

Legislative Analysis



REPEAL EMERGENCY AS AIR EMISSION AFFIRMATIVE DEFENSE

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House Bill 6122 as introduced
Sponsor: Rep. Donovan McKinney
Committee: Natural Resources, Environment, Tourism
and Outdoor Recreation
Complete to 12-12-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 6122 would repeal section 5527 of the Natural Resources and Environmental Protection Act (NREPA), which provides conditions under which an *emergency* constitutes an affirmative defense to an action brought against a permit holder for noncompliance with the terms of their permit.

Emergency means a situation arising from sudden and reasonably unforeseeable events beyond the control of the source (i.e., of an air pollutant), including acts of God, war, strike, riot, catastrophe, or other condition as to which the person's negligence was not the proximate cause, that requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation contained in an operating permit issued under section 5506 of NREPA, a permit to install or to operate issued under section 5505 of NREPA, or a rule issued under Part 55 (Air Pollution Control) due to unavoidable increases in emissions attributable to the situation.

An emergency does not include acts of noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

Section 5527 now provides that an emergency is an affirmative defense to an action brought for noncompliance with a technology-based emission limitation contained in an operating permit issued under section 5506, a permit to install or to operate issued under section 5505, or a rule issued under Part 55 as long as the emergency is demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that establishes all of the following:

- An emergency occurred that the defendant can identify the cause or causes of.
- The source was properly operated at the time of the emergency.
- During the emergency, the defendant took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit.
- The defendant submitted notice of the emergency to the Department of Environment, Great Lakes, and Energy within two working days after the emission limitation was exceeded due to the emergency. The notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

The bill would repeal the above provision.

MCL 324.5506 and MCL 324.5527 (repealed)

FISCAL IMPACT:

House Bill 6122 is unlikely to directly affect costs or revenues for EGLE or local units of government.

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