

# HOUSE BILL No. 4915

September 8, 2011, Introduced by Rep. Kowall 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 2007 PA 75.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 5522. (1) Until October 1, ~~2011~~, **2014**, 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  
7 requirements of the clean air act and that this expressly stated  
8 fee system serve as a limitation on the amount of fees imposed  
9 under this part on the owners or operators of fee-subject  
10 facilities in this state.

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

3 (a) Except as provided in subdivision (d), for category I  
4 facilities, the annual air quality fee shall be the sum of a  
5 facility charge **OF \$4,485.00** and an emissions charge as specified  
6 in subdivision (e) **OR (F)**. ~~The facility charge shall be \$4,485.00.~~

7 (b) For category II facilities, the annual air quality fee  
8 shall be the sum of a facility charge **OF \$1,795.00** and an emissions  
9 charge as specified in subdivision (e) **OR (F)**. ~~The facility charge  
10 shall be \$1,795.00.~~

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

13 (d) For municipal electric generating facilities that are  
14 category I facilities and that emit more than ~~450-730~~ tons but less  
15 than ~~18,000-12,000~~ tons of fee-subject air pollutants, the annual  
16 air quality fee shall be the following amount, based on the number  
17 of tons of fee-subject air pollutants emitted:

18 (i) More than ~~450-730~~ tons but less than ~~4,000-5,250~~ tons,  
19 ~~\$24,816.00-\$37,000.00~~.

20 (ii) At least ~~4,000-5,250~~ tons but ~~not more~~ **LESS** than ~~5,300~~  
21 **12,000** tons, **\$127,000.00**. ~~\$24,816.00 plus \$45.25 per ton of fee-~~  
22 ~~subject air pollutant in excess of 4,000 tons.~~

23 ~~—— (iii) More than 5,300 tons but not more than 12,000 tons,~~  
24 ~~\$85,045.00.~~

25 ~~—— (iv) More than 12,000 tons but less than 18,000 tons,~~  
26 ~~\$159,459.00.~~

27 (e) The emissions charge for category I ~~and category II~~

1 facilities THAT ARE ELECTRIC PROVIDERS AND THAT ARE NOT COVERED BY  
2 SUBDIVISION (D) AND FOR CATEGORY II FACILITIES THAT ARE ELECTRIC  
3 PROVIDERS shall equal the emission charge rate of ~~\$45.25~~,  
4 multiplied by the actual tons of fee-subject air pollutants  
5 emitted. **THE EMISSION CHARGE RATE FOR FEE-SUBJECT AIR POLLUTANTS**  
6 **SHALL BE \$47.95.** A pollutant that qualifies as a fee-subject air  
7 pollutant under more than 1 class shall be charged only once. The  
8 actual tons of fee-subject air pollutants emitted ~~is~~ **SHALL BE**  
9 considered to be the sum of all fee-subject air pollutants emitted  
10 at the fee-subject facility for the calendar year 2 years preceding  
11 the year of billing, but not more than the lesser of the following:

12 (i) ~~4,000~~ **5,250** tons.

13 (ii) ~~1,000~~ **1,250** tons per pollutant, if the sum of all fee-  
14 subject air pollutants except carbon monoxide emitted at the fee-  
15 subject facility is less than ~~4,000~~ **5,250** tons.

16 (F) **THE EMISSIONS CHARGE FOR CATEGORY I OR CATEGORY II**  
17 **FACILITIES THAT ARE NOT ELECTRIC PROVIDERS SHALL BE CALCULATED IN**  
18 **THE SAME MANNER AS PROVIDED IN SUBDIVISION (E). HOWEVER, THE ACTUAL**  
19 **TONS OF FEE-SUBJECT AIR POLLUTANTS EMITTED SHALL BE CONSIDERED TO**  
20 **BE THE SUM OF ALL FEE-SUBJECT AIR POLLUTANTS EMITTED AT A FEE-**  
21 **SUBJECT FACILITY FOR THE CALENDAR YEAR 2 YEARS PRECEDING THE YEAR**  
22 **OF BILLING, BUT NOT MORE THAN THE LESSER OF THE FOLLOWING:**

23 (i) **4,200 TONS.**

24 (ii) **1,050 TONS PER POLLUTANT, IF THE SUM OF ALL FEE-SUBJECT**  
25 **AIR POLLUTANTS EXCEPT CARBON MONOXIDE EMITTED AT THE FEE-SUBJECT**  
26 **FACILITY IS LESS THAN 4,200 TONS.**

27 ~~— (3) The auditor general shall conduct a biennial audit of the~~

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

5 (3) ~~(4)~~ After January 1, but before January 15 of each year,  
6 the department shall notify the owner or operator of each fee-  
7 subject facility of its assessed annual air quality fee. Payment is  
8 due within 90 calendar days of the mailing date of the air quality  
9 fee notification. If an assessed fee is challenged under subsection  
10 ~~(6)~~, ~~(5)~~, payment is due within 90 calendar days of the mailing  
11 date of the air quality fee notification or within 30 days of  
12 receipt of a revised fee or statement supporting the original fee,  
13 whichever is later. **HOWEVER, TO COMBINE FEE ASSESSMENTS, THE**  
14 **DEPARTMENT MAY ADJUST THE BILLING DATE AND DUE DATE UNDER THIS**  
15 **SUBSECTION FOR CATEGORY III DRY CLEANING FACILITIES THAT ARE ALSO**  
16 **SUBJECT TO THE LICENSING OR CERTIFICATION REQUIREMENTS OF SECTION**  
17 **13305 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.13305, AND**  
18 **SECTION 5I OF THE FIRE PREVENTION CODE, 1941 PA 207, MCL 29.5I.** The  
19 department shall deposit all fees collected under this section to  
20 the credit of the fund.

