

HOUSE BILL No. 5385

November 1, 2005, Introduced by Reps. Sheen, Pastor, Taub, Booher, Garfield, Stahl, Drolet, Vander Veen, Gosselin, Rocca, Baxter, Huizenga, Hildenbrand, Hoogendyk, Hune, Palmer, Mortimer, Acciavatti, Nitz, Marleau, LaJoy, Caul, Green, Jones, Hansen, Newell, Pearce, Elsenheimer, Meyer, Gaffney, Amos, Kahn, Moore, Shaffer, Robertson, Hummel, Moolenaar, Sheltrown and Brown and referred to the Committee on Natural Resources, Great Lakes, Land Use, and Environment.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 5505, 5506, and 5522 (MCL 324.5505, 324.5506,
and 324.5522), section 5522 as amended by 2001 PA 49, and by adding
section 5506a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5505. (1) Except as provided in subsection (4), a person
2 shall not install, construct, reconstruct, relocate, alter, or
3 modify any process or process equipment without first obtaining
4 from the department a permit to install, or a permit to operate
5 authorized pursuant to rules promulgated under subsection (6) if
6 applicable, authorizing the conduct or activity.

1 (2) The department shall promulgate rules to establish a
2 ~~permit to install~~ **PERMIT-TO-INSTALL** program to be administered by
3 the department. Except as provided in subsections (4) and (5), the
4 ~~permit to install~~ **PERMIT-TO-INSTALL** program is applicable to each
5 new or modified process or process equipment that emits or may emit
6 an air contaminant.

7 (3) A permit to install may authorize the trial operation of a
8 process or process equipment to demonstrate that the process or
9 process equipment is operating in compliance with the permit to
10 install issued under this section.

11 (4) The department may promulgate rules to provide for the
12 issuance of general permits and to exempt certain sources,
13 processes, or process equipment or certain modifications to a
14 source, process, or process equipment from the requirement to
15 obtain a permit to install or a permit to operate authorized
16 pursuant to rules promulgated under subsection (6). However, the
17 department shall not exempt any new source or modification that
18 would meet the definition of a major source or major modification
19 under parts C and D of title I of the clean air act, ~~chapter 360,~~
20 ~~91 Stat. 731, 42 U.S.C. 7470 to 7479, 7491 to 7492, 7501 to 7509a,~~
21 ~~and 7511~~ **42 USC 7470** to 7515.

22 (5) The department may issue a permit to install, a general
23 permit, or a permit to operate authorized under rules promulgated
24 under subsection (6) if applicable, that authorizes installation,
25 operation, or trial operation, as applicable, of a source, process,
26 or process equipment at numerous temporary locations. Such a permit
27 shall include terms and conditions necessary to assure compliance

1 with all applicable requirements of this part, the rules
2 promulgated under this part, and the clean air act, including those
3 necessary to assure compliance with all applicable ambient air
4 standards, emission limits, and increment and visibility
5 requirements pursuant to part C of title I of the clean air act,
6 ~~chapter 360, 91 Stat. 731, 42 U.S.C. 7470 to 7479 and 7491~~ **42**
7 **USC 7470** to 7492, at each location, and shall require the owner or
8 operator of the process, source, or process equipment to notify the
9 department at least 10 days in advance of each change in location.

10 (6) The department may promulgate rules to establish a program
11 that authorizes issuance of nonrenewable permits to operate for
12 sources, processes, or process equipment that are not subject to
13 the requirement to obtain a renewable operating permit pursuant to
14 section 5506.

15 (7) The failure of the department to act on an
16 administratively and technically complete application for a permit
17 to install, a general permit, or a permit to operate authorized
18 under rules promulgated under subsection (6), in accordance with a
19 time requirement established pursuant to this part, rules
20 promulgated under this part, or the clean air act may be treated as
21 a final permit action solely for the purposes of obtaining judicial
22 review in a court of competent jurisdiction to require that action
23 be taken by the department on the application without additional
24 delay.

