NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 55
AIR POLLUTION CONTROL

324.5501 Definitions.

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.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998;—Am. 2019, Act 119, Imd. Eff. Nov. 15, 2019.

Compiler's note: In this section, the reference to "(*i*) "Category F facility" evidently should read "(i) "Category F facility"."

Popular name: Act 451

Popular name: NREPA

324.5502 Issuance of permit to install or operating permit to municipal solid waste incinerator; applicability of subsection (1); municipal solid waste incinerator existing prior to June 15, 1993.

Sec. 5502. (1) Except as provided in subsection (2), the department shall not issue a permit to install or an operating permit to a municipal solid waste incinerator unless the municipal solid waste incinerator is located at least 1,000 feet from all of the following:

(a) A residential dwelling.

(b) A public or private elementary or secondary school.

(c) A preschool facility for infants or children.

(d) A hospital.

(e) A nursing home.

(2) Subsection (1) does not apply to a municipal solid waste incinerator that existed prior to June 15, 1993, or to the modification; alteration; expansion, including, but not limited to, the addition of 1 or more combustion units and any accompanying features or fixtures; or retrofit of such a municipal solid waste incinerator after June 15, 1993, regardless of whether the activity requires a permit.

(3) For the purposes of this section, a municipal solid waste incinerator existed prior to June 15, 1993 if either of the following applies:

(a) It was issued a permit to operate or a permit to install for installation, construction, modification, alteration, or retrofit prior to June 15, 1993, unless it was denied a permit to operate prior to June 15, 1993.

(b) It is located at a geographical site at which 1 or more incinerator units incinerated waste during the 6 months prior to June 15, 1993.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 227, Imd. Eff. Dec. 14, 1995;—Am. 1998, Act 6, Imd. Eff. Feb. 6, 1998.

Popular name: Act 451

Popular name: NREPA

324.5503 Powers of department.

Sec. 5503. The department may do 1 or more of the following:

(a) Promulgate rules to establish standards for ambient air quality and for emissions.

(b) Issue permits for the construction and operation of sources, processes, and process equipment, subject to enforceable emission limitations and standards and other conditions reasonably necessary to assure compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act.

(c) In accordance with this part and rules promulgated under this part, deny, terminate, modify, or revoke and reissue permits for cause. If an application for a permit is denied or is determined to be incomplete by the department, the department shall state in writing with particularity the reason for denial or the determination of incompleteness, and, if applicable, the provision of this part or a rule promulgated under this part that controls the decision.

(d) Compel the attendance of witnesses at proceedings of the department upon reasonable notice.

(e) Make findings of fact and determinations.

(f) Make, modify, or cancel orders that require, in accordance with this part, the control of air pollution.

(g) Enforce permits, air quality fee requirements, and the requirements to obtain a permit.

(h) Institute in a court of competent jurisdiction proceedings to compel compliance with this part, rules promulgated under this part, or any determination or order issued under this part.

(i) Enter and inspect any property as authorized under section 5526.

(j) Receive and initiate complaints of air pollution in alleged violation of this part, rules promulgated under

this part, or any determination, permit, or order issued under this part and take action with respect to the complaint as provided in this part.

(k) Require reports on sources and the quality and nature of emissions, including, but not limited to, information necessary to maintain an emissions inventory.

(*l*) Prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution.

(m) Encourage voluntary cooperation by all persons in controlling air pollution and air contamination.

(n) Encourage the formulation and execution of plans by cooperative groups or associations of municipalities, counties or districts, or other governmental units, industries, and others who severally or jointly are or may be the source of air pollution, for the control of pollution.

(o) Cooperate with the appropriate agencies of the United States or other states or any interstate or international agencies with respect to the control of air pollution and air contamination or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(p) Conduct or cause to be conducted studies and research with respect to air pollution control, abatement, or prevention.

(q) Conduct and supervise programs of air pollution control education including the preparation and distribution of information relating to air pollution control.

(r) Determine by means of field studies and sampling the degree of air pollution in the state.

(s) Provide advisory technical consultation services to local communities.

(t) Serve as the agency of the state for the receipt of money from the federal government or other public or private agencies and the expenditure of that money after it is appropriated for the purpose of air pollution control studies or research or enforcement of this part.

