

AIR EMISSIONS FEES: REAUTHORIZE AND INCREASE RENEWABLE OPERATING PERMIT FEES

House Bill 4915 (H-1)

Sponsor: Rep. Eileen Kowall

House Committee: Appropriations

(Enacted as Public Act 164 of 2011)

Complete to 9-19-11

A SUMMARY OF HOUSE BILL 4915 (H-1) AS REPORTED FROM COMMITTEE 9-15-11

House Bill 4915 (H-1) would amend part 55 (Air Pollution Control) of the Natural Resources Environmental Protection Act (NREPA), PA 451 of 1994, and reauthorize the air quality fee through October 1, 2015. The air quality fee program supports the state's clean air program. Under current law, the Department of Environmental Quality's authorization to levy and collect the annual fee expires on October 1, 2011. This legislation enables the State to continue to collect the fees for four more years, restructures the fee schedule, and implements a fee increase on regulated facilities.

The Federal Clean Air Act of 1990 (CAA) requires states to operate a system of user fees that is adequate to fund a renewable operating permit program (ROP) for the facilities that are the major sources of air pollution emissions. Facilities with renewable operation permits are required to pay annual emission fees to the State. The federal CAA prohibits the funding of the ROP program with any funding other than air emissions fees. The Department anticipates that the increased fees authorized by HB 4915 would generate enough funding to provide an adequate ROP program under federal standards.

In addition, the bill allows the Department to adjust the billing date and due date of the annual air quality fee for Category III dry cleaning facilities that are also subject to the licensing or certification under the Public Health Code and the Fire Prevention code, in order to combine assessments under the three acts.

The bill eliminates a requirement that the Auditor General conduct a biennial audit of the portion of the ROP program that is mandated by Title V of the federal Clean Air Act. Current statute requires that the audit include a recommendation of whether the fees are sufficient to meet the minimum requirements of the federal standards. According to the DEQ, the Department currently works with the US Environmental Protection Agency (EPA) to perform a similar annual assessment of the adequacy of the fees. The most recent required Auditor General Audit cost the Department approximately \$10,000.

BACKGROUND INFORMATION

The Air Quality Division within the DEQ administers the ROP program. There are approximately 830 larger Michigan facilities that are required to pay fees under the program.

These include facilities such as electric generating plants, mining operations, oil and gas producing facilities, cement plants, chemical manufacturing operations, landfills, and asphalt plants. Approximately 740 smaller facilities, most of which are dry cleaners, are required to pay a smaller \$250 annual air quality fee.

Because Michigan administers the national permitting system required by Title V of the Federal CAA, the ROP Program combines both the federal and state requirements into one document and one regulation process for the regulated facilities.

In order to be considered a "major source" for air emissions and be subject to Title V of the Federal CAA, a facility must emit or have the potential to emit 10 tons per year of any one hazardous air pollutant (HAP), 25 tons per year of any combination of HAPS, or 100 tons per year of any other regulated air contaminant.

There are three categories of facilities within the ROP Program:

- Category I: A source that has the potential to emit 100 tons of any regulated air pollutants per year, including oxides of nitrogen, particulate matter, sulfur dioxide, volatile organic compounds, carbon monoxide, lead, and hazardous air pollutants (HAPs).
- Category II: A source that has the potential to emit 10 tons of any single HAP or 25 tons per year of any combination of HAPs. (Facilities that fall under the federal New Source Performance Standards (NSPS) are also Category II facilities.)
- Category III: Mainly dry cleaners and degreasing facilities.

The ROP fees paid by facilities are assessed by formula and based upon the amount of air emissions in tons per year that a facility emits, a formula fee rate per ton, and a facility fee. The formula also includes caps on the amount of emissions that are able to be used in the calculation of the fees. This cap limits the fees that are placed upon facilities that emit greater amounts of pollutants.

The ROP program reviews and issues facility-wide permits which are valid for 5 years, conducts inspections of permitted facilities to assure compliance with state and federal air pollution regulations, and investigates air pollution complaints.

