

HOUSE BILL No. 5508

December 13, 2005, Introduced by Reps. Pavlov, Kahn, LaJoy, Nitz, Huizenga, Gaffney, Kathleen Law, Espinoza and Miller and referred to the Committee on Natural Resources, Great Lakes, Land Use, and Environment.

A bill to amend 1984 PA 44, entitled
"Motor fuels quality act,"
by amending the title and sections 2, 3, 5, 9b, 9d, 9g, 9h, 9i, 9j, 10b, 10c, and 10d (MCL 290.642, 290.643, 290.645, 290.649b, 290.649d, 290.649g, 290.649h, 290.649i, 290.649j, 290.650b, 290.650c, and 290.650d), the title and section 2 as amended and sections 9b, 9d, 9g, 9h, 9j, and 10c as added by 1993 PA 236, sections 3, 5, and 10b as amended by 2002 PA 13, section 9i as amended by 2004 PA 278, and section 10d as added by 1993 PA 231, and by adding sections 9k and 9l; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

1

1 An act to provide purity and quality standards for motor
2 fuels; to regulate the transfer, sale, dispensing, or offering
3 motor fuels for sale; to provide for an inspection and testing
4 program; to provide for the powers and duties of certain state
5 agencies; **TO PRESCRIBE CERTAIN POWERS OF THE GOVERNOR;** to provide
6 for the licensing of certain persons engaged in the transfer, sale,
7 dispensing, or offering of motor fuels for sale; to regulate stage
8 I ~~and stage II~~ vapor-recovery systems at certain facilities; to
9 provide for fees; **TO MAKE APPROPRIATIONS;** and to provide remedies
10 and prescribe **FINES AND** penalties.

11 Sec. 2. As used in this act:

12 (a) "Additive" means any substance in gasoline other than
13 gasoline but does not include approved blending components, other
14 than lead, sodium, and phosphate components, introduced at
15 refineries or terminals as octane or product quality enhancers in
16 quantities of less than 1% of volume.

17 (b) "American society for testing and materials" means an
18 international nonprofit scientific and educational society devoted
19 to the promotion of knowledge of the materials of engineering and
20 the standardization of specification and methods of testing.

21 (c) "Antiknock index" or "AKI" means an index number arrived
22 at by adding the motor octane number and the research octane
23 number, then dividing by 2.

24 (d) "Blender" means a person who as an individual or through
25 his or her agent adds an oxygenate to a gasoline.

26 (e) "Bulk purchaser-end user" means a person who is an
27 ultimate consumer of gasoline and receives delivery of gasoline

1 into a storage tank of at least 550-gallon capacity substantially
2 under his or her control.

3 (f) "CARB" means the California air resources board.

4 (g) "Delivery vessel" means a tank truck, tank equipped
5 trailer, or a similar vessel used for the delivery of gasoline to a
6 dispensing facility.

7 (h) "Department" means the department of agriculture.

8 (i) "Director" means the director of the department of
9 agriculture or his or her authorized representative.

10 (j) "Dispensing facility" means a site used for ~~vehicle~~
11 gasoline refueling. ~~that is located in an area of this state that~~
12 ~~has been designated as ozone nonattainment and classified as~~
13 ~~moderate, serious, severe, or extreme by the E.P.A. pursuant to 40~~
14 ~~C.F.R. section 81.323, November 6, 1991. Dispensing facility does~~
15 ~~not include a facility used exclusively for the refueling of~~
16 ~~aircraft, watercraft, or vehicles that are designed for~~
17 ~~agricultural purposes and used exclusively in agricultural~~
18 ~~operations.~~

19 (k) "Dispensing unit" means a device designed for the delivery
20 of gasoline in which 1 nozzle equates to 1 dispensing unit.

21 (l) "Distributor" means a person who purchases, transports, or
22 stores or causes the transportation or storage of gasoline at any
23 point between a gasoline refinery and a retail outlet or bulk
24 purchaser-end user facility.

25 (m) "E.P.A." means the United States environmental protection
26 agency.

27 (n) "Gasoline" means any fuel sold in this state that is

1 suitable for use in spark-ignition internal combustion engines, and
2 commonly or commercially known or sold as gasoline.

3 (o) "Leak" means liquid or vapor loss from the gasoline
4 dispensing system or stage I ~~or stage II~~ vapor-recovery system as
5 determined by visual inspection or functional testing.

6 (p) "Modification" means any change, removal, or addition,
7 other than an identical replacement, of any component contained
8 within a stage I ~~or stage II~~ vapor-recovery system. The resultant
9 modification must constitute an approved vapor-recovery system.

10 (q) "Motor octane number" or "MON" means a knock
11 characteristic of gasoline determined by use of standard procedures
12 on a motor engine.

13 (r) "Operator" means a person who owns, leases, operates,
14 manages, supervises, or controls, directly or indirectly, a
15 gasoline-dispensing facility.

16 (s) "Oxygenate" means an oxygen-containing, ashless, organic
17 compound, such as alcohol or ether, that may be used as fuel or
18 fuel supplement.

19 (t) "Person" means an individual, sole proprietorship,
20 partnership, corporation, association, or other legal entity.

21 (u) "Refiner" means a person who owns, leases, operates,
22 controls, or supervises a refinery.

23 (v) "Refinery" means a plant at which gasoline is produced.

24 (w) "Research octane number" or "RON" means a knock
25 characteristic of gasoline determined by use of standard procedures
26 on a research engine.

27 (x) "Retail dealer" means a person who owns, leases, operates,

1 controls, or supervises a retail outlet.

2 (y) "Retail outlet" means an establishment at which gasoline
3 is sold or offered for sale to the public.

