

Act No. 169
Public Acts of 2005
Approved by the Governor
October 10, 2005
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October 10, 2005
EFFECTIVE DATE: October 10, 2005

**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005**

Introduced by Reps. Kolb, Alma Smith, Tobocman and Byrum

ENROLLED HOUSE BILL No. 5094

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending section 5522 (MCL 324.5522), as amended by 2001 PA 49.

The People of the State of Michigan enact:

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

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

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

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

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

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

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

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

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

(iv) More than 12,000 tons but less than 18,000 tons, \$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 all fees collected under this section to the credit of the fund.

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

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

(7) If requested by the department, by March 15 of each year, or within 45 days of a request by the department, whichever is later, the owner or operator of each fee-subject facility shall submit information regarding the facility's previous year's emissions to the department. The information shall be sufficient for the department to calculate the facility's emissions for that year and meet the requirements of 40 CFR 51.320 to 51.327.

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

(9) By March 1 annually, the department shall prepare and submit to the governor, the legislature, the chairpersons of the standing committees of the senate and house of representatives with primary responsibility for environmental protection issues related to air quality, and the chairpersons of the subcommittees of the senate and house appropriations committees with primary responsibility for appropriations to the department a report that details the activities of the previous fiscal year funded by the fund for the department. This report shall include, at a minimum, all of the following as it relates to the department:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The number of letters of violation sent.

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

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

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

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

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

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

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

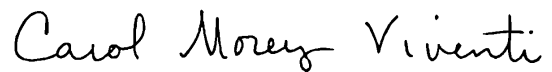
(11) The attorney general may bring an action for the collection of the fees imposed under this section.

(12) This section does not apply if the administrator of the United States environmental protection agency determines that the department is not adequately administering or enforcing the renewable operating permit program and the administrator promulgates and administers a renewable operating permit program for this state.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor