

HOUSE BILL No. 4890

June 7, 1989, Introduced by Reps. Scott, Bartnik, Kosteva, Middaugh, Sikkema, Hart and Niederstadt and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend the title and sections 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 25, and 26 of Act No. 348 of the Public Acts of 1965, entitled as amended "Air pollution act," section 15 as added by Act No. 25 of the Public Acts of 1987, being sections 336.15, 336.16, 336.17, 336.18, 336.19, 336.20, 336.21, 336.23, 336.24, 336.25, 336.26, 336.27, 336.29, 336.30, 336.31, 336.32, 336.33, 336.35, and 336.36 of the Michigan Compiled Laws; to add sections 2a, 5a, and 27; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 5, 6, 7, 8, 9, 10, 11,
2 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 25, and 26 of Act No. 348
3 of the Public Acts of 1965, section 15 as added by Act No. 25 of
4 the Public Acts of 1987, being sections 336.15, 336.16, 336.17,

1 336.18, 336.19, 336.20, 336.21, 336.23, 336.24, 336.25, 336.26,
2 336.27, 336.29, 336.30, 336.31, 336.32, 336.33, 336.35, and
3 336.36 of the Michigan Compiled Laws, are amended and sections
4 2a, 5a, and 27 are added to read as follows:

5 TITLE

6 An act to control air pollution in this state; ~~to create an~~
7 ~~air pollution control commission within the state health depart-~~
8 ~~ment; to prescribe its powers and duties;~~ to prescribe the
9 powers and duties of certain ~~county~~ STATE AND LOCAL agencies
10 AND OFFICIALS; to provide for the establishment of fees; and to
11 provide penalties AND REMEDIES.

12 SEC. 2A. AS USED IN THIS ACT:

13 (A) NOTWITHSTANDING SECTION 2, "COMMISSION" MEANS THE COM-
14 MISSION OF NATURAL RESOURCES.

15 (B) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OR HIS
16 OR HER DESIGNEE.

17 (C) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL RESOURCES.

18 (D) "RULE" MEANS A RULE PROMULGATED PURSUANT TO THE ADMINIS-
19 TRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF
20 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED
21 LAWS.

22 Sec. 5. The ~~commission~~ DIRECTOR may:

23 ~~(a) Establish standards for ambient air quality and for~~
24 ~~emissions.~~

25 (A) ~~(b)~~ Issue permits for the construction and the opera-
26 tion of air pollution control facilities and source emissions and

1 ~~to~~ require reports of the operation of the air pollution
2 control facilities.

3 (B) ~~(c)~~ Compel the attendance of witnesses at ~~proceedings~~
4 ~~of~~ HEARINGS SCHEDULED BY the ~~commission~~ DIRECTOR upon reason-
5 able notice.

6 (C) ~~(d)~~ Make findings of fact and determinations.

7 (D) ~~(e)~~ Make, modify, or cancel orders which require, in
8 accordance with ~~the provisions of~~ this act, the control of air
9 pollution.

10 (E) ~~(f)~~ Institute in a court of competent jurisdiction
11 proceedings to compel compliance with the provisions of any rule
12 PROMULGATED BY THE COMMISSION UNDER THIS ACT or any determination
13 or order which ~~it may promulgate or issue~~ THE DIRECTOR ISSUES
14 under this act.

15 (F) ~~(g)~~ Do such other things as ~~it may deem~~ THE DIRECTOR
16 CONSIDERS necessary, proper, or desirable ~~in order that it may~~
17 TO enforce rules promulgated BY THE COMMISSION under this act.

18 (G) ~~(h)~~ Accept, or when ~~deemed~~ CONSIDERED necessary by
19 the ~~commission~~ DIRECTOR require to be submitted to it, and con-
20 sider for approval, plans for air cleaning devices or any part
21 ~~thereof~~ OF AIR CLEANING DEVICES and inspect the installation
22 for compliance with the plans.

23 (H) ~~(i)~~ Enter and inspect any property at reasonable times
24 and places pursuant to reasonable notice for the purpose of
25 investigating either an actual or suspected source of air pollu-
26 tion or ascertaining compliance or noncompliance with ~~any~~ A
27 rule ~~which it may promulgate~~ PROMULGATED BY THE COMMISSION

1 under this act. If in connection with ~~such~~ THE investigation
2 or inspection, samples of air contaminants are taken for analy-
3 sis, a duplicate of the analytical report shall be furnished
4 promptly to the person who is suspected of causing ~~such~~ THE air
5 pollution.

6 (I) ~~(j)~~ Receive and initiate complaints of air pollution
7 in alleged violation of ~~any~~ A rule ~~which it may promulgate~~
8 PROMULGATED BY THE COMMISSION under this act and take ENFORCEMENT
9 action ~~with respect thereto as hereinafter~~ AS provided in this
10 act.

