

Act No. 237
Public Acts of 1993
Approved by the Governor
November 12, 1993
Filed with the Secretary of State
November 13, 1993

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Senator Wartner

ENROLLED SENATE BILL No. 46

AN ACT to amend the title and sections 2, 5, 5a, 7, 13, 15, 19, 20, 21, 22, 23, 25, and 26 of Act No. 348 of the Public Acts of 1965, entitled as amended "An act to control air pollution in this state; to create an air pollution control commission within the state health department; to prescribe its powers and duties; to prescribe the powers and duties of certain county agencies; to provide for the establishment of fees; and to provide penalties," section 2 as amended by Act No. 6 of the Public Acts of 1993, section 5a as added by Act No. 23 of the Public Acts of 1990, and section 15 as added by Act No. 25 of the Public Acts of 1987, being sections 336.12, 336.15, 336.15a, 336.17, 336.23, 336.25, 336.29, 336.30, 336.31, 336.32, 336.33, 336.35, and 336.36 of the Michigan Compiled Laws; to add sections 5b, 5c, 5d, 5e, 5f, 5g, and 5h; to repeal certain parts of the act; and to repeal certain parts of the act on specific dates.

The People of the State of Michigan enact:

Section 1. The title and sections 2, 5, 5a, 7, 13, 15, 19, 20, 21, 22, 23, 25, and 26 of Act No. 348 of the Public Acts of 1965, section 2 as amended by Act No. 6 of the Public Acts of 1993, section 5a as added by Act No. 23 of the Public Acts of 1990, and section 15 as added by Act No. 25 of the Public Acts of 1987, being sections 336.12, 336.15, 336.15a, 336.17, 336.23, 336.25, 336.29, 336.30, 336.31, 336.32, 336.33, 336.35, and 336.36 of the Michigan Compiled Laws, are amended and sections 5b, 5c, 5d, 5e, 5f, 5g, and 5h are added to read as follows:

TITLE

An act to regulate air pollution in this state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for the establishment of fees; and to provide remedies and prescribe penalties.

Sec. 2. As used in this act:

(a) "Air contaminant" means a dust, fume, gas, mist, odor, smoke, vapor or any combination thereof.

(b) "Air pollution" means the presence in the outdoor atmosphere of air contaminants in quantities, of characteristics and under conditions and circumstances, and of a duration that are or can become injurious to human health or welfare, to animal life, to plant life, or to property, or that interfere with the enjoyment of life and property in this state and excludes all aspects of employer-employee relationships as to health and safety hazards. With respect to any mode of transportation, nothing in this act or in the rules promulgated under this act shall be inconsistent with the federal regulations, emission limits, standards or requirements on various modes of transportation. Air pollution does not mean those usual and ordinary odors associated with a farm operation if the person engaged in the farm operation is following generally accepted agricultural and management practices.

(c) "Air pollution control equipment" means any method, process, or equipment that removes, reduces, or renders less noxious air contaminants discharged into the atmosphere.

(d) "Category I facility" means a fee-subject facility that is a major stationary source as defined in section 302 of title III of the clean air act, 77 Stat. 400, 42 U.S.C. 7602, an affected source as defined pursuant to section 402 of title IV of the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7651a, or a major stationary source as defined in section 169a of subpart 2 of part C of title I of the clean air act, chapter 360, 91 Stat. 742, 42 U.S.C. 7491.

(e) "Category II facility" means a fee-subject facility that is a major source as defined in section 112 of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412 or a facility subject to requirements of section 111 of part A of title I of the clean air act, chapter 360, 84 Stat. 1683, 42 U.S.C. 7411, except that a category II facility that also meets the definition of a category I facility is a category I facility.

(f) "Category III facility" means any fee-subject facility that is not a category I or category II facility.

(g) "Clean air act" means chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q and regulations promulgated under the clean air act.

(h) "Department" means the director of the department of natural resources or his or her designee.

(i) "Director" means the director of the department.

(j) "Farm operation" has the meaning ascribed to it in the Michigan right to farm act, Act No. 93 of the Public Acts of 1981, being sections 286.471 to 286.474 of the Michigan Compiled Laws.

(k) "Emission" means the emission of an air contaminant.

(l) "Fee-subject air pollutant" means particulates, sulfur dioxide, volatile organic compounds, nitrogen oxides, ozone, lead, and any pollutant regulated under section 111 or 112 of part A of title I of the clean air act, chapter 360, 84 Stat. 1683 and 1685, 42 U.S.C. 7411 and 7412, or title III of the clean air act, chapter 360, 77 Stat. 400, 42 U.S.C. 7601 to 7612, 7614 to 7617, 7619 to 7622, and 7624 to 7627.

(m) "Fee-subject facility" means the following sources:

(i) Any major source as defined in 40 C.F.R. 70.2.

(ii) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of part A of title I of the clean air act, chapter 360, 84 Stat. 1683, 42 U.S.C. 7411, when the standard, limitation, or other requirement becomes applicable to that source.

(iii) Any source, including an area source, subject to a standard, limitation, or other requirement under section 112 of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, when the standard, limitation, or other requirement becomes applicable to that source. However, a source is not a fee-subject facility solely because it is subject to a regulation, limitation, or requirement under section 112(r) of part A of title I of the clean air act, chapter 360, 84 Stat. 1685, 42 U.S.C. 7412.

(iv) Any affected source under title IV of the clean air act, chapter 360, 104 Stat. 2584, 42 U.S.C. 7651 to 7651o.

(v) Any other source in a source category designated by the administrator of the United States environmental protection agency as required to obtain an operating permit under title V, when the standard, limitation, or other requirement becomes applicable to that source.

(n) "Fund" means the emissions control fund created in section 14d.

(o) "Generally accepted agricultural and management practices" has the meaning ascribed to it in Act No. 93 of the Public Acts of 1981.

(p) "General permit" means a permit to install, permit to operate authorized pursuant to rules promulgated under section 5b(6), or an operating permit under section 5c, for a category of similar sources, processes, or process equipment. General provisions for issuance of general permits shall be provided for by rule.

(q) "Major emitting facility" means a stationary source that emits 100 tons or more per year of any of the following:

(i) Particulates.

(ii) Sulfur dioxides.

(iii) Volatile organic compounds.

(iv) Oxides of nitrogen.

(r) "Person" means an individual, partnership, corporation, association, governmental entity, or other entity.

(s) "Process" means an action, operation, or a series of actions or operations, at a source that emits or has the potential to emit an air contaminant.

(t) "Process equipment" means all equipment, devices, and auxiliary components, including air pollution control equipment, stacks, and other emission points, used in a process.

(u) "Responsible official" means for the purposes of signing and certifying the truth, accuracy, and completeness of permit applications, monitoring reports, and compliance certifications any of the following:

(i) For a corporation: a president, secretary, treasurer, or vice-president in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or an authorized representative of that person if the representative is responsible for the overall operation of 1 or more manufacturing, production, or operating facilities applying for or subject to a permit under this act and either the facilities employ more than 250 persons or have annual sales or expenditures exceeding \$25,000,000.00; or the delegation of authority to the representative is approved in advance by the department.

