

**SUBSTITUTE FOR
HOUSE BILL NO. 5094**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 5522 (MCL 324.5522), as amended by 2001 PA 49.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5522. (1) For the state fiscal year beginning October 1,
2 2001, and continuing until September 30, ~~2005~~ **2007**, the owner or
3 operator of each fee-subject facility shall pay air quality fees as
4 required and calculated under this section. The department may levy
5 and collect an annual air quality fee from the owner or operator of
6 each fee-subject facility in this state. The legislature intends
7 that the fees required under this section meet the minimum
8 requirements of the clean air act and that this expressly stated
9 fee system serve as a limitation on the amount of fees imposed

1 under this part on the owners or operators of fee-subject
2 facilities in this state.

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

5 (a) For category I facilities, the annual air quality fee
6 shall be the sum of a facility charge and an emissions charge as
7 specified in subdivision (e). The facility charge shall be
8 \$4,485.00.

9 (b) For category II facilities, the annual air quality fee
10 shall be the sum of a facility charge and an emissions charge as
11 specified in subdivision (e). The facility charge shall be
12 \$1,795.00.

13 (c) For category III facilities, the annual air quality fee
14 shall be \$250.00.

15 (d) For municipal electric generating facilities that are
16 category I facilities and that emit more than 450 tons but less
17 than 18,000 tons of fee-subject air pollutants, the annual air
18 quality fee shall be the following amount, based on the number of
19 tons of fee-subject air pollutants emitted:

20 (i) More than 450 tons but less than 4,000 tons, \$24,816.00.

21 (ii) At least 4,000 tons but not more than 5,300 tons,
22 \$24,816.00 plus \$45.25 per ton of fee-subject air pollutant in
23 excess of 4,000 tons.

24 (iii) More than 5,300 tons but not more than 12,000 tons,
25 \$85,045.00.

26 (iv) More than 12,000 tons but less than 18,000 tons,
27 \$159,459.00.

(e) The emissions charge for category I and category II facilities shall equal the emission charge rate of \$45.25, multiplied by the actual tons of fee-subject air pollutants emitted. A pollutant that qualifies as a fee-subject air pollutant under more than 1 class shall be charged only once. The actual tons of fee-subject air pollutants emitted is considered to be the sum of all fee-subject air pollutants emitted at the fee-subject facility for the calendar year 2 years preceding the year of billing, but not more than the lesser of the following:

(i) 4,000 tons.

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

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

(4) After January 1, but before January 15 of each year beginning in 1995, the department shall notify the owner or operator of each fee-subject facility of its assessed annual air quality fee. Payment is due within 90 calendar days of the mailing date of the air quality fee notification. If an assessed fee is challenged under subsection (6), payment is due within 90 calendar days of the mailing date of the air quality fee notification or within 30 days of receipt of a revised fee or statement supporting the original fee, whichever is later. The department shall deposit

1 all fees collected under this section to the credit of the fund.

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

8 (6) If the owner or operator of a fee-subject facility desires
9 to challenge its assessed fee, the owner or operator shall submit
10 the challenge in writing to the department. The department shall
11 not process the challenge unless it is received by the department
12 within 45 calendar days of the mailing date of the air quality fee
13 notification described in subsection (4). A challenge shall
14 identify the facility and state the grounds upon which the
15 challenge is based. Within 30 calendar days of receipt of the
16 challenge, the department shall determine the validity of the
17 challenge and provide the owner with notification of a revised fee
18 or a statement setting forth the reason or reasons why the fee was
19 not revised. Payment of the challenged or revised fee is due within
20 the time frame described in subsection (4). If the owner or
21 operator of a facility desires to further challenge its assessed
22 fee, the owner or operator of the facility has an opportunity for a
23 contested case hearing as provided for under the administrative
24 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

25 (7) If requested by the department, by March 15 of each year,
26 or within 45 days of a request by the department, whichever is
27 later, the owner or operator of each fee-subject facility shall

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

6 (8) By July 1 of each year, the department shall provide the
 7 owner or operator of each fee-subject facility required to pay an
 8 emission charge pursuant to this section with a copy of the
 9 department's calculation of the facility emissions for the previous
 10 year. Within 60 days of this notification, the owner or operator of
 11 the facility may provide corrections to the department. The
 12 department shall make a final determination of the emissions by
 13 December 15 of that year. If the owner or operator disagrees with
 14 the determination of the department, the owner or operator may
 15 request a contested case hearing as provided for under the
 16 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
 17 24.328.

