

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 813**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 5501, 5521, 5522, and 5523 (MCL 324.5501,
324.5521, 324.5522, and 324.5523); and to repeal acts and parts
of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5501. As used in this part:

2 (a) "Air contaminant" means a dust, fume, gas, mist, odor,
3 smoke, vapor, or any combination thereof.

4 (b) "Air pollution" means the presence in the outdoor atmo-
5 sphere of air contaminants in quantities, of characteristics,
6 under conditions and circumstances, and of a duration that are or
7 can become injurious to human health or welfare, to animal life,
8 to plant life, or to property, or that interfere with the
9 enjoyment of life and property in this state, and excludes all

1 aspects of employer-employee relationships as to health and
2 safety hazards. With respect to any mode of transportation,
3 nothing in this part or in the rules promulgated under this part
4 shall be inconsistent with the federal regulations, emission
5 limits, standards, or requirements on various modes of
6 transportation. Air pollution does not mean those usual and
7 ordinary odors associated with a farm operation if the person
8 engaged in the farm operation is following generally accepted
9 agricultural and management practices.

10 (c) "Air pollution control equipment" means any method, pro-
11 cess, or equipment that removes, reduces, or renders less noxious
12 air contaminants discharged into the atmosphere.

13 (d) "Category I facility" means a fee-subject facility that
14 is a major stationary source as defined in section 302 of title
15 III of the clean air act, 77 Stat. 400, 42 U.S.C. 7602, an
16 affected source as defined pursuant to section 402 of title IV of
17 the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7651a,
18 or a major stationary source as defined in section 169a of
19 subpart 2 of part C of title I of the clean air act, chapter 360,
20 91 Stat. 742, 42 U.S.C. 7491.

21 (e) "Category II facility" means a fee-subject facility that
22 is a major source as defined in section 112 of part A of title I
23 of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or a facil-
24 ity subject to requirements of section 111 of part A of title I
25 of the clean air act, chapter 360, 84 Stat. 1683, 42 U.S.C. 7411,
26 except that a category II facility that also meets the definition
27 of a category I facility is a category I facility.

1 (f) "Category III facility" means any fee-subject facility
2 that is not a category I or category II facility.

3 (g) "Clean air act" means chapter 360, 69 Stat. 322, 42
4 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a,
5 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to
6 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617,
7 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to
8 7661f, and 7671 to 7671q, and regulations promulgated under the
9 clean air act.

10 (h) "Emission" means the emission of an air contaminant.

11 (i) "Farm operation" has the meaning ascribed to it in the
12 Michigan right to farm act, ~~Act No. 93 of the Public Acts of~~
13 ~~1981, being sections 286.471 to 286.474 of the Michigan Compiled~~
14 ~~Laws~~ 1981 PA 93, MCL 286.471 TO 286.474.

15 (j) "Fee-subject air pollutant" means particulates,
16 EXPRESSED AS PM-10 PURSUANT TO 1996 MR 11, R 336.1116(K), sulfur
17 dioxide, volatile organic compounds, nitrogen oxides, ozone,
18 lead, and any pollutant regulated under section 111 or 112 of
19 part A of title I of the clean air act, chapter 360, 84
20 Stat. 1683 and 1685, 42 U.S.C. 7411 and 7412, or title III of the
21 clean air act, chapter 360, 77 Stat. 400, 42 U.S.C. 7601 to 7612,
22 7614 to 7617, 7619 to 7622, and 7624 to 7627.

23 (k) "Fee-subject facility" means the following sources:

24 (i) Any major source as defined in 40 C.F.R. 70.2.

25 (ii) Any source, including an area source, subject to a
26 standard, limitation, or other requirement under section 111 of
27 part A of title I of the clean air act, chapter 360,

1 84 Stat. 1683, 42 U.S.C. 7411, when the standard, limitation, or
2 other requirement becomes applicable to that source.

3 (iii) Any source, including an area source, subject to a
4 standard, limitation, or other requirement under section 112 of
5 part A of title I of the clean air act, 84 Stat. 1685,
6 42 U.S.C. 7412, when the standard, limitation, or other require-
7 ment becomes applicable to that source. However, a source is not
8 a fee-subject facility solely because it is subject to a regula-
9 tion, limitation, or requirement under section 112(r) of part A
10 of title I of the clean air act, chapter 360, 84 Stat. 1685, 42
11 U.S.C. 7412.

12 (iv) Any affected source under title IV.

13 (v) Any other source in a source category designated by the
14 administrator of the United States environmental protection
15 agency as required to obtain an operating permit under title V,
16 when the standard, limitation, or other requirement becomes
17 applicable to that source.

18 (l) "Fund" means the emissions control fund created in
19 section 5521.

20 (m) "General permit" means a permit to install, permit to
21 operate authorized pursuant to rules promulgated under
22 section 5505(6), or an operating permit under section 5506, for a
23 category of similar sources, processes, or process equipment.
24 General provisions for issuance of general permits shall be pro-
25 vided for by rule.

26 (n) "Generally accepted agricultural and management
27 practices" has the meaning ascribed to it in ~~Act No. 93 of the~~

1 ~~Public Acts of 1981~~ THE MICHIGAN RIGHT TO FARM ACT, 1981 PA 93,
2 MCL 286.471 TO 286.474.

