Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4915 (Substitute H-1 as passed by the House)
Sponsor: Representative Eileen Kowall
House Committee: Appropriations
Senate Committee: Appropriations

Date Completed: 9-23-11

CONTENT

House Bill 4915 (H-1) would amend Part 55 (Air Pollution Control) of the Natural Resources and Environmental Protection Act, the statutory basis for the Department of Environmental Quality (DEQ) Air Quality Division's Renewable Operating Permit (ROP) program. The bill would delay the sunset on the ROP program fees from October 1, 2011, for four years to October 1, 2015.

The bill also would adjust and increase annual ROP fees for "major source" facilities. These increases are detailed in the Fiscal Impact section below.

Currently, Part 55 requires that the Auditor General conduct a biennial audit of ROP program. The DEQ has indicated that the most recent audit conducted under this section cost the DEQ approximately $10,000. The bill would eliminate this audit requirement.

Finally, the bill would allow the DEQ to adjust the billing date and due date of the ROP fees 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.

MCL 324.5522

BACKGROUND

Under Title V of the Federal Clean Air Act (CAA), states are required to operate a permitting program for facilities that are major sources of air pollution within their respective states. The DEQ's ROP program is Michigan's program under Title V.

Approximately 800 large Michigan facilities pay ROP fees under the ROP program. These facilities include manufacturing facilities, electric and steam generation plants, mining and processing facilities, chemical manufacturers, and others. The fees these facilities pay are based primarily on the amount of Hazardous Air Pollutants (HAPs) released annually by those facilities. Additionally, approximately 740 smaller facilities pay a flat $250 fee; most of these facilities are dry cleaners and parts degreasing shops.

Fees are assessed by the tonnage of HAPs released by a facility on an annual basis. Permits fall into three broad categories based on HAP tonnage.

- Category I: Facilities that are capable of releasing 100 tons or more of HAPs per year.
- Category II: Facilities that are capable of releasing 10 tons or more of any single HAP, or 25 tons or more of HAPs in aggregate.

- Category III: Not considered a "major source" of air pollution by the Environmental Protection Act (EPA). These facilities are mainly dry cleaners and parts degreasing facilities.

Under Federal law, state ROP programs must be funded from user fees paid by the facilities regulated under the programs; no state general fund money may be used to support them. Additionally, the EPA has the authority to review state ROP programs to ensure that the programs are capable of meeting a minimum level of regulatory activity, and that fees levels are sufficient to raise a Federal Presumptive Minimum (FPM) amount of revenue based on a level of regulated emissions in the state. If a state is found to be funding its ROP program at a level below the FPM, the EPA has the authority to issue a Notice of Program Deficiency. Once a Notice is initiated, if no further action is taken to correct the EPA's deficiency findings, the EPA can take various actions including withholding Federal highway dollars and disbanding the state ROP program and replacing it with a Federal program.

On March 15, 2011, DEQ Director Dan Wyant received a letter from the EPA stating that Michigan's ROP program was under official review. The letter expressed four concerns the EPA has with the program:

- ROP fee levels are less than the FPM, and fee revenue is not sufficient to cover ROP program costs.
- The current fee expires September 30, 2011, and there is no provision to extend it.
- DEQ may be funding overhead costs using ROP fees beyond that which can be attributed to the ROP program.
- DEQ is not fully implementing the ROP program due to decreases in funding and staffing.

The DEQ believes that the changes proposed by House Bill 4915 (H-1) would allow the ROP program to come into compliance and address the concerns raised by the EPA in this letter.

FISCAL IMPACT

Currently, all Category I and II facilities that are not municipal electricity generating facilities pay a base annual facility charge as well as a per-ton charge. Per-ton charges are capped so that after reaching a level of emissions, the DEQ cannot bill for further emissions. It should be noted that this is not a cap on emissions; it is a cap on billing. Category III facilities are charged a $250 facility charge and no per-ton rate. Table 1 below shows the current fee structure for Category I and II facilities that are not municipal electric generating facilities. Table 2 shows how these fees would change under the bill. Fees for Category III facilities would not be changed under the bill.

Table 1

Current Fees – Category I and II Non-Municipal Electric Generating Facilities				
Facility Type	**Facility Charge**	**Charge Per Ton**	**Billing Cap (tons)**	**Maximum Fee**
Category I: Non-electric generating facility	$4,485	$45.25	1,000 per pollutant, 4,000 total	$185,485
Category I: Electric generating facility	$4,485	$45.25	1,000 per pollutant, 4,000 total	$185,485
Category II: Non-electric generating facility	$1,795	$45.25	1,000 per pollutant, 4,000 total*	$6,320*
Category II: Electric generating facility	$1,795	$45.25	1,000 per pollutant, 4,000 total*	$6,320*
* While statute does not provide an explicit tonnage cap on billings for Category II facilities, it is likely that a Category II facility with an ROP fee higher than $6,320 (meaning it had emissions higher than 100 tons) would be categorized as a Category I facility.				

Table 2

Fees Under H.B. 4915 (H-1) Category I and II Non-Municipal Electric Generating Facilities				
Facility Type	**Facility Charge**	**Charge Per Ton**	**Billing Cap (tons)**	**Maximum Fee**
Category I: Non-electric generating facility	$4,485	$47.95	1,000 per pollutant, 4,000 total	$196,285
Category I: Electric generating facility	$4,485	$47.95	1,250 per pollutant, 5,250 total	$256,222.50
Category II: Non-electric generating facility	$1,795	$47.95	1,000 per pollutant, 4,000 total*	$6,590*
Category II: Electric generating facility	$1,795	$47.95	1,250 per pollutant, 5,250 total*	$6,590*
* While the bill does not provide an explicit tonnage cap on billings for Category II facilities, it is likely that a Category II facility with an ROP fee higher than $6,590 (meaning it had emissions higher than 100 tons) would be categorized as a Category I facility.				

Under current law, municipal electric generating facilities with emissions over 450 tons have a different fee structure than other regulated facilities. Tables 3 and 4 show how those fees exist in current law and would be changed under the bill, respectively.

Table 3

Current Fees: Municipal Electric Generating Facilities	
Emission Level	**Fee**
450 – 4,000 tons	$24,816
4,001 – 5,300 tons	$24,816 plus $45.25 per ton in excess of 4,000 ($83,596 max.)
5,301 – 12,000 tons	$85,045
12,001 – 18,000 tons	$159,459

Table 4

Fees Under H.B. 4915 (H-1): Municipal Electric Generating Facilities	
Emission Level	**Fee**
0 – 730 tons	$4,485 plus $47.95 per ton (same as equivalent Category I facility)
731 – 5,250 tons	$37,000
5,251 - 12,000 tons	$127,000
12,001 and greater	$4,485 plus $47.95 per ton (same as equivalent Category I facility)

In FY 2010-11, the total revenue collected under the ROP program was $8.77 million. Under current law, the DEQ has estimated that $8.96 million will be collected in FY 2011-12. Under the bill, collections for FY 2011-12 would likely increase to $9.61 million. The Federal Presumptive Minimum is approximately $10.0 million. This is still above the amount of revenue likely to be raised under the bill, but the DEQ has indicated a high level of confidence that the EPA would accept the fee levels in the bill.

Fiscal Analyst: Josh Sefton

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