



Governor Whitman Fosters A Pro-Business Change In Environmental Laws and Regulations

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New Jersey Governor Christine Todd Whitman, at her inauguration in January 1994, spoke the following words to suggest a dramatic change in environmental laws and regulations: "We must cut through the needless overregulation that drives businesses out of New Jersey and discourages new firms from locating here. We can protect the environment without taking years to process a permit." The Governor and the Legislature then initiated a flurry of activity intended to make New Jersey a more business-friendly state. A close look at most of the Governor's initiatives at the halfway mark of her administration reveals, however, that she and the Legislature, particularly recently, have adopted a common sense approach to environmental regulation.

The STARR Report Highlights Whitman's Regulatory Reform Initiatives

As the culmination of a year-long study, in July 1995, Governor Whitman issued the Strategy to Advance Regulatory Reform report (or the "STARR report") in an effort to present the Governor's general guiding principles and priorities for "increasing efficiency of the regulatory process." The STARR report was prepared under the auspices of the Department of State, Office of the Business Ombudsman. The Executive Order creating the Office of the Business Ombudsman charges it to direct a comprehensive effort to assist businesses in dealing efficiently with regulations and to make the regulatory climate more supportive and open towards business. Executive Order No. 15 (1994).

Permit Applications Made Easier

One priority addressed in the STARR report is the need to streamline the permit application and review process.

Already, the New Jersey Department of Environmental Protection ("NJDEP") has begun to offer facility-wide permits that could replace more than sixty individual permits. The report cites the success of the NJDEP's first facility-wide permit issued in December 1994 to Schering Plough's Kenilworth facility. The goals, as articulated in the report, include the expansion of a facility-and project-wide permit program in an effort to lower costs and paperwork for the regulated community. The report also contemplates the possible privatization of certain permit review activities.

In addition, Governor Whitman has signed a law that allows a business that has applied for a permit to install and operate pollution prevention equipment, at its own risk, prior to NJDEP's approval. (P.L. 19945, c. 101). This law allows businesses to commence operating without the lengthy delays associated with NJDEP's permit review process, thereby actually encouraging the timely installation and operation of pollution prevention equipment while removing costly delays associated with the permit review process.

Encouraging Voluntary Compliance Programs

In order to promote timely environmental compliance, the STARR report highlights the Governor's goal of establishing regulatory "safe-harbors" for businesses. One such safe-harbor focuses on protecting companies who voluntarily self-audit their environmental procedures. Another safe harbor would grant to smaller companies "grace periods" to correct certain environmental violations.

The New Jersey Legislature has recently followed the lead of Oregon and Colorado, along with over a dozen other states, that have either already passed or are considering legislation that would encourage businesses to undertake voluntary environmental compliance audits. Senate Bill No. 1797, which has been passed by the Senate and is waiting for a vote in the Assembly as is its companion, Assembly Bill No. 2521, promotes self-auditing and compliance by providing a "safe-harbor" from civil and administrative penalties when violations are discovered as a result of self-audit and are corrected in a timely manner. The legislation would also provide a limited evidentiary privilege that, in some cases, would protect the confidentiality of the results of compliance audits. Thus, the results of a company's own voluntary audit would not be used against it. Such a safe-harbor encourages rather than deters voluntary compliance and accordingly promotes earlier compliance.

Grace Periods for Small Businesses

In response to the Governor's desire for greater use of "grace periods" to promote earlier compliance by businesses, the Legislature passed Assembly Bill No. 1521. This legislation would have established grace periods to allow small companies to correct certain minor violations without the imposition of fines. Surprisingly, however, Governor Whitman conditionally vetoed the bill on September 18, 1995. While the Governor recognized the bill's "balance between business and environmental concerns," she was unsatisfied with the broad scope of forgiveness

that would be given to violators. Governor Whitman asserted that the bill should "build in safeguards to assure that we are not letting those who harm the environment off the hook."

