

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)**  
**Act 451 of 1994**

\*\*\*\*\* 324.5522 THIS SECTION MAY NOT APPLY: See subsection (11) \*\*\*\*\*

**324.5522 Fee-subject facility; air quality fees; calculation of emissions charge and facility charge; annual report detailing activities of previous fiscal year; action by attorney general for collection of fees; applicability of section; condition.**

Sec. 5522. (1) Until October 1, 2027, 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 is calculated for each fee-subject facility, according to the following procedure:

(a) Except as provided in subdivisions (g) and (h), for category A facilities, the annual air quality fee is the sum of an emissions charge as specified in subdivision (i) and a facility charge. The facility charge is as follows, based on the amount of fee-subject emissions:

(i) If the amount of fee-subject emissions is capped under subdivision (i), \$45,000.00.

(ii) For 1,000 or more tons, \$30,000.00.

(iii) For 100 or more tons but less than 1,000 tons, \$15,750.00.

(iv) For 60 or more tons but less than 100 tons, \$12,500.00.

(v) For 6 or more tons but less than 60 tons, \$10,500.00.

(vi) For zero or more tons but less than 6 tons, \$5,250.00.

(b) For category B facilities, the annual air quality fee is the sum of an emissions charge as specified in subdivision (j) and a facility charge. The facility charge is as follows, based on the amount of fee-subject emissions:

(i) For 2,000 or more tons, \$21,000.00.

(ii) For 200 or more tons but less than 2,000 tons, \$15,750.00.

(iii) For 60 or more tons but less than 200 tons, \$10,500.00.

(iv) For 6 or more tons but less than 60 tons, \$7,500.00.

(v) For zero or more tons but less than 6 tons, \$5,250.00.

(c) For category C facilities, the annual air quality fee is the sum of an emissions charge as specified in subdivision (j) and a facility charge. The facility charge is as follows, based on the amount of fee-subject emissions:

(i) For 60 or more tons, \$4,500.00.

(ii) For 6 or more tons but less than 60 tons, \$3,500.00.

(iii) For zero or more tons but less than 6 tons, \$2,500.00.

(d) For category D facilities, the annual air quality fee is the sum of an emissions charge as specified in subdivision (j) and a facility charge. The facility charge is as follows, based on the amount of fee-subject emissions:

(i) For 60 or more tons, \$2,500.00.

(ii) For 6 or more tons but less than 60 tons, \$2,000.00.

(iii) For zero or more tons but less than 6 tons, \$1,795.00.

(e) For category E facilities, the annual air quality fee is as follows, based on the amount of fee-subject emissions:

(i) For 60 or more tons, \$1,795.00.

(ii) For zero or more tons but less than 60 tons, \$250.00.

(f) For category F facilities, the annual air quality fee is \$250.00.

(g) For municipal electric generating facilities with 646 or more tons of fee-subject air emissions, the annual air quality fee is \$50,000.00.

(h) For municipal electric generating facilities with less than 646 tons of fee-subject emissions, the annual air quality fee is determined in the same manner as provided in subdivision (b).

(i) The emissions charge for a category A facility that is not covered by subdivision (g) or (h) equals the emission charge rate multiplied by the actual tons of fee-subject emissions. The emission charge rate for fee-subject air pollutants is \$53.00. A pollutant that qualifies as a fee-subject air pollutant under more than 1 class is charged only once. The actual tons of fee-subject emissions is considered to be the sum of all

fee-subject emissions 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) 6,100 tons.

(ii) 1,500 tons per pollutant, if the sum of all fee-subject emissions except carbon monoxide at the fee-subject facility is less than 6,100 tons.

(j) The emissions charge for facilities that are not electric providers must be calculated in the same manner as provided in subdivision (i). However, the actual tons of fee-subject emissions is considered to be the sum of all fee-subject emissions at a fee-subject facility for the calendar year 2 years preceding the year of billing, but not more than the lesser of the following:

(i) 4,500 tons.

(ii) 1,250 tons per pollutant, if the sum of all fee-subject emissions except carbon monoxide at the fee-subject facility is less than 4,500 tons.

(3) 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 after the mailing date of the air quality fee notification. If an assessed fee is challenged under subsection (5), payment is due within 90 calendar days after the mailing date of the air quality fee notification or within 30 days after receipt of a revised fee or statement supporting the original fee, whichever is later. However, to combine fee assessments, the department may adjust the billing date and due date under this subsection for category F facilities that are dry cleaning facilities also subject to the licensing requirements of section 13305 of the public health code, 1978 PA 368, MCL 333.13305, or the certification requirements of section 5i of the fire prevention code, 1941 PA 207, MCL 29.5i. The department shall deposit all fees collected under this section to the credit of the fund.

(4) If the owner or operator of a fee-subject facility fails to submit the amount due within the time period specified in subsection (3), 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. However, to combine fee assessments, the department may waive the penalty under this subsection for dry cleaning facilities described in subsection (3).

(5) To challenge its assessed fee, the owner or operator of a fee-subject facility 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 after the mailing date of the air quality fee notification described in subsection (3). A challenge must identify the facility and state the grounds on which the challenge is based. Within 30 calendar days after receipt of the challenge, the department shall determine the validity of the challenge and provide the owner with notification of a revised fee or 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 (3). 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 chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288.

(6) If requested by the department, by March 15 of each year, or within 45 days after the request, whichever is later, the owner or operator of each fee-subject facility shall submit to the department information regarding the facility's previous year's emissions. The information must 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.

(7) 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 under this section with a copy of the department's calculation of the facility emissions for the previous year. Within 60 days after 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 chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288.

(8) By March 1 each year, 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 of representatives appropriations committees with primary responsibility for appropriations to the department a report that details the department's activities of the previous fiscal year funded by the fund. This report must 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 must 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) before 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 that were reviewed for administrative completeness within 10 days after receipt by the department.
  - (vi) The percentage and number of permit to install applications submitted to the department that were administratively complete as received.
  - (vii) The percentage and number of permit to install applications for which a final action was taken by the department within 180 days after receipt for those applications not required to complete public participation under section 5511(3) before final action, or within 240 days after receipt for those applications required to complete public participation under section 5511(3) before final action.
  - (viii) The percentage and number of permit to install applications for which a processing period extension was requested and granted.
- (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 must 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 initial permit applications 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, the number of contested case hearings and civil actions 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.
- (9) A report under subsection (8) must 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 must be expressed as a dollar amount and as a percent of the total annual cost of programs under this part.
- (10) The attorney general may bring an action for the collection of the fees imposed under this section.
- (11) 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.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998;—Am. 2001, Act 49, Imd. Eff. July 23, 2001;—Am. 2005, Act 169, Imd. Eff. Oct. 10, 2005;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2011, Act 164, Imd. Eff. Oct. 4, 2011;—Am. 2015, Act 60, Eff. Oct. 1, 2015;—Am. 2019, Act 119, Imd. Eff. Nov. 15, 2019;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

**Popular name:** Act 451

**Popular name:** NREPA