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AIR POLLUTION REGULATIONS

House Bill 4166
Sponsor: Rep. Mary C. Brown
Committee: Conservation, Environment
and Great Lakes Affairs

Complete to 2-8-93

A SUMMARY OF HOUSE BILL 4166 AS INTRODUCED 2-3-93

The federal Clean Air Act of 1990 (CAA) establishes a comprehensive permit program to regulate the modification, construction, and operation of facilities that contaminate the air, and requires states to promulgate and implement state operating permit programs that meet the act's minimum requirements. In addition, the act increases the authority of the Environmental Protection Agency (EPA) and the states to implement the act's enforcement provisions. House Bill 4166 would amend Michigan's Air Pollution Act to comply with the provisions of the CAA, to provide penalties for violations of the act, to specify the Department of Natural Resource's (DNR) and Air Pollution Control Commission's duties and responsibilities, to establish an Air Pollution Control Fund, and to repeal current enforcement provisions of the act.

Transfers and Delegations of Responsibilities. At present, the Air Pollution Control Commission administers the provisions of the Air Pollution Act. The bill would amend the act to transfer certain of the commission's responsibilities, including the collection of fees, to the DNR, and to permit the commission to delegate any of its powers to the DNR. For example, the commission could delegate its authority to issue, modify, or reissue certain permits for which there were no known unresolved objections regard air pollution. In addition, the DNR would be required to institute proceedings to compel compliance with a rule, permit, order, or other requirement of the act, while the Department of Attorney General would institute these proceedings on behalf of the commission. The bill would also transfer the State Commissioner of Health's authority to act as the authorized agent for the Air Pollution Control Commission to the director of the DNR; while all investigative, technical, scientific, and other services formerly performed by the health commissioner would be transferred to the department. In addition, a state department or agency could apply for, and be granted, delegation of a designated portion of the DNR's or the commission's authority. A delegation of authority to a city or county could not duplicate any delegation to a state department or agency.

Air Pollution Control Commission. Under the act, the commission would be required to promulgate rules on the following:

--To require that a "source" (of air pollution) file an annual report stating the nature of its enterprise and a list of materials used in its process, if required by a city or county to which authority has been delegated. (A "source" would be defined under the bill to mean any process, equipment, building, facility, structure, contrivance, installation operation, or activity that emitted or could emit an air contaminant. A "source" would not include a self-

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propelled vehicle designed for transporting persons on a street or highway, or a nonroad vehicle that was powered by a nonroad engine, as defined in the CAA, that was not a motor vehicle or a vehicle used solely for competition).

--To provide for notice and participation by the public, the EPA, and a representative of a contiguous state in permit actions and commission meetings.

--To control or prohibit the emission of "hazardous air contaminants," defined under the act to mean either a "hazardous air pollutant" as that term is defined under the CAA; or an air contaminant that is not included in that definition, but which may present, through inhalation or other routes of exposure, a threat of an adverse human health effect, or adverse environmental effects, whether through ambient concentrations, bioaccumulation, deposition, or otherwise; or a toxic air contaminant," or "TAC," as defined by rules promulgated under the act.

Rules promulgated by the commission would, at a minimum, be at least as stringent and comprehensive as any rules or standards developed under Title III of the CAA for the control of hazardous air pollutants.

Air Pollution Control Permit Program. The Air Pollution Control Commission would be required to promulgate rules to establish a permit program under which a "source" would be required to obtain a permit containing all applicable emissions control requirements. The program would be established in accordance with timetables set forth in the CAA, and administered by the DNR. Rules promulgated by the commission would incorporate methods and requirements that would:

--Assure that installation permits were obtained prior to the construction or modification of a source unless the source was otherwise exempted by the act.

--Assure that operating permits were obtained prior to beginning or continuing the operation of a source, or as authorized for trial operation of a source. Unless the source was otherwise exempted by the act, a permit would have to be obtained by December 31, 2003. The rules would also establish five-year terms for operating permits, deadlines for operating permit applications, and a phased-in schedule that was consistent with the CAA for acting on the applications.

--Assure the timely submittal of permit renewal applications.

--Establish the requirements for permit applications.

--Establish entry, inspection, monitoring, compliance certification, and reporting requirements.

--Require the payment of fees for operating permits and for installation permits.

--Permit minor operational changes in certain sources without requiring modification of a permit.

--Define eligible source categories, and rules governing their operation, and allow for the issuance of general permits to certain source categories.

--Exempt certain sources from the permit requirement.

