Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 813 (as enrolled) **PUBLIC ACT 245 of 1998**
Sponsor: Senator Christopher D. Dingell
Senate Committee: Natural Resources and Environmental Affairs
House Committee: Conservation, Environment and Recreation

Date Completed: 8-14-98

RATIONALE

Under 1990 amendments to the Federal Clean Air Act (CAA), states are required to develop programs to attain national ambient air quality standards and to monitor closely the amounts of air pollutants that are emitted by industrial facilities operating within their borders. In implementing Title V of the CAA, which governs operating permits, states are required to reduce the amounts of "fee-subject air pollutants" that are released into the atmosphere and develop a comprehensive permit program approved by the U.S. Environmental Protection Agency (EPA).

Under the operating permit program, industrial facilities must pay a fee for a permit to emit specific amounts of pollutants, and the fees must be sufficient for a state to fund its permit program. If a state fails to continue implementation of Title V, the state may lose Federal highway funds and have industrial growth restricted in areas that do not continue to attain national air quality standards.

Michigan already has established an operating permit program and air quality fee structure, which were enacted in 1993, that fully implement the Title V requirements. Part 55 of the Natural Resources and Environmental Protection Act (NREPA) requires that the owner or operator of a "fee-subject facility" pay air quality fees between October 1, 1994, and September 30, 1998, requires the fees to be deposited in the Emissions Control Fund, and provides for the expenditure of the Fund for purposes related to implementing the operating permit required by Title V of the CAA. The NREPA also requires the Department of Environmental Quality (DEQ) to do the following: establish an operating permit program for facilities subject to the CAA; require other facilities to obtain a permit to operate from the DEQ; require facilities to obtain a permit to install; and convene a task force to report on the adequacy of fee revenues and appropriateness of program activities. Under the Act, the air quality fees will expire on September 30, 1998. It has been recommended, therefore, that the fee requirement should be extended to September 30, 2000, and revised fees and reports should be implemented to reflect recommendations by the task force.

CONTENT

The bill amended Part 55 (Air Pollution Control) of the Natural Resources and Environmental Protection Act to:

- **Require the owner or operator of each fee-subject facility to pay air quality fees from October 1, 1998, to September 30, 2001.**
- **Increase the facility charges for different categories in the annual air quality fee calculation.**
- **Revise the definition of "fee-subject air pollutant".**
- **Revise the details required on the annual report provided by each State department receiving Emissions Control Fund money.**
- **Eliminate the provisions pertaining to the Federal Clean Air Act implementation account and the permit review and urban airshed study account in the Emissions Control Fund.**
- **Expand the application requirements for delegation, which allows counties to issue State permits.**

("Fee-subject facility" means any major source defined in the Code of Federal Regulations; any source or affected source subject to a standard, limitation, or other requirement under the Clean Air

Act; or any other source designated by the administrator of the EPA to obtain an operating permit.)

Air Quality Fees

Previously under the Act, for the State fiscal year beginning October 1, 1994, and continuing until September 30, 1998, the owner or operator of each fee-subject facility had to pay annual air quality fees. The bill provides for the requirement to take effect on October 1,1998, and continue until September 30, 2001.

The annual fee had to be calculated, and is increased by the bill, as follows:

-- For "category I facilities", the fee was the sum of a $2,500 facility charge and an emissions charge as specified below. The bill increased the facility charge to $3,375.
-- For "category II facilities", the fee was the sum of a $1,000 facility charge and an emissions charge. The bill increased the facility charge to $1,350.
-- For "category III facilities", the fee remains $200.

For "municipal electric generating facilities" subject to category I that emit 18,000 tons or less but more than 600 tons of fee-subject air pollutants, the fee was a $10,000 operating facility charge. The bill provides, instead, that for municipal electric generating facilities subject to category I that emit 18,000 tons or less but more than 450 tons of pollutants, the fee must be an $18,675 operating facility charge. The bill also adds that this annual air quality fee is based on the category I facility charges of $3,375 plus an emissions charge equal to the product of 450 tons of fee-subject air pollutants and $34 per ton of fee-subject air pollutant.

