

New Clean Corporate Citizen Rules Expand Current Program

New Clean Corporate Citizen (C3) rules that expand the scope of the current C3 program to cover all of the environmental statutes implemented by the Michigan Department of Environmental Quality (MDEQ) became effective on March 24, 2000. Also becoming effective at the same time are additional rules that specify the benefits available under MDEQ's surface and groundwater discharge permit programs. Previously, the benefits of the C3 program were available under only MDEQ's air quality regulations. The new rules also intended to tighten the environmental compliance criteria of the C3 program to make sure that C3 designations are granted only to highly qualified applicants. Under the rules, a C3 designation is valid for only one year and must be renewed annually.

A C3 designation is not available to an entity that, within ten years prior to its initial C3 application, has been: (i) convicted of a criminal violation of an applicable environmental requirement; (ii) found by a court to have been responsible for an illegal action that caused substantial endangerment to the public health, safety, or welfare or the environment; or (iii) assessed by MDEQ an administrative penalty of \$25,000 or more. Further, the entity must not have been assessed a civil fine, penalty, or damages of \$10,000 or more for violation of applicable environmental requirements within the preceding three years.

In addition to the above requirements, to qualify initially for and subsequently maintain a C3 designation, an applicant must: (i) demonstrate that it has in place and operates in accordance with an environmental management system (EMS); (ii) implement an effective pollution prevention (P2) program; and (iii) comply with "applicable environmental requirements."

Environmental Management System

An EMS must systematically address environmental concerns, provide for environmental improvements, and be integrated into the C3's overall management structure. A C3 may comply with the EMS requirement by doing any of the following: (i) registering or obtaining certification under an environmental management standard approved by MDEQ, such as ISO 14001; (ii) developing and complying with its own EMS tailored to the nature, scale, and potential environmental impact of the applicant's operations; or (iii) adopting and complying with an MDEQ-approved EMS applicable to a specific group of businesses.

Pollution Prevention Program

In order to comply with the P2 program requirements, a C3 must both adopt a written P2 policy and establish and maintain a P2 program applicable to the C3's business. The P2 policy must state the C3's philosophy of P2 by promoting: (i) the elimination and reduction of waste at its source of generation; (ii) the reuse of waste, including the purchase of recycled materials; and (iii) environmentally sound onsite and offsite recycling. In establishing and maintaining a P2 program, the C3 must: (i) post a copy of its P2 policy that is signed by a responsible official of the C3; (ii) conduct periodic P2 assessments in order to identify opportunities to reduce waste at its source, reuse, and recycle; (iii) establish environmental media specific P2 goals and projected time frames for meeting those goals; (iv) maintain records of its P2 progress; and (v) encourage efforts to exchange P2 technologies, such as through attending workshops and developing case

studies. A C3 may also satisfy its P2 program requirements by being a member in good standing in an MDEQ-recognized P2 program.

Environmental Compliance

As part of the application for a C3 designation, the applicant must submit a statement signed by a responsible official that he or she has reviewed the applicant's compliance record and that, to the best of his or her knowledge, the applicant is in compliance with all "applicable environmental requirements" and has no outstanding unresolved past or current uncorrected violations. In the case of a C3 designation renewal application, the applicant may demonstrate that any violations are being resolved by the applicant's adherence to a binding compliance schedule to end the violations.

The term "applicable environmental requirements" is defined to include: (i) Article II (Pollution Control) and Chapters 1 (Habitat Protection) and 3 (Management of Nonrenewable Resources) of Article III (Natural Resources Protection) of the Natural Resources and Environmental Protection Act (NREPA); (ii) the Michigan Safe Drinking Water Act; (iii) Parts 135 (Radiation Control) and 138 (Medical Waste) of the Public Health Code; (iv) administrative rules promulgated under the preceding statutory provisions; and (v) permits, orders, and other legally binding documents issued under the preceding statutory provisions. Article II of NREPA contains, for example, Part 31 (Water Resources Protection), Part 55 (Air Pollution Control), Part 111 (Hazardous Waste Management), Part 115 (Solid Waste Management), Part 201 (Environmental Remediation), and Part 213 (Leaking Underground Storage Tanks).

Any violation cited in a notice of violation must have been addressed by resolving the violation, demonstrating that the violation did not occur, or, in the case of a C3 designation renewal, demonstrating that the applicant is in compliance with a binding schedule entered into with MDEQ to correct the violation. Further, the applicant must not have been found by MDEQ to be in significant violation of any environmental requirement established by a local unit of government.