11 (J) ~~(k)~~ Prepare and develop a general comprehensive plan
12 for the control or abatement of existing air pollution and for
13 the control or prevention of any new air pollution.

14 (K) ~~(l)~~ Encourage voluntary cooperation by all persons in
15 controlling air pollution and air contamination.

16 (L) ~~(m)~~ Encourage the formulation and execution of plans
17 by cooperative groups or associations of cities, villages, and
18 counties or districts, or other governmental units, industries,
19 and others who severally or jointly are or may be the source of
20 air pollution, for the control of pollution.

21 (M) ~~(n)~~ Cooperate with the appropriate agencies of the
22 United States or other states or any interstate agencies or
23 international agencies with respect to the control of air pollu-
24 tion and air contamination, or for the formulation for the sub-
25 mission to the legislature of interstate air pollution control
26 compacts or agreements.

1 (N) ~~(e)~~ Conduct or cause to be conducted studies and
2 research with respect to air pollution control, abatement, or
3 prevention.

4 (O) ~~(p)~~ Conduct and supervise programs of air pollution
5 control education including the preparation and distribution of
6 information relating to air pollution control.

7 (P) ~~(q)~~ Determine by means of field studies and sampling
8 the degree of air pollution in the state.

9 (Q) ~~(r)~~ Provide advisory technical consultation services
10 to local communities.

11 (R) ~~(s)~~ Serve as the agency of the state for the receipt
12 of ~~moneys~~ MONEY from the federal government or other public or
13 private agencies and ~~to~~ expend ~~such moneys~~ THIS MONEY, after
14 appropriation ~~thereof~~ BY THE LEGISLATURE for the purpose of air
15 pollution control studies or research or enforcement of this
16 act.

17 SEC. 5A. IN ADMINISTERING THIS ACT, THE DIRECTOR SHALL
18 ACTIVELY SEEK THE ADVICE OF, AND SHALL CONSULT WITH, THE DEPART-
19 MENTS OF PUBLIC HEALTH AND AGRICULTURE. THE DIRECTOR MAY ENTER
20 INTO A MEMORANDUM OF UNDERSTANDING WITH THE DIRECTOR OF THE
21 DEPARTMENT OF PUBLIC HEALTH OR AGRICULTURE THAT FURTHER DEFINES
22 THE NATURE AND PROCEDURES FOR IMPLEMENTING THIS COOPERATIVE
23 RELATIONSHIP.

24 Sec. 6. (1) The ~~state commissioner of health shall act as~~
25 ~~the authorized agent for the commission in effecting the purposes~~
26 ~~of this act. All investigative, technical, scientific and other~~
27 ~~services shall be performed by the commissioner or his authorized~~

1 ~~deputies~~ DIRECTOR MAY HOLD A PUBLIC HEARING PRIOR TO MAKING A
 2 DECISION ON AN APPLICATION FOR A PERMIT UNDER THIS ACT. THE
 3 DIRECTOR SHALL HOLD A PUBLIC HEARING UPON THE REQUEST OF 1 OR
 4 MORE PERSONS.

5 (2) PERMIT DECISIONS MADE BY THE DIRECTOR UNDER THIS ACT
 6 SHALL BE IN WRITING AND SHALL CONTAIN A RATIONALE FOR THE
 7 DECISION.

8 (3) IF A PERSON FEELS HIMSELF OR HERSELF AGGRIEVED BY A
 9 PERMIT DECISION OF THE DIRECTOR, HE OR SHE MAY FILE A SWORN PETI-
 10 TION WITH THE COMMISSION, WITHIN 30 DAYS AFTER RECEIVING THE
 11 PERMIT DECISION, SETTING FORTH THE GROUNDS AND REASONS FOR HIS OR
 12 HER PETITION AND ASKING FOR A HEARING ON THE MATTER INVOLVED PUR-
 13 SUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306
 14 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF
 15 THE MICHIGAN COMPILED LAWS.

16 Sec. 7. ~~-(1) A rule or amendment or repeal thereof shall~~
 17 ~~require a vote of approval in writing of not less than 6 members~~
 18 ~~of the commission.~~

19 (1) ~~-(2)~~ The commission shall promulgate rules ~~in accord-~~
 20 ~~ance with and subject to Act No. 306 of the Public Acts of 1969,~~
 21 ~~as amended, being sections 24.201 to 24.315 of the Compiled Laws~~
 22 ~~of 1948~~ for ALL OF THE FOLLOWING purposes: ~~of-~~

23 (a) Controlling or prohibiting air pollution.

24 (b) Complying with the ~~federal~~ clean air act, ~~being 42~~
 25 ~~U.S.C., section 1857 et sequence, as amended~~ CHAPTER 360, 69
 26 STAT. 322, 42 U.S.C. 7401 TO 7428, 7450 TO 7459, 7470 TO 7479,

1 7491, 7501 TO 7508, 7521 TO 7525, 7541 TO 7546, 7548 TO 7550,
2 7571 TO 7574, 7601 TO 7622, 7624 TO 7626, AND 7641 TO 7642.