4 (z) "Rule" means a rule promulgated pursuant to the
5 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
6 ~~Acts of 1969, being sections 24.201 to 24.328 of the Michigan~~
7 ~~Compiled Laws 1969 PA 306, MCL 24.201 TO 24.328.~~

8 (aa) "Stage I vapor-recovery system" means a vapor tight
9 collection system that is approved by the department and is
10 designed to capture the gasoline vapors displaced during delivery
11 into a stationary storage tank and to return not less than 90% of
12 the displaced vapors to the delivery vessel.

13 ~~—— (bb) "Stage II vapor recovery system" means a gasoline-~~
14 ~~dispensing system approved by the department that prevents 95% or~~
15 ~~more of the volatile organic compounds from being emitted during~~
16 ~~gasoline refueling.~~

17 Sec. 3. (1) The director shall establish standards pursuant to
18 this act to ensure the purity and quality of gasoline sold or
19 offered for sale in this state.

20 (2) The director shall establish standards for the amount and
21 type of additives allowed to be included in gasoline.

22 (3) The director shall establish standards for the grading of
23 gasoline, including, but not limited to, subregular with a minimum
24 85 AKI, regular with a minimum 87 AKI and a minimum 82 MON,
25 midgrade 88 with a minimum 88 AKI and a minimum 82 MON, midgrade 89
26 with a minimum 89 AKI and a minimum 83 MON, premium with a minimum
27 90 AKI, premium 91 with a minimum 91 AKI, premium 92 with a minimum

1 92 AKI, premium 93 with a minimum 93 AKI, and premium 94 with a
2 minimum 94 AKI.

3 (4) The director shall establish standards for Reid vapor
4 pressure as specified by the American society for testing and
5 materials, except as otherwise required to conform to federal or
6 state law. ~~The~~ **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN**
7 **SECTION 10D, THE** director shall establish the Reid vapor pressure
8 as 9.0 pounds per square inch (psi) for retail outlets during the
9 period beginning June 1 through September 15 of each year, except
10 for dispensing facilities **IN COUNTIES** where the director ~~shall~~
11 ~~establish~~ **ESTABLISHES** the Reid vapor pressure as **7.0 PSI OR** 7.8
12 psi in the year ~~1996~~ **2006** and thereafter. As used in this
13 subsection and section 10d, "Reid vapor pressure" means the vapor
14 pressure of gasoline or gasoline oxygenate blend as determined by
15 ASTM test method D323, standard test method for vapor pressure of
16 petroleum products (Reid method) or test method D4953, standard
17 test method for vapor pressure of gasoline and gasoline oxygenate
18 blends (dry method).

19 (5) In establishing additive and grading standards the
20 director shall adopt the latest standards for gasoline established
21 by the American society for testing and materials and shall adopt
22 the latest standards for gasoline established by federal law or
23 regulation. The standards established by the director shall not
24 prohibit a gasoline blend that is permitted by a valid waiver
25 granted by the United States environmental protection agency
26 pursuant to the fuel or fuel additive waiver in section 211(f)(4)
27 of part A of title II of the clean air act, chapter 360, 81 Stat.

1 502, 42 ~~U.S.C.~~ **USC** 7545, and the ethanol waiver of 1.0 psi in
2 section 211(h)(4) of part A of title II of the clean air act,
3 chapter 360, 81 Stat. 502, 42 ~~U.S.C.~~ **USC** 7545, if the gasoline
4 blend meets all of the conditions set forth in the waiver.

5 Beginning June 1, 2003, the director shall not permit the use of
6 the additive methyl tertiary butyl ether (MTBE) in this state. ~~The~~
7 ~~director, in consultation with the department of environmental~~
8 ~~quality, shall determine if the additive is likely to cause harmful~~
9 ~~effects on the environment or public health within the state. By~~
10 ~~June 1, 2002, the director, in consultation with the director of~~
11 ~~the department of environmental quality, shall review the status of~~
12 ~~the use of MTBE in this state. The review shall include the~~
13 ~~following:~~

14 ~~—— (a) The amount of the additive methyl tertiary butyl ether~~
15 ~~(MTBE) currently in use in gasoline in this state.~~

16 ~~—— (b) An estimate of the amount of MTBE that is imported in~~
17 ~~gasoline transported into this state from other states or~~
18 ~~countries.~~

19 ~~—— (c) Recommendations as to whether the June 1, 2003 prohibition~~
20 ~~can be achieved and, if not, determine a more feasible date.~~

21 ~~—— (d) Any other information considered appropriate.~~

22 (6) Standards established pursuant to this section shall be by
23 rules promulgated pursuant to the administrative procedures act of
24 1969, 1969 PA 306, MCL 24.201 to 24.328.

25 Sec. 5. (1) Except as provided by federal law or regulation,
26 in the manufacture of gasoline at any refinery in this state, a
27 refiner shall not manufacture gasoline at a refinery in this state

1 unless the gasoline meets the requirements in ~~section~~ **SECTIONS 3**
2 **AND 10D**. Except as provided by federal law or regulation, a blender
3 shall not blend gasoline unless the finished blend meets the
4 requirements in ~~section~~ **SECTIONS 3 AND 10D**.

5 (2) Except as provided by federal law or regulation, a
6 distributor shall not sell or transfer to any distributor, retail
7 dealer, or bulk purchaser-end user any gasoline unless that
8 gasoline meets the requirements in ~~section~~ **SECTIONS 3 AND 10D**.

9 (3) A carrier or an employee or agent of a carrier, whether
10 operating under contract or tariff, shall not cause gasoline
11 tendered to the carrier for shipment or transfer to another
12 carrier, distributor, or retail dealer to fail to comply, at the
13 time of delivery, with the requirements in ~~section~~ **SECTIONS 3 AND**
14 **10D**.