(ii) For a partnership or sole proprietorship: a general partner or the proprietor.

(iii) For a county, city, village, township, state, federal, or other public agency: either a principal executive officer or ranking elected official. For this purpose, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(iv) For sources affected by the acid rain program under title IV, the designated representative insofar as actions, standards, requirements, or prohibitions under that title are concerned.

(v) "Rule" means a rule promulgated pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

(w) "Schedule of compliance" means, for a source not in compliance with all applicable requirements of this act, rules promulgated under this act, and the clean air act, at the time of issuance of an operating permit, a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an applicable requirement and a schedule for submission of certified progress reports at least every 6 months. Schedule of compliance means, for a source in compliance with all applicable requirements of this act, rules promulgated under this act, and the clean air act at the time of issuance of an operating permit, a statement that the source will continue to comply with these requirements. With respect to any applicable requirement of this act, rules promulgated under this act, and the clean air act, effective after the date of issuance of an operating permit, the schedule of compliance shall contain a statement that the source will meet the requirements on a timely basis, unless the underlying applicable requirement requires a more detailed schedule.

(x) "Source" means a stationary source as defined in section 302(z) of title III of the clean air act, 77 Stat. 400, 42 U.S.C. 7602, and has the same meaning as stationary source when used in comparable or applicable circumstances under the clean air act. A source includes all the processes and process equipment under common control that are located within a contiguous area, or a smaller group of processes and process equipment as requested by the owner or operator of the source, if in accordance with the clean air act.

(y) "Title IV" means title IV of the clean air act, pertaining to acid deposition control, chapter 360, 104 Stat. 2584, 42 U.S.C. 7651 to 7651c.

(z) "Title V" means title V of the clean air act, chapter 360, 104 Stat. 2635, 42 U.S.C. 7661 to 7661f.

Sec. 5. The department may do 1 or more of the following:

(a) Promulgate rules to establish standards for ambient air quality and for emissions.

(b) Issue permits for the construction and the operation of sources, processes, and process equipment, subject to enforceable emission limitations and standards and other conditions reasonably necessary to assure compliance with all applicable requirements of this act, rules promulgated under this act, and the clean air act.

(c) In accordance with this act and rules promulgated under this act, deny, terminate, modify, or revoke and reissue permits for cause. If an application for a permit is denied or is determined to be incomplete by the department, the department shall state in writing, with particularity the reason for denial or the determination of incompleteness, and, if applicable, the provision of this act or a rule promulgated under this act that controls the decision.

(d) Compel the attendance of witnesses at proceedings of the department upon reasonable notice.

(e) Make findings of fact and determinations.

(f) Make, modify, or cancel orders that require, in accordance with this act, the control of air pollution.

(g) Enforce permits, air quality fee requirements, and the requirements to obtain a permit.

(h) Institute in a court of competent jurisdiction proceedings to compel compliance with this act, rules promulgated under this act, or any determination or order issued under this act.

(i) Enter and inspect any property as authorized under section 16a.

(j) Receive and initiate complaints of air pollution in alleged violation of this act, rules promulgated under this act, or any determination, permit, or order issued under this act and take action with respect to the complaint as provided in this act.

(k) Require reports on sources and the quality and nature of emissions, including, but not limited to, information necessary to maintain an emissions inventory.

(l) Prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution.

(m) Encourage voluntary cooperation by all persons in controlling air pollution and air contamination.

(n) Encourage the formulation and execution of plans by cooperative groups or associations of cities, villages and counties or districts, or other governmental units, industries, and others who severally or jointly are or may be the source of air pollution, for the control of pollution.

(o) Cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with respect to the control of air pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(p) Conduct or cause to be conducted studies and research with respect to air pollution control, abatement or prevention.

(q) Conduct and supervise programs of air pollution control education including the preparation and distribution of information relating to air pollution control.

(r) Determine by means of field studies and sampling the degree of air pollution in the state.

(s) Provide advisory technical consultation services to local communities.

(t) Serve as the agency of the state for the receipt of money from the federal government or other public or private agencies and the expenditure of that money after it is appropriated for the purpose of air pollution control studies or research or enforcement of this act.

(u) Do such other things as the department considers necessary, proper, or desirable to enforce this act, a rule promulgated under this act, or any determination, permit, or order issued under this act, or the clean air act.

Sec. 5a. (1) Beginning on June 6, 1991 or on the effective date of the rules promulgated under subsection (5), whichever is later, a facility that incinerates medical waste shall not be operated unless the facility has been issued an operating permit by the department.

(2) An application for an operating permit under subsection (1) shall be submitted in the form and contain the information required by the department. The department shall issue an operating permit only if the facility is in compliance with this act and the rules promulgated under this act.

(3) A permit issued under this section shall be valid for 5 years. Upon expiration, a permit may be renewed.

(4) Within 2 years after the effective date of the rules promulgated under subsection (5), the department shall review all operating permits issued under this act for facilities that incinerate medical waste that were issued permits prior to the promulgation of the rules under subsection (5). If, upon review, the department determines that the facility does not meet the requirements of the rules promulgated under subsection (5) and cannot be retrofitted to comply with these rules, the department shall issue an interim operating permit that is valid for 2 years only. If the facility only needs retrofitting in order to comply with the rules, the facility shall be granted an interim permit that is valid for 1 year only. However, in either case the facility shall comply with this act and all other rules promulgated under this act for the interim period. An interim operating permit shall provide that if the facility is within 50 miles of another facility that is in compliance with the rules promulgated under subsection (5), the facility operating under the interim operating permit may receive only medical waste that is generated on the site of that facility, at a facility owned and operated by the person who owns and operated that facility, or at the private practice office of a physician who has privileges to practice at that facility, if the facility is a hospital. The department shall renew an operating permit for a facility only if the facility is in compliance with this act and the rules promulgated under this act.

(5) The department shall promulgate rules to do both of the following:

(a) Regulate facilities that incinerate medical waste. These rules shall cover at least all of the following areas:

(i) Incinerator design and operation.

(ii) Ash handling and quality.

(iii) Stack design.

(iv) Requirements for receiving medical waste from generators outside the facility.

(v) Air pollution control requirements.

(vi) Performance monitoring and testing.

(vii) Record keeping and reporting requirements.

(viii) Inspection and maintenance.

(b) Regulate the operation of facilities that incinerate only pathological waste and limited other permitted solid waste.

(6) A permit issued under this section may allow a facility to receive pathological or medical wastes that were generated off the site of the facility. However, the owner or operator of the facility shall keep monthly records of the source of the wastes and the approximate volume of the wastes received by the facility.

(7) As used in this section:

(a) "Medical waste" means that term as it is defined in part 138 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.13801 to 333.13831 of the Michigan Compiled Laws.

(b) "Pathological waste" means that term as it is defined in part 138 of the public health code.