3 (c) Controlling any mode of transportation ~~which~~ THAT is
4 capable of causing or contributing to air pollution.

5 (d) Reviewing proposed locations of stationary emission
6 sources.

7 (e) Reviewing modifications of existing emission sources.

8 (f) Prohibiting locations or modifications of emission
9 sources which impair the state's ability to meet federal ambient
10 air QUALITY standards.

11 (g) Establishing suitable emission standards consistent with
12 ambient air quality standards established by the federal govern-
13 ment and factors, including but not limited to, conditions of the
14 terrain, wind velocities and directions, land usage of the
15 region, and the anticipated characteristics and quantities of
16 potential air pollution sources. This act does not prohibit the
17 ~~commission~~ DIRECTOR from denying or revoking a permit to oper-
18 ate a control facility that would adversely affect human health
19 or other conditions important to the life of the community.

20 (2) ALL RULES PROMULGATED BY THE FORMER AIR POLLUTION CON-
21 TROL COMMISSION PURSUANT TO THIS ACT AND IN EXISTENCE ON THE
22 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION
23 SHALL CONTINUE IN FULL FORCE AND EFFECT AND AS IF THEY HAD BEEN
24 PROMULGATED BY THE COMMISSION OF NATURAL RESOURCES. THESE RULES
25 SHALL REMAIN IN EFFECT UNTIL RESCINDED OR SUPERSEDED BY RULES
26 PROMULGATED BY THE COMMISSION OF NATURAL RESOURCES.

1 Sec. 8. (1) If a written complaint is filed with the
2 ~~commission~~ DIRECTOR and the ~~commission~~ DIRECTOR believes, or
3 if the ~~commission~~ DIRECTOR ON HIS OR HER OWN believes that
4 ~~any~~ A person is violating this act or ~~any~~ A rule promulgated
5 by the commission by causing or permitting air pollution, the
6 ~~commission~~ DIRECTOR shall make a prompt investigation. If
7 after ~~such~~ AN investigation ~~it~~ THE DIRECTOR finds that a vio-
8 lation of ~~any~~ A rule ~~of~~ PROMULGATED BY the commission exists,
9 ~~it~~ HE OR SHE shall endeavor to enter into a voluntary agreement
10 with ~~such~~ THAT person as provided in subsection (2).

11 (2) In consideration of the provisions of this section or
12 other sections of this act the ~~commission~~ DIRECTOR, after due
13 notice and opportunity for public hearing, may enter into a vol-
14 untary agreement ~~or a performance contract~~ with a person to
15 abate pollution under conditions agreed upon by the ~~commission~~
16 DIRECTOR and the person. ~~, which~~ THE VOLUNTARY agreement may
17 provide for the enforcement of its terms by specific
18 performance.

19 (3) If in the opinion of the ~~commission~~ DIRECTOR the
20 person violates the terms of the VOLUNTARY agreement, ~~or~~
21 ~~contract~~ the ~~commission~~ DIRECTOR can proceed to enforce the
22 conditions of the VOLUNTARY agreement ~~or contract~~ by order or
23 by the institution in a court of competent jurisdiction of an
24 action for specific performance or such other legal or equitable
25 relief as the ~~commission deems~~ DIRECTOR CONSIDERS appropriate.

26 (4) Whenever a person other than a party to the agreement
27 feels himself OR HERSELF aggrieved by ~~an~~ A VOLUNTARY agreement

1 entered pursuant to subsection (2), he OR SHE may file a sworn
2 petition with the commission within 30 days of the issuance of
3 notice of the agreement setting forth the grounds and reasons for
4 his OR HER complaint and asking for a hearing ~~of~~ ON the matter
5 involved PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
6 ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO
7 24.328 OF THE MICHIGAN COMPILED LAWS. ~~Thereupon the commission~~
8 ~~shall set a date for a hearing to be held not more than 60 days~~
9 ~~from the date the petition is filed and shall notify the peti-~~
10 ~~tioner thereof. At the hearing the petitioner and any other~~
11 ~~interested party may appear, present witnesses and submit~~
12 ~~evidence. A final order or determination of the commission upon~~
13 ~~the matter following the hearing shall be conclusive, unless~~
14 ~~reviewed in accordance with Act No. 306 of the Public Acts of~~
15 ~~1969, as amended, in the circuit court for the county of Ingham~~
16 ~~or for the county in which the person resides.~~

17 Sec. 9. If a voluntary agreement under section 8 is not
18 entered into within a reasonable time, set by the ~~commission~~
19 DIRECTOR, the ~~commission~~ DIRECTOR may issue and serve upon the
20 person complained against a written notice, together with a copy
21 of the complaint, which shall specify the facts ~~which~~ THAT are
22 the basis for the alleged violation and a proposed order for cor-
23 rective action which states the time schedule and standards or
24 rules that are to be met by the person complained against. If a
25 person who is served with a complaint and proposed order agrees
26 with the proposed restrictions of polluting content, waste, or
27 pollution and period of time for abatement of pollution which the