15 (4) A person shall not knowingly sell, dispense, or offer for
16 sale gasoline unless that gasoline meets the requirements in
17 ~~section~~ **SECTIONS 3 AND 10D**.

18 (5) A refiner or distributor shall not transfer, sell,
19 dispense, or offer gasoline for sale in this state to a distributor
20 unless the refiner or distributor indicates on each bill, invoice,
21 or other instrument evidencing a delivery of gasoline, the name of
22 the wholesale distributor who received delivery of the gasoline.

23 (6) A distributor or refiner shall not transfer, sell,
24 dispense, or offer gasoline for sale in this state to a retail
25 dealer unless the distributor indicates on each bill, invoice, or
26 other instrument evidencing a delivery of gasoline, the name and
27 license number issued pursuant to this act, of the retail dealer

1 who received delivery of the gasoline.

2 (7) A bill, invoice, or other instrument evidencing a delivery
3 of gasoline issued by a refiner or distributor for deliveries of
4 gasoline to purchasers who are not required to hold a license
5 issued pursuant to the motor fuel tax act, 2000 PA 403, MCL
6 207.1001 to 207.1170, or this act shall clearly indicate the name
7 and address and other information necessary to identify the
8 purchaser of the gasoline.

9 (8) A bill, invoice, or other instrument evidencing a delivery
10 of gasoline required by subsection (5), (6), or (7) shall include a
11 guarantee that the gasoline delivered meets the requirements in
12 ~~section~~ **SECTIONS 3 AND 10D** and shall indicate the concentration
13 range of alcohol in the gasoline, except for alcohols or ethers
14 that have a molecular weight greater than ethanol and are not mixed
15 with methanol or ethanol, or both, and shall indicate the possible
16 presence, without regard to concentration range, of any alcohols or
17 ethers that have a molecular weight greater than ethanol and are
18 not mixed with methanol or ethanol, or both.

19 (9) A refiner, distributor, bulk purchaser-end user, or retail
20 dealer shall not transfer, sell, dispense, or offer gasoline for
21 sale unless that gasoline is visibly free of undissolved water,
22 sediments, and other suspended matter and is clear and bright at an
23 ambient temperature or 70 degrees Fahrenheit, whichever is greater.

24 (10) A person who violates this section or rules promulgated
25 under this section is liable for a civil fine not to exceed
26 \$10,000.00 for each day of the continuance of the violation. A
27 civil fine ordered pursuant to this section shall be submitted to

1 the state treasurer for deposit in the gasoline inspection and
2 testing fund created by section 8.

3 Sec. 9b. (1) Except as otherwise provided for in this section,
4 ~~the following dispensing facilities are exempt from the~~
5 ~~requirements of sections 9a to 9f, 9i, and 9j:~~

6 ~~—— (a) A~~ A dispensing facility that never dispenses 10,000
7 gallons (37,850 liters) or more of gasoline per month on average in
8 any 12-month period, beginning with the 12 months preceding the
9 effective date of this section ~~or the period from November 15,~~
10 ~~1990 to November 15, 1992~~ **IS EXEMPT FROM THE REQUIREMENTS OF**
11 **SECTIONS 9A TO 9D, 9I, AND 9J.** If the dispensing facility is
12 inactive for any period during the 12-month averaging period, the
13 average shall be calculated based upon the months of actual
14 operation. The exemption described in this ~~subdivision~~ **SUBSECTION**
15 does not apply to a dispensing facility that dispenses 10,000 or
16 more gallons of gasoline per month on average in any 12-month
17 period and such a facility is subject to sections 9a to 9f, 9i, and
18 9j and continues to be subject to these sections even if the
19 facility's gasoline throughput later falls below the exemption
20 threshold.

21 ~~—— (b) A dispensing facility owned by an independent small~~
22 ~~business marketer of gasoline that has sales of less than 50,000~~
23 ~~gallons per month on an average in any 12-month period, beginning~~
24 ~~with the effective date of this section, and has 7 or less~~
25 ~~dispensing units is exempt only from the requirements of this act~~
26 ~~pertaining to the stage II vapor recovery system. For the purposes~~
27 ~~of this subdivision, an independent small business marketer of~~

~~gasoline is a person engaged in the marketing of gasoline who, without the exemption provided for in this subdivision, would be required to pay for procurement and installation of vapor recovery equipment under this act but does not include a person who is any of the following:~~

~~—— (i) A refiner.~~

~~—— (ii) A person who controls, is controlled by, or is under common control with, a refiner.~~

~~—— (iii) A person who is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner, unless the sole affiliation is by means of a supply contract or an agreement or contract strictly applying to the use as a trademark, trade name, service mark, or other identifying symbol or name owned by the refiner or any such person.~~

~~—— (iv) A person who receives less than 50% of his or her annual income from refining or marketing gasoline.~~

~~(2) A person who claims an exemption under subsection (1)(b) shall provide to the director articles of incorporation, lease agreements, supply contracts, or other adequate documentation to support the person's eligibility for the exemption. For the purpose of subsection (1)(b), "refiner" does not include a refiner whose total refinery capacity, including the refinery capacity of any person who controls, is controlled by, or is under common control with the refiner, does not exceed 65,000 barrels per day. For purposes of this subsection and subsection (1)(b), "control" of a corporation means ownership of more than 50% of its stock.~~

1 (2) ~~—(3)—~~ A dispensing facility that claims or intends to
2 claim exempt status under subsection ~~—(1)(a)—~~ (1) and which has
3 2,000 or more gallons stationary gasoline storage capacity
4 beginning in 1994 shall submit an annual report to the department
5 by March 1 of each year for gasoline dispensed during the preceding
6 year. These throughput records shall contain the quantity of
7 gasoline dispensed at the facility during each month of operation
8 for the preceding calendar year and shall list any period of time
9 the facility was not operational during the preceding calendar
10 year. The director shall review and verify the accuracy of the
11 documents before making final determination on eligibility for
12 exemption.

