

**SENATE BILL NO. 672**

July 10, 1997, Introduced by Senator A. SMITH and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 5522 (MCL 324.5522).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 5522. (1) For the state fiscal year beginning  
2 October 1, 1994, and continuing until September 30, ~~1998~~ 2002,  
3 the owner or operator of each fee-subject facility shall pay air  
4 quality fees as required and calculated under this section. The  
5 department may levy and collect an annual air quality fee from  
6 the owner or operator of each fee-subject facility in this  
7 state. The legislature intends that the fees required under this  
8 section meet the minimum requirements of the clean air act and  
9 that this expressly stated fee system serve as a limitation on  
10 the amount of fees imposed under this part on the owners or  
11 operators of fee-subject facilities in this state.

1 (2) The annual air quality fee shall be calculated for each  
2 fee-subject facility, according to the following procedure:

3 (a) For category I facilities, the annual air quality fee  
4 shall be the sum of a facility charge and an emissions charge as  
5 specified in subdivision ~~(e)~~ (D). The facility charge shall be  
6 ~~-\$2,500.00~~ \$1,250.00.

7 (b) For category II facilities, the annual air quality fee  
8 shall be the sum of a facility charge and an emissions charge as  
9 specified in subdivision ~~(e)~~ (D). The facility charge shall be  
10 ~~-\$1,000.00~~ \$500.00.

11 (c) For category III facilities, the annual air quality fee  
12 shall be ~~-\$200.00~~ \$100.00.

13 ~~(d) For municipal electric generating facilities subject to~~  
14 ~~category I which emit less than 18,000 tons, but more than 600~~  
15 ~~tons of fee-subject air pollutants, the annual air quality fee~~  
16 ~~shall be an operating permit facility charge of \$10,000.00 only.~~

17 (D) ~~(e)~~ The emissions charge for category I and category  
18 II facilities equals the product of the actual tons of  
19 fee-subject air pollutants emitted and the emission charge rate.  
20 A pollutant that qualifies as a fee-subject air pollutant under  
21 more than 1 class shall be charged only once. The charge shall  
22 be calculated as follows:

23 (i) The emissions tonnage shall be calculated for the calen-  
24 dar year 2 years preceding the year of the billing. The actual  
25 tons of fee-subject air pollutants emitted is the sum of all  
26 fee-subject air pollutants emitted at the fee-subject facility.  
27 ~~except that for the purposes of the emissions charge calculation~~

1 ~~the actual tons charged shall not exceed either of the~~  
2 ~~following:~~

3 ~~(A) 4,000 tons.~~

4 ~~(B) 1,000 tons per pollutant, if the sum of all fee-subject~~  
5 ~~air pollutants except carbon monoxide emitted at the fee-subject~~  
6 ~~facility is less than 4,000 tons.~~

7 ~~(ii) The emission charge rate shall be \$25.00~~ \$12.00 per  
8 ton of fee-subject air pollutants.

9 (3) The auditor general shall conduct a biennial audit of  
10 the federally mandated operating permit program required in title  
11 V. The audit shall include the auditor general's recommendation  
12 regarding the sufficiency of the fees required under  
13 subsection (2) to meet the minimum requirements of the clean air  
14 act.

15 (4) After January 1, but before January 15 of each year  
16 beginning in 1995, the department shall notify the owner or oper-  
17 ator of each fee-subject facility of its assessed annual air  
18 quality fee. Payment is due within 90 calendar days of the mail-  
19 ing date of the air quality fee notification. If an assessed fee  
20 is challenged as authorized in subsection (6), payment is due  
21 within 90 calendar days of the mailing date of the air quality  
22 fee notification or within 30 days of receipt of a revised fee or  
23 statement supporting the original fee, whichever is later. The  
24 department shall deposit all fees collected under this section to  
25 the credit of the emissions control fund created in  
26 section 5521.

1 (5) If the owner or operator of a fee-subject facility fails  
2 to submit the amount due within the time period specified in  
3 subsection (4), the department shall assess the owner or operator  
4 a penalty of 5% of the amount of the unpaid fee for each month  
5 that the payment is overdue up to a maximum penalty of 25% of the  
6 total fee owed.

7 (6) If the owner or operator of a fee-subject facility  
8 desires to challenge its assessed fee, the owner or operator  
9 shall submit the challenge in writing to the department within 30  
10 calendar days of the mailing date of the air quality fee notifi-  
11 cation described in subsection (4). A challenge shall identify  
12 the facility and state the grounds upon which the challenge is  
13 based. Within 30 calendar days of receipt of the challenge, the  
14 department shall determine the validity of the challenge and pro-  
15 vide the owner with notification of a revised fee or a statement  
16 setting forth the reason or reasons why the fee was not revised.  
17 Payment of the challenged or revised fee is due within the time  
18 frame described in subsection (4). If the owner or operator of a  
19 facility desires to further challenge its assessed fee, the owner  
20 or operator of the facility has an opportunity for a contested  
21 case hearing as provided for under the administrative procedures  
22 act of 1969, ~~Act No. 306 of the Public Acts of 1969, being~~  
23 ~~sections 24.201 to 24.328 of the Michigan Compiled Laws~~ 1969 PA  
24 306, MCL 24.201 TO 24.328.