1 ~~commission deems~~ DIRECTOR CONSIDERS necessary, and notifies the
2 ~~commission thereof before the date set for hearing, unless the~~
3 ~~person complained against requests a hearing before the commis-~~
4 ~~sion within 30 days after he receives the order,~~ DIRECTOR OF HIS
5 OR HER AGREEMENT, disposition of the case may be made with the
6 approval BY ALL PARTIES of the ~~commission by stipulation or~~
7 consent order without further hearing. ~~An~~ A CONSENT order
8 adopted by the ~~commission~~ DIRECTOR shall be A final ORDER.

9 Sec. 10. ~~(1) The respondent to the complaint may file a~~
10 ~~written answer thereto and may appear at the hearing in person or~~
11 ~~by representative, with or without counsel, and may submit testi-~~
12 ~~mony, or may do both.~~

13 ~~(2) The commission on behalf of a party may subpoena and~~
14 ~~compel the attendance of witnesses, and require the production~~
15 ~~for examination of any book or paper relating to the matter under~~
16 ~~investigation at the hearing. The subpoena shall only be issued~~
17 ~~after application to the circuit court having jurisdiction and~~
18 ~~with the approval of the court.~~

19 ~~(3) The testimony taken at the hearing before the commission~~
20 ~~or its presiding officer shall be under oath and recorded. (4)~~
21 A hearing on a contested matter held pursuant to this act shall
22 be held BY THE COMMISSION in accordance with ~~and subject to~~ THE
23 ADMINISTRATIVE PROCEDURES ACT OF 1969, Act No. 306 of the Public
24 Acts of 1969, as amended, BEING SECTIONS 24.201 TO 24.328 OF THE
25 MICHIGAN COMPILED LAWS.

26 Sec. 11. (1) Public hearings with reference to pollution
27 control may be held before ~~any member of~~ THE DIRECTOR OR the

1 commission or their designated ~~delegates or representatives~~
2 REPRESENTATIVE. Persons designated to conduct the hearing shall
3 be described as presiding officers and shall be disinterested and
4 technically qualified persons.

5 (2) If a record, permit application, or other information
6 ~~which~~ THAT is furnished to or is obtained by the ~~commission~~
7 DIRECTOR concerning 1 or more air contaminant sources is certi-
8 fied by the owner or operator, that the record, permit applica-
9 tion, or information which relates to production, sales figures,
10 or to processes are unique to the owner or operator or would tend
11 to affect adversely the competitive position of the owner or
12 operator, or if information relating to secret processes, produc-
13 tion, or methods of manufacture is obtained in the course of an
14 in-plant inspection, then the record, permit application, or
15 information shall be only for the confidential use of the
16 ~~commission~~ DIRECTOR in the administration of this act, unless
17 the owner or operator expressly agrees to its publication or
18 availability to the general public. This shall not prevent the
19 use of a record, permit application, or information by the
20 ~~commission~~ DIRECTOR in compiling or publishing analyses or sum-
21 maries relating to the general condition of the outdoor atmo-
22 sphere if the analyses or summaries do not identify an owner or
23 operator or reveal information ~~which~~ THAT is otherwise confi-
24 dential under this section. Nothing in this section renders data
25 on the quantity or quality of emissions from any source
26 confidential. The data on amount and nature of emissions from
27 each source shall be public.

1 Sec. 13. Application for relief from ~~any rules or~~ A RULE
2 PROMULGATED BY THE COMMISSION OR AN order of the ~~commission~~
3 DIRECTOR shall be made by petition to the circuit court for the
4 county of Ingham, or to the county in which the petitioner
5 resides, which petition shall be verified as in a civil action.
6 Each petition shall contain a plain and concise statement of the
7 material facts on which the petitioner relies and shall set forth
8 the rule or order or part ~~thereof~~ OF THE ORDER which he ~~shall~~
9 ~~claim~~ OR SHE CLAIMS to be unreasonable or prejudicial to him OR
10 HER and shall specify the grounds ~~therefor~~ OF HIS OR HER
11 CLAIM. The petition may be accompanied by affidavits or other
12 written proof and shall demand the relief to which the petitioner
13 alleges he OR SHE is entitled, in the alternative or otherwise.
14 The petition may be made by any 1 or more persons, jointly or
15 severally, who ~~shall be~~ ALLEGE THAT THEY ARE aggrieved by ~~any~~
16 ~~rule or order~~ A RULE PROMULGATED BY THE COMMISSION OR AN ORDER
17 ISSUED BY THE DIRECTOR whether or not the petitioner is or was a
18 party to the proceeding in which the rule was adopted by the
19 commission.

