

SENATE BILL No. 316

March 13, 2001, Introduced by Senators SMITH, DE BEAUSSAERT and PETERS and referred to the Committee on Natural Resources and Environmental Affairs.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 5522 (MCL 324.5522), as amended by 1998 PA 245.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5522. (1) For the state fiscal year beginning
2 October 1, ~~1998~~ 2001, and continuing until September 30, ~~2001~~
3 2004, the owner or operator of each fee-subject facility shall
4 pay air quality fees as required and calculated under this
5 section. The department may levy and collect an annual air qual-
6 ity fee from the owner or operator of each fee-subject facility
7 in this state. The legislature intends that the fees required
8 under this section meet the minimum requirements of the clean air
9 act and that this expressly stated fee system serve as a

1 limitation on the amount of fees imposed under this part on the
2 owners or operators of fee-subject facilities in this state.

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

5 (a) For category I facilities AND CATEGORY II FACILITIES,
6 the annual air quality fee shall be the sum of a facility charge
7 and an emissions charge ~~as specified in subdivision (e).~~ AS
8 FOLLOWS:

9 (i) The facility charge FOR A CATEGORY I FACILITY shall be
10 ~~\$3,375.00~~ \$1,687.50. ~~(b) For category II facilities, the~~
11 ~~annual air quality fee shall be the sum of a facility charge and~~
12 ~~an emissions charge as specified in subdivision (e).~~ The facil-
13 ity charge FOR A CATEGORY II FACILITY shall be ~~-\$1,350.00~~
14 \$675.00.

15 ~~(c) For category III facilities, the annual air quality fee~~
16 ~~shall be \$200.00.~~

17 ~~(d) For municipal electric generating facilities subject to~~
18 ~~category I which emit less than 18,000 tons, but more than 450~~
19 ~~tons of fee-subject air pollutants, the annual air quality fee~~
20 ~~shall be an operating permit facility charge of \$18,675.00 only.~~
21 ~~This annual air quality fee is based upon the category I facility~~
22 ~~charges of \$3,375.00 plus an emissions charge equal to the pro-~~
23 ~~duct of 450 tons of fee-subject air pollutants and \$34.00 per ton~~
24 ~~of fee-subject air pollutant.~~

25 (ii) ~~(e)~~ The emissions charge for category I and
26 category II facilities equals the product of the actual tons of
27 fee-subject air pollutants emitted and the emission charge rate.

~~1 A pollutant that qualifies as a fee-subject air pollutant under
2 more than 1 class shall be charged only once. The charge shall
3 be calculated as follows: (i) The emissions tonnage shall be
4 calculated for the calendar year 2 years preceding the year of
5 the billing. The actual tons of fee-subject air pollutants
6 emitted is the sum of all fee-subject air pollutants emitted at
7 the fee-subject facility, except that for the purposes of the
8 emissions charge calculation the actual tons charged shall not
9 exceed either of the following:~~

~~10 (A) 4,000 tons.~~

~~11 (B) 1,000 tons per pollutant, if the sum of all fee-subject
12 air pollutants except carbon monoxide emitted at the fee-subject
13 facility is less than 4,000 tons. (ii) The emission charge rate
14 shall be \$34.00 per ton of fee-subject air pollutants~~

~~15 CALCULATED BY DIVIDING THE MINIMUM PROGRAM AMOUNT BY THE TOTAL
16 TONS OF FEE-SUBJECT AIR POLLUTANTS EMITTED IN THIS STATE BY
17 CATEGORY I AND CATEGORY II FACILITIES, BASED ON THE DEPARTMENT OF
18 ENVIRONMENTAL QUALITY'S MOST CURRENT EMISSIONS INVENTORY. AS
19 USED IN THIS SUBPARAGRAPH, "MINIMUM PROGRAM AMOUNT" MEANS THE
20 MINIMUM AMOUNT OF REVENUES REQUIRED TO BE COLLECTED AND RETAINED
21 UNDER THIS SECTION IN ORDER FOR THE FEES UNDER THIS SECTION TO BE
22 PRESUMED TO BE ADEQUATE UNDER 40 C.F.R. 70.9(b)(2). A POLLUTANT
23 THAT QUALIFIES AS A FEE-SUBJECT AIR POLLUTANT UNDER MORE THAN
24 1 CLASS SHALL BE CHARGED ONLY ONCE.~~

~~25 (B) FOR CATEGORY III FACILITIES, THE ANNUAL AIR QUALITY FEE
26 SHALL BE \$100.00.~~

1 (3) The auditor general shall conduct a biennial audit of
2 the federally mandated operating permit program required in title
3 V. The audit shall include the auditor general's recommendation
4 regarding the sufficiency of the fees required under
5 subsection (2) to meet the minimum requirements of the clean air
6 act.

7 (4) After January 1, but before January 15 of each year,
8 ~~beginning in 1995,~~ the department shall notify the owner or
9 operator of each fee-subject facility of its assessed annual air
10 quality fee. Payment is due within 90 calendar days of the mail-
11 ing date of the air quality fee notification. If an assessed fee
12 is challenged ~~as authorized in~~ UNDER subsection (6), payment is
13 due within 90 calendar days of the mailing date of the air qual-
14 ity fee notification or within 30 days of receipt of a revised
15 fee or statement supporting the original fee, whichever is
16 later. The department shall deposit all fees collected under
17 this section to the credit of the fund.

18 (5) If the owner or operator of a fee-subject facility fails
19 to submit the amount due within the time period specified in
20 subsection (4), the department shall assess the owner or operator
21 a penalty of 5% of the amount of the unpaid fee for each month
22 that the payment is overdue up to a maximum penalty of 25% of the
23 total fee owed.

