one or both of the following were established by clear and convincing evidence:

- The operator's actions posed a substantial endangerment to the public health, safety, or welfare.
- The violation was intentional or occurred as the result of the operator's gross negligence.

Clean Corporate Citizen Designation

The DEQ could not process an application or renewal request for a clean corporate citizen (C3) designation under R 324.1501 to R 324.1511 of the Michigan Administrative Code submitted on or after the bill's effective date. A C3 designation would have to be considered an environmental leader designation for the purposes of Part 14 for the duration of the term of the C3 designation.

(Those administrative rules provide for a Clean Corporate Citizen Program under which the operator of an establishment may obtain a C3 designation from the DEQ. The rules prescribe specific regulatory benefits for designees related to air quality, surface water, groundwater, and underground storage tanks.)

Other Provisions

The DEQ would have to maintain a copy of ISO 14001:2004 available for inspection at the Department's headquarters in Lansing. Upon request, the DEQ would have to provide information on how to purchase a copy from the American National Standards Institute.

The bill provides that proposed Part 14 could not be construed in a manner that conflicted with or authorized any violation of State or Federal law.

Senate Bill 940

Under the Management and Budget Act, if consistent with Federal statutes, in all purchases made by the Department of Technology, Management, and Budget, all other things being equal, preference must be given to products manufactured or services offered by Michigan-based firms. Under the bill, preference would have to be given to Michigan-based firms or to establishments with respect to which the operator was designated as an environmental leader under proposed Part 14 of NREPA.

Proposed MCL 324.1401-324.1429 (S.B. 939)

MCL 18.1261 (S.B. 940)

Proposed MCL 333.13537 & 333.13832 (S.B. 941)

MCL 325.1023 (S.B. 942)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bills 939, 941, and 942

Overall, the bills would have a likely negative impact on State finances, and potentially have a small positive fiscal impact on local units of government. The bills would effectively replace the Clean Corporate Citizen (C3) program in the Department of Environmental Quality with a new Environmental Leader program. Since the scope of regulatory areas eligible for the program would not be expanded by the bill, it is unlikely that new administrative costs would be introduced.

However, the benefits associated with participating in the Environmental Leader

program would be more numerous than those associated with the C3 program. For instance, Environmental Leaders would get a 15% discount on permit and fee costs. Since it is unknown how many regulated establishments would participate in the program, it is difficult to project how much this discount would cost the DEQ as lost revenue. However, fees associated with DEQ programs eligible for the C3 and Environmental Leader programs generate approximately \$25.0 million to \$35.0 million annually for the operation of those programs and for DEQ administration. A 15% discount on this revenue would be a loss of approximately \$3.8 million to \$5.3 million annually, but it is highly unlikely that all regulated individuals paying fees would be interested in or qualify for the Environmental Leader program. If 10% of permits were issued to Environmental Leaders, this loss would be \$380,000 to \$530,000 annually. The actual amount of revenue lost under the bills would vary depending on participation in the program. To the extent that local units of government that are regulated under programs eligible for the Environmental Leader program participated, some of this lost revenue could benefit local units as a discount on their normal permit fees.

The bills also could introduce some costs associated with training Environmental Leaders in performing environmental audits under Part 148 of NREPA.

Finally, the bills would reduce the costs of operating the various permit programs covered under the Environmental Leader program by some amount, by making routine inspections of regulated facilities less frequent. It is unknown at this time whether these savings would offset the revenue lost by the fee discounts offered by the bills.

Senate Bill 940

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Joe Carrasco
Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.