(u) Do such other things as the department considers necessary, proper, or desirable to enforce this part, a rule promulgated under this part, or any determination, permit, or order issued under this part, or the clean air act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Air Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16 , compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 336.1101 et seq.; R 336.1122; and R 336.1201 et seq. of the Michigan Administrative Code.

324.5504 Medical waste incineration facility; operating permit required; form and contents of application; compliance; validity and renewal of permit; review of operating permits; retrofitting facility; interim operating permit; rules; receipt of pathological or medical wastes generated off-site; records; definitions.

Sec. 5504. (1) Beginning on June 6, 1991 or on the effective date of the rules promulgated under subsection (5), whichever is later, a facility that incinerates medical waste shall not be operated unless the facility has been issued an operating permit by the department.

(2) An application for an operating permit under subsection (1) shall be submitted in the form and contain the information required by the department. The department shall issue an operating permit only if the facility is in compliance with this part and the rules promulgated under this part.

(3) A permit issued under this section shall be valid for 5 years. Upon expiration, a permit may be renewed.

(4) Within 2 years after the effective date of the rules promulgated under subsection (5), the department shall review all operating permits issued under this part for facilities that incinerate medical waste that were issued permits prior to the promulgation of the rules under subsection (5). If, upon review, the department determines that the facility does not meet the requirements of the rules promulgated under subsection (5) and cannot be retrofitted to comply with these rules, the department shall issue an interim operating permit that is valid for 2 years only. If the facility only needs retrofitting in order to comply with the rules, the facility shall be granted an interim permit that is valid for 1 year only. However, in either case the facility shall comply with this part and all other rules promulgated under this part for the interim period. An interim operating permit shall provide that if the facility is within 50 miles of another facility that is in compliance with the rules promulgated under subsection (5), the facility operating under the interim operating permit may receive only medical waste that is generated on the site of that facility, at a facility owned and operated by the person who owns and operates that facility, or at the private practice office of a physician who has privileges to practice at that facility, if the facility is a hospital. The department shall renew an operating permit for a

facility only if the facility is in compliance with this part and the rules promulgated under this part.

(5) The department shall promulgate rules to do both of the following:

(a) Regulate facilities that incinerate medical waste. These rules shall cover at least all of the following areas:

(*i*) Incinerator design and operation.

(*ii*) Ash handling and quality.

(*iii*) Stack design.

(*iv*) Requirements for receiving medical waste from generators outside the facility.

(*v*) Air pollution control requirements.

(*vi*) Performance monitoring and testing.

(*vii*) Record keeping and reporting requirements.

(*viii*) Inspection and maintenance.

(b) Regulate the operation of facilities that incinerate only pathological waste and limited other permitted solid waste.

(6) A permit issued under this section may allow a facility to receive pathological or medical wastes that were generated off the site of the facility. However, the owner or operator of the facility shall keep monthly records of the source of the wastes and the approximate volume of the wastes received by the facility.

(7) As used in this section:

(a) "Medical waste" means that term as it is defined in part 138 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.13801 to 333.13831 of the Michigan Compiled Laws.

(b) "Pathological waste" means that term as it is defined in part 138 of the public health code.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 336.1901 et seq. of the Michigan Administrative Code.

324.5505 Installation, construction, reconstruction, relocation, alteration, or modification of process or process equipment; permit to install or operate required; rules; trial operation; rules for issuance of general permit or certain exemptions; temporary locations; nonrenewable permits; failure of department to act on applications; appeal of permit actions.

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

(2) The department shall promulgate rules to establish a permit to install program to be administered by the department. Except as provided in subsections (4) and (5), the permit to install program is applicable to each new or modified process or process equipment that emits or may emit an air contaminant. The start date for emissions offsets eligible to be applied to a permit to install shall be the date established by federal rule or, if a date is not established by federal rule, January 1 of the year after the emissions baseline year used for the purpose of preparing the relevant state implementation plan. The department shall make available information in the permit database and the air emissions inventory established under section 5503(k), to identify emissions reductions that may be used as emissions offsets. This subsection does not authorize the department to seek permit changes to make emissions reductions available for use as emissions offsets.