The emissions charge for category I and II facilities equals the product of the actual tons of fee-subject air pollutants emitted and the emission charge rate. The emission charge rate was $25 per ton of fee-subject air pollutants. The bill increased the emission charge rate to $34 per ton of fee-subject air pollutants.

As previously provided, the emissions tonnage must be calculated for the calendar year two years preceding the year of the billing. The actual tons of fee-subject air pollutants emitted are the sum of all fee-subject air pollutants emitted at the fee-subject facility, except that for the purposes of the emissions charge calculation the actual tons charged must not exceed either a) 4,000 tons, or b) 1,000 tons per pollutant if the sum of all fee-subject air pollutants except carbon monoxide emitted at the facility is under 4,000 tons.

The NREPA defines "fee-subject air pollutant" as particulates, sulfur dioxide, volatile organic compounds, nitrogen oxides, ozone, lead, and any pollutant regulated under certain sections of the Clean Air Act. The bill retains this definition but refers to "particulates, expressed as PM-10 pursuant to 1996 MR 11, R 336.1116(k)".

Previously under the NREPA, if the owner or operator of a fee-subject facility wished to challenge its fee, the owner or operator had to submit a written challenge to the DEQ within 30 days of the mailing date of the fee notification. The bill deleted that deadline, and prohibits the DEQ from processing the challenge unless the Department receives it within 45 days of the mailing date of the fee notification.

Annual Report

Under the Act, the director of each State department to which funds are appropriated from the Emissions Control Fund, must prepare and submit to the Governor and the Legislature an annual report that details the activities funded by the Fund for his or her department. The bill requires the annual report to be submitted by March 1 and to detail activities of the previous fiscal year.

The bill retains the requirement that all of the following information be included in the report:

-- The number of full-time equated positions performing air quality enforcement, compliance, and permitting activities, and the number of hours worked on Title V activities in relation to hours worked on other matters.
-- The number of letters of violation sent.
-- The amount of penalties collected from all consent orders and judgments.
-- For each enforcement action that includes payment of a penalty, a description of what corrective actions were required by the action.
-- The number of inspections done on sources required to obtain a permit and the number of inspections of other sources.
-- The number of air pollution complaints received and investigated by the DEQ. (The

bill also requires the number of complaints resolved and not resolved by the DEQ.)

-- The number of contested case hearings and civil actions initiated and completed, and the number of voluntary consent orders, administrative penalty orders, and emergency orders entered or issued, for sources required to obtain a permit.

The bill also requires the following information relating to the permit to install program authorized under the NREPA:

-- The number of applications received by the DEQ.
-- The number of applications for which a final action was taken by the DEQ.
-- The number of permits to install approved that were or were not required to complete public participation before final action.
-- The average number of final permit actions per permit to install reviewer full-time equivalents.
-- The percentage and number of applications that were reviewed for administrative completeness within 10 days of receipt by the DEQ.
-- The percentage and number of applications that were reviewed for technical completeness within 30 days of receipt of an administratively complete application by the DEQ.
-- The percentage and number of applications submitted that were administratively complete.
-- The percentage and number of applications for which a final action was taken by the DEQ within 60 days of receipt of a technically complete application for those not required to complete public participation before final action and within 120 days of receipt for those required to complete public participation.

In addition, the bill requires the following information for the renewable operating permit program: the number of applications received; the number of applications for which a final action was taken by the DEQ, reported as the number of applications approved, denied, and withdrawn; the percentage and number of applications initially processed within the required time; the percentage and number of renewals and modifications processed within the required time; the number of applications reopened by the DEQ; and the number of general permits issued by the DEQ.