20 Sec. 14. When the director ~~of public health~~ finds that
21 ~~any~~ A person is discharging or causing to be discharged into
22 the atmosphere directly or indirectly any air contaminant and the
23 discharge constitutes an immediate and serious danger to the
24 health, safety, and welfare of the people and that it appears to
25 be prejudicial to the interests of the people of the state to
26 delay action, the director shall notify the person by written
27 notice that he OR SHE must discontinue immediately the air

1 pollution. Within not more than 15 days, the ~~commission~~
2 DIRECTOR shall provide the person the opportunity to be heard and
3 to present any proof that ~~such~~ THE discharge does not consti-
4 tute a danger to the health, safety, and welfare of the people.

5 Sec. 15. (1) The provisions of this section, including
6 subsection (2), shall apply to any fugitive dust source at all
7 mining operations, standard industrial classification major
8 groups 10 through 14; manufacturing operations, standard indus-
9 trial classification major groups 20 through 39; railroad trans-
10 portation, standard industrial classification major group 40;
11 motor freight transportation and warehousing, standard industrial
12 classification major group 42; electric services, standard indus-
13 trial classification group 491; sanitary services, standard
14 industrial classification group 495; and steam supply, standard
15 industrial classification group 496, which are located in areas
16 listed in table 36 of R 336.1371 of the Michigan administrative
17 code.

18 (2) Except as provided in subsection (8), a person responsi-
19 ble for any fugitive dust source regulated under this section
20 shall not cause or allow the emission of fugitive dust from any
21 road, lot, or storage pile, including any material handling
22 activity at a storage pile, that has an opacity greater than 5%
23 as determined by reference test method 9d. Except as otherwise
24 provided in subsection (8) or this section, a person shall not
25 cause or allow the emission of fugitive dust from any other fugi-
26 tive dust source that has an opacity greater than 20% as
27 determined by test method 9d. The provisions of this subsection

1 shall not apply to storage pile material handling activities when
2 wind speeds are in excess of 25 miles per hour (40.2 kilometers
3 per hour).

4 (3) In addition to the requirements of subsection (2), and
5 except as provided in subdivisions (e), (f), and (g), a person
6 shall control fugitive dust emissions in a manner that results in
7 compliance with all of the following provisions:

8 (a) Potential fugitive dust sources shall be maintained and
9 operated so as to comply with all of the following applicable
10 provisions:

11 (i) All storage piles of materials, where the total uncon-
12 trolled emissions of fugitive dust from all such piles at a
13 facility is in excess of 50 tons per year and where such piles
14 are located within a facility with potential particulate emis-
15 sions from all sources including fugitive dust sources and all
16 other sources exceeding 100 tons per year, shall be protected by
17 a cover or enclosure or sprayed with water or a surfactant solu-
18 tion, or treated by an equivalent method, in accordance with the
19 operating program required by subsection (4).

20 (ii) All conveyor loading operations to storage piles speci-
21 fied in subparagraph (i) shall utilize spray systems, telescopic
22 chutes, stone ladders, or other equivalent methods in accordance
23 with the operating program required by subsection (4). Batch
24 loading operations to storage piles specified in subparagraph (i)
25 shall utilize spray systems, limited drop heights, enclosures, or
26 other equivalent methods in accordance with the operating program
27 required by subsection (4). Unloading operations from storage

1 piles specified in subparagraph (i) shall utilize rake
2 reclaimers, bucket wheel reclaimers, under-pile conveying, pneu-
3 matic conveying with baghouse, water sprays, gravity-feed plow
4 reclaimer, front-end loaders with limited drop heights, or other
5 equivalent methods in accordance with the operating program
6 required by subsection (4).

7 (iii) All traffic pattern access areas surrounding storage
8 piles specified in subparagraph (i) and all traffic pattern roads
9 and parking facilities shall be paved or treated with water,
10 oils, or chemical dust suppressants. All paved areas, including
11 traffic pattern access areas surrounding storage piles specified
12 in subparagraph (i), shall be cleaned in accordance with the
13 operating program required by subsection (4). All areas treated
14 with water, oils, or chemical dust suppressants shall have the
15 treatment applied in accordance with the operating program
16 required by subsection (4).

17 (iv) All unloading and transporting operations of materials
18 collected by pollution control equipment shall be enclosed or
19 shall utilize spraying, pelletizing, screw conveying, or other
20 equivalent methods.

21 (v) Crushers, grinding mills, screening operations, bucket
22 elevators, conveyor transfer points, conveyor bagging operations,
23 storage bins, and fine product truck and railcar loading opera-
24 tions shall be sprayed with water or a surfactant solution, uti-
25 lize choke-feeding, or be treated by an equivalent method in
26 accordance with an operating program required under

1 subsection (4). This subparagraph shall not apply to high-lines
2 at steel mills.