25 (8) Any person may appeal the issuance or denial by the
26 department of a permit to install, a general permit, or a permit to
27 operate authorized in rules promulgated under subsection (6), for a

1 new source in accordance with section 631 of the revised judicature
2 act of 1961, ~~Act No. 236 of the Public Acts of 1961, being section~~
3 ~~600.631 of the Michigan Compiled Laws~~ **1961 PA 236, MCL 600.631.**

4 Petitions for review shall be the exclusive means to obtain
5 judicial review of such a permit and shall be filed within 90 days
6 after the final permit action, except that a petition may be filed
7 after that deadline ~~only~~ if the petition is based solely on
8 grounds arising after the deadline for judicial review. ~~Such a~~
9 **THE** petition shall be filed no later than 90 days after the new
10 grounds for review arise. Appeals of permit actions for existing
11 sources shall be in accordance with section 5506(14).

12 **(9) THE PROCESSING OF A PERMIT APPLICATION UNDER THIS SECTION**
13 **IS SUBJECT TO SECTION 5506A.**

14 Sec. 5506. (1) After the date established pursuant to
15 subsections (3) and (4)(n), if an application for an operating
16 permit is required to be submitted, a person shall not operate a
17 source that is required to obtain an operating permit under
18 ~~section 502a of title V of the clean air act, chapter 360, 104~~
19 ~~Stat. 2641, 42 U.S.C. USC 7661a, and which is thereby~~ **THAT IS**
20 subject to the requirements of this section except in compliance
21 with an operating permit issued by the department. A permit issued
22 under this section does not convey a property right or an exclusive
23 privilege.

24 (2) If a person who owns or operates a source has submitted a
25 timely and administratively complete application for an operating
26 permit, including an application for renewal of an operating
27 permit, but final action has not been taken on the application, the

1 source's failure to have an operating permit is not a violation of
2 subsection (1) unless the delay in final action is due to the
3 failure of the person owning or operating the source to submit
4 information required or requested to process the application. A
5 source required to have a permit under this section is not in
6 violation of subsection (1) before the date on which the source is
7 required to submit an application pursuant to subsections (3) and
8 (4)(n). Except as otherwise provided in subsection (5), expiration
9 of an operating permit terminates a person's right to operate a
10 source. This subsection does not waive an applicable requirement to
11 obtain a permit under section 5505.

12 (3) A person who owns or operates a source required to have an
13 operating permit ~~pursuant to~~ **UNDER** this section shall submit to
14 the department within 12 months after the date on which the source
15 becomes subject to the requirement to obtain a permit under
16 subsection (1), or on an earlier date specified by rule, a
17 compliance plan and an administratively complete application for an
18 operating permit signed by a responsible official, who shall
19 certify the accuracy of the information submitted. ~~The department~~
20 ~~shall approve or disapprove a timely and administratively complete~~
21 ~~application, and shall issue or deny the operating permit within 18~~
22 ~~months after the date of receipt of the compliance plan and an~~
23 ~~administratively complete operating application, except that the~~
24 ~~department shall establish a phased schedule for acting on the~~
25 ~~timely and administratively complete operating permit applications~~
26 ~~submitted within the first full year after the operating permit~~
27 ~~program becomes effective. The schedule shall assure that at least~~

~~1/3 of the applications will be acted on by the department annually
over a period not to exceed 3 years after the operating permit
program becomes effective.~~

**THE PROCESSING OF A PERMIT APPLICATION
UNDER THIS SECTION IS SUBJECT TO SECTION 5506A.**

(4) The department shall promulgate rules to establish an operating permit program required under title V to be administered by the department. This permit program shall include all of the following and, at a minimum, shall be consistent with the requirements of title V:

(a) Provisions defining the categories of sources that are subject to the operating permit requirements of this section. Operating permits under this section are not required for any source category that is not required to obtain an operating permit under ~~section 502(a) of the clean air act, title V of chapter 360,~~
~~104 Stat. 2641, 42 U.S.C.~~ **USC 7661a.**

(b) Requirements for operating permit applications, including standard application forms, the minimum information that must be submitted with an administratively complete application, and criteria for determining in a timely fashion **AS PROVIDED FOR IN SECTION 5506A** the administrative completeness of an application.

(c) A requirement that each operating permit application include a compliance plan describing how the source will comply with all applicable requirements of this part, rules promulgated under this part, and the clean air act.

(d) Provisions for inspection, entry, monitoring, record keeping, and reporting applicable to each operating permit issued under this section.

1 (e) Requirements and provisions for expeditiously determining
2 when applications are technically complete, for processing
3 applications.