FISCAL IMPACT:

Under current law, all facilities that are not municipal electricity-generating facilities are required to pay an annual air quality fee that consists of a facility charge and an emissions charge. The facility charge for Category I facilities is \$4,485 and the facility charge for Category II facilities is \$1,795. Both categories must pay the emission charge of \$45.25 per ton, up to 4,000 tons or 1,000 tons per pollutant. Category III facilities pay a set annual air quality fee of \$250. The following table lists the fees for these facilities:

**Table 1. Category I and II Facilities Fees
Under Current Law
(Excluding Municipal Electric Generating Facilities)**

Facility Emission Tonnage	Annual Fee	Emission Charge
Category I Facilities	\$4,485	\$45.25 per ton*
Category II Facilities	1,795	45.25 per ton*
Category III Facilities	\$ 250	\$0

**Amount limited to the lesser of either: 4,000 tons or 1,000 tons per pollutant
(if sum of pollutants except carbon monoxide is less than 4,000 tons)*

Municipal electric generating facilities are currently required to pay the following specific annual air quality fees, based on the number of tons of fee-subject air pollutants emitted:

**Table 2. Municipal Electric Generating Facilities Fees
Under Current Law**

Facility Emission Tonnage	Annual Fee	Emission Charge
Less than 450	\$ 4,485	\$45.25 per ton*
More than 450, less than 4,000	24,816	0
At least 4,000, not more than 5,300	24,816	45.25 per ton (in excess of 4,000)
More than 5,300, not more than 12,000	85,045	0
More than 12,000, less than 18,000	\$159,459	\$0

**Amount limited to the lesser of either: 4,000 tons or 1,000 tons per pollutant
(if sum of pollutants except carbon monoxide is less than 4,000 tons)*

House Bill 4915 keeps the facility charges for both categories at current level, but increases the emissions charge from \$45.25 per ton to \$47.95 per ton for all relevant facilities.

Under the provisions of House Bill 4915, a revised fee schedule is established for facilities other than those that are electricity generating ones owned by municipalities. The bill differentiates between the remaining facilities by establishing a different emission cap on those that generate electricity and those that do not. Facilities that generate electricity pay emission fees on the amount of their emissions, up to **5,250** tons total, or **1,250** tons per pollutant. Facilities that are not electricity generators pay emission fees for up to **4,000** tons of emissions, or **1,000** tons per pollutant.

The following tables present the revised fee schedule for these facilities:

**Table 3. Non-Municipal Electric Generating Facilities Fees
Under House Bill 4915 (H-1)**

Facility Emission Tonnage	Annual Fee	Emission Charge
Category I Facilities	\$4,485	\$47.95 per ton*
Category II Facilities	\$1,795	\$47.95 per ton*

**Amount limited to the lesser of either: 5,250 tons or 1,250 tons per pollutant
(if sum of pollutants except carbon monoxide is less than 5,250 tons)*

**Table 4. Category I and II Non-Electric Generating Facilities Fees
Under House Bill 4915 (H-1)**

Facility Emission Tonnage	Annual Fee	Emission Charge
Category I Facilities	\$4,485	\$47.95 per ton*
Category II Facilities	\$1,795	\$47.95 per ton*

**Amount limited to the lesser of either: 4,000 tons or 1,000 tons per pollutant
(if sum of pollutants except carbon monoxide is less than 4,000 tons)*

Under the provisions of the House Bill 4915, municipal electricity generating facilities would be subject to a higher annual fee as well. The facility charge would remain at \$4,485, but the emissions charge per ton would increase from \$45.25 to \$47.95 for facilities that generate less than 730 tons. Facilities that generate between 730 tons and less than 5,200 tons would pay a total fee of \$37,000 with no separate emissions fee, and facilities that generate between 5,200 tons and 12,000 tons would pay a total fee of \$127,000. The actual tons of fee-subject air pollutants are calculated based on the emissions of the two preceding years prior to the billing year.

**Table 5. Municipal Electric Generating Facilities Fees
Under House Bill 4915 (H-1)**

Facility Emission Tonnage	Annual Fee	Emission Charge
Less than 730	\$ 4,485	\$47.95 per ton*
More than 730, less than 5,200	37,000	0
More than 5,250, not more than 12,000	127,000	0
More than 12,000	\$ 4,485	\$47.95 per ton*

**Amount limited to the lesser of either: 5,250 tons or 1,250 tons per pollutant
(if sum of pollutants except carbon monoxide is less than 5,250 tons)*

The fees for the ROP program have not been increased since 2001. The Department reports that the amount of revenue that will be collected through the air quality fees in FY 2011 will be \$8.77 million. The proposed fee increase will generate approximately \$840,000 in additional revenue bringing the total revenue from air quality fees in FY 2012 to \$9.6 million to support the renewable operating permit program.

According to the DEQ, the revenues raised under the current fee schedule do not generate sufficient funding to adequately fund the program, as required by federal law. In March of 2011, the Director of DEQ received a letter from the U.S. Environmental Protection Agency (EPA) stating that it is placing the ROP Program under review. If the Michigan program is declared to be inadequate, the EPA will begin the process to revoke Michigan's program and implement a federal program.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.