3 (o) "Major emitting facility" means a stationary source that
4 emits 100 tons or more per year of any of the following:

5 (i) Particulates.

6 (ii) Sulfur dioxides.

7 (iii) Volatile organic compounds.

8 (iv) Oxides of nitrogen.

9 (p) "Process" means an action, operation, or a series of
10 actions or operations at a source that emits or has the potential
11 to emit an air contaminant.

12 (q) "Process equipment" means all equipment, devices, and
13 auxiliary components, including air pollution control equipment,
14 stacks, and other emission points, used in a process.

15 (r) "Responsible official" means for the purposes of signing
16 and certifying as to the truth, accuracy, and completeness of
17 permit applications, monitoring reports, and compliance certifi-
18 cations any of the following:

19 (i) For a corporation: a president, secretary, treasurer,
20 or vice-president in charge of a principal business function, or
21 any other person who performs similar policy or decision making
22 functions for the corporation, or an authorized representative of
23 that person if the representative is responsible for the overall
24 operation of 1 or more manufacturing, production, or operating
25 facilities applying for or subject to a permit under this part
26 and either the facilities employ more than 250 persons or have
27 annual sales or expenditures exceeding \$25,000,000.00, or if the

1 delegation of authority to the representative is approved in
2 advance by the department.

3 (ii) For a partnership or sole proprietorship: a general
4 partner or the proprietor.

5 (iii) For a county or municipality or a state, federal, or
6 other public agency: ~~either~~ a principal executive officer or
7 ranking elected official. For this purpose, a principal execu-
8 tive officer of a federal agency includes the chief executive
9 officer having responsibility for the overall operations of a
10 principal geographic unit of the agency.

11 (iv) For sources affected by the acid rain program under
12 title IV: the designated representative insofar as actions,
13 standards, requirements, or prohibitions under that title are
14 concerned.

15 (s) "Schedule of compliance" means, for a source not in com-
16 pliance with all applicable requirements of this part, rules
17 promulgated under this part, and the clean air act at the time of
18 issuance of an operating permit, a schedule of remedial measures
19 including an enforceable sequence of actions or operations lead-
20 ing to compliance with an applicable requirement and a schedule
21 for submission of certified progress reports at least every 6
22 months. Schedule of compliance means, for a source in compliance
23 with all applicable requirements of this part, rules promulgated
24 under this part, and the clean air act at the time of issuance of
25 an operating permit, a statement that the source will continue to
26 comply with these requirements. With respect to any applicable
27 requirement of this part, rules promulgated under this part, and

1 the clean air act effective after the date of issuance of an
2 operating permit, the schedule of compliance shall contain a
3 statement that the source will meet the requirements on a timely
4 basis, unless the underlying applicable requirement requires a
5 more detailed schedule.

6 (t) "Source" means a stationary source as defined in section
7 302(z) of title III of the clean air act, 77 Stat. 400, 42
8 U.S.C. 7602, and has the same meaning as stationary source when
9 used in comparable or applicable circumstances under the clean
10 air act. A source includes all the processes and process equip-
11 ment under common control that are located within a contiguous
12 area, or a smaller group of processes and process equipment as
13 requested by the owner or operator of the source, if in accord-
14 ance with the clean air act.

15 (u) "Title IV" means title IV of the clean air act, pertain-
16 ing to acid deposition control, chapter 360, 104 Stat. 2584, 42
17 U.S.C. 7651 to 7651o.

18 (v) "Title V" means title V of the clean air act, chapter
19 360, 104 Stat. 2635, 42 U.S.C. 7661 to 7661f.

20 Sec. 5521. (1) The emissions control fund is created within
21 the state treasury. The state treasurer may receive money from
22 any source for deposit into the fund. The state treasurer shall
23 direct the investment of the fund. The state treasurer shall
24 credit to the fund interest and earnings from fund investments.

25 (2) Money in the fund at the close of the fiscal year shall
26 remain in the fund and shall not lapse to the general fund.

1 (3) Upon the expenditure or appropriation of funds raised
2 through fees in this part for any purpose other than those
3 specifically listed in this part, authorization to collect fees
4 under this part is suspended until such time as the funds
5 expended or appropriated for purposes other than those listed in
6 this part are returned to the emissions control fund.

7 ~~(4) The state treasurer shall establish, within the fund, a~~
8 ~~clean air act implementation account and a permit review and~~
9 ~~urban airshed study account.~~

10 ~~(5) For the state fiscal years ending September 30, 1993 and~~
11 ~~September 30, 1994, the department shall expend money from the~~
12 ~~fund, upon appropriation, only for the following purposes:~~

13 ~~(a) Money in the clean air act implementation account shall~~
14 ~~be used for 1 or more of the following:~~

15 ~~(i) Developing and implementing requirements of Public Law~~
16 ~~101-549, 104 Stat. 2399, commonly referred to as the clean air~~
17 ~~act amendments of 1990.~~

18 ~~(ii) Emissions and ambient air monitoring.~~

19 ~~(iii) Audits and inspections of source-operated monitoring~~
20 ~~programs.~~