4 (f) Provisions for transmitting copies of each operating
5 permit application and proposed and final permits, including each
6 modification or renewal, to the administrator of the United States
7 environmental protection agency, and for notifying all other states
8 whose air quality may be affected and are contiguous to this state
9 and for providing an opportunity for those states to provide
10 written recommendations on each operating permit application and
11 proposed permit, pursuant to the requirements of ~~section 505(a)~~
12 ~~and (d) of the clean air act, title V of chapter 360, 104 Stat.~~
13 ~~2643, 42 U.S.C. 7661d~~ **42 USC 7661D(A) AND (D).**

14 (g) Provisions for issuance of operating permits and, in
15 accordance with this part and rules promulgated under this part,
16 for denial, termination, modification, revocation, renewal, and
17 revision of operating permits for cause.

18 (h) Provisions to allow for changes within a permitted source
19 without a revision to the operating permit, if the changes are not
20 modifications under any provision of title I of the clean air act,
21 ~~chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479,~~
22 ~~7491 to 7492, 7501 to 7509a, and 7511~~ **42 USC 7401** to 7515, and the
23 changes do not exceed the emissions allowed under the operating
24 permit, if the owner or operator of the source provides the
25 department and the administrator of the United States environmental
26 protection agency with written notification at least 7 days in
27 advance of the proposed changes. However, the department may

1 provide a different time frame for an emergency as defined in
2 section 5527. The emissions allowed under the operating permit
3 include any enforceable emission limitation, standard, or other
4 condition, including a work practice standard, determined by the
5 department to be required by an applicable requirement of this
6 part, rules promulgated under this part, or the clean air act, or
7 that establishes an emission limit or an enforceable emissions cap
8 that the source has assumed to avoid an applicable requirement of
9 this part, rules promulgated under this part, or the clean air act,
10 to which the source would otherwise be subject. These provisions
11 shall include the following:

12 (i) Changes that contravene an express permit condition. ~~Such~~
13 **THOSE** changes shall not include changes that would violate any
14 applicable requirement of this part, the rules promulgated under
15 this part, or the clean air act, or changes that would contravene
16 any applicable requirement for monitoring, record keeping,
17 reporting, or compliance certification.

18 (ii) Changes that involve emissions trading if trading has been
19 approved by the administrator of the United States environmental
20 protection agency as a part of the state implementation plan.

21 (i) Provisions to allow changes within a permitted source,
22 pursuant to 40 ~~C.F.R.~~ **CFR** 70.4(b)(14), that are not addressed or
23 prohibited by the operating permit, if all of the following
24 criteria are met:

25 (i) The change meets all applicable requirements of this part,
26 the rules promulgated under this part, and the clean air act and
27 does not violate any existing emission limitation, standard, or

1 other condition of the operating permit.

2 (ii) The change does not affect any applicable requirement of
3 the acid rain program under title IV and is not a modification
4 under any provision of title I of the clean air act, ~~chapter 360,~~
5 ~~77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492,~~
6 ~~7501 to 7509a, and 7511~~ **42 USC 7401** to 7515.

7 (iii) The source provides prompt written notice to the
8 department and the administrator of the United States environmental
9 protection agency, except for changes that qualify as insignificant
10 processes or activities pursuant to section 5507(2).

11 (j) Provisions to allow changes within a permitted source,
12 pursuant to 40 ~~C.F.R.~~ **CFR** 70.7(e)(2), that may be made
13 immediately after the source files an application with the
14 department, if all of the following criteria are met:

15 (i) The change does not violate any applicable requirement of
16 this part, the rules promulgated under this part, or the clean air
17 act.

18 (ii) The change does not significantly affect an existing
19 monitoring, record keeping, or reporting requirement in the
20 operating permit.

21 (iii) The change does not require or modify a case-by-case
22 determination of an emission limitation or other standard, or a
23 source-specific determination, for temporary sources, of ambient
24 air impacts, or a visibility or increment analysis.

25 (iv) The change does not seek to establish or modify an
26 emission limitation, standard, or other condition of the operating
27 permit that the source has assumed to avoid an applicable

1 requirement of this part, the rules promulgated under this part, or
2 the clean air act, to which the source would otherwise be subject.

3 (v) The change is not a modification under any provision of
4 title I of the clean air act, ~~chapter 360, 77 Stat. 392, 42~~
5 ~~U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and~~
6 ~~7511~~ **42 USC 7401** to 7515.