Regulatory Equality

The Governor also has actively sought general regulatory reform as part of her effort to attract and keep businesses in New Jersey. Part of this effort includes Executive Order No. 27 (1994), that requires administrative agencies to justify regulations that exceed federal standards. The Executive Order, codified on April 6, 1995 (P.L. 1995, c. 65), requires a state agency to provide sufficient justification for any regulation that imposes a standard that is greater than a similar standard imposed by federal law or regulation. Heralded by industry as being a big step toward making the state "open for business," the new law should solve a perceived problem that stricter standards in New Jersey create a disincentive for businesses to remain in the state and for new businesses to relocate to New Jersey.

NJDEP Amnesty and Oversight Reform

Under Governor Whitman, the NJDEP also has established amnesty and mediation programs that seek to increase compliance while offering businesses some reduction in punitive fines. In October 1994, for example, the agency established an air permit amnesty program that offered forgiveness of penalties to those who pledge prompt compliance. According to the NJDEP, as a result of the amnesty program, the agency has received more than 700 permit applications or notices of intent to submit applications, representing at least 1,000 pieces of equipment. Seen as especially beneficial to small companies, the program has been lauded by industry as a great success.

Apart from the STARR Report, on August 2, 1995, the Governor enacted a revision to New Jersey's Air Pollution Control Act that is designed, in part, to simplify the air pollution control program by concentrating NJDEP's oversight on the small number of facilities that are responsible for the majority of the emissions. (P.L. 1995, c. 188.) This law and related regulations were crafted with the input of a number of industry groups, including the New Jersey Business and Industry Association.

"Brownfields" Legislation Pending

The legislature also is developing a statutory program to encourage the redevelopment of inner-city industrial sites. Assembly Bill No. 1631, already passed by the Assembly, and now before the Senate Budget and Appropriations Committee, is known as the "Environmental Opportunity Zone Act" or "Brownfields Act." The act seeks to revitalize and redevelop contaminated sites as an economic benefit to the municipalities and the urban population living nearby. Under the "brownfields program," the property owner could receive a property tax exemption for ten years in scaled amounts, established by ordinance through the governing municipality, when it agrees to remediate the property in accordance with NJDEP standards. The owner must also promise that, once

remediated, the property will be "used for a commercial or industrial purpose during the time period for which the real property tax exemption is given."

Some Early Legislative Initiatives Have Stalled

As the New Jersey Legislature returns to the fall session, it may continue consideration of a proposal aimed at promoting the use of pollution control equipment by providing tax credits or tax exemptions to businesses that purchase such equipment. Assembly Bill No. 1188, which has been before the Environment and Energy Committee since its introduction in February 7, 1994, provides to eligible businesses an investment tax credit equal to 15 percent of the cost of purchasing and installing the equipment in the year in which the equipment is purchased. Businesses eligible for the tax credit would be those that "generate air or water pollution as a by-product of a manufacturing or industrial process."

Similarly, Assembly Bill No. 864, before the Appropriations Committee since January 20, 1994, exempts the sale of equipment used to reduce pollution from the assessment of sales and use taxes. Like Assembly Bill No. 1188, this bill would only apply to those businesses or purchasers that generate "air or water pollution or solid or hazardous waste within the state as a by-product of a manufacturing, industrial, commercial or agricultural process" when the equipment is required by federal or state law or regulation. A similar version of Assembly Bill No. 864 was introduced in the Senate in the form of Senate Bill No. 523 on February 10, 1994, and has been before the New Jersey Senate's Natural Resources, Trade & Economic Development Committee for consideration.

Whitman Continues to Balance Interests

Governor Whitman and her administration have recognized the burdens that inefficient regulation can place on the businesses that are vital to the state's economy. As a result, the variety of newly enacted legislation, as well as the ideas expressed in the STARR report, tend to represent practical solutions aimed, not at lessening environmental standards, but at developing methods to ease the burden of compliance.

The Governor's conditional veto of the "grace period" bill, however, may reflect the Administration's growing concern over public opinion and the Governor's strongly held belief that "a clean environment is essential to economic prosperity." Because Governor Whitman views herself as a moderate Republican, the tension between environmental protection and the desire to diminish burdensome regulations will undoubtedly heighten. As we move more deeply into the 1996 campaign season, it will be interesting to see how the leaders in New Jersey, other states and the U.S. Congress will balance what typically are seen to be the competing interests of industry and those of the environment.

Practice:

Environmental Law