

# HOUSE BILL No. 5220

August 4, 2009, Introduced by Rep. Bennett and referred to the Committee on Appropriations.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending section 5522 (MCL 324.5522), as amended by 2007 PA 75.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 5522. (1) Until October 1, ~~2011~~2013, the owner or  
2 operator of each fee-subject facility shall pay air quality fees as  
3 required and calculated under this section. The department may levy  
4 and collect an annual air quality fee from the owner or operator of  
5 each fee-subject facility in this state. The legislature intends  
6 that the fees required under this section meet the minimum  
7 requirements of the clean air act and that this expressly stated  
8 fee system serve as a limitation on the amount of fees imposed  
9 under this part on the owners or operators of fee-subject  
10 facilities in this state.

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

3 (a) ~~Except as provided in subdivision (d), for~~ **FOR** category I  
4 facilities, the annual air quality fee shall be the sum of a  
5 facility charge and an emissions charge as specified in subdivision  
6 ~~(e)~~ **(D)**. The facility charge shall be \$4,485.00.

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

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

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

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

19 ~~—— (ii) At least 4,000 tons but not more than 5,300 tons,~~  
20 ~~\$24,816.00 plus \$45.25 per ton of fee subject air pollutant in~~  
21 ~~excess of 4,000 tons.~~

22 ~~—— (iii) More than 5,300 tons but not more than 12,000 tons,~~  
23 ~~\$85,045.00.~~

24 ~~—— (iv) More than 12,000 tons but less than 18,000 tons,~~  
25 ~~\$159,459.00.~~

26 **(D)** ~~(e)~~ The emissions charge for category I and category II  
27 facilities shall equal the emission charge rate of ~~\$45.25~~ **\$43.50**,

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~~ 8,000 tons.

(ii) ~~1,000~~ 2,000 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~~ 8,000 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.~~

(3) ~~(4)~~ After January 1, but before January 15 of each year, 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)~~ (5), 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 MAY ADJUST THE BILLING DATE AND DUE DATE UNDER THIS SUBSECTION FOR CATEGORY III DRY CLEANING FACILITIES THAT ARE ALSO SUBJECT TO THE LICENSING OR CERTIFICATION REQUIREMENTS OF**

1 SECTION 13305 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL  
2 333.13305, OR SECTION 5I OF THE FIRE PREVENTION CODE, 1941 PA 207,  
3 MCL 29.5I. The department shall deposit all fees collected under  
4 this section to the credit of the fund.

5 (4) ~~(5)~~—If the owner or operator of a fee-subject facility  
6 fails to submit the amount due within the time period specified in  
7 subsection ~~(4)~~—(3), **AS ADJUSTED BY THE DEPARTMENT, IF APPLICABLE,**  
8 the department shall assess the owner or operator a penalty of 5%  
9 of the amount of the unpaid fee for each month that the payment is  
10 overdue up to a maximum penalty of 25% of the total fee owed.

11 (5) ~~(6)~~—If the owner or operator of a fee-subject facility  
12 desires to challenge its assessed fee, the owner or operator shall  
13 submit the challenge in writing to the department. The department  
14 shall not process the challenge unless it is received by the  
15 department within 45 calendar days of the mailing date of the air  
16 quality fee notification described ~~in~~ **UNDER** subsection ~~(4)~~—(3). A  
17 challenge shall identify the facility and state the grounds upon  
18 which the challenge is based. Within 30 calendar days of receipt of  
19 the challenge, the department shall determine the validity of the  
20 challenge and provide the owner with notification of a revised fee  
21 or a statement setting forth the reason or reasons why the fee was  
22 not revised. Payment of the challenged or revised fee is due within  
23 the time frame described in subsection ~~(4)~~—(3). If the owner or  
24 operator of a facility desires to further challenge its assessed  
25 fee, the owner or operator of the facility has an opportunity for a  
26 contested case hearing as provided for under the administrative  
27 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

1       (6) ~~(7)~~—If requested by the department, by March 15 of each  
2 year, or within 45 days of a request by the department, whichever  
3 is later, the owner or operator of each fee-subject facility shall  
4 submit information regarding the facility's previous year's  
5 emissions to the department. The information shall be sufficient  
6 for the department to calculate the facility's emissions for that  
7 year and meet the requirements of 40 CFR 51.320 to 51.327.

8       (7) ~~(8)~~—By July 1 of each year, the department shall provide  
9 the owner or operator of each fee-subject facility required to pay  
10 an emission charge pursuant to this section with a copy of the  
11 department's calculation of the facility emissions for the previous  
12 year. Within 60 days of this notification, the owner or operator of  
13 the facility may provide corrections to the department. The  
14 department shall make a final determination of the emissions by  
15 December 15 of that year. If the owner or operator disagrees with  
16 the determination of the department, the owner or operator may  
17 request a contested case hearing as provided for under the  
18 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
19 24.328.

20       (8) ~~(9)~~—By March 1 annually, the department shall prepare and  
21 submit to the governor, the legislature, the chairpersons of the  
22 standing committees of the senate and house of representatives with  
23 primary responsibility for environmental protection issues related  
24 to air quality, and the chairpersons of the subcommittees of the  
25 senate and house appropriations committees with primary  
26 responsibility for appropriations to the department a report that  
27 details the department's activities of the previous fiscal year

1 funded by the fund. This report shall include, at a minimum, all of  
2 the following as it relates to the department:

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

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

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

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

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

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

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

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

1 the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (i) The number of contested case hearings and civil actions  
14 initiated and completed, and the number of voluntary consent  
15 orders, administrative penalty orders, and emergency orders entered  
16 or issued, for sources required to obtain a permit under section  
17 5506.

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

20 (9) ~~(10)~~—The report under subsection ~~(9)~~—(8) shall also  
21 include the amount of revenue for programs under this part received  
22 during the prior fiscal year from fees, from federal funds, and  
23 from general fund appropriations. Each of these amounts shall be  
24 expressed as a dollar amount and as a percent of the total annual  
25 cost of programs under this part.

26 (10) ~~(11)~~—The attorney general may bring an action for the  
27 collection of the fees imposed under this section.



1           (11) ~~(12)~~—This section does not apply if the administrator of  
2 the United States environmental protection agency determines that  
3 the department is not adequately administering or enforcing the  
4 renewable operating permit program and the administrator  
5 promulgates and administers a renewable operating permit program  
6 for this state.