



**House
Legislative
Analysis
Section**

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CLEAN AIR ACT ENFORCEMENT

House Bill 4865 (Substitute H-1)
Sponsor: Rep. Carl F. Gnodtke
Committee: Conservation, Environment
& Great Lakes

Complete to 9-13-93

A SUMMARY OF HOUSE BILL 4865 (SUBSTITUTE H-1)

House Bill 4865 would amend the Air Pollution Act to comply with the provisions of Title V of the federal Clean Air Act Amendments of 1990, and to transfer certain responsibilities -- some of which are currently carried out by the Air Pollution Control Commission and the Department of Public Health -- to the Department of Natural Resources. The bill is tie-barred to Senate Bills 46 and 804, which would establish regulations for permits and fees, respectively. The following is a brief summary of the bill:

Definition of Emergency. Under the bill, "emergency" would be defined as a situation arising from sudden and reasonably unforeseeable events beyond the control of a permit holder operating a facility that was a source of a contamination, including "acts of God," war, strike, riot, catastrophe, or other condition in which negligence on the part of the person was not the proximate cause, which required immediate corrective action to restore normal operation, and which caused the source to exceed a technology-based emission limitation contained in an operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency would not include acts of noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. An emergency would constitute an affirmative defense to an action brought for noncompliance with a technology-based emission limitation contained in an operating permit if the affirmative defense of "emergency" was demonstrated by appropriate evidence that established the following:

- An emergency had occurred and the permit holder could identify the cause.
- The permitted source was properly operated at the time of the emergency.
- The permit holder took all reasonable steps during the emergency to minimize levels of emissions that exceeded the permit's emission standards.
- The permit holder submitted notice to the department within two working days after the emission limitation was exceeded due to the emergency.

In any enforcement proceeding, the permit holder would have the burden of proof in establishing the occurrence of an emergency.

Violations: Complaints. Under the bill, the Department of Natural Resources (DNR) would be required to conduct a prompt investigation if it suspected that the

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provisions of the act, a rule promulgated under the act, or a permit or any determination other than an order issued under the provisions of the act were being violated. If the investigation uncovered a violation, then the department would be required to attempt to enter into a voluntary agreement, in the form of a consent order and compliance schedule, with the individual (or other legal entity). If a voluntary agreement were not entered into, then the Air Pollution Commission could issue a compliance order.

The department would also be required to conduct a prompt investigation if it believed that an order issued under the act were being violated. If, after this investigation, it was determined that the terms of the order had not been complied with, then the department could attempt to enter into a voluntary agreement, in the form of a consent order and compliance schedule, with the individual or other legal entity. An order could be appealed under the provisions of the Administrative Procedures Act.

Release of Information. Under the bill, a copy of each permit, permit application, order, compliance plan and schedule of compliance, emissions or compliance monitoring report, sample analysis, compliance certification, or other report, information, permits, or order issued under the act, would be made available to the public to the extent provided by the Freedom of Information Act. Current provisions under the act, which exempt information that is deemed unique to its owner (e.g., a trade secret), or that would damage the owner's market competitiveness, would be amended to require that the person asserting confidentiality satisfactorily demonstrate that the information should be considered confidential. Disputes between those who asserted confidentiality and those requesting information under the Freedom of Information Act would be decided by the director of the DNR.

Notice to Discontinue Air Pollution. An individual who discharged an air contaminant that constituted an "imminent and substantial endangerment to the public health, safety, or welfare, or to the environment," would receive a written notice to discontinue or contain the contaminant from the director of the department. The individual would be given an opportunity for a hearing within seven days. The order would remain in effect for at least seven days, unless the attorney general brought a civil action to restrain the alleged endangerment before the seven-day period expired, in which case the order would remain in effect for an additional seven days or for whichever period of time the court authorized. Prior to taking this action, the director would be required to notify the emergency management coordinator who had been appointed under the Emergency Management Act for the county in which the source of the contamination was located.

Right to Inspect. The department would have the right to enter and inspect any property at reasonable times to investigate an actual or suspected source of air pollution, or to ascertain compliance with the act or with the federal Clean Air Act. If samples of air contaminants were taken for analysis, a duplicate copy of the analytical report would be furnished promptly to the individual suspected of causing the air pollution. In implementing these provisions of the bill the department could undertake, at reasonable times, the following actions:

-- Have access to, and copy, records the were required to be maintained under the act.

-- Inspect facilities, equipment, practices, or operations.

-- Sample or monitor substances or parameters to determine compliance with the act or the federal Clean Air Act, or enter into a contract to have this done.

If the department, or its authorized representative (defined under the bill to mean an employee of the department, another state department or agency, a local unit of government to which authority had been delegated under the act, or a contractor retained by the state or a local unit of government to which authority had been delegated) were refused entry or access under these provisions, the attorney general could either petition the court for a warrant authorizing entry or access, or commence a civil action to compel compliance with the request.

Administrative Fines. The director of DNR could assess an administrative fine of up to \$10,000 per violation, per day, for a violation of the act, with the following restrictions:

** The maximum fine could not exceed \$100,000.

** The violation would have to have occurred during the 12-month period prior to the administrative action.

** The DNR could not make issuance of a permit conditional upon payment of an fine.

** A person accused of violating the act could file a petition for a review under the Administrative Procedures Act, but only to appeal the amount of the fine.

Injunctive Relief. The attorney general could initiate a civil action for a violation of the act for appropriate relief -- including injunctive relief and civil fines -- for failure to: obtain a permit; comply with the terms of a permit or order; pay an air quality fee or to comply with a filing requirement; and for failure to comply with the act's inspection, entry, and monitoring requirements; as well as for discharging an air contaminant that constituted an "imminent and substantial endangerment" to the public. The attorney general could file an action to recover the full value of the injuries done to the environment. Under such an action, the court could award costs of litigating to the prevailing party.

Violations. Under the bill, fines would be assessed against a person for each instance of violation, and -- if the violation were continuous -- would be assessable up to the maximum amount for each day of violation, as follows:

-- A person who knowingly violated the act would be guilty of a misdemeanor, punishable by a fine of up to \$10,000 per day for each violation. Violations would include: making a false material statement; altering or concealing information; and failing to pay an air quality fee, install monitoring equipment, or to file a notice.

-- A person who, in violation of Part A of Title I of the federal Clean Air Act, knowingly released hazardous air pollutants into the air that placed others in imminent danger of death or serious bodily injury would be guilty of a felony, punishable by imprisonment for up to two years, a fine of up to \$10,000, or both.

-- A person who, in violation of Part A of Title I of the federal Clean Air Act, knowingly released hazardous air pollutants that resulted in the death or serious bodily injury of another would be guilty of a felony, punishable by six years in prison, a fine of up to \$25,000, or both.

-- A person who, in violation of Part A of Title I of the federal Clean Air Act, knowingly released hazardous air pollutants with the intention of placing another person in imminent danger of death or serious bodily injury would be guilty of a felony, punishable by 15 years in prison, a fine of up to \$250,000, or both, if the actions did result in death or caused serious bodily injury.

Fines would not be imposed for a violation caused by an act of God, war, strike, riot, catastrophe, or other condition over which the person had no control. In addition, a civil or criminal fine imposed under the provisions of the bill would have to be appropriate to the violation, and take into account the size of the business, the economic impact of previous fines, good faith efforts made by the violator to comply, the duration of the violation, payment of previous fines, the economic benefit of noncompliance, the seriousness of the violation, and such other factors as justice demanded.

MCL 336.18 et al.