Sec. 5b. (1) Except as provided in subsection (4), a person shall not install, construct, reconstruct, relocate, alter, or modify any process or process equipment without first obtaining from the department a permit to install, or a permit to operate authorized pursuant to rules promulgated under subsection (6) if applicable, authorizing the conduct or activity.

(2) The department shall promulgate rules to establish a permit to install program to be administered by the department. Except as provided in subsections (4) and (5), the permit to install program is applicable to each new or modified process or process equipment that emits or may emit an air contaminant.

(3) A permit to install may authorize the trial operation of a process or process equipment to demonstrate that the process or process equipment is operating in compliance with the permit to install issued under this section.

(4) The department may promulgate rules to provide for the issuance of general permits and to exempt certain sources, processes, or process equipment or certain modifications to a source, process, or process equipment from the requirement to obtain a permit to install or a permit to operate authorized pursuant to rules promulgated under subsection (6). However, the department shall not exempt any new source or modification that would meet the definition of a major source or major modification under parts C and D of title I of the clean air act, chapter 360, 91 Stat. 731, 42 U.S.C. 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.

(5) The department may issue a permit to install, a general permit, or a permit to operate authorized under rules promulgated under subsection (6) if applicable, that authorizes installation, operation, or trial operation, as applicable, of a source, process, or process equipment at numerous temporary locations. Such a permit shall include terms and conditions necessary to assure compliance with all applicable requirements of this act, the rules promulgated under this act, and the clean air act, including those necessary to assure compliance with all applicable ambient air standards, emission limits, and increment and visibility requirements pursuant to part C of title I of the clean air act, chapter 360, 91 Stat. 731, 42 U.S.C. 7470 to 7479 and 7491 to 7492, at each location, and shall require the owner or operator of the process, source, or process equipment to notify the department at least 10 days in advance of each change in location.

(6) The department may promulgate rules to establish a program that authorizes issuance of nonrenewable permits to operate for sources, processes, or process equipment that are not subject to the requirement to obtain a renewable operating permit pursuant to section 5c.

(7) The failure of the department to act on an administratively and technically complete application for a permit to install, a general permit, or a permit to operate authorized under rules promulgated under subsection (6), in accordance with a time requirement established pursuant to this act, rules promulgated under this act, or the clean air act may be treated as a final permit action solely for the purposes of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department on the application without additional delay.

(8) Any person may appeal the issuance or denial by the department of a permit to install, a general permit, or a permit to operate authorized in rules promulgated under subsection (6), for a new source in accordance with section 631 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.631 of the Michigan Compiled Laws. Petitions for review shall be the exclusive means to obtain judicial review of such a permit and shall be filed within 90 days after the final permit action, except that a petition may be filed after that deadline only if the petition is based solely on grounds arising after the deadline for judicial review. Such a petition shall be filed no later than 90 days after the new grounds for review arise. Appeals of permit actions for existing sources shall be in accordance with section 5c(14).

Sec. 5c. (1) After the date established pursuant to subsections (3) and (4)(n), if an application for an operating permit is required to be submitted, a person shall not operate a source that is required to obtain an operating permit under section 502a of title V of the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a and which is thereby subject to the requirements of this section except in compliance with an operating permit issued by the department. A permit issued under this section does not convey a property right or an exclusive privilege.

(2) If a person who owns or operates a source has submitted a timely and administratively complete application for an operating permit, including an application for renewal of an operating permit, but final action has not been taken on the application, the source's failure to have an operating permit is not a violation of subsection (1) unless the delay in final action is due to the failure of the person owning or operating the source to submit information required or requested to process the application. A source required to have a permit under this section is not in violation of subsection (1) before the date on which the source is required to submit an application pursuant to subsections (3) and (4)(n). Except as otherwise provided in subsection (5), expiration of an operating permit terminates a person's right to operate a source. This subsection does not waive an applicable requirement to obtain a permit under section 5b.

(3) A person who owns or operates a source required to have an operating permit pursuant to this section shall submit to the department within 12 months after the date on which the source becomes subject to the requirement to obtain a permit under subsection (1), or on an earlier date specified by rule, a compliance plan and an administratively complete application for an operating permit signed by a responsible official, who shall certify the accuracy of the information submitted. The department shall approve or disapprove a timely and administratively complete application, and shall issue or deny the operating permit within 18 months after the date of receipt of the compliance plan and an administratively complete operating application, except that the department shall establish a phased schedule for acting on the timely and administratively complete operating permit applications submitted within the first full year after the operating permit program becomes effective. The schedule shall assure that at least 1/3 of the applications will be acted on by the department annually over a period not to exceed 3 years after the operating permit program becomes effective.

(4) The department shall promulgate rules to establish an operating permit program required under title V to be administered by the department. This permit program shall include all of the following and, at a minimum, shall be consistent with the requirements of title V:

(a) Provisions defining the categories of sources that are subject to the operating permit requirements of this section. Operating permits under this section are not required for any source category that is not required to obtain an operating permit under section 502(a) of the clean air act, title V of chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a.

(b) Requirements for operating permit applications, including standard application forms, the minimum information that must be submitted with an administratively complete application, and criteria for determining in a timely fashion the administrative completeness of an application.

(c) A requirement that each operating permit application include a compliance plan describing how the source will comply with all applicable requirements of this act, rules promulgated under this act, and the clean air act.

(d) Provisions for inspection, entry, monitoring, record keeping, and reporting applicable to each operating permit issued under this section.

(e) Requirements and provisions for expeditiously determining when applications are technically complete, for processing applications.

(f) Provisions for transmitting copies of each operating permit application, proposed and final permits, including each modification or renewal, to the administrator of the United States environmental protection agency, and for notifying all other states whose air quality may be affected and are contiguous to this state and for providing an opportunity for those states to provide written recommendations on each operating permit application and proposed permit, pursuant to the requirements of section 505(a) and (d) of the clean air act, title V of chapter 360, 104 Stat. 2643, 42 U.S.C. 7661d.

(g) Provisions for issuance of operating permits and, in accordance with this act and rules promulgated under this act, for denial, termination, modification, revocation, renewal, and revision of operating permits for cause.

(h) Provisions to allow for changes within a permitted source without a revision to the operating permit, if the changes are not modifications under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, and the changes do not exceed the emissions allowed under the operating permit, if the owner or operator of the source provides the department and the administrator of the United States environmental protection agency with written notification at least 7 days in advance of the proposed changes. However, the department may provide a different time frame for an emergency as defined in section 16b. The emissions allowed under the operating permit include any enforceable emission limitation, standard, or other condition, including a work practice standard, determined by the department to be required by an applicable requirement of this act, rules promulgated under this act, or the clean air act, or that establishes an emission limit or an enforceable emissions cap that the source has assumed to avoid an applicable requirement of this act, rules promulgated under this act, or the clean air act, to which the source would otherwise be subject. These provisions shall include the following:

(i) Changes that contravene an express permit condition. Such changes shall not include changes that would violate any applicable requirement of this act, the rules promulgated under this act, or the clean air act, or changes that would contravene any applicable requirement for monitoring, record keeping, reporting, or compliance certification.