25 (7) If requested by the department, by March 15 of each year  
26 beginning in 1995, or within 45 days of a request by the  
27 department, whichever is later, the owner or operator of each

1 fee-subject facility shall submit information regarding the  
2 facility's previous year's emissions to the department. The  
3 information shall be sufficient for the department to calculate  
4 the facility's emissions for that year and meet the requirements  
5 of ~~subpart Q of 40 C.F.R. part 51~~ 40 C.F.R. 51.320 TO 51.327.

6 (8) By July 1 of each year beginning in 1995, the department  
7 shall provide the owner or operator of each fee-subject facility  
8 required to pay an emission charge pursuant to this section with  
9 a copy of the department's calculation of the facility emissions  
10 for the previous year. Within 60 days of this notification, the  
11 owner or operator of the facility may provide corrections to the  
12 department. The department shall make a final determination of  
13 the emissions by December 15 of that year. If the owner or oper-  
14 ator disagrees with the determination of the department, the  
15 owner or operator may request a contested case hearing before the  
16 ~~commission of natural resources~~ DIRECTOR OF THE DEPARTMENT OF  
17 ENVIRONMENTAL QUALITY as provided for under the administrative  
18 procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969~~  
19 1969 PA 306, MCL 24.201 TO 24.328.

20 (9) For each state department to which funds are appropri-  
21 ated from the emissions control fund, the director of that state  
22 department shall prepare and submit to the governor and the leg-  
23 islature an annual report that details the activities funded by  
24 the emissions control fund for his or her department. This  
25 report shall include, at a minimum, all of the following as it  
26 relates to each particular department:

1 (a) The number of full-time equated positions performing air  
2 quality enforcement, compliance, or permitting activities and the  
3 number of hours worked on title V activities in relation to hours  
4 worked on other matters.

5 (b) The total number of new source review and operating  
6 permit applications received by the department, including those  
7 received but not processed or issued.

8 (c) A breakdown of the new source review and operating per-  
9 mits issued based on amount of emissions as follows:

10 (i) Less than 1 ton per year.

11 (ii) Between 1 and 10 tons per year.

12 (iii) Between 10 and 50 tons per year.

13 (iv) Greater than 50 tons per year.

14 (d) The total number of new source review and operating per-  
15 mits issued over the course of the year.

16 (e) The total number of new source review and operating per-  
17 mits issued per permit reviewer.

18 (f) The total number of new source review and operating per-  
19 mits carried over from the previous year.

20 (g) The total number of new source review and operating per-  
21 mits at the start of the year that are carried over from preced-  
22 ing years plus the number received by the department in the cur-  
23 rent year minus the number issued.

24 (h) The total number of new source review and operating per-  
25 mits denied.

26 (i) The ratio of the number of new source review and  
27 operating permits rejected to the number issued.

1 (j) The number of letters of violation sent.

2 (k) The amount of penalties collected from all consent  
3 orders and judgments.

4 (l) For each enforcement action that includes payment of a  
5 penalty, a description of what corrective actions were required  
6 by the enforcement action.

7 (m) The average amount of time to take final action on a new  
8 source review or operating permit from the time the department  
9 first receives the application to when it issues the permit for  
10 each category listed in subdivision (c).

11 (n) A list of state implementation plan development  
12 accomplishments.

13 (o) The number of inspections done on sources required to  
14 obtain a permit under section 5506 and the number of inspections  
15 of other sources.

16 (p) The number of complaints received by the department for  
17 sources required to obtain a permit under section 5506, the  
18 number of complaints investigated, and the number of complaints  
19 not investigated.

20 (q) The number of compliance reports and certifications  
21 reviewed for sources required to obtain a permit under section  
22 5506.

23 (r) The number of contested case hearings, civil actions,  
24 and criminal investigations and prosecutions initiated and com-  
25 pleted, and the number of voluntary consent orders, administra-  
26 tive penalty orders, and emergency orders entered or issued, for  
27 sources required to obtain a permit under section 5506.

1 (s) The amount of criminal fines and civil fines collected  
2 from all administrative and judicial orders and judgments.

3 (10) By May 13, 1995, the department shall convene a task  
4 force made up of representatives of fee-subject facilities, envi-  
5 ronmental groups, the general public, and any state department to  
6 which funds are appropriated from the emissions control fund. By  
7 November 13, 1995, the task force shall consult with the auditor  
8 general and submit to the legislature an interim report on the  
9 same information required in the report due on July 1, 2000. Not  
10 later than July 1, 2000, the task force shall provide to the leg-  
11 islature a final report on the adequacy of the fee revenues and  
12 appropriateness of program activities and shall recommend changes  
13 to this section, as appropriate, to match fee revenues to program  
14 costs.

15 (11) The attorney general may bring an action for the col-  
16 lection of the fees imposed under this section and any penalty  
17 assessed under section 5519.