13 ~~—— (4) A gasoline dispensing facility exempt under subsection~~
14 ~~(1)(b) shall maintain records of the gasoline dispensed that will~~
15 ~~allow the gasoline throughput for each calendar month to be~~
16 ~~continuously determined. These records shall be maintained for 3~~
17 ~~years and shall be submitted to the director within 30 days after a~~
18 ~~request.~~

19 (3) ~~—(5)—~~ If a dispensing facility's gasoline throughput for
20 any calendar month ever exceeds the applicability threshold, the
21 operator shall notify the department within 30 days.

22 Sec. 9d. (1) ~~An operator shall not transfer, permit the~~
23 ~~transfer of, or provide equipment for the transfer of gasoline from~~
24 ~~a stationary storage tank at a dispensing facility into a motor~~
25 ~~vehicle fuel tank unless an approved stage II vapor recovery system~~
26 ~~has been installed and is properly used during the transfer. The~~
27 ~~system shall use coaxial hoses at the dispensers, and shall not~~

~~contain any components, such as remote vapor check valves in balance-type systems that would significantly impede the performance of the functional tests required in section 9f.~~

~~—— (2) The operator of a dispensing facility shall demonstrate proper stage II vapor-recovery system function by the vapor-recovery system compliance tests as required in section 9f.~~

~~—— (3) The operator shall maintain the stage I and stage II vapor-recovery systems in proper operating condition as specified by the manufacturer and free of defects that could impair the effectiveness of the system. Any component identified as defective, but which does not substantially impair the effectiveness of the system, may remain in operation but shall be repaired or replaced within 15 days after identification. Upon identification of any substantial defect, the operator shall immediately tag "out-of-order" all dispensing equipment for which stage II vapor recovery has been impaired. Tagged equipment shall be rendered inoperable and the tag or tags shall not be removed until the defective equipment has been repaired, replaced, or adjusted, as necessary.~~

~~(2) —(4) The stage I and stage II vapor-recovery systems and gasoline-dispensing equipment shall be maintained to have no leaks.~~

~~(3) —(5) The operator shall conduct equipment inspections at least weekly to determine if the stage II I vapor-recovery system is operating in accordance with this act and rules promulgated under this act. The inspection shall include all of the following:~~

~~(a) A visual inspection of motor vehicle refueling to ensure that the flow shutoff mechanisms are working properly.~~

1 (b) An inspection of all boots, hoses, facecones, and
2 faceplates for tears or rips.

3 (c) A visual inspection of all dispensing equipment for any
4 gasoline leaks.

5 (d) An inspection of all gasoline delivery nozzles for
6 tightness, bends, and crimps that may impede vapor recovery.

7 ~~—— (6) A notice of the benefits and explanation of operation of a~~
8 ~~stage II vapor recovery system shall be conspicuously posted in a~~
9 ~~manner specified by the department in accordance with section~~
10 ~~9h(1)(d).-~~

11 (4) ~~—(7)—~~ A person shall not repair, modify, or permit the
12 repair or modification of the stage I ~~or stage II~~ vapor-recovery
13 system or its components so that they are different from their
14 approved configuration; or tamper with, or permit tampering with,
15 the system in a manner that would impair the operation or
16 effectiveness of the system.

17 ~~—— (8) The operator shall recertify the function of the stage II~~
18 ~~vapor recovery system at least every 5 years or upon major system~~
19 ~~replacement or modification, whichever comes first. Recertification~~
20 ~~requires a leak test and all other functional tests required by the~~
21 ~~department.~~

22 ~~—— (9) The operator shall ensure that at least 1 employee of the~~
23 ~~dispensing facility possesses a valid training certificate on the~~
24 ~~operation and maintenance of the stage II vapor recovery system and~~
25 ~~on the vapor recovery program and its requirements, as specified in~~
26 ~~section 9e. If the dispensing facility employee who completed the~~
27 ~~training course leaves the employment of the dispensing facility,~~

~~at least 1 other employee of the dispensing facility shall successfully complete a training course within 90 days after the departure of the previously trained employee. If a dispensing facility changes the type of stage II vapor recovery system used by the facility, new training or retraining of an employee under this subsection shall be completed before the start up of the new vapor recovery system.~~

Sec. 9g. (1) An operator shall maintain accurate records of all of the following at the dispensing facility location:

(a) All current licenses and permits required to operate the dispensing facility.

~~(b) Current proof of attendance and completion of the training specified in section 9d(9).~~

(B) ~~(c)~~ The location, including the contact person's name, address, and telephone number, of the records required under this act which are not maintained at the dispensing facility location.

(2) An operator shall maintain accurate **STAGE I VAPOR-RECOVERY OR GASOLINE-DISPENSING EQUIPMENT MAINTENANCE** records ~~of both of the following~~ **ON FORMS APPROVED BY THE DEPARTMENT** for 3 years. ~~—~~

~~(a) Installation and compliance testing results required under section 9f.~~

~~(b) Maintenance records on forms approved by the department.~~

(3) The records required by subsection (2) shall be maintained for 1 year at the dispensing facility location. After this time these records may be maintained at another business location.

(4) Records required under this act and maintained at the dispensing facility location shall be made available to the

1 director upon request during normal business hours. If records
2 required under this section are not maintained at the dispensing
3 facility location, the records shall be provided to the director
4 within 72 hours of a request.