21 ~~(iv) Preparing generally applicable rules to implement~~
22 ~~requirements of Public Law 101-549, 104 Stat. 2399, commonly~~
23 ~~referred to as the clean air act amendments of 1990.~~

24 ~~(v) Modeling, analyses, or demonstrations.~~

25 ~~(vi) Preparing inventories and tracking emissions.~~

26 ~~(b) Money in the permit review and urban airshed study~~
27 ~~account shall be used for both of the following:~~

1 ~~(i) Not more than \$545,000.00 to provide grants for local~~
2 ~~air pollution programs that collect data for the urban airshed~~
3 ~~model.~~

4 ~~(ii) To process permit applications pursuant to this part~~
5 ~~until such time that all permit applications received by the~~
6 ~~department are being processed in a timely manner. When permit~~
7 ~~applications under this part are being processed in a timely~~
8 ~~manner, money in the permit review and urban airshed study~~
9 ~~account that is not allocated for grants under subparagraph (i)~~
10 ~~shall be used for the purposes described in subdivision (a),~~
11 ~~unless the department recommends and the appropriations commit-~~
12 ~~tees of the senate and house of representatives approve continued~~
13 ~~use of this money or a portion of this money to process permit~~
14 ~~applications.~~

15 (4) ~~-(6)-~~ Beginning October 1, 1994 and thereafter money
16 shall be expended from the fund, upon appropriation, only for the
17 following purposes as they relate to implementing the operating
18 permit program required by title V:

19 (a) Preparing generally applicable rules or guidance regard-
20 ing the operating permit program or its implementation or
21 enforcement.

22 (b) Reviewing and acting on any application for a permit,
23 permit revision, or permit renewal, the development of an appli-
24 cable requirement as part of the processing of a permit, or
25 permit revision or renewal.

1 (c) General administrative costs of running the operating
2 permit program, including the supporting and tracking of permit
3 applications, compliance certification, and related data entry.

4 (d) Implementing and enforcing the terms of any operating
5 permit, not including any court costs or other costs associated
6 with an enforcement action.

7 (e) Emissions and ambient monitoring.

8 (f) Modeling, analysis, or demonstration.

9 (g) Preparing inventories and tracking emissions.

10 (h) Providing direct and indirect support to facilities
11 under the small business clean air assistance program created in
12 part 57.

13 Sec. 5522. (1) For the state fiscal year beginning
14 October 1, ~~1994~~ 1998, and continuing until September 30, ~~1998~~
15 2001, the owner or operator of each fee-subject facility shall
16 pay air quality fees as required and calculated under this
17 section. The department may levy and collect an annual air qual-
18 ity fee from the owner or operator of each fee-subject facility
19 in this state. The legislature intends that the fees required
20 under this section meet the minimum requirements of the clean air
21 act and that this expressly stated fee system serve as a limita-
22 tion on the amount of fees imposed under this part on the owners
23 or operators of fee-subject facilities in this state.

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

26 (a) For category I facilities, the annual air quality fee
27 shall be the sum of a facility charge and an emissions charge as

1 specified in subdivision (e). The facility charge shall be
2 ~~-\$2,500.00-~~ \$3,375.00.

3 (b) For category II facilities, the annual air quality fee
4 shall be the sum of a facility charge and an emissions charge as
5 specified in subdivision (e). The facility charge shall be
6 ~~-\$1,000.00-~~ \$1,350.00.

7 (c) For category III facilities, the annual air quality fee
8 shall be \$200.00.

9 (d) For municipal electric generating facilities subject to
10 category I which emit less than 18,000 tons, but more than ~~600-~~
11 450 tons of fee-subject air pollutants, the annual air quality
12 fee shall be an operating permit facility charge of ~~-\$10,000.00-~~
13 \$18,675.00 only. THIS ANNUAL AIR QUALITY FEE IS BASED UPON THE
14 CATEGORY I FACILITY CHARGES OF \$3,375.00 PLUS AN EMISSIONS CHARGE
15 EQUAL TO THE PRODUCT OF 450 TONS OF FEE-SUBJECT AIR POLLUTANTS
16 AND \$34.00 PER TON OF FEE-SUBJECT AIR POLLUTANT.

17 (e) The emissions charge for category I and category II
18 facilities equals the product of the actual tons of fee-subject
19 air pollutants emitted and the emission charge rate. A pollutant
20 that qualifies as a fee-subject air pollutant under more than 1
21 class shall be charged only once. The charge shall be calculated
22 as follows:

23 (i) The emissions tonnage shall be calculated for the calen-
24 dar year 2 years preceding the year of the billing. The actual
25 tons of fee-subject air pollutants emitted is the sum of all
26 fee-subject air pollutants emitted at the fee-subject facility,
27 except that for the purposes of the emissions charge calculation

1 the actual tons charged shall not exceed either of the
2 following:

3 (A) 4,000 tons.

4 (B) 1,000 tons per pollutant, if the sum of all fee-subject
5 air pollutants except carbon monoxide emitted at the fee-subject
6 facility is less than 4,000 tons.

7 (ii) The emission charge rate shall be ~~-\$25.00-~~ \$34.00 per
8 ton of fee-subject air pollutants.