7 (k) Provisions for expeditiously handling administrative
8 changes within a permitted source, pursuant to 40 ~~C.F.R.~~ **CFR**
9 70.7(d). These changes are limited to the following:

10 (i) Correction of a typographical error.

11 (ii) A change in the name, address, or phone number of any
12 person identified in the permit, or other similar minor
13 administrative change.

14 (iii) A change that requires more frequent monitoring or
15 reporting by the person owning or operating the source.

16 (iv) A change in ownership or operational control of the
17 source, if the department determines that no other change in the
18 operating permit is necessary, and if a written agreement
19 containing a specific date for transfer of operating permit
20 responsibility, coverage, and liability between the current and new
21 owners or operators has been submitted to the department.

22 (v) Incorporation into the operating permit of the
23 requirements of a permit to install issued pursuant to section
24 5505, if the permit to install has met procedural requirements that
25 are substantially equivalent to the requirements of this section,
26 including the content of the permit, and the provisions for
27 participation by the United States environmental protection agency

1 and other affected states and participation of the public under
2 section 5511.

3 (l) Provisions for including reasonably anticipated alternate
4 operating scenarios in an operating permit, pursuant to 40 ~~C.F.R.~~
5 **CFR** 70.6(a)(9).

6 (m) Provisions to allow for the trading of emission increases
7 and decreases within a permitted source solely for the purpose of
8 complying with an enforceable emissions cap that is established in
9 the permit pursuant to 40 ~~C.F.R. part~~ **CFR** 70.4(b)(12)(iii),
10 independent of any otherwise applicable requirements of this part,
11 the rules promulgated under this part, or the clean air act.

12 (n) A schedule of the dates when submittal of an application
13 for an operating permit is required for the source categories
14 subject to this section and a ~~phased~~ schedule for taking final
15 action on those applications **SUBJECT TO SECTION 5506A.**

16 (5) Each operating permit issued under this section shall be
17 for a fixed term not to exceed 5 years. A permit applicant shall
18 submit a timely application for renewal of an operating permit at
19 least 6 months, but not more than 18 months, ~~prior to~~ **BEFORE** the
20 expiration of the term of the existing operating permit. If a
21 timely and administratively complete application is submitted, but
22 the department has not approved or denied the renewal permit before
23 the expiration of the term of the existing permit, the existing
24 permit shall not expire until the renewal permit is approved or
25 denied.

26 (6) Each operating permit issued pursuant to this section
27 shall include those enforceable emissions limitations and standards

1 applicable to the source, if any, and other conditions necessary to
2 assure compliance with the applicable requirements of this part,
3 rules promulgated under this part, and the clean air act, a
4 schedule of compliance, and a requirement that the owner or
5 operator of a source submit to the department, at least every 6
6 months, a report summarizing the results of any required
7 monitoring. Each operating permit issued pursuant to this section
8 shall also include a severability clause to ensure the continued
9 validity of the unchallenged terms and conditions of the operating
10 permit if any portion of a permit is challenged.

11 (7) The department shall require revision of an operating
12 permit ~~prior to~~ **BEFORE** the expiration of the permit consistent
13 with ~~section 5506(4)(g)~~ **RULES PROMULGATED UNDER SUBSECTION**
14 **(4)(G)**, for any of the following reasons or to do any of the
15 following:

16 (a) To incorporate new applicable emissions limitations,
17 standards, or rules promulgated under this part or regulations
18 promulgated under the clean air act, issued or promulgated after
19 the issuance of the permit, if 3 or more years remain in the term
20 of the permit. A revision shall occur as expeditiously as
21 practicable, but not later than 18 months after the promulgation of
22 the emission limitation, standard, rule, or regulation. A revision
23 is not required if the effective date of the emission limitation,
24 standard, rule, or regulation is after the expiration date of the
25 permit.

26 (b) To incorporate new applicable standards and requirements
27 of the acid rain program under title IV into the operating permits

1 of sources affected by that program.

2 (c) If the department determines that the permit contains a
3 material mistake; that information required by this part, rules
4 promulgated under this part, or the clean air act was omitted; or
5 that an inaccurate statement was made in establishing the emissions
6 limitations, standards, or conditions of the permit.

7 (d) If the department determines that the permit must be
8 revised to assure compliance with the applicable requirements of
9 this part, rules promulgated under this part, or the clean air act.