The bill eliminated all of the following information, which previously was required in the annual report:

-- The total number of new source review and operating permit applications received by the DEQ, including those received but not processed or issued.
-- A breakdown of the new source review and operating permits issued based on amount of emissions per year as follows: less than one ton; between one and 10 tons; between 10 and 50 tons; and over 50 tons.
-- The total number of new source review and operating permits issued over the course of the year.
-- The total number of such permits issued per permit reviewer.
-- The total number of such permits issued the previous year.
-- The total number of permits at the start of the year that were carried over from preceding years plus the number received by the DEQ in the current year minus the number issued.
-- The total number of permits that were denied.
-- The ratio of the number of permits rejected to the number issued.
-- The average amount of time to take final action on a permit from the time the DEQ first received the application to the time it issued the permit for each tonnage category.
-- A list of State implementation plan development accomplishments.
-- The number of compliance reports and certifications reviewed for sources required to obtain an operating permit.
-- The number of criminal investigations and prosecutions initiated and completed.
-- The amount of criminal and civil fines collected from all administrative and judicial orders and judgments.

Task Force

The Act previously stated that by May 13, 1995, the DEQ had to convene a task force made up of representatives of fee-subject facilities, environmental groups, the general public, and any State department to which Emissions Control Fund money was appropriated. By July 1, 2000, the task force had to provide the Legislature with a report on the adequacy of the fee revenues and appropriateness of program activities, and recommend changes concerning fees and reports, as appropriate, to match fee revenues to program costs.

The bill reinstated this provision but requires the DEQ to convene a task force by August 1, 1999; requires the task force to provide a report by August 1, 2000; and requires the task force also to report on the fee structure relative to all sectors of the regulated industry.

Fee Collection

Under the bill, the Attorney General may bring an action for the collection of air quality fees. Previously, the Attorney General could bring an action for the collection of the fees and any penalty assessed for failure to submit emissions information as required under the NREPA.

Emissions Control Fund

The bill eliminated provisions that required the State Treasurer to establish, within the Emissions Control Fund, a Clean Air Act implementation account and a permit review and urban airshed study account, and required the Department to spend Fund money, upon appropriation, for specific purposes in fiscal years that ended September 30, 1993, and September 30, 1994.

Delegation Application

Under the NREPA, a county in which a city with a population of 750,000 or more is located may apply for a delegation from the DEQ. The delegation allows the county to issue permits and administer and enforce the applicable provisions of Part 55.

Under the bill, the county applying for a delegation must demonstrate that it has adequate and qualified staff to do the following:

-- Monitor ambient air as specified by the DEQ.
-- Process and review applications for installation and operating permits, tax exemptions, and construction waivers.
-- Perform necessary sampling and laboratory analyses.
-- Conduct regular and complete inspections and record reviews of all significant sources of air pollution.
-- Respond to citizen complaints.
-- Notify sources of identified violations of applicable provisions of Part 55, rules, the CAA, and the State implementation plan, and conduct appropriate enforcement, including administrative, civil, and criminal enforcement.
-- Perform dispersion modeling analyses, collect emissions release information, and develop necessary State implementation plan demonstrations.
-- Carry out other activities required by Part 55, rules promulgated under Part 55, the Clean Air Act, and the State implementation plan.

In addition, the county must demonstrate that it has adequate funding to carry out the applicable provisions of and rules promulgated under Part 55, the Clean Air Act, and the State implementation plan; and has performed, as demonstrated by State audit reports, in accordance with the terms of the most recent contract, if any, between the State and county that describes work activities and a program to be carried out by the county.

Further, the county must demonstrate that the county program contains provisions for public notice and participation, and that the county has the capacity to administer the State air quality fee program.

Delegation

Under the bill, the delegation must be in a form of a written contract that describes the activities the county must carry out during the delegation; provides for the program to be consistent with implementation of the State's air program, using State procedures, forms, databases, and other means; and provides for ongoing communication between the county and State to assure consistency.

As previously provided, the delegation must be for a term of two to five years and may be renewed by the DEQ. The bill specifies that the DEQ must deny a renewal application upon a finding that the county no longer meets the prescribed criteria or provisions of the delegation contract. Previously, the DEQ could deny a renewal only if the county was materially in violation of Part 55, rules promulgated under it, the Clean Air Act, the State implementation plan, or provisions of the delegation agreement.

In addition, the bill requires the county to submit a report to the DEQ that documents the county's ability to meet the prescribed criteria and the delegation contract during the past 12 months.