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

15 (4) After January 1, but before January 15 of each year
16 beginning in 1995, the department shall notify the owner or oper-
17 ator of each fee-subject facility of its assessed annual air
18 quality fee. Payment is due within 90 calendar days of the mail-
19 ing date of the air quality fee notification. If an assessed fee
20 is challenged as authorized in subsection (6), payment is due
21 within 90 calendar days of the mailing date of the air quality
22 fee notification or within 30 days of receipt of a revised fee or
23 statement supporting the original fee, whichever is later. The
24 department shall deposit all fees collected under this section to
25 the credit of the ~~emissions control fund created in~~
26 ~~section 5521-~~ FUND.

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

7 (6) If the owner or operator of a fee-subject facility
8 desires to challenge its assessed fee, the owner or operator
9 shall submit the challenge in writing to the department. THE
10 DEPARTMENT SHALL NOT PROCESS THE CHALLENGE UNLESS IT IS RECEIVED
11 BY THE DEPARTMENT within ~~30~~ 45 calendar days of the mailing
12 date of the air quality fee notification described in
13 subsection (4). A challenge shall identify the facility and
14 state the grounds upon which the challenge is based. Within 30
15 calendar days of receipt of the challenge, the department shall
16 determine the validity of the challenge and provide the owner
17 with notification of a revised fee or a statement setting forth
18 the reason or reasons why the fee was not revised. Payment of
19 the challenged or revised fee is due within the time frame
20 described in subsection (4). If the owner or operator of a
21 facility desires to further challenge its assessed fee, the owner
22 or operator of the facility has an opportunity for a contested
23 case hearing as provided for under the administrative procedures
24 act of 1969, ~~Act No. 306 of the Public Acts of 1969, being~~
25 ~~sections 24.201 to 24.328 of the Michigan Compiled Laws~~ 1969 PA
26 306, MCL 24.201 TO 24.328.

1 (7) If requested by the department, by March 15 of each year
2 beginning in 1995, or within 45 days of a request by the
3 department, whichever is later, the owner or operator of each
4 fee-subject facility shall submit information regarding the
5 facility's previous year's emissions to the department. The
6 information shall be sufficient for the department to calculate
7 the facility's emissions for that year and meet the requirements
8 of subpart Q of 40 C.F.R. part 51.

9 (8) By July 1 of each year beginning in 1995, the department
10 shall provide the owner or operator of each fee-subject facility
11 required to pay an emission charge pursuant to this section with
12 a copy of the department's calculation of the facility emissions
13 for the previous year. Within 60 days of this notification, the
14 owner or operator of the facility may provide corrections to the
15 department. The department shall make a final determination of
16 the emissions by December 15 of that year. If the owner or oper-
17 ator disagrees with the determination of the department, the
18 owner or operator may request a contested case hearing ~~before~~
19 ~~the commission of natural resources~~ as provided for under the
20 administrative procedures act of 1969, ~~Act No. 306 of the Public~~
21 ~~Acts of 1969~~ 1969 PA 306, MCL 24.201 TO 24.328.

22 (9) ~~For each state department to which funds are appropri-~~
23 ~~ated from the emissions control fund, the director of that state~~
24 THE department shall prepare and submit to the governor and the
25 legislature BY MARCH 1 an annual report that details the activi-
26 ties OF THE PREVIOUS FISCAL YEAR funded by the ~~emissions~~
27 ~~control~~ fund for ~~his or her~~ THE department. This report shall

1 include, at a minimum, all of the following as it relates to
2 ~~each particular~~ THE department:

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

7 ~~(b) The total number of new source review and operating~~
8 ~~permit applications received by the department, including those~~
9 ~~received but not processed or issued.~~

10 ~~(c) A breakdown of the new source review and operating per-~~
11 ~~mits issued based on amount of emissions as follows:~~

12 ~~(i) Less than 1 ton per year.~~

13 ~~(ii) Between 1 and 10 tons per year.~~

14 ~~(iii) Between 10 and 50 tons per year.~~

15 ~~(iv) Greater than 50 tons per year.~~

16 ~~(d) The total number of new source review and operating per-~~
17 ~~mits issued over the course of the year.~~

18 ~~(e) The total number of new source review and operating per-~~
19 ~~mits issued per permit reviewer.~~

20 ~~(f) The total number of new source review and operating per-~~
21 ~~mits carried over from the previous year.~~

22 ~~(g) The total number of new source review and operating per-~~
23 ~~mits at the start of the year that are carried over from preced-~~
24 ~~ing years plus the number received by the department in the cur-~~
25 ~~rent year minus the number issued.~~

26 ~~(h) The total number of new source review and operating~~
27 ~~permits denied.~~

1 ~~(i) The ratio of the number of new source review and~~
2 ~~operating permits rejected to the number issued.~~

3 (B) ALL OF THE FOLLOWING INFORMATION RELATED TO THE PERMIT
4 TO INSTALL PROGRAM AUTHORIZED UNDER SECTION 5505:

5 (i) THE NUMBER OF PERMIT TO INSTALL APPLICATIONS RECEIVED BY
6 THE DEPARTMENT.

7 (ii) THE NUMBER OF PERMIT TO INSTALL APPLICATIONS FOR WHICH
8 A FINAL ACTION WAS TAKEN BY THE DEPARTMENT. THE NUMBER OF FINAL
9 ACTIONS SHOULD BE REPORTED AS THE NUMBER OF APPLICATIONS
10 APPROVED, THE NUMBER OF APPLICATIONS DENIED, AND THE NUMBER OF
11 APPLICATIONS WITHDRAWN BY THE APPLICANT.