10 (8) At the request of the permit holder, a permit revision
11 under subsection (7) may be treated as a permit renewal if it
12 complies with the applicable requirements for permit renewals of
13 this part, rules promulgated under this part, and the clean air
14 act.

15 (9) A person who owns or operates a source subject to an
16 operating permit issued pursuant to this section shall promptly
17 report to the department any deviations from the emissions
18 limitations, standards, or conditions of the permit and shall
19 annually certify to the department that the source has been and is
20 in compliance with all emissions limitations, standards, and
21 conditions of the permit, except for those deviations reported to
22 the department, during the reporting period. A responsible official
23 shall sign all reports submitted pursuant to this subsection.

24 (10) The department shall not approve or otherwise issue any
25 operating permit for a source required to obtain an operating
26 permit pursuant to ~~section 502(a) of title V of the clean air act,~~
27 ~~chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a~~ **42 USC 7661A(A)**, if

1 the administrator of the United States environmental protection
2 agency objects to issuance of the permit in a timely manner
3 pursuant to ~~section 505(b) of title V of the clean air act,~~
4 ~~chapter 360, 104 Stat. 2643, 42 U.S.C. 7661d~~ **42 USC 7661D(B)**.

5 (11) Each operating permit shall contain a statement that
6 compliance with an operating permit issued in accordance with this
7 section is compliance with subsection (1). In addition, the
8 statement shall provide that compliance with the operating permit
9 is compliance with other applicable requirements of this part,
10 rules promulgated under this part, and the clean air act, as of the
11 date of permit issuance if either of the following requirements is
12 met:

13 (a) The permit specifically includes the applicable
14 requirement.

15 (b) The permit includes a determination that any other
16 requirements that are specifically referred to in the determination
17 are not applicable.

18 (12) An application for an operating permit may include a
19 request that the permit include reference to specific requirements
20 of this part, rules promulgated under this part, or the clean air
21 act that the person owning or operating the source believes are not
22 applicable to the source. The operating permit shall include a
23 determination of applicability for the requirements included in the
24 request.

25 (13) Subsection (11) does not apply to a change at a source
26 made pursuant to subsection (4)(h), (i), or (j). Subsection (11)
27 does not apply to a change in a source made pursuant to subsection

1 (4)(k) until the change is incorporated into the operating permit.

2 (14) A person who owns or operates an existing source that is
3 required to obtain an operating permit under this section, a
4 general permit, or a permit to operate authorized under rules
5 promulgated under section 5505(6) may file a petition with the
6 department for review of the denial of his or her application for
7 such a permit, the revision of any emissions limitation, standard,
8 or condition, or a proposed revocation of his or her permit. This
9 review shall be conducted pursuant to the contested case and
10 judicial review procedures of the administrative procedures act of
11 1969, ~~Act No. 306 of the Public Acts of 1969, being sections~~
12 ~~24.201 to 24.328 of the Michigan Compiled Laws~~ **1969 PA 306, MCL**
13 **24.201 TO 24.328**. Any person may appeal the issuance or denial of
14 an operating permit in accordance with section 631 of the revised
15 judicature act of 1961, ~~Act No. 236 of the Public Acts of 1961,~~
16 ~~being section 600.631 of the Michigan Compiled Laws~~ **1961 PA 236,**
17 **MCL 600.631**. A petition for judicial review is the exclusive means
18 of obtaining judicial review of a permit and shall be filed within
19 90 days after the final permit action. ~~Such a~~ **THE** petition may be
20 filed after that deadline only if it is based solely on grounds
21 arising after the deadline for judicial review and if the appeal
22 does not involve applicable standards and requirements of the acid
23 rain program under title IV. ~~Such a~~ **THE** petition shall be filed
24 within 90 days after the new grounds for review arise.

25 (15) The failure of the department to act on a technically and
26 administratively complete application or renewal application for an
27 operating permit in accordance with a time requirement established

1 ~~pursuant to subsection (3)~~ **IN SECTION 5506A** and rules promulgated
2 under subsection (4)(n) is final permit action solely for the
3 purposes of obtaining judicial review in a court of competent
4 jurisdiction to require that action be taken by the department
5 without additional delay on the application or renewal application.