--Assess the potential for adverse environmental effects from hazardous air contaminant emissions. "Adverse environmental effect" is defined to mean any significant adverse effect to wildlife or other natural resources, including adverse impact on endangered population or any other degradation of environmental quality over broad areas.

--Assess the potential for adverse human health effects from hazardous contaminant emissions. "Adverse human health effect" is defined to mean any adverse effect, including, but not limited to, the effects of carcinogenic, mutagenic, teratogenic, or neurotoxic substances that cause reproductive dysfunction or that are toxic.

--Assure that human health-based emission standards for hazardous air contaminants for new and modified sources were applied to existing sources to the extent practicable, and would not result in emissions that exceeded those established under the act or the CAA.

--Establish the method for determining whether the site of a proposed source was appropriate.

--Require that each permit contains provisions to assure that it will be revised to incorporate standards and rules promulgated under the bill or under the CAA.

--Assure compliance with federal rules and regulations concerning acid deposition control.

--Establish small business requirements, including those necessary to implement the Small Business Stationary Source Assistance Act.

--Provide for the control or prohibition of the emission of hazardous air contaminants.

Content of Permits. The DNR would assure that each permit specified certain conditions, including the following:

--Enforceable emission limitations and standards for air contaminants.

--Operation of the source and related air contaminant control equipment to minimize emissions.

--Inspection, entry, record keeping, reporting, testing, and source and emission monitoring.

--A schedule of compliance.

--Reporting requirements for deviations from the permit conditions.

--Annual reporting requirements.

An installation permit could also include provisions pertaining to trial operation that could be used to demonstrate compliance with the permit. In addition, a source that failed to comply with the conditions of an installation permit could be denied an operating permit by the commission, and ordered to cease operation, or else issued a permit that included an enforceable schedule of compliance. A denial of an operating permit under this provision would not be subject to a contested case hearing.

An operating permit that met the above requirements would be considered to be in compliance with the provisions of the CAA and of the act. A permit could also provide that its compliance equalled compliance with other applicable provisions of the act relating to the permit holder in either of the following circumstances:

--The permit included the applicable requirements of those provisions.

--The commission determined that the other specifically referenced provisions were not applicable, and the permit contained that determination. (Note: This provision would not exclude a source from a civil action brought by the state to stop the emission of air contaminants.)

In a situation where an application had been submitted in a timely manner, but final action had not been taken by the commission, a source would not be held liable.

Expedited Permit Application Review System. The commission would be required to promulgate rules to establish an expedited permit application review system to process permit applications by the DNR within 90 days. An application would be eligible for expedited review if the applicant sought modification or renewal of a permit not associated with a compliance order or written notice of violation, and proposed changes that would result in an emission reduction of one or more air contaminants authorized in a permit.

Denial of Permits. A permit application would be denied by the commission if certain circumstances existed, including the following:

--Installation or operation of the source would violate the act, rules promulgated under the act, or the CAA, unless the source complied with a legally enforceable compliance plan or schedule.

--Installation, construction, reconstruction, relocation, alteration, or operation of the source presented an imminent and substantial endangerment to human health, safety, welfare, or the environment.

--The person applying for the permit made false representations or provided false information.

--The source had not been installed as specified in the installation permit.

--The owner or operator of the source failed to pay an assessed fee.

In addition, the commission could deny a permit if the application failed to disclose all legally required information, and if the applicant were the owner or operator of any source that did not comply with or was not operating within a legally enforceable schedule of compliance regarding all of the following acts, although compliance with these would not relieve the DNR of a more stringent requirement established by rule:

- The Thomas J. Anderson, Gordon Rockwell Environmental Protection Act.
- The Solid Waste Management Act.
- The Hazardous Waste Management Act.
- The Environmental Response Act.
- Public Act 245 of 1929, the Water Resources Commission act.
- The Underground Storage Tank Regulatory Act.
- The Leaking Underground Storage Tank Act.
- The federal Emergency Planning and Community Right-to-Know Act, Title III.
- Any other state or federal statute, rule, or local ordinance pertaining to the protection of the environment.

In addition, the commission would not issue or renew a permit if the EPA objected in a timely manner.

Department Responsibilities. The DNR would be required to:

- Assess and predict its ability to review applications, and petition the legislature for an increase in the fee structure if it concluded that it was unable to meet one or more deadlines due to a shortage of personnel or finances.
- Maintain a list, updated monthly, of all applications for permits.
- Maintain a list of all parties to consent orders.
- Require enhanced monitoring and submission of compliance certification, following the promulgation of EPA compliance certification rules.

In addition, the director of the department would be required to submit a report to the governor and the legislature detailing the operation of the permit system.