5 Sec. 9h. (1) To implement this section and sections 9a to 9g,
6 the director shall do all of the following:

7 (a) Develop and conduct training for department inspectors to
8 provide knowledge and proficiency on ~~all~~ **STAGE I** vapor-recovery
9 program requirements and procedures.

10 (b) Prepare information on the purposes and benefits of **STAGE**
11 **I** vapor-recovery controls and distribute this information to
12 regulated facilities.

13 ~~—— (c) Prepare for the general public information on the benefits~~
14 ~~and purpose of the stage II vapor-recovery program and the proper~~
15 ~~use of the equipment.~~

16 ~~—— (d) The director shall design a uniform means of providing the~~
17 ~~notice required by section 9d(6). The notice shall be designed in~~
18 ~~such a manner that the consumer can readily understand the benefits~~
19 ~~and operation of a stage II vapor-recovery system.~~

20 **(C)** ~~—(e)—~~ Conduct a minimum of 1 compliance inspection per
21 year per dispensing facility, with mandatory reinspection of
22 dispensing facilities that are found to be in violation of this act
23 or rules promulgated under this act. A compliance inspection
24 consists of the inspection of the records required in section 9g ~~—~~
25 ~~inspection of facility equipment as required in section 9e,~~ and
26 functional testing of the equipment.

27 **(D)** ~~—(f)—~~ Monitor the compliance of the regulated facilities

1 with this act through data collection, including applications and
2 required documents.

3 (E) ~~-(g)-~~ Investigate complaints and initiate and conduct
4 other investigations on possible violations of this act.

5 (2) If the director finds a defect in a stage I ~~or stage II~~
6 vapor-recovery system, the director shall reject or condemn and
7 mark the equipment as "rejected" or "condemned". Equipment that is
8 rejected or condemned and ordered corrected or disposed of shall
9 remain under the control of the director until suitable repair or
10 disposition has been made under this section. The operator of the
11 rejected or condemned equipment shall cause it to be made correct
12 within the specified time period authorized by the director, or may
13 dispose of the equipment in a manner specified by the director.
14 Equipment that has been rejected or condemned and ordered corrected
15 or disposed of may be confiscated and may be destroyed by the
16 director if not corrected as required by, or if disposed of
17 contrary to the requirements of, this section.

18 (3) If necessary for the enforcement of this act or rules
19 promulgated under this act, the director may do all of the
20 following:

21 (a) Issue stop-use orders, hold orders, or removal orders for
22 stage I ~~or stage II~~ vapor-recovery and gasoline-dispensing
23 equipment. A person shall not use, remove from the premises
24 specified, or fail to remove from the premises specified any stage
25 I ~~or stage II~~ vapor-recovery or gasoline-dispensing equipment
26 contrary to any order issued pursuant to this section.

27 (b) Seize for use as evidence without formal warrant, any

1 incorrect or unapproved stage I ~~or stage II~~ vapor-recovery system
2 or dispensing equipment found to be used or exposed for use in
3 violation of this act or rules promulgated under this act.

4 (4) With respect to enforcement of this act, the director has
5 the power of a peace officer.

6 (5) The director may petition a court of competent
7 jurisdiction for a temporary restraining order or permanent
8 injunction restraining a person from violating this act or a rule
9 promulgated under this act.

10 Sec. 9i. (1) A dispensing facility **IN THE COUNTY OF WAYNE,**
11 **OAKLAND, MACOMB, WASHTENAW, LIVINGSTON, MONROE, OR ST. CLAIR**
12 constructed after November 15, 1990 shall obtain a dispensing
13 permit. The fee for a dispensing permit is \$25.00 for each year or
14 portion of a year.

15 (2) Before a dispensing permit is issued, a dispensing
16 facility shall install an approved stage I ~~and, if required, stage~~
17 ~~II~~ vapor-recovery system and, in addition to the fee for the
18 dispensing permit, shall pay a registration fee for each dispensing
19 unit located at the dispensing facility. A permit shall not be
20 issued or renewed until all fees and administrative fines issued
21 under section 10a are paid. A hearing shall not be required before
22 the refusal to issue or renew a permit under this subsection.

23 (3) A dispensing permit expires annually on November 30 unless
24 renewed before December 1 of each year or unless suspended, denied,
25 or revoked by the department. Application for a dispensing permit
26 shall be made on a form furnished by the department. The completed
27 form shall contain the information requested by the department and

1 shall be accompanied by the fees specified.

2 (4) The director may suspend, deny, or revoke a dispensing
3 permit issued pursuant to this act for failure to pay the fee
4 required by subsection (1) or (2) or for failure to comply with the
5 requirements of sections 9a to 10c.

6 (5) A fee shall be charged to the operator of stage I ~~and~~
7 ~~stage II~~ vapor-recovery or gasoline-dispensing equipment for its
8 inspection if any of the following occur:

9 (a) The inspection is a reinspection of equipment that has
10 already been tested and found to contain a substantial defect. ~~as~~
11 ~~defined under section 9c.~~

12 (b) The inspection is performed at the request of the
13 operator.

14 (6) The department shall establish the fees and expenses for
15 special services, including the fee for an operator requested
16 inspection or reinspection, for registrations, for training
17 courses, and for accreditation of a trainer, to provide that each
18 fee is sufficient to cover the cost of an operator requested
19 inspection, reinspection, registration, training, or trainer
20 accreditation, respectively, and that the aggregate of all fees
21 collected is sufficient to pay for all salaries and other expenses
22 connected with the activity. The department shall review and adjust
23 the fees at the end of each year and have all fees approved by the
24 director before they are adopted. Fees collected under this section
25 shall be deposited in the gasoline inspection and testing fund and
26 reserved for conducting the vapor-recovery program.