12 (iii) THE NUMBER OF PERMITS TO INSTALL APPROVED THAT WERE
13 REQUIRED TO COMPLETE PUBLIC PARTICIPATION UNDER SECTION 5511(3)
14 BEFORE FINAL ACTION AND THE NUMBER OF PERMITS TO INSTALL APPROVED
15 THAT WERE NOT REQUIRED TO COMPLETE PUBLIC PARTICIPATION UNDER
16 SECTION 5511(3) PRIOR TO FINAL ACTION.

17 (iv) THE AVERAGE NUMBER OF FINAL PERMIT ACTIONS PER PERMIT
18 TO INSTALL REVIEWER FULL-TIME EQUIVALENTS.

19 (v) THE PERCENTAGE AND NUMBER OF PERMIT TO INSTALL APPLICA-
20 TIONS WHICH WERE REVIEWED FOR ADMINISTRATIVE COMPLETENESS WITHIN
21 10 DAYS OF RECEIPT BY THE DEPARTMENT.

22 (vi) THE PERCENTAGE AND NUMBER OF PERMIT TO INSTALL APPLICA-
23 TIONS WHICH WERE REVIEWED FOR TECHNICAL COMPLETENESS WITHIN 30
24 DAYS OF RECEIPT OF AN ADMINISTRATIVELY COMPLETE APPLICATION BY
25 THE DEPARTMENT.

1 (vii) THE PERCENTAGE AND NUMBER OF PERMIT TO INSTALL
2 APPLICATIONS SUBMITTED TO THE DEPARTMENT THAT WERE
3 ADMINISTRATIVELY COMPLETE AS RECEIVED.

4 (viii) THE PERCENTAGE AND NUMBER OF PERMIT TO INSTALL APPLI-
5 CATIONS FOR WHICH A FINAL ACTION WAS TAKEN BY THE DEPARTMENT
6 WITHIN 60 DAYS OF RECEIPT OF A TECHNICALLY COMPLETE APPLICATION
7 FOR THOSE NOT REQUIRED TO COMPLETE PUBLIC PARTICIPATION UNDER
8 SECTION 5511(3) PRIOR TO FINAL ACTION, OR WITHIN 120 DAYS OF
9 RECEIPT OF A TECHNICALLY COMPLETE APPLICATION FOR THOSE WHICH ARE
10 REQUIRED TO COMPLETE PUBLIC PARTICIPATION UNDER SECTION 5511(3)
11 PRIOR TO FINAL ACTION.

12 (C) ALL OF THE FOLLOWING INFORMATION FOR THE RENEWABLE OPER-
13 ATING PERMIT PROGRAM AUTHORIZED UNDER SECTION 5506:

14 (i) THE NUMBER OF RENEWABLE OPERATING PERMIT APPLICATIONS
15 RECEIVED BY THE DEPARTMENT.

16 (ii) THE NUMBER OF RENEWABLE OPERATING PERMIT APPLICATIONS
17 FOR WHICH A FINAL ACTION WAS TAKEN BY THE DEPARTMENT. THE NUMBER
18 OF FINAL ACTIONS SHOULD BE REPORTED AS THE NUMBER OF APPLICATIONS
19 APPROVED, THE NUMBER OF APPLICATIONS DENIED, AND THE NUMBER OF
20 APPLICATIONS WITHDRAWN BY THE APPLICANT.

21 (iii) THE PERCENTAGE AND NUMBER OF PERMIT APPLICATIONS INI-
22 TIALY PROCESSED WITHIN THE REQUIRED TIME.

23 (iv) THE PERCENTAGE AND NUMBER OF PERMIT RENEWALS AND MODI-
24 FICATIONS PROCESSED WITHIN THE REQUIRED TIME.

25 (v) THE NUMBER OF PERMIT APPLICATIONS REOPENED BY THE
26 DEPARTMENT.

1 (vi) THE NUMBER OF GENERAL PERMITS ISSUED BY THE DEPARTMENT.

2 (D) ~~-(j)-~~ The number of letters of violation sent.

3 (E) ~~-(k)-~~ The amount of penalties collected from all consent
4 orders and judgments.

5 (F) ~~-(l)-~~ For each enforcement action that includes payment
6 of a penalty, a description of what corrective actions were
7 required by the enforcement action.

8 ~~-(m) The average amount of time to take final action on a~~
9 ~~new source review or operating permit from the time the depart-~~
10 ~~ment first receives the application to when it issues the permit~~
11 ~~for each category listed in subdivision (c).~~

12 ~~-(n) A list of state implementation plan development~~
13 ~~accomplishments.~~

14 (G) ~~-(o)-~~ The number of inspections done on sources required
15 to obtain a permit under section 5506 and the number of inspec-
16 tions of other sources.