(ii) Changes that involve emissions trading if trading has been approved by the administrator of the United States environmental protection agency as a part of the state implementation plan.

(i) Provisions to allow changes within a permitted source, pursuant to 40 C.F.R. 70.4(b)(14), that are not addressed or prohibited by the operating permit, if all of the following criteria are met:

(i) The change meets all applicable requirements of this act, the rules promulgated under this act, and the clean air act and does not violate any existing emission limitation, standard, or other condition of the operating permit.

(ii) The change does not affect any applicable requirement of the acid rain program under title IV and is not a modification under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.

(iii) The source provides prompt written notice to the department and the administrator of the United States environmental protection agency, except for changes that qualify as insignificant processes or activities pursuant to section 5d(2).

(j) Provisions to allow changes within a permitted source, pursuant to 40 C.F.R. 70.7(e)(2), that may be made immediately after the source files an application with the department if all of the following criteria are met:

(i) The change does not violate any applicable requirement of this act, the rules promulgated under this act, or the clean air act.

(ii) The change does not significantly affect an existing monitoring, record keeping, or reporting requirement in the operating permit.

(iii) The change does not require or modify a case-by-case determination of an emission limitation or other standard, or a source-specific determination, for temporary sources, of ambient air impacts, or a visibility or increment analysis.

(iv) The change does not seek to establish or modify an emission limitation, standard, or other condition of the operating permit that the source has assumed to avoid an applicable requirement of this act, the rules promulgated under this act, or the clean air act, to which the source would otherwise be subject.

(v) The change is not a modification under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.

(k) Provisions for expeditiously handling administrative changes within a permitted source, pursuant to 40 C.F.R. 70.7(d). These changes are limited to the following:

(i) Correction of a typographical error.

(ii) A change in the name, address, or phone number of any person identified in the permit, or other similar minor administrative change.

(iii) A change that requires more frequent monitoring or reporting by the person owning or operating the source.

(iv) A change in ownership or operational control of the source, if the department determines that no other change in the operating permit is necessary, and if a written agreement containing a specific date for transfer of operating permit responsibility, coverage, and liability between the current and new owners or operators has been submitted to the department.

(v) Incorporation into the operating permit of the requirements of a permit to install issued pursuant to section 5b, if the permit to install has met procedural requirements that are substantially equivalent to the requirements of this section, including the content of the permit, and the provisions for participation by the United States environmental protection agency and other affected states and participation of the public under section 5h.

(l) Provisions for including reasonably anticipated alternate operating scenarios in an operating permit, pursuant to 40 C.F.R. 70.6(a)(9).

(m) Provisions to allow for the trading of emission increases and decreases within a permitted source solely for the purpose of complying with an enforceable emissions cap that is established in the permit pursuant to 40 C.F.R. part 70.4(b)(12)(iii), independent of any otherwise applicable requirements of this act, the rules promulgated under this act, or the clean air act.

(n) A schedule of the dates when submittal of an application for an operating permit is required for the source categories subject to this section and a phased schedule for taking final action on those applications.

(5) Each operating permit issued under this section shall be for a fixed term not to exceed 5 years. A permit applicant shall submit a timely application for renewal of an operating permit at least 6 months, but not more than 18 months, prior to the expiration of the term of the existing operating permit. If a timely and administratively complete application is submitted, but the department has not approved or denied the renewal permit before the expiration of the term of the existing permit, the existing permit shall not expire until the renewal permit is approved or denied.

(6) Each operating permit issued pursuant to this section shall include those enforceable emissions limitations and standards applicable to the source, if any, and other conditions necessary to assure compliance with the applicable requirements of this act, rules promulgated under this act, and the clean air act, a schedule of compliance, and a requirement that the owner or operator of a source submit to the department, at least every 6 months, a report summarizing the results of any required monitoring. Each operating permit issued pursuant to this section shall also include a severability clause to ensure the continued validity of the unchallenged terms and conditions of the operating permit if any portion of a permit is challenged.

(7) The department shall require revision of an operating permit prior to the expiration of the permit consistent with section 5c(4)(g), for any of the following reasons or to do any of the following:

(a) To incorporate new applicable emissions limitations, standards, or rules promulgated under this act or regulations promulgated under the clean air act, issued or promulgated after the issuance of the permit, if 3 or more years remain in the term of the permit. A revision shall occur as expeditiously as practicable, but not later than

18 months after the promulgation of the emission limitation, standard, rule, or regulation. A revision is not required if the effective date of the emission limitation, standard, rule, or regulation is after the expiration date of the permit.

(b) To incorporate new applicable standards and requirements of the acid rain program under title IV into the operating permits of sources affected by that program.

(c) If the department determines that the permit contains a material mistake; that information required by this act, rules promulgated under this act, or the clean air act was omitted; or that an inaccurate statement was made in establishing the emissions limitations, standards, or conditions of the permit.

(d) If the department determines that the permit must be revised to assure compliance with the applicable requirements of this act, rules promulgated under this act, or the clean air act.

(8) At the request of the permit holder, a permit revision under subsection (7) may be treated as a permit renewal if it complies with the applicable requirements for permit renewals of this act, rules promulgated under this act, and the clean air act.

(9) A person who owns or operates a source subject to an operating permit issued pursuant to this section shall promptly report to the department any deviations from the emissions limitations, standards, or conditions of the permit and shall annually certify to the department that the source has been and is in compliance with all emissions limitations, standards, and conditions of the permit, except for those deviations reported to the department, during the reporting period. A responsible official shall sign all reports submitted pursuant to this subsection.

(10) The department shall not approve or otherwise issue any operating permit, for a source required to obtain an operating permit pursuant to section 502(a) of title V of the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a, if the administrator of the United States environmental protection agency objects to issuance of the permit, in a timely manner, pursuant to section 505(b) of title V of the clean air act, chapter 360, 104 Stat. 2643, 42 U.S.C. 7661d.

(11) Each operating permit shall contain a statement that compliance with an operating permit issued in accordance with this section is compliance with subsection (1). In addition, the statement shall provide that compliance with the operating permit is compliance with other applicable requirements of this act, rules promulgated under this act, and the clean air act, as of the date of permit issuance if either of the following requirements is met:

(a) The permit specifically includes the applicable requirement.

(b) The permit includes a determination that any other requirements that are specifically referred to in the determination are not applicable.

(12) An application for an operating permit may include a request that the permit include *reference to specific* requirements of this act, rules promulgated under this act, or the clean air act, which the person owning or operating the source believes are not applicable to the source. The operating permit shall include a determination of applicability for the requirements included in the request.

(13) Subsection (11) does not apply to a change at a source made pursuant to subsection (4)(h), (i), or (j). Subsection (11) does not apply to a change in a source made pursuant to subsection (4)(k), until the change is incorporated into the operating permit.

