

May 24, 2000, Introduced by Reps. Birkholz, Rick Johnson, Tabor, Jellema, Byl and DeVuyst and referred to the Committee on Conservation and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending section 5527 (MCL 324.5527).

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

1       Sec. 5527. (1) As used in this section, "emergency" means a  
2 situation arising from sudden and reasonably unforeseeable events  
3 beyond the control of the source, including acts of God, war,  
4 strike, riot, catastrophe, or other condition as to which negli-  
5 gence on the part of the person was not the proximate cause,  
6 ~~which~~ THAT requires immediate corrective action to restore  
7 normal operation, and that causes the source to exceed a  
8 technology-based emission limitation contained in an operating  
9 permit issued pursuant to section 5506, A PERMIT TO INSTALL OR  
10 PERMIT TO OPERATE ISSUED PURSUANT TO SECTION 5505, OR ANY RULE  
11 PROMULGATED UNDER THIS PART due to unavoidable increases in

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1 emissions attributable to the ~~emergency~~ SITUATION. An  
2 emergency does not include acts of noncompliance caused by  
3 improperly designed equipment, lack of preventative maintenance,  
4 careless or improper operation, or operator error.

5 (2) An emergency constitutes an affirmative defense to an  
6 action brought for noncompliance with a technology-based emission  
7 limitation contained in an operating permit issued pursuant to  
8 section 5506, A PERMIT TO INSTALL OR PERMIT TO OPERATE ISSUED  
9 PURSUANT TO SECTION 5505, OR ANY RULE PROMULGATED UNDER THIS PART  
10 if the ~~affirmative defense of~~ emergency is demonstrated through  
11 properly signed, contemporaneous operating logs, or other rele-  
12 vant evidence that ~~establish~~ ESTABLISHES all of the following:

13 (a) An emergency occurred and that the ~~permit holder~~  
14 DEFENDANT can identify the cause or causes of the emergency.

15 (b) The ~~permitted~~ source was properly operated at the time  
16 of the emergency.

17 (c) During the emergency the ~~permit holder~~ DEFENDANT took  
18 all reasonable steps to minimize levels of emissions that  
19 exceeded the emission standards, or other requirements in the  
20 permit.

21 (d) The ~~permit holder~~ DEFENDANT submitted notice of the  
22 emergency to the department within 2 working days ~~of the time~~  
23 ~~when an~~ AFTER THE emission limitation was exceeded due to the  
24 emergency. This notice must contain a description of the emer-  
25 gency, any steps taken to mitigate emissions, and corrective  
26 actions taken.

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1       (3) In any enforcement proceeding, the ~~permit holder~~  
2 DEFENDANT seeking to establish the occurrence of an emergency has  
3 the burden of proof.