6 (16) The department may, after notice and opportunity for
7 public hearing, pursuant to the requirements of section 5511, issue
8 a general permit covering numerous similar sources, processes, or
9 process equipment, or a permit that authorizes operation of a
10 source at numerous temporary locations. A general permit or a
11 permit that authorizes operation of a source at numerous temporary
12 locations shall comply with all requirements applicable to
13 operating permits pursuant to this section. A permit that
14 authorizes operation of a source at numerous temporary locations
15 shall include terms and conditions necessary to assure compliance
16 with all applicable requirements of this part, rules promulgated
17 under this part, and the clean air act, including those necessary
18 to assure compliance with all applicable ambient air standards,
19 applicable emission limits, and applicable increment and visibility
20 requirements pursuant to part C of title I of the clean air act,
21 ~~chapter 360, 91 Stat. 731, 42 U.S.C. 7470 to 7479 and 7491~~ **42 USC**
22 **7470** to 7492, at each authorized location and shall require the
23 owner or operator of the source to notify the department at least
24 10 days in advance of each change in location. A source covered by
25 a general permit is not relieved from the obligation to file an
26 application for a permit pursuant to subsections (3) and (5).

27 (17) As used in this section, "technically complete" means,

1 for the purposes of an application for an operating permit required
2 by this section, all of the information required for an
3 administratively complete application and any other specific
4 information requested by the department that may be necessary to
5 implement and enforce all applicable requirements of this part, the
6 rules promulgated under this part, or the clean air act, or to
7 determine the applicability of those requirements. An application
8 is not technically complete if it omits information needed to
9 determine the applicability of any lawful requirement or to enforce
10 any lawful requirement or any information necessary to evaluate the
11 amount of the annual air quality fee for the source.

12 **SEC. 5506A. (1) THIS SECTION APPLIES TO THE PROCESSING OF**
13 **APPLICATIONS FOR NEW PERMITS OR THE RENEWAL OF EXISTING PERMITS**
14 **REQUIRED UNDER THIS PART UNLESS THE DEPARTMENT AND THE APPLICANT**
15 **AGREE IN WRITING TO ALTERNATE PROVISIONS.**

16 **(2) THE DEPARTMENT SHALL DETERMINE WHETHER AN APPLICATION FOR**
17 **A MAJOR SOURCE IS ADMINISTRATIVELY COMPLETE WITHIN 10 DAYS AFTER**
18 **THE RECEIPT OF THE APPLICATION. IF THE DEPARTMENT FINDS THAT THE**
19 **APPLICATION IS NOT COMPLETE, THE DEPARTMENT SHALL NOTIFY THE**
20 **APPLICANT IN WRITING. IF THE APPLICATION IS RESUBMITTED, THE**
21 **DEPARTMENT HAS 5 BUSINESS DAYS OR THE REMAINING DAYS, IF ANY, OF**
22 **THE ORIGINAL 10-DAY PERIOD, WHICHEVER IS GREATER, TO DETERMINE IF**
23 **THE RESUBMITTED APPLICATION IS ADMINISTRATIVELY COMPLETE. IF THE**
24 **DEPARTMENT DOES NOT DETERMINE WHETHER AN APPLICATION IS**
25 **ADMINISTRATIVELY COMPLETE WITHIN THE TIME PROVIDED UNDER THIS**
26 **SUBSECTION, THE APPLICATION SHALL BE CONSIDERED TO BE**
27 **ADMINISTRATIVELY COMPLETE.**

1 (3) WITHIN 120 DAYS AFTER RECEIPT OF AN ADMINISTRATIVELY
2 COMPLETE APPLICATION AND ANY OTHER REQUIRED DOCUMENTS FOR A NEW
3 PERMIT OR A RENEWAL OF A PERMIT FOR A MAJOR SOURCE, THE DEPARTMENT
4 SHALL DETERMINE WHETHER TO GRANT OR DENY THE PERMIT. THE DEPARTMENT
5 SHALL NOTIFY THE APPLICANT OF THE DECISION IN WRITING.

6 (4) WITHIN 60 DAYS OF RECEIPT OF AN ADMINISTRATIVELY COMPLETE
7 APPLICATION AND ANY OTHER REQUIRED DOCUMENTS FOR A NEW PERMIT OR A
8 RENEWAL OF A PERMIT FOR A MINOR SOURCE, THE DEPARTMENT SHALL
9 PROCESS THE APPLICATION AND MAKE A DETERMINATION TO GRANT OR DENY
10 THE PERMIT. THE DEPARTMENT SHALL NOTIFY THE APPLICANT OF THE
11 DECISION IN WRITING.