17 (H) ~~-(p)-~~ The number of AIR POLLUTION complaints received,
18 INVESTIGATED, NOT RESOLVED, AND RESOLVED by the department. ~~for~~
19 ~~sources required to obtain a permit under section 5506, the~~
20 ~~number of complaints investigated, and the number of complaints~~
21 ~~not investigated.~~

22 ~~-(q) The number of compliance reports and certifications~~
23 ~~reviewed for sources required to obtain a permit under section~~
24 ~~5506.~~

25 (I) ~~-(r)-~~ The number of contested case hearings ~~—~~ AND
26 civil actions ~~—~~, and criminal investigations and prosecutions
27 initiated and completed, and the number of voluntary consent

1 orders, administrative penalty orders, and emergency orders
2 entered or issued, for sources required to obtain a permit under
3 section 5506.

4 ~~(s) The amount of criminal fines and civil fines collected~~
5 ~~from all administrative and judicial orders and judgments.~~

6 (10) By ~~May 13, 1995~~ AUGUST 1, 1999, the department shall
7 convene a task force made up of representatives of fee-subject
8 facilities, environmental groups, the general public, and any
9 state department to which funds are appropriated from the
10 ~~emissions control fund. By November 13, 1995, the task force~~
11 ~~shall consult with the auditor general and submit to the legisla-~~
12 ~~ture an interim report on the same information required in the~~
13 ~~report due on July 1, 2000.~~ Not later than ~~July~~ AUGUST 1,
14 2000, the task force shall provide to the legislature a final
15 report on the adequacy of the fee revenues, ~~and~~ THE FEE STRUC-
16 TURE RELATIVE TO ALL SECTORS OF THE REGULATED INDUSTRY, AND THE
17 appropriateness of program activities and shall recommend changes
18 to this section, as appropriate, to match fee revenues to program
19 costs.

20 (11) The attorney general may bring an action for the col-
21 lection of the fees imposed under this section. ~~and any penalty~~
22 ~~assessed under section 5519.~~

23 Sec. 5523. (1) A county in which a city with a population
24 of 750,000 or more is located may apply for a delegation from the
25 department to issue STATE permits and administer and enforce the
26 applicable provisions of this part, rules promulgated under this
27 part, the clean air act, and the state implementation plan.

1 After a public hearing, the department shall grant the delegation
2 if the ~~county demonstrates both~~ DEPARTMENT FINDS THAT THE
3 COUNTY'S APPLICATION DEMONSTRATES ALL of the following:

4 (a) That the county ~~has a~~ program ~~that~~ complies with the
5 applicable ~~requirements~~ PROVISIONS of this part, the rules
6 promulgated under this part, the clean air act, and the state
7 implementation plan.

8 (b) That the county has, and will continue to have, the
9 capacity to carry out the applicable provisions of this part,
10 rules promulgated under this part, the clean air act, and the
11 state implementation plan INCLUDING, BUT NOT LIMITED TO, ADEQUATE
12 AND QUALIFIED STAFF TO DO ALL OF THE FOLLOWING:

13 (i) MONITOR AMBIENT AIR AT LOCATIONS SPECIFIED BY THE
14 DEPARTMENT USING EQUIPMENT AND PROCEDURES SPECIFIED BY THE
15 DEPARTMENT.

16 (ii) PROCESS AND REVIEW APPLICATIONS FOR INSTALLATION PER-
17 MITS, OPERATING PERMITS, TAX EXEMPTIONS, AND CONSTRUCTION WAIVERS
18 PURSUANT TO SECTIONS 5505 AND 5506, PART 59, AND THE CLEAN AIR
19 ACT, DEMONSTRATING A THOROUGH KNOWLEDGE OF PERMIT APPLICABILITY,
20 PROCEDURES, AND REGULATIONS [BY DEVELOPING PERMITS THAT ARE FREE OF
SIGNIFICANT ERRORS AND INACCURACIES AS DEFINED IN THE PERFORMANCE
STANDARDS SECTION OF THE ANNUAL CONTRACT BETWEEN THE DEPARTMENT AND
PARTICIPATING COUNTIES].

21 (iii) PERFORM NECESSARY SAMPLING AND LABORATORY ANALYSES.

22 (iv) CONDUCT REGULAR AND COMPLETE INSPECTIONS AND RECORD
23 REVIEWS OF ALL SIGNIFICANT SOURCES OF AIR POLLUTION.

24 (v) RESPOND TO CITIZEN COMPLAINTS RELATED TO AIR POLLUTION.

25 (vi) NOTIFY SOURCES OF IDENTIFIED VIOLATIONS OF APPLICABLE
26 PROVISIONS OF THIS PART, RULES PROMULGATED UNDER THIS PART, THE
27 CLEAN AIR ACT, AND THE STATE IMPLEMENTATION PLAN AND CONDUCT

1 APPROPRIATE ENFORCEMENT, UP TO AND INCLUDING ADMINISTRATIVE,
2 CIVIL, AND CRIMINAL ENFORCEMENT.

3 (vii) PERFORM DISPERSION MODELING ANALYSES, COLLECT EMIS-
4 SIONS RELEASE INFORMATION, AND DEVELOP NECESSARY STATE IMPLEMEN-
5 TATION PLAN DEMONSTRATIONS.

6 (viii) CARRY OUT OTHER ACTIVITIES REQUIRED BY THIS PART,
7 RULES PROMULGATED UNDER THIS PART, THE CLEAN AIR ACT, AND THE
8 STATE IMPLEMENTATION PLAN.