3 (b) If particulate collection equipment is operated pursuant
4 to this section, emissions from such equipment shall not exceed
5 0.03 grains per dry standard cubic foot (0.07 grams per cubic
6 meter).

7 (c) A person shall not cause or allow the operation of a
8 vehicle for the transporting of bulk materials with a silt con-
9 tent of more than 1% without employing 1 or more of the following
10 control methods:

11 (i) The use of completely enclosed trucks, tarps, or other
12 covers for bulk materials with a silt content of 20% or more by
13 weight.

14 (ii) The use of tarps, chemical dust suppressants, or water
15 in sufficient quantity to maintain the surface in a wet condition
16 for bulk materials with a silt content of more than 5% but less
17 than 20%.

18 (iii) Loading trucks so that no part of the load making con-
19 tact with any sideboard, side panel, or rear part of the load
20 comes within 6 inches of the top part of the enclosure for bulk
21 materials with a silt content of more than 1% but not more than
22 5%.

23 (d) All vehicles for transporting bulk materials off-site
24 shall be maintained in such a way as to prevent leakage or spill-
25 age and shall comply with the requirements of section 720 of the
26 Michigan vehicle code, Act No. 300 of the Public Acts of 1949,

1 being section 257.720 of the Michigan Compiled Laws, and with
2 R 28.1457 of the Michigan administrative code.

3 (e) The provisions of subdivisions (c) and (d) shall not
4 apply to vehicles with less than a 2-ton capacity that are used
5 to transport sand, gravel, stones, peat, or topsoil.

6 (f) The provisions of subdivision (c)(i) and (ii) do not
7 apply to fly ash which has been thoroughly wetted and has the
8 property of forming a stable crust upon drying.

9 (g) The provisions of subdivision (c) shall not apply to the
10 transportation of iron or steel slag if the vehicles do not leave
11 the facility and the slag has a temperature of 200 degrees fahr-
12 enheit or greater.

13 (4) All fugitive dust sources subject to the provisions of
14 this section shall be operated in compliance with both the provi-
15 sions of an operating program that shall be prepared by the owner
16 or operator of the source and submitted to the ~~commission~~
17 DIRECTOR and with applicable provisions of this section. Such
18 operating program shall be designed to significantly reduce the
19 fugitive dust emissions to the lowest level that a particular
20 source is capable of achieving by the application of control
21 technology that is reasonably available, considering technologi-
22 cal and economic feasibility. The operating program shall be
23 implemented upon the approval of the ~~commission~~ DIRECTOR.

24 (5) The operating program required by subsection (4) is
25 subject to review and approval or disapproval by the ~~commission~~
26 DIRECTOR and shall be considered approved if not acted on by the
27 ~~commission~~ DIRECTOR within 90 days of submittal. All programs

1 approved by the ~~commission~~ DIRECTOR shall become a part of a
2 legally enforceable order or as part of an approved permit to
3 install or operate. At a minimum, the operating program shall
4 include all of the following:

5 (a) The name and address of the facility.

6 (b) The name and address of the owner or operator responsi-
7 ble for implementation of the operating program.

8 (c) A map or diagram of the facility showing all of the
9 following:

10 (i) Approximate locations of storage piles.

11 (ii) Conveyor loading operations.

12 (iii) All traffic patterns within the facility.

13 (d) The location of unloading and transporting operations
14 with pollution control equipment.

15 (e) A detailed description of the best management practices
16 utilized to achieve compliance with this section, including an
17 engineering specification of particulate collection equipment,
18 application systems for water, oil, chemicals, and dust suppres-
19 sants utilized, and equivalent methods utilized.

20 (f) A test procedure, including recordkeeping, for testing
21 all waste or recycled oils used for fugitive dust control for
22 toxic contaminants.

23 (g) The frequency of application, application rates, and
24 dilution rates if applicable, of dust suppressants by location of
25 materials.

26 (h) The frequency of cleaning paved traffic pattern roads
27 and parking facilities.

1 (i) Other information as may be necessary to facilitate the
2 ~~commission's~~ DIRECTOR'S review of the operating program.

3 (6) Except for fugitive dust sources operating programs
4 approved by the FORMER AIR POLLUTION CONTROL commission pursuant
5 to R 336.1373 of the Michigan administrative code between
6 April 23, 1985 and May 12, 1987, the owner or operator of a
7 source shall submit the operating program required by
8 subsection (4) to the ~~commission~~ DIRECTOR within 90 days after
9 the effective date of the amendatory act that added this
10 section.

11 (7) The operating program required by subsection (4) shall
12 be amended by the owner or operator so that the operating program
13 is current and reflects any significant change in the fugitive
14 dust source or fugitive dust emissions. An amendment to an oper-
15 ating program shall be consistent with the requirements of this
16 section and shall be submitted to the ~~commission~~ DIRECTOR for
17 its review and approval or disapproval.