27 (7) Subject to subsection (2) and beginning on the effective

1 date of the amendatory act that added this subsection, the
2 department shall issue an initial or renewal permit not later than
3 120 days after the applicant files a completed application. If the
4 application is considered incomplete by the department, the
5 department shall notify the applicant in writing or make
6 notification electronically available within 40 days after receipt
7 of the incomplete application, describing the deficiency and
8 requesting the additional information. The 120-day period is tolled
9 upon notification by the department of a deficiency until the date
10 all of the information requested during the 40-day period is
11 received by the department. The determination of the completeness
12 of an application does not operate as an approval of the
13 application for the permit and does not confer eligibility of an
14 applicant determined otherwise ineligible for issuance of a permit.
15 Requests for new or additional information by the department that
16 fall outside the initial 40-day period do not toll the 120-day
17 period.

18 (8) If the department does not issue or deny a permit within
19 120 days after the receipt of a completed application, the
20 department shall return the permit fee and shall reduce the permit
21 fee for the applicant's next renewal application, if any, by 15%.
22 The failure to issue a permit within the time required under this
23 subsection does not allow the department to otherwise delay the
24 processing of the application, and that application, upon
25 completion, shall be placed in sequence with other completed
26 applications received at that same time. The department shall not
27 discriminate against an applicant in the processing of an

1 application based on the fact that the application fee was refunded
2 or discounted under this subsection.

3 (9) Beginning October 1, 2005, the director of the department
4 shall submit a report by December 1 of each year to the standing
5 committees and appropriations subcommittees of the senate and house
6 of representatives concerned with motor fuel quality issues. The
7 director shall include all of the following information in the
8 report concerning the preceding fiscal year:

9 (a) The number of initial and renewal applications the
10 department received and completed within the 120-day time period
11 described in subsection (7).

12 (b) The number of applications denied.

13 (c) The number of applications not issued within the 120-day
14 period and the amount of money returned to permittees under
15 subsection (8).

16 (10) As used in this section, "completed application" means an
17 application complete on its face and submitted with any applicable
18 permitting fees as well as any other information, records,
19 approval, security, or similar item required by law or rule from a
20 local unit of government, a federal agency, or a private entity but
21 not from another department or agency of the state of Michigan.

22 Sec. 9j. (1) A person shall not deliver gasoline or permit the
23 delivery of gasoline to a dispensing facility that lacks a stage I
24 vapor-recovery system.

25 (2) Prior to delivery of gasoline to a dispensing facility, a
26 delivery vessel shall be certified by the department of ~~natural~~
27 ~~resources~~ **ENVIRONMENTAL QUALITY** as vapor tight by meeting the

1 requirements of R 336.1627 of the Michigan Administrative Code.

2 (3) A person shall not deliver gasoline or permit the delivery
3 of gasoline to a dispensing facility unless the stage I vapor-
4 recovery system is employed during delivery and the dispensing
5 facility storage tank is equipped with a permanent submerged fill
6 pipe.

7 (4) A stage I vapor-recovery system shall include a properly
8 functioning interlocking system or procedure that ensures that the
9 vapor-tight collection line is connected before any gasoline is
10 loaded, or shall include an equivalent system approved by the
11 department.

12 (5) A stage I vapor-recovery system shall have a poppetted
13 drybreak on the vapor return or an equivalent system approved by
14 the department.

15 (6) All open vent pipes for a stage I ~~or stage II~~ vapor-
16 recovery system that are on stationary tanks at dispensing
17 facilities shall be equipped with pressure-vacuum relief valves in
18 a system approved by the department.

19 (7) A dispensing facility regulated under this act is not
20 subject to R 336.1606 or R 336.1703, or both, of the Michigan
21 Administrative Code. This subsection does not apply to a delivery
22 vessel which shall continue to be subject to the rules listed in
23 this subsection.

24 **SEC. 9K. IF THE GOVERNOR DECLARES AN EMERGENCY UNDER THE**
25 **EMERGENCY MANAGEMENT ACT, 1976 PA 390, MCL 30.401 TO 30.421, OR**
26 **1982 PA 191, MCL 10.81 TO 10.89, THE GOVERNOR MAY EXERCISE HIS OR**
27 **HER DISCRETION TO GRANT A TEMPORARY VARIANCE SUSPENDING THE LOW**

1 VAPOR PRESSURE FUEL PROVISIONS OF THIS ACT OR RULES PROMULGATED
2 UNDER THIS ACT IF THE GOVERNOR CONCLUDES IT IS NECESSARY TO AVOID
3 DISRUPTIONS IN FUEL SUPPLY. FUEL MANUFACTURED, SOLD, DISTRIBUTED,
4 OFFERED FOR SALE OR DISTRIBUTION, DISPENSED, OFFERED FOR SUPPLY,
5 STORED, OR TRANSPORTED UNDER THE VARIANCE SHALL BE DEEMED COMPLIANT
6 WITH THIS ACT. THE FINE DESCRIBED IN SECTION 9/ DOES NOT APPLY TO A
7 VARIANCE DESCRIBED IN THIS SECTION.