(14) A person who owns or operates an existing source that is required to obtain an operating permit under this section, a general permit, or a permit to operate authorized under rules promulgated under section 5b(6) may file a petition with the department for review of the denial of his or her application for such a permit, the revision of any emission limitation, standard, or condition, or a proposed revocation of his or her permit. This review shall be conducted pursuant to the contested case and judicial review procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. Any person may appeal the issuance or denial of an operating permit in accordance with section 631 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.631 of the Michigan Compiled Laws. A petition for judicial review is the exclusive means of obtaining judicial review of a permit and shall be filed within 90 days after the final permit action. Such a petition may be filed after that deadline only if it is based solely on grounds arising after the deadline for judicial review and if the appeal does not involve applicable standards and requirements of the acid rain program under title IV. Such a petition shall be filed within 90 days after the new grounds for review arise.

(15) The failure of the department to act on a technically and administratively complete application or renewal application for an operating permit in accordance with a time requirement established pursuant to subsection (3) and rules promulgated under subsection (4)(n) is final permit action solely for the purposes of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department without additional delay on the application or renewal application.

(16) The department may, after notice and opportunity for public hearing, pursuant to the requirements of section 5h, issue a general permit covering numerous similar sources, processes, or process equipment, or a permit that authorizes operation of a source at numerous temporary locations. A general permit or a permit that authorizes operation of a source at numerous temporary locations shall comply with all requirements applicable to operating permits pursuant to this section. A permit that authorizes operation of a source at numerous temporary locations shall

include terms and conditions necessary to assure compliance with all applicable requirements of this act, rules promulgated under this act, and the clean air act, including those necessary to assure compliance with all applicable ambient air standards, applicable emission limits, and applicable increment and visibility requirements pursuant to part C of title I of the clean air act, chapter 360, 91 Stat. 731, 42 U.S.C. 7470 to 7479 and 7491 to 7492, at each authorized location and shall require the owner or operator of the source to notify the department at least 10 days in advance of each change in location. A source covered by a general permit is not relieved from the obligation to file an application for a permit pursuant to subsections (3) and (5).

Sec. 5d. (1) An administratively complete application means an application for an operating permit required in section 5c that is submitted on standard application forms provided by the department and includes all of the following:

(a) Source identifying information, including company name and address, owner's name, and the names, addresses, and telephone numbers of the responsible official and permit contact person.

(b) A description of the source's processes and products using the applicable standard industrial classification codes.

(c) A description of all emissions of air contaminants emitted by the source that are regulated under this act, the rules promulgated under this act, and the clean air act.

(d) A schedule for submission of annual compliance certifications during the permit term, unless more frequent certifications are specified by an underlying applicable requirement.

(e) A certification by a responsible official of the truth, accuracy, and completeness of the application. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete.

(f) For each process, except for any insignificant processes listed by the department pursuant to subsection (2), all of the following:

(i) A description of the process using the standard classification code.

(ii) Citation and description of all applicable requirements, including any applicable test method for determining compliance with each applicable requirement.

(iii) Actual and allowable emission rates in tons per year and in terms that are necessary to establish compliance with all applicable emission limitations and standards, including all calculations used to determine those emission rates. Actual emission information shall be used for verifying the compliance status of the process with all applicable requirements. Actual emission information shall not be used, except at the request of the permit applicant, to establish new emission limitations or standards or to modify existing emission limitations or standards unless such limitation or standard is required to assure compliance with a specific applicable requirement.

(iv) Information on fuels, fuel use, raw materials, production rates, and operating schedules, to the extent it is needed to determine or regulate emissions.

(v) Limitations on source operation affecting emissions or any work practice standards, if applicable.

(vi) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(vii) Identification and description of all emission points, in sufficient detail to establish the basis for fees or to determine applicable requirements.

(viii) Other information required by any applicable requirement.

(ix) A statement of the methods proposed to be used for determining compliance with the applicable requirements under the operating permit, including a description of monitoring, record keeping, and reporting requirements and test methods.

(x) An explanation of any proposed exemptions from otherwise applicable requirements.

(xi) Information necessary to define any alternative operating scenarios which are to be included in the operating permit or to define permit terms and conditions implementing section 5c(4)(l).

(xii) A compliance plan.

(xiii) A schedule of compliance.

(2) The department shall promulgate a list of insignificant processes or activities, which are exempt from all or part of the information requirements of this section. For any insignificant processes or activities that are exempt because of size or production rate, the application shall include a list of such insignificant processes and activities.

(3) As used in section 5c, "technically complete" means for the purposes of an application for an operating permit required by section 5c, all of the information required for an administratively complete application and any other specific information, requested by the department, that may be necessary to implement and enforce all applicable requirements of this act, the rules promulgated under this act, or the clean air act, or to determine the applicability of the requirements. An application is not technically complete if it omits information needed to determine the applicability of

any lawful requirement, to enforce any lawful requirement, or any information necessary to evaluate the amount of the annual air quality fee for the source.

(4) As used in section 5c and this section, "compliance plan" means a description of the compliance status of the source with respect to all applicable requirements for each process as follows:

(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(b) For applicable requirements that will become effective during the permit term, a statement that the source will meet these requirements on a timely basis.

(c) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

Sec. 5e. (1) As used in this section, "section 112" means section 112 of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412.

(2) A new, modified, or existing source, process, or process equipment, for which standards have been promulgated under section 112(d) or for which a control technology determination has been made pursuant to section 112(g) or 112(j) is not subject to the best available control technology for toxics (T-BACT) requirements of rules promulgated under this act for any of the following:

(a) The hazardous air pollutants listed in section 112(b).

(b) Other toxic air contaminants that are volatile organic compounds, if the standard promulgated under section 112(d) or the determination made under section 112(g) or 112(j) controls similar compounds that are also volatile organic compounds.

(c) Other toxic air contaminants that are particulate matter, if the standard promulgated under section 112(d) or the determination made under section 112(g) or 112(j) controls similar compounds that are also particulate matter.

(d) Other toxic air contaminants that are similar to the compounds controlled by the standard promulgated under section 112(d) or controlled by the determination made under section 112(g) or 112(j).

(3) A new, modified, or existing source, process, or process equipment for which standards have been promulgated under section 112(f) is not subject to the health based screening level requirements in rules promulgated under this act for the hazardous air pollutants listed in section 112(b).

Sec. 5f. (1) As used in this section, "malfunction" means any sudden failure of a source, air pollution control equipment, process, or process equipment, to operate in a normal or usual manner. A malfunction exists only for the time reasonably necessary to implement corrective measures. Malfunction does not include failures arising as a result of substandard maintenance that does not conform to industry standards, or periods when the source is being operated carelessly or in a manner that is not consistent with good engineering practice or judgment.

(2) Within 18 months of the effective date of this section, the department shall promulgate general rules, and may promulgate rules that pertain to specific categories of sources, that are consistent with, but are not limited to, the requirements of the clean air act, to establish standards of performance, emission standards, and requirements for monitoring, record keeping, and reporting which will apply during start-up, shutdown, and malfunction of a source, process, or process equipment. The rules shall require that during periods of start-up, shutdown, and malfunction, the operator shall to the extent reasonably possible operate a source, process, or process equipment in a manner consistent with good air pollution control practices for minimizing emissions.

