

Act No. 119  
Public Acts of 2019  
Approved by the Governor  
November 14, 2019

Filed with the Secretary of State  
November 15, 2019

EFFECTIVE DATE: November 15, 2019

**STATE OF MICHIGAN  
100TH LEGISLATURE  
REGULAR SESSION OF 2019**

Introduced by Senator Bayer

# ENROLLED SENATE BILL No. 530

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people’s right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts,” by amending sections 5501 and 5522 (MCL 324.5501 and 324.5522), section 5501 as amended by 1998 PA 245 and section 5522 as amended by 2015 PA 60.

*The People of the State of Michigan enact:*

Sec. 5501. As used in this part:

- (a) “Air contaminant” means a dust, fume, gas, mist, odor, smoke, vapor, or any combination thereof.
- (b) “Air pollution” means the presence in the outdoor atmosphere of air contaminants in quantities, of characteristics, under conditions and circumstances, and of a duration that are or can become injurious to human health or welfare, to animal life, to plant life, or to property, or that interfere with the enjoyment of life and property in this state. Air pollution does not mean any health or safety hazard that is an aspect of employer-employee relationships. With respect to any mode of transportation, nothing in this part or in the rules promulgated under this part shall be inconsistent with the federal regulations, emission limits, standards, or requirements on various modes of transportation. Air pollution does not mean those usual and ordinary odors associated with a farm operation if the person engaged in the farm operation is following generally accepted agricultural and management practices.
- (c) “Air pollution control equipment” means any method, process, or equipment that removes, reduces, or renders less noxious air contaminants discharged into the atmosphere.
- (d) “Category A facility” means a fee-subject facility that is an electric provider and is any of the following:
  - (i) A major stationary source as defined in 42 USC 7602.
  - (ii) An affected source as defined pursuant to 42 USC 7651a.
  - (iii) A major stationary source as defined in 42 USC 7491.
- (e) “Category B facility” means a fee-subject facility that is not an electric provider and is any of the following:
  - (i) A major stationary source as defined in 42 USC 7602.

(ii) An affected source as defined pursuant to 42 USC 7651a.

(iii) A major stationary source as defined in 42 USC 7491.

(f) "Category C facility" means a fee-subject facility that is not a category A or category B facility and that is a major source as defined in 42 USC 7412.

(g) "Category D facility" means a fee-subject facility that is not a category A, category B, or category C facility and that is subject to requirements of 42 USC 7411.

However, a source is not a category D facility if any of the following apply:

(i) All equipment at the source meets a permit to install exemption in R 336.1280 to R 336.1291 of the Michigan Administrative Code and does not have an active permit to install.

(ii) The source is stripper well property as defined in 26 USC 613A(c)(6)(E).

(h) "Category E facility" means a fee-subject facility that is not a category A, category B, category C, or category D facility and that has an active title V opt-out permit.

(i) "Category F facility" means a fee-subject facility that is not a category A, category B, category C, category D, or category E facility.

(j) "Clean air act" means chapter 360, 69 Stat 322, 42 USC 7401 to 7671q, and regulations promulgated under the clean air act.

(k) "Electric provider" means that term as defined in section 5 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1005.

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

(m) "Farm operation" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(n) "Fee-subject air pollutant" means particulates, expressed as PM-10 pursuant to R 336.1116(k) of the Michigan Administrative Code, sulfur dioxide, volatile organic compounds, nitrogen oxides, ozone, lead, and any pollutant regulated under 42 USC 7411 or 7412 or title III of the clean air act, chapter 360, 77 Stat 400, 42 USC 7601 to 7628.

(o) "Fee-subject emissions" means emissions of fee-subject air pollutants.

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

(i) Any major source as defined in 40 CFR 70.2.

(ii) Any source, including an area source, subject to a standard, limitation, or other requirement under 42 USC 7411, when the standard, limitation, or other requirement becomes applicable to that source.

(iii) Any source, including an area source, subject to a standard, limitation, or other requirement under 42 USC 7412, when the standard, limitation, or other requirement becomes applicable to that source. However, a source is not a fee-subject facility solely because it is subject to a regulation, limitation, or requirement under 42 USC 7412(r).

(iv) Any affected source under title IV.

(v) Any other source in a source category designated by the administrator of the United States Environmental Protection Agency as required to obtain an operating permit under title V, when the standard, limitation, or other requirement becomes applicable to that source.

(vi) Any source with an active title V opt-out permit.

(q) "Fund" means the emissions control fund created in section 5521.

(r) "General permit" means a permit to install, permit to operate authorized pursuant to rules promulgated under section 5505(6), or an operating permit under section 5506, for a category of similar sources, processes, or process equipment. General provisions for issuance of general permits shall be provided for by rule.

(s) "Generally accepted agricultural and management practices" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

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

(i) Particulates.

(ii) Sulfur dioxides.

(iii) Volatile organic compounds.

(iv) Oxides of nitrogen.

(u) “Process”, unless the context requires a different meaning, means an action, operation, or a series of actions or operations at a source that emits or has the potential to emit an air contaminant.