DNR Information Gathering and Entry Authority. The department could require the owner or operator of a source, an emission control or process equipment manufacturer, or any qualified person, to perform certain duties, such as establishing and maintaining records, preparing reports, installing monitoring equipment, and obtaining emission samples, either on a one-time, periodic, or continuous basis. The department could enter the premises or property containing the records of the person on which these requirements were imposed, and -- at reasonable times -- have access to, copy any records, or take samples. The department could also photograph or videotape any source. When entering public or private property, the department, or its representative, would be required to: present credentials, contact the person in charge of the source, describe the nature of its authorized activities, and inform the person that he or she was entitled to participate in the collection of any split samples and, at reasonable cost, receive a copy of the results of any analysis and videotape taken. A person whose activities were regulated in this manner could request to have part of the information furnished as being only for confidential use. Data on the

quantity, quality, or composition of air contaminants emitted into the ambient air; air emission factors, rates, and characterizations; emissions during malfunctions of processes or process equipment; and the efficiency of air pollution control devices would not be rendered as confidential information. The attorney general, on behalf of the department, could petition the court for a warrant authorizing access if the department were refused entry or information for the purposes of enforcing the bill.

Stage II Vapor Recovery. The department could prohibit the use of any gasoline dispensing pump or other pumping device if, upon inspection, it found that the pump was not in compliance with the CAA, the bill, or rules promulgated under the bill. A warning tag would be placed on the pump prohibiting its use.

All information held by the department or the commission would be subject to the provisions of the Freedom of Information Act.

Judicial Review. The failure of the commission to act on a technically and administratively complete permit application would be treated as a final permit action for purposes of obtaining judicial review to compel action on the application without additional delay.

Air Pollution Control Fund. All civil fines and natural resource damages collected under the act would be deposited into the fund, to be expended by the DNR only for the following:

- Ambient air monitoring.
- Investigating the environmental fate of airborne pollutants.
- Health studies related to airborne pollutants.
- Air Quality Education.
- Reforestation.
- Mitigation of damages from air contaminants that could not be collected.
- Assisting sources that were not the subject of enforcement in voluntarily reducing air contaminant emissions.

Penalties. The department could implement a field citation program applicable to minor offenses and divided into Class I, II, III, and IV violations. Penalties would be assessed at the full applicable amount for Class I minor violations; at 50 percent for Class II minor violations; and at ten percent for Class III minor violations. Under the bill, "minor violations" would be classified as: open burning, not meeting a temperature requirement on an afterburner, not utilizing a required water wash, not having paint filters, emission test data or reporting deadline violations, not following cold cleaner cover procedures, not following degreaser cover procedures, violations of certain rules contained in the Michigan Administrative Code, and Stage II Vapor Recovery requirements.

The person to whom a citation was issued could, within 21 days, elect to pay the penalty or request an informal hearing. Should a violation continue, payment of a civil penalty required by a field citation would not be a defense to further enforcement to correct the violation, to assess the maximum penalty, or to seek any other remedy available. In

addition, field citations could include administrative fines of up to \$5,000, or up to \$25,000 if it were discovered that the violator had failed to obtain a permit. The department would be required to report to the legislature four years after the effective date of this provision regarding its effectiveness. A violator and the commission could also enter into an agreement, in the form of a consent order.

Upon receipt of evidence that a source presented an imminent endangerment to the public health, safety, or welfare, or to the environment, the director of the department could bring a civil action on behalf of the state to immediately restrain any violator. If that were not practicable, orders could be issued. Prior to taking any action, the director would be required to confirm the accuracy of the information and to notify the Emergency Management Coordinator for the county in which the source was located. The Emergency Management Coordinator would notify the fire department, the county sheriff, and the health department.

The bill would impose criminal penalties for violations of the act, or of a rule promulgated under the act. For example, a person who knowingly violated the act, failed to obtain a permit, or failed to comply with the terms of a permit or order would be guilty of a felony punishable by imprisonment for up to five years, a fine of \$2,500 to \$25,000, or both. Similar penalties would be imposed for false representation, and negligent or knowing release of any hazardous air contaminant. In addition, the department could pay an award of up to \$10,000 to an individual who provided information resulting in the assessment of a civil fine, or leading to the arrest and conviction of a person. Under the bill, a local unit of government could also commence a civil action against a person found in violation of the act; the commission, department, or a city or county that failed to perform its responsibilities.

Repeals. House Bill 4166 would repeal current provisions of the act relating to violations, voluntary agreements, and hearings.

MCL 336.12 et al.