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BILL



ANALYSIS

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

Senate Committee: Natural Resources, Environment and Great Lakes
House Committee: Natural Resources, Tourism, and Outdoor Recreation

Date Completed: 1-22-13

PUBLIC ACTS 554 through 557 of 2012

CONTENT

Senate Bill 939 added Part 14 (Clean Corporate Citizens) to the Natural Resources and Environmental Protection Act (NREPA) to provide for a Clean Corporate Citizen (C3) designation that a facility may receive from the Department of Environmental Quality. Specifically, the bill does the following:

- Prescribes criteria that a facility must meet to receive the designation, including requirements to implement an environmental management system and adopt an environmental policy.
- Requires a C3 to submit an annual report on compliance activities.
- Prescribes benefits to which a C3 is entitled, including reduced permit processing times, doubled permit duration, less frequent inspections, and a preference in State purchasing.
- Rescinds administrative rules providing for a C3 Program.

Senate Bill 940 amended the Management and Budget Act to include facilities operated by designated C3s among the entities given a preference in State purchasing decisions.

Senate Bills 941 and 942 amended 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 are subject to Part 14 of NREPA.

Senate Bills 940, 941, and 942 were tie-barred to Senate Bill 939. All of the bills took effect on January 2, 2013. Senate Bills 939 and 940 are described below in further detail.

Senate Bill 939

Designation Requirements

Facility. To obtain a clean corporate citizen designation, as well as the benefits prescribed in the bill, a facility must meet the qualifications set forth in Part 14 and submit an application to the Department of Environmental Quality (DEQ).

"Clean corporate citizen" means a facility that has demonstrated environmental stewardship and a strong environmental ethic by meeting the criteria of Part 14.

"Facility" means any 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 establishment.

Environmental Management System. To qualify for a C3 designation, a facility must meet one of the following environmental management system requirements:

- Obtain and operate in accordance with requirements for registration or certification under an environmental management standard, such as ISO 14001:2004, or, for the chemical industry, RC 2008, approved by the DEQ Director.
- Adopt and maintain an environmental management system that is set forth in writing, and that is consistent with the requirements of ISO 14001:2004 or RC 2008, as applicable, and appropriate for the nature, scale, and potential environmental impact of the operation at the facility.
- Adopt and maintain an environmental management system that is set forth in writing, approved by the Director, and applicable to a specific group or classification of facilities, and that meets the requirements of the preceding provision.
- For a facility with 100 or fewer employees, adopt and maintain the following elements of a written environmental management system: an environmental policy, the environmental aspects, the objectives and targets of operations, the roles and responsibilities, and the procedures for internal and external communication.

"Environmental management system" means 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" and "RC 2008" mean the standards adopted by the International Organization for Standardization in 2004 and the Responsible Care program adopted by the American Chemistry Council in 2008, respectively, to prescribe uniform requirements for the purpose of certification or registration of an environmental management system.

Environmental Policy & Pollution Prevention. A facility must adopt and maintain a written environmental policy. "Environmental policy" means a policy, signed by an authorized facility official, that does all of the following:

- Articulates the facility's environmental mission and values.
- Promotes pollution prevention.
- Acknowledges the importance of communication with the public with respect to environmental issues.
- Expresses the facility's commitment to comply with environmental laws.
- Recognizes that every employee can contribute to environmental improvement.

In addition, a facility must establish and maintain a program specific to that facility under which the operator does all of the following:

- Posts the environmental policy at the facility.
- Conducts periodic assessments that identify opportunities for pollution prevention.
- Establishes 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.
- Prepares and maintains reports to demonstrate progress toward attaining the goals.

As part of the program, facilities are encouraged initiate community-based activities and 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.
- Giving the DEQ access to electronic copies of the facility's emergency response plan, pollution incident plan, stormwater pollution prevention plan, and other plans as appropriate.

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

"Waste" means 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. A facility may not have been the subject of any of the following at any time within the preceding three years:

- Conviction for a criminal violation of an applicable State environmental requirement.
- An 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.
- A DEQ assessment, a judicial consent decree, or an administrative consent order, imposing 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.

Also, a facility will not qualify for a C3 designation if the DEQ determines that it was responsible for a pattern of illegal actions, at any time within the preceding three years, that endangered the public health, safety, or welfare or the environment.

"Supplemental environmental project" means an environmentally beneficial project that an alleged violator is not legally required to undertake, but agrees to undertake in settlement of an enforcement action.