12 (5) IF THE DEPARTMENT FAILS TO PROCESS AN APPLICATION AND MAKE
13 A DETERMINATION TO GRANT OR DENY THE PERMIT WITHIN THE TIME
14 REQUIRED UNDER SUBSECTION (3) OR (4), AS APPLICABLE, THE DEPARTMENT
15 SHALL RETURN TO THE APPLICANT THE APPLICATION FEE SUBMITTED UNDER
16 SECTION 5522 AND THE APPLICANT SHALL NOT BE SUBJECT TO AN
17 APPLICATION FEE AND SHALL RECEIVE A 15% ANNUAL DISCOUNT ON AN
18 ANNUAL PERMIT FEE REQUIRED FOR A PERMIT ISSUED BASED ON THAT
19 APPLICATION.

20 (6) THE DEPARTMENT SHALL ARRANGE FOR NOT LESS THAN 35% OF THE
21 APPLICATIONS FOR PERMITS TO INSTALL AND NOT LESS THAN 35% OF THE
22 APPLICATIONS FOR RENEWABLE OPERATING PERMITS TO BE PROCESSED BY
23 PRIVATE CONTRACTORS OPERATING IN THIS STATE. A PRIVATE CONTRACTOR
24 IS NOT ELIGIBLE TO BE AWARDED THE PROCESSING OF MORE THAN 1/3 OF
25 THE APPLICATIONS FOR PERMITS TO INSTALL OR MORE THAN 1/3 OF THE
26 APPLICATIONS FOR RENEWABLE OPERATING PERMITS THAT ARE AWARDED TO
27 PRIVATE CONTRACTORS UNDER THIS SUBSECTION. A PRIVATE CONTRACTOR IS

1 SUBJECT TO THE SAME TIME LIMITS AS PROVIDED UNDER SUBSECTIONS (3)
2 AND (4), COMMENCING UPON ITS RECEIPT OF THE APPLICATION. THE
3 PRIVATE CONTRACTOR SHALL REPORT TO THE DEPARTMENT AND THE APPLICANT
4 ITS FINDINGS AND RECOMMENDATIONS, IN WRITING. THE DEPARTMENT SHALL
5 APPROVE OR DENY THE APPLICATION WITHIN 30 DAYS BASED ON THE PRIVATE
6 CONTRACTOR'S FINDINGS AND RECOMMENDATIONS. A DETERMINATION UNDER
7 THIS SUBSECTION IS SUBJECT TO THE SAME REVIEW AND APPEALS AS IF THE
8 DETERMINATION WERE MADE BY THE DEPARTMENT. (7) A PERSON SHALL
9 NOT SERVE AS A PRIVATE CONTRACTOR UNDER SUBSECTION (6) UNLESS THE
10 PERSON HAS BEEN CERTIFIED AS COMPETENT BY THE DEPARTMENT. A PRIVATE
11 CONTRACTOR SHALL NOT PROCESS AN APPLICATION FROM ANY APPLICANT WITH
12 WHICH THE PRIVATE CONTRACTOR HAS OR HAS HAD ANY BUSINESS
13 RELATIONSHIP WITHIN THE PAST 3 YEARS. A PRIVATE CONTRACTOR SHALL BE
14 PAID A REASONABLE FEE FOR ITS PERMIT PROCESSING FROM THE FEES
15 COLLECTED UNDER THIS PART. THE DEPARTMENT SHALL PROMULGATE RULES TO
16 IMPLEMENT THIS SUBSECTION.

17 Sec. 5522. (1) For the state fiscal year beginning October 1,
18 2001, and continuing until September 30, 2005, the owner or
19 operator of each fee-subject facility shall pay air quality fees as
20 required and calculated under this section. The department may levy
21 and collect an annual air quality fee from the owner or operator of
22 each fee-subject facility in this state. The legislature intends
23 that the fees required under this section meet the minimum
24 requirements of the clean air act and that this expressly stated
25 fee system serve as a limitation on the amount of fees imposed
26 under this part on the owners or operators of fee-subject
27 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) For category I 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 \$4,485.00.