Repealer

The bill repealed a section that required the owner or operator of a major emitting facility to submit emissions information to the Department each year through March 15, 1994 (MCL 324.5519). The bill also repealed a section requiring the owner of a

major emitting facility to pay an emission fee for specific pollutants for the 1992-93 and 1993-94 fiscal years (MCL 324.5520).

MCL 324.5501 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill reestablishes air quality fees that owners of facilities that are major emitters of "fee-subject air pollutants" must pay based on a per-ton amount of pollutants emitted annually into the atmosphere. The revised fees, which will be in effect until September 30, 2001, enable the State to continue to implement an operating permit program and monitor the amounts of air pollutants emitted by approved industrial facilities, as required under the Federal law. Under the bill, the annual air quality fees increase for category I and II facilities and remain the same for category III facilities. The emissions charge rate increases to $34 per ton of fee-subject air pollutants. The fee increase allows the State to continue to collect a presumptive minimum amount of fees as established by the EPA, in order to avoid having to demonstrate the adequacy of a lower level of fees. In addition, increased fees provide an incentive for major polluters to reduce and eventually eliminate the amount of pollutants emitted in the air.

Supporting Argument

The bill implements the recommendations of the task force by requiring additional information in the annual report relating to the permit to install program and the renewable operating permit program. The task force is made up of representatives of fee-subject facilities, environmental groups, the general public, and any State department to which Emissions Control Fund money is appropriated, and must provide the Legislature with a report on the adequacy of the fee revenues, the fee structure, and the appropriateness of program activities, as well as recommend changes concerning fees and reports to match revenues and program costs.

Opposing Argument

Under the CAA, 893 Michigan businesses are required to pay air quality fees to fund the required operating permit program. Instead of imposing a $34-per-ton fee with a 4,000-ton cap, the bill should set a lower per-ton fee without any cap. Since coal-burning utilities are the main beneficiaries of the cap, eliminating the cap in the emissions charge calculations would lower the cost to all other businesses subject to the fee. Evidently, 876 businesses could be paying lower air quality fees on a "per unit of pollution" basis, while the 17 heaviest polluters, which emit 68% of the State's air pollutants from fee-subject stationary sources, would see an increase in air pollution fees. Restructuring the fees could use market-based incentives to decrease emissions and improve air quality across the State.

Response: The previous and current fee structures represent a delicate balancing act that applies to all sources that have obtained an operating permit. The cap ensures that the cost of the program does not disproportionately fall on a handful of companies.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill will maintain a current $8.1 million revenue source to the State, and thereby maintain a $1.6 million local air pollution grant program to counties that is reliant upon that revenue. The bill will also increase revenue to the State by 31%, or approximately $2.6 million.

Previous air emissions fees were scheduled for sunset on September 30, 1998. Both the current FY 1997-98 and the FY 1998-99 Department of Environmental Quality budget rely upon $10.85 million in air emissions fees.

The following table summarizes the fee increases by type of facility and tonnage. The tonnage changes in Senate Bill 813 due to the use of PM-10 in the definition of fee-subject pollutants.

Senate Bill 813	Number of Tons		Amount of Fee		Amount of Revenue		Change	
	Former	S.B. 813	Former	S.B. 813	Former	S.B. 813	Dollar	Percent
Category I								
Facility Fee			2,500	3,375	1,217,500	1,643,625	426,125	35.0%
Tonnage Fee	238,855	231,503	25	34	5,971,375	7,871,102	1,899,727	31.8%
Subtotal					7,188,875	9,514,727	2,325,852	32.4%
Category II								
Facility Fee			1,000	1,350	373,000	503,550	130,550	35.0%
Tonnage Fee	9,257	7,848	25	34	231,425	266,832	35,407	15.3%
Subtotal					604,425	770,382	165,957	27.5%
Category III			200	200	239,000	239,000	0	0.0%
Municipal Electric			10,000	18,675	90,000	168,075	78,075	86.8%
TOTALS					8,122,300	10,692,184	2,569,884	31.6%

Date Source: Department of Environmental Quality, Air Quality Division.

Fiscal Analyst: G. Cutler

A9798\S813EA