18 (9) By March 1 annually, the department shall prepare and
 19 submit to the governor, the legislature, the ~~chair~~ **CHAIRPERSONS**
 20 of the standing ~~committee~~ **COMMITTEES** of the senate and house of
 21 representatives with primary responsibility for environmental
 22 protection issues related to air quality, and the ~~chairs~~
 23 **CHAIRPERSONS** of the subcommittees of the senate and house
 24 appropriations committees with primary responsibility for
 25 appropriations to the department a report that details the
 26 activities of the previous fiscal year funded by the fund for the
 27 department. This report shall include, at a minimum, all of the

1 following as it relates to the department:

2 (a) The number of full-time equated positions performing title
3 V and non-title V air quality enforcement, compliance, or
4 permitting activities.

5 (b) All of the following information related to the permit to
6 install program authorized under section 5505:

7 (i) The number of permit to install applications received by
8 the department.

9 (ii) The number of permit to install applications for which a
10 final action was taken by the department. The number of final
11 actions should be reported as the number of applications approved,
12 the number of applications denied, and the number of applications
13 withdrawn by the applicant.

14 (iii) The number of permits to install approved that were
15 required to complete public participation under section 5511(3)
16 before final action and the number of permits to install approved
17 that were not required to complete public participation under
18 section 5511(3) prior to final action.

19 (iv) The average number of final permit actions per permit to
20 install reviewer full-time equivalent position.

21 (v) The percentage and number of permit to install
22 applications which were reviewed for administrative completeness
23 within 10 days of receipt by the department.

24 (vi) The percentage and number of permit to install
25 applications which were reviewed for technical completeness within
26 30 days of receipt of an administratively complete application by
27 the department.

1 (vii) The percentage and number of permit to install
2 applications submitted to the department that were administratively
3 complete as received.

4 (viii) The percentage and number of permit to install
5 applications for which a final action was taken by the department
6 within 60 days of receipt of a technically complete application for
7 those not required to complete public participation under section
8 5511(3) prior to final action, or within 120 days of receipt of a
9 technically complete application for those which are required to
10 complete public participation under section 5511(3) prior to final
11 action.

12 (c) All of the following information for the renewable
13 operating permit program authorized under section 5506:

14 (i) The number of renewable operating permit applications
15 received by the department.

16 (ii) The number of renewable operating permit applications for
17 which a final action was taken by the department. The number of
18 final actions should be reported as the number of applications
19 approved, the number of applications denied, and the number of
20 applications withdrawn by the applicant.

21 (iii) The percentage and number of permit applications initially
22 processed within the required time.

23 (iv) The percentage and number of permit renewals and
24 modifications processed within the required time.

25 (v) The number of permit applications reopened by the
26 department.

27 (vi) The number of general permits issued by the department.

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

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

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

7 (g) The number of inspections done on sources required to
8 obtain a permit under section 5506 and the number of inspections of
9 other sources.

10 (h) The number of air pollution complaints received,
11 investigated, not resolved, and resolved by the department.

12 (i) The number of contested case hearings and civil actions
13 initiated and completed, and the number of voluntary consent
14 orders, administrative penalty orders, and emergency orders entered
15 or issued, for sources required to obtain a permit under section
16 5506.

17 (j) The amount of revenue in the fund at the end of the fiscal
18 year.

19 (10) The report under subsection (9) shall also include the
20 amount of revenue for programs under this part received during the
21 prior fiscal year from fees, from federal funds, and from general
22 fund appropriations. Each of these amounts shall be expressed as a
23 dollar amount and as a percent of the total annual cost of programs
24 under this part.

25 (11) The attorney general may bring an action for the
26 collection of the fees imposed under this section.

27 (12) This section does not apply if the administrator of the

1 United States environmental protection agency determines that the
2 department is not adequately administering or enforcing the
3 renewable operating permit program and the administrator
4 promulgates and administers a renewable operating permit program
5 for this state.