21 (4) ~~(5)~~ If the owner or operator of a fee-subject facility  
22 fails to submit the amount due within the time period specified in  
23 subsection ~~(4)~~, ~~(3)~~, the department shall assess the owner or  
24 operator a penalty of 5% of the amount of the unpaid fee for each  
25 month that the payment is overdue up to a maximum penalty of 25% of  
26 the total fee owed. **HOWEVER, TO COMBINE FEE ASSESSMENTS, THE**  
27 **DEPARTMENT MAY WAIVE THE PENALTY UNDER THIS SUBSECTION FOR DRY**

1 **CLEANING FACILITIES DESCRIBED IN SUBSECTION (3).**

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

20       (6) ~~(7)~~ If requested by the department, by March 15 of each  
21 year, or within 45 days of a request by the department, whichever  
22 is later, the owner or operator of each fee-subject facility shall  
23 submit information regarding the facility's previous year's  
24 emissions to the department. The information shall be sufficient  
25 for the department to calculate the facility's emissions for that  
26 year and meet the requirements of 40 CFR 51.320 to 51.327.

27       (7) ~~(8)~~ By July 1 of each year, the department shall provide

1 the owner or operator of each fee-subject facility required to pay  
2 an emission charge pursuant to this section with a copy of the  
3 department's calculation of the facility emissions for the previous  
4 year. Within 60 days of this notification, the owner or operator of  
5 the facility may provide corrections to the department. The  
6 department shall make a final determination of the emissions by  
7 December 15 of that year. If the owner or operator disagrees with  
8 the determination of the department, the owner or operator may  
9 request a contested case hearing as provided for under the  
10 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
11 24.328.

12 (8) ~~(9)~~—By March 1 annually, the department shall prepare and  
13 submit to the governor, the legislature, the chairpersons of the  
14 standing committees of the senate and house of representatives with  
15 primary responsibility for environmental protection issues related  
16 to air quality, and the chairpersons of the subcommittees of the  
17 senate and house appropriations committees with primary  
18 responsibility for appropriations to the department a report that  
19 details the department's activities of the previous fiscal year  
20 funded by the fund. This report shall include, at a minimum, all of  
21 the following as it relates to the department:

22 (a) The number of full-time equated positions performing title  
23 V and non-title V air quality enforcement, compliance, or  
24 permitting activities.

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

27 (i) The number of permit to install applications received by

1 the department.

2 (ii) The number of permit to install applications for which a  
3 final action was taken by the department. The number of final  
4 actions ~~should~~**SHALL** be reported as the number of applications  
5 approved, the number of applications denied, and the number of  
6 applications withdrawn by the applicant.

7 (iii) The number of permits to install approved that were  
8 required to complete public participation under section 5511(3)  
9 before final action and the number of permits to install approved  
10 that were not required to complete public participation under  
11 section 5511(3) prior to final action.

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

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

17 (vi) The percentage and number of permit to install  
18 applications that were reviewed for technical completeness within  
19 30 days of receipt of an administratively complete application by  
20 the department.

21 (vii) The percentage and number of permit to install  
22 applications submitted to the department that were administratively  
23 complete as received.

24 (viii) The percentage and number of permit to install  
25 applications for which a final action was taken by the department  
26 within 60 days of receipt of a technically complete application for  
27 those not required to complete public participation under section

1 5511(3) prior to final action, or within 120 days of receipt of a  
2 technically complete application for those which are required to  
3 complete public participation under section 5511(3) prior to final  
4 action.

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

7 (i) The number of renewable operating permit applications  
8 received by the department.

9 (ii) The number of renewable operating permit applications for  
10 which a final action was taken by the department. The number of  
11 final actions ~~should~~**SHALL** be reported as the number of  
12 applications approved, the number of applications denied, and the  
13 number of applications withdrawn by the applicant.

14 (iii) The percentage and number of permit applications initially  
15 processed within the required time.

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

18 (v) The number of permit applications reopened by the  
19 department.

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

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

22 (e) The amount of penalties collected from all consent orders  
23 and judgments.

24 (f) For each enforcement action that includes payment of a  
25 penalty, a description of what corrective actions were required by  
26 the enforcement action.

27 (g) The number of inspections done on sources required to



1 obtain a permit under section 5506 and the number of inspections of  
2 other sources.

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

5 (i) The number of contested case hearings and civil actions  
6 initiated and completed, and the number of voluntary consent  
7 orders, administrative penalty orders, and emergency orders entered  
8 or issued, for sources required to obtain a permit under section  
9 5506.

10 (j) The amount of revenue in the fund at the end of the fiscal  
11 year.

12 (9) ~~(10)~~—The report under subsection ~~(9)~~—(8) shall also  
13 include the amount of revenue for programs under this part received  
14 during the prior fiscal year from fees, from federal funds, and  
15 from general fund appropriations. Each of these amounts shall be  
16 expressed as a dollar amount and as a percent of the total annual  
17 cost of programs under this part.

18 (10) ~~(11)~~—The attorney general may bring an action for the  
19 collection of the fees imposed under this section.

20 (11) ~~(12)~~—This section does not apply if the administrator of  
21 the United States environmental protection agency determines that  
22 the department is not adequately administering or enforcing the  
23 renewable operating permit program and the administrator  
24 promulgates and administers a renewable operating permit program  
25 for this state.

26 (12) AS USED IN THIS SECTION, "ELECTRIC PROVIDER" MEANS THAT  
27 TERM AS DEFINED IN SECTION 5 OF THE CLEAN, RENEWABLE, AND EFFICIENT

1 ENERGY ACT, 2008 PA 295, MCL 460.1005.