(v) “Process equipment” means all equipment, devices, and auxiliary components, including air pollution control equipment, stacks, and other emission points, used in a process.

(w) “Responsible official” means, for the purposes of signing and certifying as to the truth, accuracy, and completeness of permit applications, monitoring reports, and compliance certifications, any of the following:

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

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

(iii) For a county or municipality or a state, federal, or other public agency: a principal executive officer or ranking elected official. For this purpose, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

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

(x) “Schedule of compliance” means, for a source not in compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act at the time of issuance of an operating permit, a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an applicable requirement and a schedule for submission of certified progress reports at least every 6 months. Schedule of compliance means, for a source in compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act at the time of issuance of an operating permit, a statement that the source will continue to comply with these requirements. With respect to any applicable requirement of this part, rules promulgated under this part, and the clean air act effective after the date of issuance of an operating permit, the schedule of compliance shall contain a statement that the source will meet the requirements on a timely basis, unless the underlying applicable requirement requires a more detailed schedule.

(y) “Source” means a stationary source as defined in 42 USC 7602, and has the same meaning as stationary source when used in comparable or applicable circumstances under the clean air act. A source includes all the processes and process equipment under common control that are located within a contiguous area, or a smaller group of processes and process equipment as requested by the owner or operator of the source, if in accordance with the clean air act.

(z) “Title IV” means title IV of the clean air act, pertaining to acid deposition control, 42 USC 7651 to 7651o.

(aa) “Title V” means title V of the clean air act, 42 USC 7661 to 7661f.

(bb) “Title V opt-out permit” means a permit to install that includes all of the following:

(i) Specified emission limits below thresholds for title V applicability.

(ii) Operational restriction.

(iii) Monitoring or record-keeping requirements to make subparagraphs (i) and (ii) practically enforceable through a permit.

Sec. 5522. (1) Until October 1, 2023, the owner or operator of each fee-subject facility shall pay air quality fees as required and calculated under this section. The department may levy and collect an annual air quality fee from the owner or operator of each fee-subject facility in this state. The legislature intends that the fees required under this section meet the minimum requirements of the clean air act and that this expressly stated fee system serve as a limitation on the amount of fees imposed under this part on the owners or operators of fee-subject facilities in this state.

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

(a) Except as provided in subdivisions (g) and (h), for category A facilities, the annual air quality fee is the sum of an emissions charge as specified in subdivision (i) and a facility charge. The facility charge is as follows, based on the amount of fee-subject emissions:

(i) If the amount of fee-subject emissions is capped under subdivision (i), \$45,000.00.

(ii) For 1,000 or more tons, \$30,000.00.

(iii) For 100 or more tons but less than 1,000 tons, \$15,750.00.

(iv) For 60 or more tons but less than 100 tons, \$12,500.00.

(v) For 6 or more tons but less than 60 tons, \$10,500.00.

(vi) For zero or more tons but less than 6 tons, \$5,250.00.

(b) For category B facilities, the annual air quality fee is the sum of an emissions charge as specified in subdivision (j) and a facility charge. The facility charge is as follows, based on the amount of fee-subject emissions:

(i) For 2,000 or more tons, \$21,000.00.

(ii) For 200 or more tons but less than 2,000 tons, \$15,750.00.

(iii) For 60 or more tons but less than 200 tons, \$10,500.00.

(iv) For 6 or more tons but less than 60 tons, \$7,500.00.

(v) For zero or more tons but less than 6 tons, \$5,250.00.

(c) For category C facilities, the annual air quality fee is the sum of an emissions charge as specified in subdivision (j) and a facility charge. The facility charge is as follows, based on the amount of fee-subject emissions:

(i) For 60 or more tons, \$4,500.00.

(ii) For 6 or more tons but less than 60 tons, \$3,500.00.

(iii) For zero or more tons but less than 6 tons, \$2,500.00.

(d) For category D facilities, the annual air quality fee is the sum of an emissions charge as specified in subdivision (j) and a facility charge. The facility charge is as follows, based on the amount of fee-subject emissions:

(i) For 60 or more tons, \$2,500.00.

(ii) For 6 or more tons but less than 60 tons, \$2,000.00.

(iii) For zero or more tons but less than 6 tons, \$1,795.00.

(e) For category E facilities, the annual air quality fee is as follows, based on the amount of fee-subject emissions:

(i) For 60 or more tons, \$1,795.00.

(ii) For zero or more tons but less than 60 tons, \$250.00.

(f) For category F facilities, the annual air quality fee is \$250.00.

(g) For municipal electric generating facilities with 646 or more tons of fee-subject air emissions, the annual air quality fee is \$50,000.00.

(h) For municipal electric generating facilities with less than 646 tons of fee-subject emissions, the annual air quality fee shall be determined in the same manner as provided in subdivision (b).