(3) During periods of start-up, shutdown, or malfunction of a source, process, or process equipment, the emission of an air contaminant in excess of a standard or emission limitation, or a violation of any other requirement, established by this act, a rule promulgated under this act, or specified in a permit to install, a permit to operate authorized pursuant to rules promulgated under section 5b(6), or an operating permit under section 5c, is prohibited unless the following applicable requirements and any applicable rules promulgated pursuant to subsection (2) are complied with:

(a) At all times, including periods of start-up, shutdown, and malfunction, owners and operators shall, to the extent practicable, operate a source, process, or process equipment, in a manner consistent with good air pollution control practice for minimizing emissions.

(b) Notice of a malfunction of a source, process, or process equipment that results in excess emissions of an air contaminant shall be provided to the department if the malfunction results in excess emissions that continue for more than 2 hours. Notice by any reasonable means includes but is not limited to oral, telephonic, or electronic notice, and shall be provided as soon as reasonably possible, but not to exceed 2 business days of the discovery of the malfunction. Written notice of malfunction shall be provided within 10 days after the malfunction has been corrected. Written notice shall specify all of the following:

(i) The cause of the malfunction, if known.

(ii) The date, time, location, and duration of the malfunction.

- (iii) The actions taken to correct and prevent the reoccurrence of the malfunction.
- (iv) Actions taken to minimize emissions during the malfunction, if any.
- (v) The type and, where known or where it is reasonably possible to estimate, the quantity of any excess emissions of air contaminants.
- (vi) Contemporaneous operational logs, continuous emission monitoring information where continuous emission monitoring is required by the clean air act, rules promulgated under this act or specified as a condition of a permit issued under this act, or an order entered under this act.
- (c) The malfunctioning source, process, or process equipment shall have been maintained and operated in a manner consistent with the applicable provisions of a malfunction abatement plan approved under this act, if any.
- (d) During start-up or shutdown, the source, process, or process equipment shall be operated in accordance with applicable start-up or shutdown provisions of its installation permit, nonrenewable permit to operate, or operating permit, if any.
- (4) Notwithstanding the provisions of subsection (3), the department may take action under section 14(1) to immediately discontinue and take action to contain an imminent and substantial endangerment to public health, safety, or welfare.
- (5) Notwithstanding the provisions of subsection (3), enforcement action may be taken against a person who violates section 16f(4), (5), or (6).
- (6) Subsections (3) to (5) do not apply upon the effective date of the general rules required under subsection (2) or 36 months after the effective date of this section, whichever is first.

Sec. 5g. In accordance with this act and rules promulgated under this act, the department may, after notice and opportunity for public hearing, deny or revoke a permit issued under this act if any of the following circumstances exist:

- (a) Installation, modification, or operation of the source will violate this act, rules promulgated under this act, or the clean air act, unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order.
- (b) Installation, construction, reconstruction, relocation, alteration, or operation of the source presents or may present an imminent and substantial endangerment to human health, safety, or welfare, or the environment.
- (c) The person applying for the permit makes a false representation or provides false information during the permit review process.
- (d) The source has not been installed, constructed, reconstructed, relocated, altered, or operated in a manner consistent with the application for a permit or as specified in a permit.
- (e) The person owning or operating the source fails to pay an air quality fee assessed under this act.
- (f) The person proposes a major offset source or the owner or operator of a proposed major offset modification that owns or operates another source in the state which has the potential to emit 100 tons or more per year of any air contaminant regulated under the clean air act and that source is in violation of this act, rules promulgated under this act, the clean air act, or a permit or order issued under this act, unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order.

Sec. 5h. (1) The department shall establish and maintain a list of all applications for permits submitted pursuant to sections 5b and 5c of this act. The list shall report the status of each application. The information on the list shall be updated by the department on a monthly basis. The department shall send a copy of the pertinent sections of the list to the chairperson of the county board of commissioners of each county. Any other person may subscribe to this list on a countywide or statewide basis and shall reimburse the department for the costs of copying, handling, and mailing. The department shall make the list available at district offices selected by the department. The department may also develop an electronic data base that includes the capability of making this list available to the public. This list shall include all of the following information:

- (a) The name of the permit applicant.
- (b) The street address, if available, the county, and the municipality or township in which the source is located or proposed to be located.
- (c) The type of application, such as installation, operation, renewal, or general permit.
- (d) The date the permit application was received by the department.
- (e) The date when the permit application is determined to be administratively complete, if applicable.
- (f) A brief description of the source, process, or process equipment covered by the permit application.
- (g) Brief pertinent comments regarding the progress of the permit application, including the dates of public comment periods and public hearings, if applicable.

(2) The department shall establish and maintain a list of all proposed consent order public notices. This information shall be updated by the department on a monthly basis. Any other person may subscribe to this list on a countywide or statewide basis and shall reimburse the department for the costs of copying, handling, and mailing. The department shall make the list available at district offices selected by the department. This list shall include all of the following information:

- (a) The name of the parties to the proposed consent order.
- (b) The street address, if available, and the county, municipality, and township in which the source is located.
- (c) A brief description of the source.
- (d) A brief description of the alleged violation to be resolved by the proposed consent order.
- (e) A brief description of the respondent's position regarding the alleged violation if the respondent requests such inclusion and supplies to the department a brief statement of the respondent's position regarding the alleged violation.

(3) The department shall not issue a permit to install or a nonrenewable permit to operate pursuant to section 5b for a major source or for a major modification under title I of the clean air act, Chapter 360, 77 Stat. 392, 42 Stat. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, or issue, renew, or significantly modify any operating permit issued under section 5c, or enter into a consent order, without providing public notice, including offering an opportunity for public comment and a public hearing on the draft permit or proposed consent order. In addition, the department shall not issue a permit for which there is a known public controversy without providing public notice including an opportunity for public comment and public meeting. For the purposes of an operating permit issued under section 5c, a significant modification does not include any modifications to a permit made pursuant to section 5c(4)(h), (i), (j), or (k). For a general permit issued pursuant to section 5b(4) or section 5c(16), public notice and opportunity for public comment and public hearing shall only be provided before the base general permit is approved, not as individual sources apply for coverage under that general permit. Public notice and an opportunity for public comment and a public hearing as required under this section shall be provided as follows:

(a) Public notice shall be provided by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice, and by other means determined to be necessary by the department to assure adequate notice to the public. Notice shall also be provided to persons on a mailing list, developed by the department, including those persons who request in writing to be on that list, and to any other person who requests in writing to be notified of a permit action involving a specific source.

(b) The notice shall identify the source; the name and address of the responsible official; the mailing address of the department; the activity or activities involved in the proposed permit action or consent order; the emissions change involved in any significant permit modification; the name, address, and telephone number of a representative of the department from whom interested persons may obtain additional information, including copies of the draft permit or proposed consent order, the application, all relevant supporting material, and any other materials available to the department that are relevant to the permit or consent order decision; a brief description of the comment procedures required by this section; and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.

