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BILL



ANALYSIS

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House Bill 4449 (Substitute H-1 as passed by the House)
Sponsor: Representative Roger Victory
House Committee: Appropriations
Senate Committee: Appropriations

Date Completed: 5-26-15

CONTENT

House Bill 4449 (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, 2015, for four years to October 1, 2019.

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

Finally, the bill would make a technical change to the requirements of a report on the Emissions Control Fund (appropriated as "Air Quality Fees" in the DEQ budget).

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.

FISCAL IMPACT

House Bill 4449 (H-1) would increase revenue received by the DEQ under the ROP program by approximately \$1.2 million annually. Additional appropriation authority was built into the FY 2011-12 DEQ budget in anticipation of this or a similar fee increase. The bill would have no impact on local governments.

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	\$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 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 \$6,590 (meaning it had emissions higher than 100 tons) would be categorized as a Category I facility.				

Table 2

Fees Under H.B. 4449 (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	\$5,250	\$51.15	1,250 per pollutant, 4,500 total	\$235,425
Category I: Electric generating facility	\$5,250	\$51.15	1,500 per pollutant, 6,100 total	\$317,265
Category II: Non-electric generating facility	\$1,795	\$51.15	1,250 per pollutant, 4,500 total*	\$6,910*
Category II: Electric generating facility	\$1,795	\$51.15	1,500 per pollutant, 6,100 total*	\$6,910*
* 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 \$6,910 (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 730 tons have a different fee structure than that of 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
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)

Table 4

Fees Under H.B. 4449 (H-1): Municipal Electric Generating Facilities	
Emission Level	Fee
0 – 730 tons	\$5,250 plus \$51.15 per ton (same as equivalent Category I facility)
731 – 5,000 tons	\$41,830
5,000 and greater	\$5,250 plus \$51.15 per ton (same as equivalent Category I facility)

In FY 2013-14, the total revenue collected under the ROP program was \$9.6 million. Under the bill, collections for FY 2015-16 would likely increase to \$10.8 million, an increase of \$1.2 million over FY 2013-14 collections. The Federal Presumptive Minimum for FY 2015-16 has not yet been established, but the DEQ has expressed confidence that this amount will be sufficient.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.