18 (8) Upon request by the owner or operator of a fugitive dust
19 source, the ~~commission~~ DIRECTOR may establish alternate provi-
20 sions to those specified in this section, if all of the following
21 conditions are met:

22 (a) The fugitive dust emitting process, operation, or activ-
23 ity is subject to either of the following:

24 (i) The opacity limits of subsection (2).

25 (ii) The spray requirements of subsection (3)(a)(i) to (v).

1 (b) An alternate provision shall not be established by the
2 ~~commission~~ DIRECTOR unless the ~~commission~~ DIRECTOR is
3 reasonably convinced of all of the following:

4 (i) That a fugitive dust emitting process, operation, or
5 activity subject to the alternate provisions is in compliance or
6 on a legally enforceable schedule of compliance with the other
7 rules of the commission.

8 (ii) That compliance with the provisions of this section is
9 not technically or economically reasonable.

10 (iii) That reasonable measures to reduce fugitive emissions
11 as required by this section have been implemented in accordance
12 with or will be implemented in accordance with a schedule
13 approved by the ~~commission~~ DIRECTOR.

14 (9) Any alternate provisions approved by the ~~commission~~
15 DIRECTOR pursuant to subsection (8) shall be submitted to the
16 United States environmental protection agency as an amendment to
17 the state implementation plan.

18 Sec. 16. A person, ~~who~~ or a governmental unit, who fails
19 to obtain or comply with a permit, or comply with a final order
20 or order of determination of the ~~commission~~ DIRECTOR made under
21 this act is guilty of a misdemeanor and shall be fined not more
22 than \$10,000.00 and in the discretion of the court an additional
23 amount of not more than \$2,000.00 per day a violation continues.
24 The circuit court of the county in which the violation occurred
25 has exclusive jurisdiction. However, the person shall not be
26 subject to the penalties of this section if the discharge of the
27 emissions are in conformance with and obedient to a rule

1 PROMULGATED BY THE COMMISSION, OR A voluntary agreement or order
 2 of the ~~commission~~ DIRECTOR. Upon petition by the ~~commission~~
 3 DIRECTOR, the circuit court in the county where the violation
 4 exists may order a person to be restrained from continuing a
 5 violation. In addition the attorney general may, at the request
 6 of the ~~commission~~ DIRECTOR, file an action in a court of compe-
 7 tent jurisdiction to recover the full value of the injuries done
 8 to the natural resources of the state and the costs of surveil-
 9 lance and enforcement by the state resulting from the violation.
 10 In addition to any fine, the court in its discretion may impose
 11 probation upon any person for a violation of this section.

12 Sec. 17. The ~~commission~~ DIRECTOR may bring any appropri-
 13 ate action in the name of the people of the state either at law
 14 or in chancery, as may be necessary to carry out ~~the provisions~~
 15 ~~of~~ this act and to enforce any and all laws, rules, and regula-
 16 tions relating to ~~the provisions of~~ this act.

17 Sec. 19. Notwithstanding any other provision of this act,
 18 the ~~commission~~ DIRECTOR may suspend the enforcement of the
 19 whole or any part of ~~any~~ A rule ~~or regulation in the case of~~
 20 ~~any~~ PROMULGATED BY THE COMMISSION IF A person ~~who~~ shows that
 21 the enforcement ~~thereof~~ OF THE RULE would be inequitable or
 22 unreasonable as to him OR HER, or the ~~commission~~ DIRECTOR may
 23 suspend the enforcement ~~thereof~~ OF A RULE for any reason
 24 ~~deemed~~ CONSIDERED by ~~it~~ THE DIRECTOR to be sufficient to show
 25 that the enforcement ~~thereof~~ OF THE RULE would be an unreason-
 26 able hardship upon the person. ~~, and upon any~~ UPON THE
 27 suspension of the whole or any part of ~~the~~ A rule, ~~or~~

1 ~~regulation~~ the ~~commission~~ DIRECTOR shall grant to the person a
2 variance ~~therefrom~~ FROM THE RULE.

3 Sec. 20. In determining under what conditions and to what
4 extent a variance from a rule ~~or regulation~~ PROMULGATED BY THE
5 COMMISSION may be granted, the ~~commission~~ DIRECTOR shall give
6 due recognition to the progress ~~which~~ THAT the person request-
7 ing the variance has made in eliminating or preventing air
8 pollution. The ~~commission~~ DIRECTOR shall consider the reason-
9 ableness of granting a variance conditioned upon the person
10 effecting a partial control of the particular air pollution or a
11 progressive control of the air pollution over a period of time
12 ~~which it~~ THAT THE DIRECTOR considers reasonable under all the
13 circumstances. ~~or the commission~~ IN ADDITION, THE DIRECTOR
14 may prescribe other and different reasonable requirements with
15 which the person receiving the variance shall comply.