If a C3 applicant does not meet the above environmental compliance requirements, then MDEQ may nevertheless issue a C3 designation if the applicant agrees to a binding and significant reduction in wastes that is below the level otherwise required by applicable environmental requirements or if the applicant agrees to a significant and permanent retirement of air emission reduction credits under the Part 55 of NREPA air permitting rules.

Application Procedures

Prior to submitting a C3 application to MDEQ for review, the applicant must provide the public at least 30 days to review the application and related documentation. In order to do so, the applicant must publish a notice in a local newspaper stating the applicant's intent to apply for a C3 designation and of the availability of the application and related documentation for public review. The application and documentation must be made available at a local public library or

other public building for at least 30 days. Further, the public notice must allow for comments to be submitted to the applicant or MDEQ. The documentation made available for public review must include: (i) a detailed summary of each element in the applicant's EMS; (ii) a copy of the applicant's P2 policy and supporting information; and (iii) a copy of the applicant's signed statement that it is in compliance with applicable environmental requirements.

The applicant may submit its C3 application after the close of the 30-day public review period. The application must be on the form provided by MDEQ and must be accompanied by all of the supporting documentation specified in the C3 rules. The C3 application and other forms are available on MDEQ's web site at <http://www.deq.state.mi.us/ead/tasect/c3/>. Unless an extension is requested by the applicant, MDEQ is required to approve or disapprove an application for C3 designation within 60 days after MDEQ's receipt of a complete application. The rules provide that there is no formal appeal process for MDEQ's decision on a C3 application, but that an applicant may reapply for C3 designation at any time. The rules also set forth the procedures for annually reapplying to maintain a C3 designation and the procedures MDEQ must follow to terminate a C3 designation.

C3 Designation Benefits

Under the C3 rules, a C3 has the benefits granted C3s in rules promulgated under NREPA, the Michigan Safe Drinking Water Act, and Parts 135 (Radiation Control) and 138 (Medical Waste) of the Public Health Code. To date, C3 benefit rules have been promulgated for Part 31 (Water Resources Protection), Part 55 (Air Pollution Control), and Part 211 (Underground Storage Tank Regulations) of NREPA. The Part 55 C3 benefit rules have been effective since May 13, 1997, and the Part 211 rules were effective January 2, 1999. As mentioned above, new C3 benefit rules also became effective under Part 31 on March 24, 2000.

Part 31 C3 Benefits

The benefits available under the Part 31 wastewater discharge permit rules for entities receiving a C3 designation are divided into benefits applicable to "national" and "state" permits. A "national" permit is one issued by MDEQ under the National Pollutant Discharge Elimination System program for discharges into surface water, and a "state" permit is one issued by MDEQ for discharges to the ground surface or groundwater. Examples of the benefits available to a C3 under each permit type are discussed below.

Examples of National Permit Benefits

- A C3 applying for renewal of a national permit may certify that all or a portion of its previous permit application remains representative of its discharge and need not provide new discharge information unless there have been changes in state or federal application requirements since the time of the previous application, such as the modification of analytical methods.
- A C3 seeking a permit for a new discharge that is not covered by a federal technology-based treatment standard may provide its determination of best professional judgment (BPJ) for setting technology-based effluent limitations under

Section 402(a)(1) of the federal Clean Water Act. MDEQ will use the C3's determination of BPJ unless that determination is inconsistent with state or federal regulations or is contrary to previous BPJ determinations.

- A nonmunicipal C3 is authorized to construct and operate wastewater treatment processes to comply with effluent limitations in its national permit without first receiving MDEQ approval of the plans and specifications of the treatment processes.
- MDEQ will not conduct more than one comprehensive sampling inspection during the term of a C3's national permit unless MDEQ has reason to believe that the C3 is not in compliance with the permit or other requirements.
- National permits issued to C3s will provide for reduced monitoring and reporting frequencies.

Examples of State Permit Benefits

- A C3 applying for a new state permit, permit renewal, or permit modification may request that MDEQ accelerate review of the application. If accelerated review is approved by MDEQ, it must complete the review within 30 calendar days.
- Under specified conditions, MDEQ may authorize a C3 to reduce the frequency of effluent and groundwater monitoring from that which would otherwise be required.
- Under specified conditions, a C3 may reduce monitoring and reporting requirements for upgradient wells to an annual schedule upon written notice to MDEQ.
- A C3 may petition MDEQ to extend the expiration of its state permit for up to five years if the C3 demonstrates that it has consistently complied with its permit for the preceding five years, thus avoiding the full permit renewal procedures.

This article was prepared by Brian J. Negele, a partner in our Environmental Department, and previously appeared in the June, 2000 edition of the Michigan Environmental Compliance Update, a monthly newsletter prepared by the Environmental Department and published by M. Lee Smith Publishers.