(i) The emissions charge for a category A facility that is not covered by subdivision (g) or (h) equals the emission charge rate multiplied by the actual tons of fee-subject emissions. The emission charge rate for fee-subject air pollutants is \$53.00. A pollutant that qualifies as a fee-subject air pollutant under more than 1 class shall be charged only once. The actual tons of fee-subject emissions is considered to be the sum of all fee-subject emissions at the fee-subject facility for the calendar year 2 years preceding the year of billing, but not more than the lesser of the following:

(i) 6,100 tons.

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

(j) The emissions charge for facilities that are not electric providers shall be calculated in the same manner as provided in subdivision (i). However, the actual tons of fee-subject emissions is considered to be the sum of all fee-subject emissions at a fee-subject facility for the calendar year 2 years preceding the year of billing, but not more than the lesser of the following:

(i) 4,500 tons.

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

(3) After January 1, but before January 15 of each year, the department shall notify the owner or operator of each fee-subject facility of its assessed annual air quality fee. Payment is due within 90 calendar days after the mailing date of the air quality fee notification. If an assessed fee is challenged under subsection (5), payment is due within 90 calendar days after the mailing date of the air quality fee notification or within 30 days after receipt of a revised fee or statement supporting the original fee, whichever is later. However, to combine fee assessments, the department may adjust the billing date and due date under this subsection for category III facilities that are dry cleaning facilities also subject to the licensing requirements of section 13305 of the public health code, 1978 PA 368, MCL 333.13305, or the certification requirements of section 5i of the fire prevention code, 1941 PA 207, MCL 29.5i. The department shall deposit all fees collected under this section to the credit of the fund.

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

(5) To challenge its assessed fee, the owner or operator of a fee-subject facility shall submit the challenge in writing to the department. The department shall not process the challenge unless it is received by the department within 45 calendar days after the mailing date of the air quality fee notification described in subsection (3). A challenge shall identify the facility and state the grounds upon which the challenge is based. Within 30 calendar days of receipt of the challenge, the department shall determine the validity of the challenge and provide the owner with notification of a revised fee or a statement setting forth the reason or reasons why the fee was not revised. Payment of the challenged or revised fee is due within the time frame described in subsection (3). If the owner or operator of a facility desires to further challenge its assessed fee, the owner or operator of the facility has an opportunity for a contested case hearing as provided for under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288.

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

(7) By July 1 of each year, the department shall provide the owner or operator of each fee-subject facility required to pay an emission charge pursuant to this section with a copy of the department's calculation of the facility emissions for the previous year. Within 60 days after this notification, the owner or operator of the facility may provide corrections to the department. The department shall make a final determination of the emissions by December 15 of that year. If the owner or operator disagrees with the determination of the department, the owner or operator may request a contested case hearing as provided for under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.288.

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

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

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

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

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

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

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

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

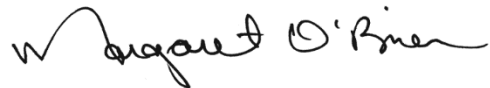
(vi) The percentage and number of permit to install applications submitted to the department that were administratively complete as received.

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

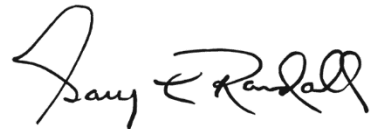
(viii) The percentage and number of permit to install applications for which a processing period extension was requested and granted.

- (c) All of the following information for the renewable operating permit program authorized under section 5506:
- (i) The number of renewable operating permit applications received by the department.
  - (ii) The number of renewable operating permit applications for which a final action was taken by the department. The number of final actions shall be reported as the number of applications approved, the number of applications denied, and the number of applications withdrawn by the applicant.
  - (iii) The percentage and number of initial permit applications processed within the required time.
  - (iv) The percentage and number of permit renewals and modifications processed within the required time.
  - (v) The number of permit applications reopened by the department.
  - (vi) The number of general permits issued by the department.
- (d) The number of letters of violation sent.
- (e) The amount of penalties collected from all consent orders and judgments.
- (f) For each enforcement action that includes payment of a penalty, a description of what corrective actions were required by the enforcement action.
- (g) The number of inspections done on sources required to obtain a permit under section 5506 and the number of inspections of other sources.
- (h) The number of air pollution complaints received, investigated, not resolved, and resolved by the department.
- (i) The number of contested case hearings and civil actions initiated, the number of contested case hearings and civil actions completed, and the number of voluntary consent orders, administrative penalty orders, and emergency orders entered or issued, for sources required to obtain a permit under section 5506.
  - (j) The amount of revenue in the fund at the end of the fiscal year.
- (9) A report under subsection (8) shall also include the amount of revenue for programs under this part received during the prior fiscal year from fees, from federal funds, and from general fund appropriations. Each of these amounts shall be expressed as a dollar amount and as a percent of the total annual cost of programs under this part.
- (10) The attorney general may bring an action for the collection of the fees imposed under this section.
- (11) This section does not apply if the administrator of the United States Environmental Protection Agency determines that the department is not adequately administering or enforcing the renewable operating permit program and the administrator promulgates and administers a renewable operating permit program for this state.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved \_\_\_\_\_

\_\_\_\_\_  
Governor