

SENATE BILL NO. 446

August 20, 2019, Introduced by Senator BAYER and referred to the Committee on Appropriations.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 5522 (MCL 324.5522), as amended by 2015 PA 60.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5522. (1) Until October 1, ~~2019~~, **2023**, the owner or
2 operator of each fee-subject facility shall pay air quality fees as
3 required and calculated under this section. The department may levy
4 and collect an annual air quality fee from the owner or operator of
5 each fee-subject facility in this state. The legislature intends
6 that the fees required under this section meet the minimum

1 requirements of the clean air act and that this expressly stated
2 fee system serve as a limitation on the amount of fees imposed
3 under this part on the owners or operators of fee-subject
4 facilities in this state.

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

7 (a) Except as provided in subdivision (d), for category I
8 facilities, the annual air quality fee shall be the sum of a
9 facility charge of \$5,250.00 and an emissions charge as specified
10 in subdivision (e) or (f).

11 (b) For category II facilities, the annual air quality fee
12 shall be the sum of a facility charge of \$1,795.00 and an emissions
13 charge as specified in subdivision (e) or (f).

14 (c) For category III facilities, the annual air quality fee
15 shall be \$250.00.

16 (d) For municipal electric generating facilities that are
17 category I facilities and that emit more than 730 tons of fee-
18 subject air pollutants, the annual air quality fee shall be the
19 following amount, based on the number of tons of fee-subject air
20 pollutants emitted:

21 (i) For more than 730 tons but less than 5,000 tons, an annual
22 fee of \$41,830.00.

23 (ii) For 5,000 tons or more, an annual fee equal to the sum of
24 a facility charge of \$5,250.00 and an emissions charge as specified
25 in subdivision (e).

26 (e) The emissions charge for category I facilities that are
27 electric providers and that are not covered by subdivision (d) and
28 for category II facilities that are electric providers shall equal
29 the emission charge rate multiplied by the actual tons of fee-

1 subject air pollutants emitted. The emission charge rate for fee-
2 subject air pollutants shall be \$51.15. A pollutant that qualifies
3 as a fee-subject air pollutant under more than 1 class shall be
4 charged only once. The actual tons of fee-subject air pollutants
5 emitted shall be considered to be the sum of all fee-subject air
6 pollutants emitted at the fee-subject facility for the calendar
7 year 2 years preceding the year of billing, but not more than the
8 lesser of the following:

9 (i) 6,100 tons.

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

13 (f) The emissions charge for category I or category II
14 facilities that are not electric providers shall be calculated in
15 the same manner as provided in subdivision (e). However, the actual
16 tons of fee-subject air pollutants emitted shall be considered to
17 be the sum of all fee-subject air pollutants emitted at a fee-
18 subject facility for the calendar year 2 years preceding the year
19 of billing, but not more than the lesser of the following:

20 (i) 4,500 tons.

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

24 (3) After January 1, but before January 15 of each year, the
25 department shall notify the owner or operator of each fee-subject
26 facility of its assessed annual air quality fee. Payment is due
27 within 90 calendar days of the mailing date of the air quality fee
28 notification. If an assessed fee is challenged under subsection
29 (5), payment is due within 90 calendar days of the mailing date of

1 the air quality fee notification or within 30 days of receipt of a
2 revised fee or statement supporting the original fee, whichever is
3 later. However, to combine fee assessments, the department may
4 adjust the billing date and due date under this subsection for
5 category III facilities that are dry cleaning facilities also
6 subject to the licensing or certification requirements of section
7 13305 of the public health code, 1978 PA 368, MCL 333.13305, and
8 section 5i of the fire prevention code, 1941 PA 207, MCL 29.5i. The
9 department shall deposit all fees collected under this section to
10 the credit of the fund.

11 (4) If the owner or operator of a fee-subject facility fails
12 to submit the amount due within the time period specified in
13 subsection (3), the department shall assess the owner or operator a
14 penalty of 5% of the amount of the unpaid fee for each month that
15 the payment is overdue up to a maximum penalty of 25% of the total
16 fee owed. However, to combine fee assessments, the department may
17 waive the penalty under this subsection for dry cleaning facilities
18 described in subsection (3).

19 (5) To challenge its assessed fee, the owner or operator of a
20 fee-subject facility shall submit the challenge in writing to the
21 department. The department shall not process the challenge unless
22 it is received by the department within 45 calendar days of the
23 mailing date of the air quality fee notification described in
24 subsection (3). A challenge shall identify the facility and state
25 the grounds upon which the challenge is based. Within 30 calendar
26 days of receipt of the challenge, the department shall determine
27 the validity of the challenge and provide the owner with
28 notification of a revised fee or a statement setting forth the
29 reason or reasons why the fee was not revised. Payment of the

1 challenged or revised fee is due within the time frame described in
2 subsection (3). If the owner or operator of a facility desires to
3 further challenge its assessed fee, the owner or operator of the
4 facility has an opportunity for a contested case hearing as
5 provided for under the administrative procedures act of 1969, 1969
6 PA 306, MCL 24.201 to 24.328.