8 SEC. 9/. (1) A GASOLINE REFINER, DISTRIBUTOR, OR TERMINAL MAY
9 PETITION THE DEPARTMENT FOR A TEMPORARY VARIANCE FROM THE REID
10 VAPOR PRESSURE STANDARDS ESTABLISHED BY THE DIRECTOR. IN ORDER TO
11 RECEIVE A VARIANCE, THE REFINER, DISTRIBUTOR, OR TERMINAL SHALL
12 DEMONSTRATE THAT FUEL NECESSARY TO MEET THE CURRENT STANDARD CANNOT
13 BE SUPPLIED AND THAT THE REFINER, DISTRIBUTOR, OR TERMINAL HAS
14 TAKEN AND WILL CONTINUE TO TAKE ALL REASONABLE STEPS TO MINIMIZE
15 THE REID VAPOR PRESSURE OF FUEL DURING THE PERIOD THE VARIANCE IS
16 IN EFFECT. IF THE DEPARTMENT FINDS THAT THE REASON FUEL THAT WOULD
17 ALLOW THE REFINER, DISTRIBUTOR, OR TERMINAL TO MEET THE STANDARD IS
18 NOT AVAILABLE IS BEYOND THE CONTROL OF THE REFINER, DISTRIBUTOR, OR
19 TERMINAL AND THAT COMPLIANCE WITH THE REID VAPOR PRESSURE STANDARD
20 WOULD RESULT IN FUEL SHORTAGES THAT CANNOT OTHERWISE BE MADE UP,
21 THE DEPARTMENT MAY GRANT THE VARIANCE. THE VARIANCE SHALL BE
22 GRANTED ONLY FOR THE MINIMUM PERIOD NECESSARY AND IN NO EVENT SHALL
23 THE DEPARTMENT GRANT A VARIANCE FOR LONGER THAN 20 DAYS. THE
24 ALLOWABLE REID VAPOR PRESSURE UNDER THE VARIANCE SHALL BE THE
25 MINIMUM THE DEPARTMENT CONSIDERS NECESSARY AND IN NO EVENT SHALL
26 ALLOW THE REFINER, DISTRIBUTOR, OR TERMINAL TO OPERATE WITH A REID
27 VAPOR PRESSURE OF GREATER THAN 9.0 PSI.

1 (2) A FINE OF 10 CENTS PER GALLON OF FUEL SOLD OR RELEASED FOR
2 SALE DURING THE VARIANCE PERIOD SHALL BE COLLECTED BY THE
3 DEPARTMENT FOR EVERY VARIANCE GRANTED. AFTER 2006, THE AMOUNT OF
4 THE FINE SHALL BE THE AMOUNT CHARGED IN 2006 ANNUALLY ADJUSTED BY
5 THE SAME PERCENTAGE INCREASE OR DECREASE AS THE INCREASE OR
6 DECREASE IN THE DETROIT CONSUMER PRICE INDEX. THE DEPARTMENT SHALL
7 COLLECT THE FINES ON FORMS GENERATED BY THE DEPARTMENT AND SHALL
8 ESTABLISH A PAYMENT SCHEDULE FOR PAYMENT OF FINES. FINES COLLECTED
9 UNDER THIS SECTION SHALL BE DEPOSITED IN THE AIR QUALITY MITIGATION
10 FUND AND SHALL BE APPROPRIATED ANNUALLY BY THE LEGISLATURE FOR AIR
11 QUALITY MITIGATION PROJECTS IN THE GEOGRAPHIC AREA OF THE REFINER,
12 DISTRIBUTOR, OR TERMINAL.

13 Sec. 10b. (1) A person who individually, or by the action of
14 his or her agent or employee, or as the agent or employee of
15 another, performs any of the following is guilty of a misdemeanor
16 punishable by imprisonment for not more than 90 days — or a fine
17 of not less than \$1,000.00 or more than \$2,000.00, or both:

18 (a) Renders less effective or inoperable any part of a stage I
19 ~~or stage II~~ vapor-recovery system.

20 (b) Makes a false statement, representation, or certification
21 on an application, report, plan, label, or other document that is
22 required to be maintained under this act or rules promulgated under
23 this act.

24 (c) Fails to disclose to the department any knowledge or
25 information relating to or observation of any modification of a
26 stage I ~~or stage II~~ vapor-recovery system which makes the system
27 less effective or inoperable, or falsification of records required

1 to be maintained under this act or rules promulgated under this
2 act.

3 (d) Removes a tag, seal, or mark placed on a dispensing device
4 by the director.

5 (e) Violates this act or a rule promulgated under this act for
6 which a specific penalty is not prescribed.

7 (2) A person who individually, or by the action of his or her
8 agent or employee, or as the agent or employee of another, performs
9 any of the following acts is guilty of a misdemeanor punishable by
10 imprisonment for not more than 90 days — or a fine of not less
11 than \$2,000.00 or more than \$10,000.00, or both:

12 (a) Violates a prohibited act listed in this section within 24
13 months after another violation of this section that results in a
14 conviction.

15 (b) Impersonates in any way the director or any department
16 inspector.

17 (3) A person who individually, or by the action of his or her
18 agent or employee, or as the agent or employee of another, performs
19 any of the following acts is guilty of a felony punishable by
20 imprisonment for not more than 2 years — or a fine of not less
21 than \$10,000.00 or more than \$15,000.00, or both:

22 (a) Intentionally commits a prohibited act under this section.

23 (b) Violates a prohibited act listed in this section within 24
24 months after 2 previous violations of this section that result in
25 convictions.

26 (4) If a violation of this section results in a conviction,
27 the court shall assess against the defendant the costs of the

1 department's investigation, and these costs shall be paid to the
2 state treasury and deposited in the gasoline inspection and testing
3 fund to be used for the enforcement of this act.

