

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 5839 (as reported without amendment)

Sponsor: Representative Patricia Birkholtz

House Committee: Conservation and Outdoor Recreation

Senate Committee: Natural Resources and Environmental Affairs

CONTENT

The bill would amend Part 55 (Air Pollution Control) of the Natural Resources and Environmental Protection Act to include in the definition of "emergency", for purposes of an affirmative defense, events causing a source to exceed an emission limitation in a permit issued under Section 5505 (a permit to install or modify a process or process equipment, or a nonrenewable permit to operate), or any rule promulgated under Part 55.

Under Part 55, "emergency" means a situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, war, strike, riot, catastrophe, or other conditions as to which negligence on the part of the person was not the proximate cause, that requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation contained in an operating permit issued under Section 5506 (a Title V renewable operating permit), due to unavoidable increases in emissions attributable to the emergency.

An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation contained in an Title V renewable operating permit if the emergency is demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that establishes the following: an emergency occurred and that the permit holder can identify the cause of the emergency; the source was properly operated at the time of the emergency; the permit holder took reasonable steps to minimize levels of emissions that exceeded emission standards during the emergency; and the permit holder submitted notice of the emergency (containing a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken) to the Department of Environmental Quality within two working days after the emission limitation was exceeded due to the emergency. In any enforcement proceeding, the permit holder seeking to establish the occurrence of an emergency has the burden of proof. The bill would apply these affirmative defense provisions to noncompliance with an emission limitation in a permit to install or permit to operate issued under Section 5505, or any rule promulgated under Part 55.

MCL 324.5527

Legislative Analyst: N. Nagata

FISCAL IMPACT

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

Date Completed: 11-28-00

Fiscal Analyst: P. Graham