16 Sec. 21. The ~~commission~~ DIRECTOR shall grant a variance
17 from ~~any~~ A rule ~~or regulation to,~~ and suspend the enforcement
18 ~~thereof as to,~~ any OF THE RULE IF A person ~~who~~ shows ~~in the~~
19 ~~case of the person and of the activity which the person then~~
20 ~~operates~~ that ~~a~~ compliance by him OR HER with the rule, ~~or~~
21 ~~regulation,~~ and ~~that~~ the acquisition, installation, operation,
22 and maintenance of facilities and equipment required or necessary
23 to accomplish the compliance, would constitute an undue hardship
24 on the person and would be out of proportion to the benefits to
25 be obtained ~~thereby~~ BY COMPLIANCE. A variance shall not be
26 granted under ~~the provisions of~~ this section where the person
27 applying ~~therefor~~ FOR THE VARIANCE is causing air pollution

1 which is injurious to the public health. ~~Any~~ A variance
 2 granted UNDER THIS ACT shall not be construed ~~as~~ to relieve the
 3 person ~~who shall receive it~~ RECEIVING THE VARIANCE from any
 4 liability imposed by other law for ~~the commission or maintenance~~
 5 ~~of~~ CAUSING OR MAINTAINING a nuisance.

6 Sec. 22. ~~Any~~ A variance granted pursuant to ~~the provi-~~
 7 ~~sions of~~ this act shall be granted for such period of time, not
 8 exceeding 1 year, as is specified by the ~~commission~~ DIRECTOR at
 9 the time of granting it, but ~~any~~ A variance may be continued
 10 from year to year. ~~Any~~ A variance granted by the ~~commission~~
 11 DIRECTOR may be granted on the condition that the person receiv-
 12 ing it shall make reports to the ~~commission~~ DIRECTOR periodi-
 13 cally, as the ~~commission~~ DIRECTOR shall specify, as to the
 14 progress which the person has made toward reaching ~~a~~ compliance
 15 with the ~~rule or regulation of~~ RULES PROMULGATED BY the
 16 commission.

17 Sec. 23. The ~~commission~~ DIRECTOR may revoke or modify by
 18 written order, after a public hearing held upon not less than 10
 19 days' notice, any order permitting a variance.

20 Sec. 25. This act shall not be construed as repealing any
 21 of the laws relating to air pollution ~~which~~ THAT are not by
 22 this act expressly repealed, but it shall be held and construed
 23 to be as ancillary to and supplementing the laws now in force,
 24 ~~excepting~~ EXCEPT as they may be in direct conflict with this
 25 act. The final order or determination of the ~~commission~~
 26 DIRECTOR shall not be used in evidence of presumptive air

1 pollution in any suit filed by any person other than ~~this~~
2 ~~commission~~ THE DIRECTOR.

3 Sec. 26. (1) Nothing in this act or in any rule ~~or regula-~~
4 ~~tion which shall be~~ promulgated ~~pursuant to~~ UNDER this act
5 shall be ~~deemed~~ CONSIDERED to invalidate any existing ordi-
6 nances or regulations having requirements equal to or greater
7 than the minimum applicable requirements of this act or prevent
8 any political subdivision from adopting similar provisions if
9 their requirements are equal to or greater than the minimum
10 applicable requirements of this act.

11 (2) When a political subdivision or enforcing official
12 ~~thereof~~ OF A POLITICAL SUBDIVISION fails to enforce properly
13 the provisions of the political subdivision's ordinances, laws,
14 or regulations ~~which do~~ THAT afford ~~equal~~ protection to the
15 public ~~as that~~ EQUAL TO THOSE provided in this act, the ~~air~~
16 ~~pollution control commission~~ DIRECTOR, after consultation with
17 the local official or governing body of the political subdivi-
18 sion, may take such appropriate action as may be necessary for
19 enforcement of the applicable provisions of this act.

20 (3) The ~~air pollution control commission~~ DIRECTOR shall
21 counsel and advise local units of government on the administra-
22 tion of this act. ~~In their respective fields, they~~ THE
23 DIRECTOR shall cooperate in the enforcement of this act with
24 local officials upon request.

25 SEC. 27. THE AMENDATORY ACT THAT ADDED THIS SECTION SHALL
26 NOT BE CONSTRUED TO ALTER THE PROVISIONS OF ANY PERMIT, ORDER,

1 RULE, OR STIPULATION IN EFFECT ON THE EFFECTIVE DATE OF THIS
2 SECTION.

3 Section 2. Sections 3, 4, and 14a of Act No. 348 of the
4 Public Acts of 1965, being sections 336.13, 336.14, and 336.24a
5 of the Michigan Compiled Laws, are repealed.

6 Section 3. This amendatory act shall take effect April 15,
7 1990.

8 Section 4. This amendatory act shall not take effect unless
9 Senate Bill No. _____ or House Bill No. 4893 (request
10 no. 01427'89) of the 85th Legislature is enacted into law.