"Applicable state environmental requirement" means 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. A facility must address any outstanding violation that is cited in a violation notice that, as determined by the DEQ, substantially endangers 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 is acceptable to the DEQ, the EPA, or the local enforcing agency that issued the notice, to correct the violation.

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

"Applicable environmental requirement" means an applicable Federal or State environmental requirement, or an environmental requirement established by a local unit of government. "Applicable federal environmental requirement" means 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 a C3 designation, a facility must submit to the DEQ an application, on a form

provided by the Department, as well as all of the following:

- 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 facility during the past three years.
- A certified statement that the applicant meets the requirements of Part 14 for a C3 designation.
- Information demonstrating the applicant's compliance with the requirements regarding the environmental management system and environmental policy, including a detailed summary of each required element of the management system and a copy of the policy.
- A list of the significant goals established in the environmental management system and the environmental policy.
- If the facility is already designated as a C3 when the application is filed, the latest required annual report (described below).

The DEQ must determine whether the application is administratively complete within 14 days after receiving it. If the application is complete, the DEQ must 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 must include the DEQ's electronic mail and postal mailing addresses for receiving comments. Comments must be received for at least 30 days after notice is given.

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

If the application is disapproved, the applicant may reapply for a C3 designation at any time. In addition, an applicant may withdraw an application without prejudice at any time.

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

The term of a C3 designation is five years.

Termination of Designation

The DEQ Director must terminate a C3 designation if he or she determines that the facility does not meet the applicable requirements of Part 14.

The Director must advise a facility of his or her intent to terminate the designation and the specific reason for the termination at least 30 days in advance.

Upon termination of a C3 designation, all benefits provided to the facility will terminate.

A facility whose designation is terminated may reapply at any time.

Annual Report

A C3 must submit an annual report at least 60 days before the annual anniversary date of the current designation. The report must 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 facility's program established under Part 14, on a form provided by the DEQ.
- Set, revise, and attain objectives and implement measures in the C3's environmental management system and pollution prevention programs.

In addition, the report must include a certified statement that the C3 is in compliance with the requirements of Part 14 for the designation.

C3 Benefits

Upon a C3's request, the DEQ must give the facility priority over people who are not C3s in both of the following:

- Compliance assistance programs applicable to the facility, such as the

Retired Engineers Technical Assistance Program under NREPA.

- Processing permit or operating license renewal applications for the facility.

In addition, the DEQ must give employees of the C3 free training on performing environmental audits under Part 148.

The term of a permit issued by the DEQ for the facility must be twice the term that would otherwise apply.

The facility also must receive a preference for State purchases as provided in Section 261 of the Management and Budget Act (which Senate Bill 940 amended as described below). The facility will qualify for any additional C3 benefits for it 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 must conduct routine inspections of the facility half as frequently as they would be conducted if the facility were not a C3, and give the operator at least 72 hours' advance notice of any routine inspection of the facility.

In addition, the facility will not be subject to a civil fine for a violation of applicable State environmental requirements if it 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 does not apply if one or both of the following are established by clear and convincing evidence:

- The facility's actions pose or 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.

Rules Rescission

The bill rescinded the Clean Corporate Citizen Program rules, R 324.1501 to R

324.1511 of the Michigan Administrative Code.

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

Other Provisions

The bill requires the DEQ to maintain on its website a list of facilities currently designated as C3s.

Also, the DEQ must maintain a copy of ISO 14001:2004 and RC 2008 available for inspection at the Department's headquarters in Lansing. Upon request, the DEQ must provide information on how to purchase a copy of ISO 14001:2004 from the American National Standards Institute and RC 2008 from the American Chemistry Council.

The bill provides that Part 14 may not be construed in a manner that conflicts with or authorizes 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. The bill also requires that preference be given to facilities with respect to which the operator is designated as a C3 under Part 14 of NREPA.

MCL 324.1401-324.1429 (S.B. 939)
18.1261 (S.B. 940)
333.13537 & 333.13832 (S.B. 941)
324.1023 (S.B. 942)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bills 939, 941, and 942

The bills will have an indeterminate fiscal impact on State finances, and no fiscal impact on local units of government. The

bills will introduce some costs associated with the requirement that the DEQ provide free training to Clean Corporate Citizens in performing environmental audits under Part 148 of NREPA.

The bills also will reduce the costs of operating the various permit programs covered under the Clean Corporate Citizen program by some amount, by making routine inspections of regulated facilities less frequent. It is unknown at this time whether these savings will offset the costs of providing free training, so the fiscal impact is indeterminate.

Senate Bill 940

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

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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.