(c) The department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(d) The department shall keep a record of the commenters and the issues raised during the public comment period and public hearing, if held, and these records shall be available to the public.

Sec. 7. (1) The department shall promulgate rules for purposes of:

- (a) Controlling or prohibiting air pollution.
- (b) Complying with the clean air act.
- (c) Controlling any mode of transportation which is capable of causing or contributing to air pollution.
- (d) Reviewing proposed locations of stationary emission sources.
- (e) Reviewing modifications of existing emission sources.
- (f) Prohibiting locations or modifications of emission sources that impair the state's ability to meet federal ambient air standards.
- (g) Establishing suitable emission standards consistent with ambient air quality standards established by the federal government and factors, including, but not limited to, conditions of the terrain, wind velocities and directions, land usage of the region and the anticipated characteristics and quantities of potential air pollution sources. This act does not prohibit the department from denying or revoking a permit to operate a source, process, or process equipment that would adversely affect human health or other conditions important to the life of the community.
- (h) Implementing sections 5b and 5c.

(2) Unless otherwise provided in this act, each rule, permit, or administrative order promulgated or issued under this act prior to the effective date of the amendatory act that added this subsection, shall remain in effect according to its terms unless the rule or order is inconsistent with this act or is revised, amended, or repealed.

Sec. 13. Application for relief from a rule promulgated by the department shall be made by petition to the circuit court for the county of Ingham, or to the county in which the petitioner resides. The petition shall be verified as in a civil action. Each petition shall contain a plain and concise statement of the material facts on which the petitioner relies and shall set forth the rule or part of the rule that the petitioner claims is unreasonable or prejudicial to the petitioner and shall specify the grounds for the claim. The petition may be accompanied by affidavits or other written proof and shall demand the relief to which the petitioner alleges he or she is entitled, in the alternative or otherwise. The petition may be made by 1 or more persons, jointly or severally, who are aggrieved by a rule whether or not the petitioner is or was a party to the proceeding in which the rule was promulgated by the department.

Sec. 15. (1) The provisions of this section, including subsection (2), shall apply to any fugitive dust source at all mining operations, standard industrial classification major groups 10 through 14; manufacturing operations, standard industrial classification major groups 20 through 39; railroad transportation, standard industrial classification major group 40; motor freight transportation and warehousing, standard industrial classification major group 42; electric services, standard industrial classification group 491; sanitary services, standard industrial classification group 495; and steam supply, standard industrial classification group 496, which are located in areas listed in table 36 of R 336.1371 of the Michigan administrative code.

(2) Except as provided in subsection (8), a person responsible for any fugitive dust source regulated under this section shall not cause or allow the emission of fugitive dust from any road, lot, or storage pile, including any material handling activity at a storage pile, that has an opacity greater than 5% as determined by reference test method 9d. Except as otherwise provided in subsection (8) or this section, a person shall not cause or allow the emission of fugitive dust from any other fugitive dust source that has an opacity greater than 20% as determined by test method 9d. The provisions of this subsection shall not apply to storage pile material handling activities when wind speeds are in excess of 25 miles per hour (40.2 kilometers per hour).

(3) In addition to the requirements of subsection (2), and except as provided in subdivisions (e), (f), and (g), a person shall control fugitive dust emissions in a manner that results in compliance with all of the following provisions:

(a) Potential fugitive dust sources shall be maintained and operated so as to comply with all of the following applicable provisions:

(i) All storage piles of materials, where the total uncontrolled emissions of fugitive dust from all such piles at a facility is in excess of 50 tons per year and where such piles are located within a facility with potential particulate emissions from all sources including fugitive dust sources and all other sources exceeding 100 tons per year, shall be protected by a cover or enclosure or sprayed with water or a surfactant solution, or treated by an equivalent method, in accordance with the operating program required by subsection (4).

(ii) All conveyor loading operations to storage piles specified in subparagraph (i) shall utilize spray systems, telescopic chutes, stone ladders, or other equivalent methods in accordance with the operating program required by subsection (4). Batch loading operations to storage piles specified in subparagraph (i) shall utilize spray systems, limited drop heights, enclosures, or other equivalent methods in accordance with the operating program required by subsection (4). Unloading operations from storage piles specified in subparagraph (i) shall utilize rake reclaimers, bucket wheel reclaimers, under-pile conveying, pneumatic conveying with baghouse, water sprays, gravity-feed plow reclaimer, front-end loaders with limited drop heights, or other equivalent methods in accordance with the operating program required by subsection (4).

(iii) All traffic pattern access areas surrounding storage piles specified in subparagraph (i) and all traffic pattern roads and parking facilities shall be paved or treated with water, oils, or chemical dust suppressants. All paved areas, including traffic pattern access areas surrounding storage piles specified in subparagraph (i), shall be cleaned in accordance with the operating program required by subsection (4). All areas treated with water, oils, or chemical dust suppressants shall have the treatment applied in accordance with the operating program required by subsection (4).

(iv) All unloading and transporting operations of materials collected by pollution control equipment shall be enclosed or shall utilize spraying, pelletizing, screw conveying, or other equivalent methods.

(v) Crushers, grinding mills, screening operations, bucket elevators, conveyor transfer points, conveyor bagging operations, storage bins, and fine product truck and railcar loading operations shall be sprayed with water or a surfactant solution, utilize choke-feeding, or be treated by an equivalent method in accordance with an operating program required under subsection (4). This subparagraph shall not apply to high-lines at steel mills.

(b) If particulate collection equipment is operated pursuant to this section, emissions from such equipment shall not exceed 0.03 grains per dry standard cubic foot (0.07 grams per cubic meter).

(c) A person shall not cause or allow the operation of a vehicle for the transporting of bulk materials with a silt content of more than 1% without employing 1 or more of the following control methods:

(i) The use of completely enclosed trucks, tarps, or other covers for bulk materials with a silt content of 20% or more by weight.

(ii) The use of tarps, chemical dust suppressants, or water in sufficient quantity to maintain the surface in a wet condition for bulk materials with a silt content of more than 5% but less than 20%.

(iii) Loading trucks so that no part of the load making contact with any sideboard, side panel, or rear part of the load comes within 6 inches of the top part of the enclosure for bulk materials with a silt content of more than 1% but not more than 5%.

(d) All vehicles for transporting bulk materials off-site shall be maintained in such a way as to prevent leakage or spillage and shall comply with the requirements of section 720 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.720 of the Michigan Compiled Laws, and with R 28.1457 of the Michigan administrative code.

(e) The provisions of subdivisions (c) and (d) shall not apply to vehicles with less than a 2-ton capacity that are used to transport sand, gravel, stones, peat, or topsoil.

(f) The provisions of subdivision (c)(i) and (ii) do not apply to fly ash which has been thoroughly wetted and has the property of forming a stable crust upon drying.