4 Sec. 10c. ~~—(1) The director may suspend the requirements of~~
5 ~~sections 9a through 9g, 9i, and 9j for any area of the state that~~
6 ~~is formally redesignated by the E.P.A. as an attainment area for~~
7 ~~ozone in accordance with the requirements of the E.P.A. and section~~
8 ~~107(d)(3)(D) of part A of title I of the clean air act, chapter~~
9 ~~360, 84 Stat. 1678, 42 U.S.C. 7407, if the redesignation by the~~
10 ~~E.P.A. identifies the stage II vapor control program as unnecessary~~
11 ~~to maintain the national ambient air quality standards for ozone in~~
12 ~~the affected area. However, the director retains the authority to~~
13 ~~implement the stage II vapor control program as a contingency~~
14 ~~measure in any such formally redesignated area consistent with the~~
15 ~~redesignation request as approved by the E.P.A. and the~~
16 ~~requirements of the clean air act.~~

17 ~~—— (2) Any area of the state that is formally redesignated by the~~
18 ~~E.P.A. as an attainment area for ozone in accordance with the~~
19 ~~requirements of the E.P.A. and section 107(d)(3)(D) of part A of~~
20 ~~title I of the clean air act, chapter 360, 84 Stat. 1678, 42 U.S.C.~~
21 ~~7407, and has demonstrated maintenance of the standards without the~~
22 ~~stage I vapor control program is exempt from the requirements of~~
23 ~~sections 9a to 9f, 9i, and 9j. However, the~~ **THE** ~~director retains~~
24 ~~the authority to implement the stage I vapor control program~~ ~~as a~~
25 ~~contingency measure in any such formally redesignated area~~
26 ~~consistent with the redesignation request as approved by the E.P.A.~~
27 ~~and the requirements of the clean air act~~ **IN AREAS WHERE IT IS**

1 DETERMINED NECESSARY TO ATTAIN OR MAINTAIN NATURAL AMBIENT AIR
2 QUALITY STANDARDS.

3 ~~—— (3) The director shall suspend the requirements of this act~~
4 ~~pertaining to the stage II vapor control program contained in~~
5 ~~sections 9a to 9g and section 9i when the E.P.A. promulgates final~~
6 ~~onboard vehicle vapor control rules pursuant to section 202(a)(6)~~
7 ~~of part A of title II of the clean air act, chapter 360, 79 Stat.~~
8 ~~992, 42 U.S.C. 7521. However, the director retains the authority to~~
9 ~~implement the stage II vapor control program as a contingency~~
10 ~~measure in the maintenance plan for an area formally redesignated~~
11 ~~by the E.P.A. as an attainment area for ozone if an actual~~
12 ~~violation of the ozone standard is observed in that area. In~~
13 ~~addition, the director may only implement the contingency measure~~
14 ~~regarding the stage II vapor control program in 1 or more of the~~
15 ~~following counties:~~

- 16 ~~—— (a) Macomb county.~~
17 ~~—— (b) Oakland county.~~
18 ~~—— (c) Washtenaw county.~~
19 ~~—— (d) Wayne county.~~
20 ~~—— (e) Kent county.~~
21 ~~—— (f) Muskegon county.~~
22 ~~—— (g) Ottawa county.~~

23 ~~—— (4) Except as otherwise provided in subsection (3), for all of~~
24 ~~the counties listed in subsection (3), if the ozone nonattainment~~
25 ~~area is redesignated by the E.P.A. as an attainment area, the~~
26 ~~director shall not implement the stage II vapor control program in~~
27 ~~that area as provided for in section 9a to 9g and 9i.~~

1 Sec. 10d. ~~Any area of the state that is formally redesignated~~
2 ~~by the E.P.A. as an attainment area for ozone in accordance with~~
3 ~~the requirements of the E.P.A. and Section 107(d)(3)(D) of Part A~~
4 ~~of title I of the clean air act, chapter 360, 84 Stat. 1678, 42~~
5 ~~U.S.C. 7407, and has demonstrated maintenance of the standards~~
6 ~~without the Reid vapor pressure requirement of 7.8 psi for~~
7 ~~dispensing facilities during the period beginning June 1 through~~
8 ~~September 15 of each year is exempt from that requirement of~~
9 ~~sections 9a to 9g, 9i, and 9j. However, the~~ BEGINNING JUNE 1
10 THROUGH SEPTEMBER 15 OF 2007 AND FOR THAT PERIOD OF TIME EACH
11 SUBSEQUENT YEAR, THE REID VAPOR PRESSURE STANDARD SHALL BE 7.0 PSI
12 FOR DISPENSING FACILITIES IN WAYNE, OAKLAND, MACOMB, WASHTENAW,
13 LIVINGSTON, MONROE, ST. CLAIR, AND LENAWEE COUNTIES. THE director
14 retains the authority to implement the Reid vapor pressure 7.0 PSI
15 REQUIREMENT OR 7.8 psi requirement ~~for dispensing facilities as a~~
16 ~~contingency measure in any such formally redesignated area~~
17 ~~consistent with the redesignation request as approved by the E.P.A.~~
18 ~~and the requirements of the clean air act~~ IN AREAS WHERE IT IS
19 DETERMINED NECESSARY TO ATTAIN OR MAINTAIN NATIONAL AMBIENT AIR
20 QUALITY STANDARDS. IF AN AREA OF THE STATE THAT IS REQUIRED TO USE
21 A LOW VAPOR PRESSURE FUEL OF 7.8 PSI OR 7.0 PSI HAS BEEN
22 REDESIGNATED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
23 AS IN ATTAINMENT OF NATIONAL AMBIENT AIR QUALITY STANDARDS, AND THE
24 MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY HAS DEMONSTRATED THAT
25 MAINTENANCE OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS CAN BE
26 ACHIEVED WITHOUT THE USE OF LOW VAPOR PRESSURE FUEL, THE DIRECTOR
27 MAY, WITH THE APPROVAL OF THE UNITED STATES ENVIRONMENTAL

1 PROTECTION AGENCY, TERMINATE THE LOW VAPOR PRESSURE FUEL
2 REQUIREMENT FOR THAT AREA.

3 Enacting section 1. Sections 9c, 9e, and 9f of the motor fuels
4 quality act, 1984 PA 44, MCL 290.649c, 290.649e, and 290.649f, are
5 repealed.