9 (C) THAT THE COUNTY HAS ADEQUATE FUNDING TO CARRY OUT THE
10 APPLICABLE PROVISIONS OF THIS PART, RULES PROMULGATED UNDER THIS
11 PART, THE CLEAN AIR ACT, AND THE STATE IMPLEMENTATION PLAN. THIS
12 SHALL INCLUDE IDENTIFICATION OF FUNDING FROM AIR QUALITY FEES AND
13 ANY FEDERAL, STATE, OR COUNTY FUNDS ALONG WITH AN IDENTIFICATION
14 OF THE ACTIVITIES THAT ARE FUNDED BY EACH FUNDING SOURCE. THE
15 COUNTY FUNDING SHALL BE SUFFICIENT TO PROVIDE THE REQUIRED
16 GRANTEE MATCH FOR ANY FEDERAL AIR POLLUTION GRANT.

17 (D) THAT THE COUNTY HAS PERFORMED IN ACCORDANCE WITH THE
18 TERMS OF THE MOST RECENT CONTRACT, IF ANY, BETWEEN THE STATE AND
19 THE COUNTY THAT DESCRIBES THE WORK ACTIVITIES AND PROGRAM TO BE
20 CARRIED OUT BY THE COUNTY. THIS SHALL BE DEMONSTRATED THROUGH
21 STATE AUDIT REPORTS AND THE COUNTY'S PROMPT AND PERMANENT CORREC-
22 TION OF ANY DEFICIENCIES IDENTIFIED IN STATE AUDIT REPORTS.

23 (E) THAT THE COUNTY PROGRAM CONTAINS PROVISIONS FOR PUBLIC
24 NOTICE AND PUBLIC PARTICIPATION CONSISTENT WITH THIS PART, THE
25 RULES PROMULGATED UNDER THIS PART, AND THE CLEAN AIR ACT.

26 (F) THAT THE COUNTY HAS THE CAPACITY TO ADMINISTER THE STATE
27 AIR QUALITY FEE PROGRAM IN THE MANNER PRESCRIBED IN SECTION 5522

1 FOR ALL FEE-SUBJECT FACILITIES SUBJECT TO THIS PART, LOCATED
2 WITHIN THE COUNTY, AND SUBJECT TO THE DELEGATED PROGRAM OF THE
3 COUNTY. THIS SHALL INCLUDE AN ABILITY TO IDENTIFY FEE-SUBJECT
4 FACILITIES, CALCULATE AND ASSESS FEES, IMPLEMENT COLLECTIONS,
5 MAINTAIN A DEDICATED ACCOUNT, AND PROCESS FEE CHALLENGES.

6 (2) A delegation under this section shall be for a term of
7 not more than 5 years and not less than 2 years, and may be
8 renewed by the department. THE DELEGATION SHALL BE IN THE FORM
9 OF A WRITTEN CONTRACT THAT DOES ALL OF THE FOLLOWING:

10 (A) DESCRIBES THE ACTIVITIES THE COUNTY SHALL CARRY OUT
11 DURING THE TERM OF THE DELEGATION.

12 (B) PROVIDES FOR THE DELEGATED PROGRAM TO BE CONSISTENT WITH
13 IMPLEMENTATION OF THE STATE'S AIR PROGRAM, USING STATE PROCE-
14 DURES, FORMS, DATABASES, AND OTHER MEANS.

15 (C) PROVIDES FOR ONGOING COMMUNICATION BETWEEN THE COUNTY
16 AND STATE TO ASSURE CONSISTENCY UNDER SUBDIVISION (B).

17 (3) One hundred eighty days prior to the expiration of the
18 term of delegation, the county may submit an application to the
19 department for renewal of their delegation of authority. The
20 department shall hold a public hearing and following the public
21 hearing make its decision on a renewal of delegation at least
22 ~~90~~ 60 days prior to the expiration of the term of the
23 delegation. The department ~~may~~ SHALL deny the renewal of a
24 delegation of authority ~~only~~ upon a finding that the county ~~is~~
25 ~~materially in violation of applicable provisions of this part,~~
26 ~~rules promulgated under this part, the clean air act, the state~~
27 ~~implementation plan,~~ NO LONGER MEETS THE CRITERIA DESCRIBED IN

1 SUBSECTION (1) or provisions of the delegation ~~agreed to between~~
2 ~~the department and the county~~ CONTRACT. The county may appeal a
3 finding under subsection (1) or this subsection to a court of
4 competent jurisdiction.

5 (4) ~~-(3)-~~ A county delegated authority under this section
6 annually shall submit a report to the department that
7 ~~demonstrates all of the following:~~ DOCUMENTS THE COUNTY'S ABIL-
8 ITY TO MEET THE CRITERIA DESCRIBED IN SUBSECTION (1) AND THE DEL-
9 EGATION CONTRACT DURING THE PAST 12 MONTHS.