7 (b) For category II facilities, the annual air quality fee
8 shall be the sum of a facility charge and an emissions charge as
9 specified in subdivision (e). The facility charge shall be
10 \$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 tons but less
15 than 18,000 tons of fee-subject air pollutants, the annual air
16 quality fee shall be the following amount, based on the number of
17 tons of fee-subject air pollutants emitted:

18 (i) More than 450 tons but less than 4,000 tons, \$24,816.00.

19 (ii) At least 4,000 tons but not more than 5,300 tons,
20 \$24,816.00 plus \$45.25 per ton of fee-subject air pollutant in
21 excess of 4,000 tons.

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

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

26 (e) The emissions charge for category I and category II
27 facilities shall equal the emission charge rate of \$45.25,

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

8 (i) 4,000 tons.

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

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

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

27 (5) If the owner or operator of a fee-subject facility fails

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

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

23 (7) If requested by the department, by March 15 of each year,
24 or within 45 days of a request by the department, whichever is
25 later, the owner or operator of each fee-subject facility shall
26 submit information regarding the facility's previous year's
27 emissions to the department. The information shall be sufficient

1 for the department to calculate the facility's emissions for that
2 year and meet the requirements of subpart Q of 40 ~~C.F.R.~~ **CFR** part
3 51.

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

16 (9) By March 1 annually, the department shall prepare and
17 submit to the governor, the legislature, the ~~chair~~ **CHAIRS** of the
18 standing ~~committee~~ **COMMITTEES** of the senate and house of
19 representatives with primary responsibility for environmental
20 protection issues related to air quality, and the chairs of the
21 subcommittees of the senate and house appropriations committees
22 with primary responsibility for appropriations to the department a
23 report that details the activities of the previous fiscal year
24 funded by the fund for the department. This report shall include,
25 at a minimum, all of the following as it relates to the department:

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

1 permitting activities.

2 (b) All of the following information related to the ~~permit to~~
3 ~~install~~ **PERMIT-TO-INSTALL** program authorized under section 5505:

4 (i) The number of ~~permit to install~~ **PERMIT-TO-INSTALL**
5 applications received by the department.

6 (ii) The number of ~~permit to install~~ **PERMIT-TO-INSTALL**
7 applications for which a final action was taken by the department.
8 The number of final actions should be reported as the number of
9 applications approved, the number of applications denied, and the
10 number of applications withdrawn by the applicant.

11 (iii) The number of permits to install approved that were
12 required to complete public participation under section 5511(3)
13 before final action and the number of permits to install approved
14 that were not required to complete public participation under
15 section 5511(3) ~~prior to~~ **BEFORE** final action.

16 (iv) The average number of final permit actions per ~~permit to~~
17 ~~install~~ **PERMIT-TO-INSTALL** reviewer full-time equivalent position.

18 (v) The percentage and number of ~~permit to install~~ **PERMIT-**
19 **TO-INSTALL** applications which were reviewed for administrative
20 completeness within 10 days of receipt by the department.

21 (vi) The percentage and number of ~~permit to install~~ **PERMIT-**
22 **TO-INSTALL** applications which were reviewed for technical
23 completeness within 30 days of receipt of an administratively
24 complete application by the department.

25 (vii) The percentage and number of ~~permit to install~~ **PERMIT-**
26 **TO-INSTALL** applications submitted to the department that were
27 administratively complete as received.

1 (viii) The percentage and number of ~~permit to install~~ **PERMIT-**
2 **TO-INSTALL** applications for which a final action was taken by the
3 department within 60 days of receipt of a technically complete
4 application for those not required to complete public participation
5 under section 5511(3) ~~prior to~~ **BEFORE** final action, or within 120
6 days of receipt of a technically complete application for those
7 which are required to complete public participation under section
8 5511(3) ~~prior to~~ **BEFORE** final action.

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

11 (i) The number of renewable operating permit applications
12 received by the department.

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

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

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

22 (v) The number of permit applications reopened by the
23 department.

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

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

26 (e) The amount of penalties collected from all consent orders
27 and judgments.

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

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

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

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

14 (j) The amount of revenue in the fund at the end of the fiscal
15 year.

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

22 (11) The attorney general may bring an action for the
23 collection of the fees imposed under this section.

24 (12) This section does not apply if the administrator of the
25 United States environmental protection agency determines that the
26 department is not adequately administering or enforcing the
27 renewable operating permit program and the administrator

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