7 (6) If requested by the department, by March 15 of each year,
8 or within 45 days of a request by the department, whichever is
9 later, the owner or operator of each fee-subject facility shall
10 submit information regarding the facility's previous year's
11 emissions to the department. The information shall be sufficient
12 for the department to calculate the facility's emissions for that
13 year and meet the requirements of 40 CFR 51.320 to 51.327.

14 (7) By July 1 of each year, the department shall provide the
15 owner or operator of each fee-subject facility required to pay an
16 emission charge pursuant to this section with a copy of the
17 department's calculation of the facility emissions for the previous
18 year. Within 60 days of this notification, the owner or operator of
19 the facility may provide corrections to the department. The
20 department shall make a final determination of the emissions by
21 December 15 of that year. If the owner or operator disagrees with
22 the determination of the department, the owner or operator may
23 request a contested case hearing as provided for under the
24 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
25 24.328.

26 (8) By March 1 annually, the department shall prepare and
27 submit to the governor, the legislature, the chairpersons of the
28 standing committees of the senate and house of representatives with
29 primary responsibility for environmental protection issues related

1 to air quality, and the chairpersons of the subcommittees of the
2 senate and house appropriations committees with primary
3 responsibility for appropriations to the department a report that
4 details the department's activities of the previous fiscal year
5 funded by the fund. This report shall include, at a minimum, all of
6 the following as it relates to the department:

7 (a) The number of full-time equated positions performing title
8 V and ~~non-title~~ **nontitle** V air quality enforcement, compliance, or
9 permitting activities.

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

12 (i) The number of permit to install applications received by
13 the department.

14 (ii) The number of permit to install applications for which a
15 final action was taken by the department. The number of final
16 actions shall be reported as the number of applications approved,
17 the number of applications denied, and the number of applications
18 withdrawn by the applicant.

19 (iii) The number of permits to install approved that were
20 required to complete public participation under section 5511(3)
21 before final action and the number of permits to install approved
22 that were not required to complete public participation under
23 section 5511(3) prior to final action.

24 (iv) The average number of final permit actions per permit to
25 install reviewer full-time equivalent position.

26 (v) The percentage and number of permit to install
27 applications that were reviewed for administrative completeness
28 within 10 days of receipt by the department.

29 (vi) The percentage and number of permit to install

1 applications submitted to the department that were administratively
2 complete as received.

3 (vii) The percentage and number of permit to install
4 applications for which a final action was taken by the department
5 within 180 days of receipt for those applications not required to
6 complete public participation under section 5511(3) prior to final
7 action, or within 240 days of receipt for those applications which
8 are required to complete public participation under section 5511(3)
9 prior to final action.

10 (viii) The percentage and number of permit to install
11 applications for which a processing period extension was requested
12 and granted.

13 (c) All of the following information for the renewable
14 operating permit program authorized under section 5506:

15 (i) The number of renewable operating permit applications
16 received by the department.

17 (ii) The number of renewable operating permit applications for
18 which a final action was taken by the department. The number of
19 final actions shall be reported as the number of applications
20 approved, the number of applications denied, and the number of
21 applications withdrawn by the applicant.

22 (iii) The percentage and number of initial permit applications
23 processed within the required time.

24 (iv) The percentage and number of permit renewals and
25 modifications processed within the required time.

26 (v) The number of permit applications reopened by the
27 department.

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

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

1 (e) The amount of penalties collected from all consent orders
2 and judgments.

3 (f) For each enforcement action that includes payment of a
4 penalty, a description of what corrective actions were required by
5 the enforcement action.

6 (g) The number of inspections done on sources required to
7 obtain a permit under section 5506 and the number of inspections of
8 other sources.

9 (h) The number of air pollution complaints received,
10 investigated, not resolved, and resolved by the department.

11 (i) The number of contested case hearings and civil actions
12 initiated and completed, and the number of voluntary consent
13 orders, administrative penalty orders, and emergency orders entered
14 or issued, for sources required to obtain a permit under section
15 5506.

16 (j) The amount of revenue in the fund at the end of the fiscal
17 year.

18 (9) The report under subsection (8) shall also include the
19 amount of revenue for programs under this part received during the
20 prior fiscal year from fees, from federal funds, and from general
21 fund appropriations. Each of these amounts shall be expressed as a
22 dollar amount and as a percent of the total annual cost of programs
23 under this part.

24 (10) The attorney general may bring an action for the
25 collection of the fees imposed under this section.

26 (11) This section does not apply if the administrator of the
27 United States Environmental Protection Agency determines that the
28 department is not adequately administering or enforcing the
29 renewable operating permit program and the administrator

1 promulgates and administers a renewable operating permit program
2 for this state.

3 (12) As used in this section, "electric provider" means that
4 term as defined in section 5 of the clean ~~, renewable, and~~
5 ~~efficient energy~~ **and renewable energy and energy waste reduction**
6 act, 2008 PA 295, MCL 460.1005.