

## **Legislation reforming Michigan's cleanup program**

Michigan's cleanup program will be overhauled significantly under a bill being considered by the legislature. On August 5, the Senate Economic Development and Regulatory Reform Committee introduced a substitute version of Senate Bill 437 that contains many important changes to Michigan's cleanup program.

### **Background**

For years, the business community has expressed concerns regarding Michigan's cleanup program – Part 201 of the Natural Resources and Environmental Protection Act. Concerns include, among others, conservative decision-making by the Michigan Department of Environmental Quality (MDEQ) and difficulty in obtaining closure approvals.

In 2006, the MDEQ agreed that it would work with a stakeholders' group to address concerns raised by the business community and others. The State retained Public Sector Consultants (PSC) to facilitate the effort to evaluate the Part 201 program and craft recommendations for reform. PSC produced a report of these recommendations in April, 2007 after several meetings with multiple stakeholders' groups. The stakeholders' groups had broad-based representation from the MDEQ, business groups, environmentalists, and others.

After PSC produced the report, the MDEQ began working on a redesign of the cleanup program. In late 2008, the MDEQ began rolling out its proposed program redesign. The MDEQ's rollout continued through the first half of 2009.

The business community believes that the MDEQ's proposed redesign is heading in the wrong direction, and fear that the proposed redesign will impede brownfield redevelopment and would not speed up closure determinations. Accordingly, the business community began working on legislation to develop reforms that would meet its objectives.

### **Legislation**

Key provisions of the new legislation include:

- Creation of a clear and attainable closure process.
  - A review panel consisting of qualified scientists appointed by the Governor and the legislature would review closure requests.
  - The MDEQ would have more flexibility to consider risk-based solutions.
  - Decision-making would be based on realistic and not hypothetical risks.
  - Deadlines would be imposed for decision-making by the MDEQ.
- The MDEQ's decision-making would be open and transparent.
- The current causation-based liability standard for owners and operators would be maintained, including the baseline-environmental-assessment (BEA) process.

- Liability exemption would be added for transfers among affiliates without the need to go through the BEA process.
- The State cleanup criteria cannot be more stringent than the federal cleanup criteria.

The business community believes that these changes will increase the number of cleanups occurring in the State and streamline the program while still protecting the environment. The legislature is expected to begin moving this legislation in August.