10 ~~-(a) That the county has the capacity to implement the per-~~
11 ~~mitting program under title V, the applicable requirements of~~
12 ~~this part, rules promulgated under this part, and the clean air~~
13 ~~act.~~

14 ~~-(b) That the county program complies with the applicable~~
15 ~~provisions of this part, the rules promulgated under this part,~~
16 ~~and the clean air act.~~

17 ~~-(c) That the county program contains provisions for public~~
18 ~~notice and public participation consistent with this part, the~~
19 ~~rules promulgated under this part, and title V, where~~
20 ~~applicable.~~

21 ~~-(d) That the fees collected pursuant to section 5522 have~~
22 ~~been expended in accordance with section 5521(5).~~

23 (5) ~~-(4)-~~ In addition to the report of the county under sub-
24 section ~~-(3)-~~ (4), the auditor general of the state shall annu-
25 ally submit to the governor, the legislature, and the department
26 an independent report regarding whether a county meets the
27 criteria provided in subsection ~~-(3)-~~ (1) and a review of the

1 fiscal integrity of a county delegated authority under this
2 section. The auditor general's report shall also determine the
3 county's pro rata share of the state's support services for title
4 V programs that are attributable to and payable by a county.

5 (6) ~~—(5)—~~ Within 60 days after a county delegated authority
6 under this section submits its annual report as required under
7 subsection ~~—(3)—~~ (4), the department shall notify the county, in
8 writing, whether the report of the county meets the requirements
9 of this section or states, with particularity, the deficiencies
10 in that report or any findings in the auditor general's report
11 that render the county in noncompliance with the ~~requirements~~
12 ~~of~~ CRITERIA IN subsection ~~—(3)—~~ (1). The county shall have 90
13 days to correct any stated deficiencies. If the department finds
14 that the deficiencies have not been corrected by the county, the
15 department shall notify the county, in writing, within 30 days of
16 the submission of the county's corrections and may terminate a
17 county's delegation. The county shall have 21 days from receipt
18 of the decision of termination in which to appeal the
19 department's decision to a court of competent jurisdiction. If
20 the department fails to notify the county within 60 days, the
21 report shall be considered satisfactory for the purposes of this
22 subsection.

23 (7) ~~—(6)—~~ Notwithstanding any other statutory provision,
24 rule, or ordinance, a county delegated authority under this sec-
25 tion to administer and enforce this part shall issue STATE per-
26 mits and implement its responsibilities only in accordance with
27 its delegation, THE DELEGATION CONTRACT, this part, rules

1 promulgated under this part, the clean air act, and the
2 applicable provisions of the state implementation plan.
3 ~~Permits~~ STATE PERMITS issued by a county that is delegated
4 authority under this section have the same force and effect as
5 permits issued by the department, and if SUCH a county issues a
6 STATE permit pursuant to ~~this~~ section 5505 OR 5506, no other
7 state or county permit is required pursuant to ~~this part~~
8 SECTION 5505 OR 5506, RESPECTIVELY.

9 (8) ~~-(7)-~~ Upon receipt of a permit application, prior to
10 taking final action to issue a STATE permit or entering into a
11 consent order, the county shall transmit to the department a copy
12 of each administratively complete permit application, application
13 for a permit modification or renewal, proposed permit, or pro-
14 posed consent order. The county shall transmit to the department
15 a copy of each STATE permit issued by the county and consent
16 order entered within 30 days of issuance of the STATE permit or
17 entry of the consent order.

18 (9) ~~-(8)-~~ Notwithstanding a delegation under this part, the
19 department retains the authority to bring any appropriate
20 enforcement action under sections 5515, 5516, 5518, 5526, 5527,
21 5528, 5529, 5530, 5531, and 5532 as authorized under this part
22 and the rules promulgated under this part to enforce this part
23 and the rules promulgated under this part. The department may
24 bring any appropriate action to enforce a STATE permit issued or
25 a consent order entered into by a county to which authority is
26 delegated.

1 (10) ~~-(9)-~~ Notwithstanding any other provision of this part,
2 in a county that has been delegated authority under this section,
3 that county shall impose and collect fees in the manner pre-
4 scribed in section 5522 on all fee-subject facilities subject to
5 this part and located within the corporate boundaries and subject
6 to the delegated program of the county. The department shall not
7 levy or collect an annual air quality fee from the owner or oper-
8 ator of a fee-subject facility who pays fees pursuant to this
9 section. A county that is delegated authority under this section
10 shall not assess a fee for a program or service other than as
11 provided for in this part or title V or assess a fee covered by
12 this part or title V greater than the fees set forth in section
13 5522. A county that is delegated authority under this section
14 shall pay to the state the pro rata share of the state's support
15 services for title V programs attributable to the county.

16 (11) ~~-(10)-~~ Fees imposed and collected by a county with del-
17 egated authority under this section shall be paid to the county
18 treasury.

19 (12) ~~-(11)-~~ The county treasurer of a county delegated
20 authority under this section shall create a clean air implementa-
21 tion account in the county treasury, and the county treasurer
22 shall deposit all fees received pursuant to the delegation autho-
23 rized under this section in the account. The fees shall be
24 expended only in accordance with section ~~-5521(5)-~~ 5521(6), the
25 rules promulgated under this part, and the clean air act.

SB0813, As Passed House, June 10, 1998

Senate Bill No. 813

27

1 Enacting section 1. Sections 5519 and 5520 of the natural
2 resources and environmental protection act, 1994 PA 451, MCL
3 324.5519 and 324.5520, are repealed.