24 (6) If the owner or operator of a fee-subject facility
25 desires to challenge its assessed fee, the owner or operator
26 shall submit the challenge in writing to the department. The
27 department shall not process the challenge unless it is received

1 by the department within 45 calendar days of the mailing date of
2 the air quality fee notification described in subsection (4). A
3 challenge shall identify the facility and state the grounds upon
4 which the challenge is based. Within 30 calendar days of receipt
5 of the challenge, the department shall determine the validity of
6 the challenge and provide the owner with notification of a
7 revised fee or a statement setting forth the reason or reasons
8 why the fee was not revised. Payment of the challenged or
9 revised fee is due within the time frame described in
10 subsection (4). If the owner or operator of a facility desires
11 to further challenge its assessed fee, the owner or operator of
12 the facility has an opportunity for a contested case hearing as
13 provided for under the administrative procedures act of 1969,
14 1969 PA 306, MCL 24.201 to 24.328.

15 (7) If requested by the department, by March 15 of each
16 year, ~~beginning in 1995,~~ or within 45 days of a request by the
17 department, whichever is later, the owner or operator of each
18 fee-subject facility shall submit information regarding the
19 facility's previous year's emissions to the department. The
20 information shall be sufficient for the department to calculate
21 the facility's emissions for that year and meet the requirements
22 of subpart Q of 40 C.F.R. part 51.

23 (8) By July 1 of each year, ~~beginning in 1995,~~ the depart-
24 ment shall provide the owner or operator of each fee-subject
25 facility required to pay an emission charge pursuant to this sec-
26 tion with a copy of the department's calculation of the facility
27 emissions for the previous year. Within 60 days of this

1 notification, the owner or operator of the facility may provide
2 corrections to the department. The department shall make a final
3 determination of the emissions by December 15 of that year. If
4 the owner or operator disagrees with the determination of the
5 department, the owner or operator may request a contested case
6 hearing as provided for under the administrative procedures act
7 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

8 (9) The department shall prepare and submit to the governor
9 and the legislature by March 1 an annual report that details the
10 activities of the previous fiscal year funded by the fund for the
11 department. This report shall include, at a minimum, all of the
12 following as it relates to the department:

13 (a) The number of full-time equated positions performing air
14 quality enforcement, compliance, or permitting activities and the
15 number of hours worked on title V activities in relation to hours
16 worked on other matters.

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

19 (i) The number of permit to install applications received by
20 the department.

21 (ii) The number of permit to install applications for which
22 a final action was taken by the department. The number of final
23 actions should be reported as the number of applications
24 approved, the number of applications denied, and the number of
25 applications withdrawn by the applicant.

26 (iii) The number of permits to install approved that were
27 required to complete public participation under section 5511(3)

1 before final action and the number of permits to install approved
2 that were not required to complete public participation under
3 section 5511(3) prior to final action.

4 (iv) The average number of final permit actions per permit
5 to install reviewer full-time ~~equivalents~~ EQUIVALENT POSITION.

6 (v) The percentage and number of permit to install applica-
7 tions which were reviewed for administrative completeness within
8 10 days of receipt by the department.

9 (vi) The percentage and number of permit to install applica-
10 tions which were reviewed for technical completeness within 30
11 days of receipt of an administratively complete application by
12 the department.

13 (vii) The percentage and number of permit to install appli-
14 cations submitted to the department that were administratively
15 complete as received.

16 (viii) The percentage and number of permit to install appli-
17 cations for which a final action was taken by the department
18 within 60 days of receipt of a technically complete application
19 for those not required to complete public participation under
20 section 5511(3) prior to final action, or within 120 days of
21 receipt of a technically complete application for those which are
22 required to complete public participation under section 5511(3)
23 prior to final action.

24 (c) All of the following information for the renewable oper-
25 ating permit program authorized under section 5506:

26 (i) The number of renewable operating permit applications
27 received by the department.

1 (ii) The number of renewable operating permit applications
2 for which a final action was taken by the department. The number
3 of final actions should be reported as the number of applications
4 approved, the number of applications denied, and the number of
5 applications withdrawn by the applicant.

6 (iii) The percentage and number of permit applications ini-
7 tially processed within the required time.

8 (iv) The percentage and number of permit renewals and modi-
9 fications processed within the required time.

10 (v) The number of permit applications reopened by the
11 department.

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

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

15 (e) The amount of penalties collected from all consent
16 orders and judgments.

17 (f) For each enforcement action that includes payment of a
18 penalty, a description of what corrective actions were required
19 by the enforcement action.

20 (g) The number of inspections done on sources required to
21 obtain a permit under section 5506 and the number of inspections
22 of other sources.

23 (h) The number of air pollution complaints received, inves-
24 tigated, not resolved, and resolved by the department.

25 (i) The number of contested case hearings and civil actions
26 initiated and completed, and the number of voluntary consent
27 orders, administrative penalty orders, and emergency orders

1 entered or issued, for sources required to obtain a permit under
2 section 5506.

3 (10) By August 1, ~~1999~~ 2002, the department shall convene
4 a task force made up of representatives of fee-subject facili-
5 ties, environmental groups, the general public, and any state
6 department to which funds are appropriated from the fund. Not
7 later than August 1, ~~2000~~ 2003, the task force shall provide to
8 the legislature a final report on the adequacy of the fee reve-
9 nues, the fee structure relative to all sectors of the regulated
10 industry, and the appropriateness of program activities and shall
11 recommend changes to this section, as appropriate, to match fee
12 revenues to program costs.

13 (11) The attorney general may bring an action for the col-
14 lection of the fees imposed under this section.