(g) The provisions of subdivision (c) shall not apply to the transportation of iron or steel slag if the vehicles do not leave the facility and the slag has a temperature of 200 degrees fahrenheit or greater.

(4) All fugitive dust sources subject to the provisions of this section shall be operated in compliance with both the provisions of an operating program that shall be prepared by the owner or operator of the source and submitted to the department and with applicable provisions of this section. Such operating program shall be designed to significantly reduce the fugitive dust emissions to the lowest level that a particular source is capable of achieving by the application of control technology that is reasonably available, considering technological and economic feasibility.

(5) The operating program required by subsection (4) is subject to review and approval or disapproval by the department and shall be considered approved if not acted on by the department within 90 days of submittal. All programs approved by the department shall become a part of a legally enforceable order or as part of an approved permit to install or operate. At a minimum, the operating program shall include all of the following:

(a) The name and address of the facility.

(b) The name and address of the owner or operator responsible for implementation of the operating program.

(c) A map or diagram of the facility showing all of the following:

(i) Approximate locations of storage piles.

(ii) Conveyor loading operations.

(iii) All traffic patterns within the facility.

(d) The location of unloading and transporting operations with pollution control equipment.

(e) A detailed description of the best management practices utilized to achieve compliance with this section, including an engineering specification of particulate collection equipment, application systems for water, oil, chemicals, and dust suppressants utilized, and equivalent methods utilized.

(f) A test procedure, including record keeping, for testing all waste or recycled oils used for fugitive dust control for toxic contaminants.

(g) The frequency of application, application rates, and dilution rates if applicable, of dust suppressants by location of materials.

(h) The frequency of cleaning paved traffic pattern roads and parking facilities.

(i) Other information as may be necessary to facilitate the department's review of the operating program.

(6) Except for fugitive dust sources operating programs approved by the department pursuant to R 336.1373 of the Michigan administrative code between April 23, 1985 and May 12, 1987, the owner or operator of a source shall submit the operating program required by subsection (4) to the department by August 12, 1987.

(7) The operating program required by subsection (4) shall be amended by the owner or operator so that the operating program is current and reflects any significant change in the fugitive dust source or fugitive dust emissions. An amendment to an operating program shall be consistent with the requirements of this section and shall be submitted to the department for its review and approval or disapproval.

(8) Upon request by the owner or operator of a fugitive dust source, the department may establish alternate provisions to those specified in this section, if all of the following conditions are met:

(a) The fugitive dust emitting process, operation, or activity is subject to either of the following:

(i) The opacity limits of subsection (2).

(ii) The spray requirements of subsection (3)(a)(i) to (v).

(b) An alternate provision shall not be established by the department unless the department is reasonably convinced of all of the following:

(i) That a fugitive dust emitting process, operation, or activity subject to the alternate provisions is in compliance or on a legally enforceable schedule of compliance with the other rules of the department.

(ii) That compliance with the provisions of this section is not technically or economically reasonable.

(iii) That reasonable measures to reduce fugitive emissions as required by this section have been implemented in accordance with or will be implemented in accordance with a schedule approved by the department.

(9) Any alternate provisions approved by the department pursuant to subsection (8) shall be submitted to the United States environmental protection agency as an amendment to the state implementation plan.

Sec. 19. Notwithstanding any other provision of this act, the department may suspend the enforcement of the whole or any part of any rule as it applies to any person who shows that the enforcement of the rule would be inequitable or unreasonable as to that person, or the department may suspend the enforcement of the rule for any reason considered by it to be sufficient to show that the enforcement of the rule would be an unreasonable hardship upon the person. Upon any suspension of the whole or any part of the rule the department shall grant to the person a variance from that rule. The department shall not suspend enforcement or grant a variance under this section that would violate the clean air act.

Sec. 20. In determining under what conditions and to what extent a variance from a rule or regulation that would not violate the clean air act may be granted, the department shall give due recognition to the progress which the person requesting the variance has made in eliminating or preventing air pollution. The department shall consider the reasonableness of granting a variance conditioned upon the person effecting a partial control of the particular air pollution or a progressive control of the air pollution over a period of time that it considers reasonable under all the circumstances; or the department may prescribe other and different reasonable requirements with which the person receiving the variance shall comply.

Sec. 21. The department shall grant a variance from any rule to, and suspend the enforcement of the rule as it applies to, any person who shows in the case of the person and of the source, process, or process equipment that the person operates that his or her compliance with the rule or regulation, and that the acquisition, installation, operation and maintenance of a source or process, or process equipment required or necessary to accomplish the compliance, would constitute an undue hardship on the person and would be out of proportion to the benefits to be obtained by compliance. A variance shall not be granted under this section if the person applying for the variance is causing air pollution that is injurious to the public health or if the granting of the variance would violate the clean air act. Any variance granted shall not be construed as to relieve the person who receives it from any liability imposed by other law for the maintenance of a nuisance.

Sec. 22. Any variance granted pursuant to sections 19, 20, and 21 shall be granted for a period of time, that does not exceed 1 year, as is specified by the department at the time of granting it, but any variance may be continued from year to year. Any variance granted by the department may be granted on the condition that the person receiving it shall report to the department periodically, as the department specifies, as to the progress which the person has made toward compliance with the rule of the department.

Sec. 23. The department may revoke or modify any order permitting a variance by written order, after a public hearing held upon not less than 10 days' notice.

Sec. 25. This act does not repeal any of the laws relating to air pollution which are not by this act expressly repealed, and is ancillary to and supplements the laws now in force, except as they may be in direct conflict with this act. The final order or determination of the department shall not be used as evidence of presumptive air pollution in any suit filed by any person other than the department.

Sec. 26. (1) Nothing in this act or in any rule that is promulgated pursuant to this act invalidates any existing ordinance or regulation having requirements equal to or greater than the minimum applicable requirements of this act or prevents any political subdivision from adopting similar provisions if their requirements are equal to or greater than the minimum applicable requirements of this act.

(2) When a political subdivision or enforcing official of a political subdivision fails to enforce properly the provisions of the political subdivision's ordinances, laws, or regulations that afford equal protection to the public as provided in this

act, the department, after consultation with the local official or governing body of the political subdivision may take such appropriate action as may be necessary for enforcement of the applicable provisions of this act.

(3) The department shall counsel and advise local units of government on the administration of this act. The department shall cooperate in the enforcement of this act with local officials upon request.

Section 2. Sections 3, 4, 6, and 14a of Act No. 348 of the Public Acts of 1965, being sections 336.13, 336.14, 336.16, and 336.24a of the Michigan Compiled Laws, are repealed.

Section 3. Sections 9, 10, 16, and 17 of Act No. 348 of the Public Acts of 1965, being sections 336.19, 336.20, 336.26, and 336.27 of the Michigan Compiled Laws, are repealed effective March 15, 1994.

Section 4. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

(a) House Bill No. 4865.

(b) Senate Bill No. 804.

This act is ordered to take immediate effect.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved -----

Governor.