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

(4) The department may promulgate rules to provide for the issuance of general permits and to exempt certain sources, processes, or process equipment or certain modifications to a source, process, or process equipment from the requirement to obtain a permit to install or a permit to operate authorized pursuant to rules promulgated under subsection (6). However, the department shall not exempt any new source or modification that would meet the definition of a major source or major modification under parts C and D of title I of the clean air act, 42 USC 7470 to 7515.

(5) The department may issue a permit to install, a general permit, or a permit to operate authorized under rules promulgated under subsection (6) if applicable, that authorizes installation, operation, or trial operation, as applicable, of a source, process, or process equipment at numerous temporary locations. Such a permit shall do both of the following:

(a) Include terms and conditions necessary to ensure compliance with all applicable requirements of this part, the rules promulgated under this part, and the clean air act, including those necessary to ensure compliance with all applicable ambient air standards, emission limits, and increment and visibility requirements pursuant to part C of title I of the clean air act, 42 USC 7470 to 7492, at each location.

(b) Require the owner or operator of the process, source, or process equipment to notify the department at least 10 days in advance of each change in location. However, if electronic notification is used, the notification shall be given at least the following number of business days before the change of location:

(*i*) 5 business days unless subparagraph (*ii*) applies.

(*ii*) 2 business days, if, at least 10 days before the change of location, the owner provided the department a list of anticipated operating locations for that calendar year and if the change of location is on that list.

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

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

(8) Any person may appeal the issuance or denial by the department of a permit to install, a general permit, or a permit to operate authorized in rules promulgated under subsection (6), for a new source in accordance with section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631. Petitions for review shall be the exclusive means to obtain judicial review of such a permit and shall be filed within 90 days after the final permit action, except that a petition may be filed after that deadline only if the petition is based solely on grounds arising after the deadline for judicial review. Such a petition shall be filed no later than 90 days after the new grounds for review arise. Appeals of permit actions for existing sources are subject to section 5506(14).

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2005, Act 57, Imd. Eff. June 30, 2005;—Am. 2019, Act 120, Eff. Feb. 13, 2020.

Popular name: Act 451

Popular name: NREPA

324.5506 Operating permit.

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

(2) If a person who owns or operates a source has submitted a timely and administratively complete application for an operating permit, including an application for renewal of an operating permit, but final action has not been taken on the application, the source's failure to have an operating permit is not a violation of subsection (1) unless the delay in final action is due to the failure of the person owning or operating the source to submit information required or requested to process the application. A source required to have a permit under this section is not in violation of subsection (1) before the date on which the source is required to submit an application pursuant to subsections (3) and (4)(n). Except as otherwise provided in subsection (5), expiration of an operating permit terminates a person's right to operate a source. This subsection does not waive an applicable requirement to obtain a permit under section 5505.

(3) A person who owns or operates a source required to have an operating permit pursuant to this section shall submit to the department within 12 months after the date on which the source becomes subject to the requirement to obtain a permit under subsection (1), or on an earlier date specified by rule, a compliance plan and an administratively complete application for an operating permit signed by a responsible official, who shall certify the accuracy of the information submitted. The department shall approve or disapprove a timely and administratively complete application, and shall issue or deny the operating permit within 18 months after the date of receipt of the compliance plan and an administratively complete operating application, except that the department shall establish a phased schedule for acting on the timely and administratively complete operating permit applications submitted within the first full year after the operating permit 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.

(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. 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 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.

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

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

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

(h) Provisions to allow for changes within a permitted source without a revision to the operating permit, if the changes are not modifications under any provision of title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, and the changes do not exceed the emissions allowed under the operating permit, if the owner or operator of the source provides the department and the administrator of the United States environmental protection agency with written notification at least 7 days in advance of the proposed changes. However, the department may provide a different time frame for an emergency as defined in section 5527. The emissions allowed under the operating permit include any enforceable emission limitation, standard, or other condition, including a work practice standard, determined by the department to be required by an applicable requirement of this part, rules promulgated under this part, or the clean air act, or that establishes an emission limit or an enforceable emissions cap that the source has assumed to avoid an applicable requirement of this part, rules promulgated under this part, or the clean air act, to which the source would otherwise be subject. These provisions shall include the following:

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

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

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

(*i*) The change meets all applicable requirements of this part, the rules promulgated under this part, and the clean air act and does not violate any existing emission limitation, standard, or other condition of the operating permit.

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

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

(j) Provisions to allow changes within a permitted source, pursuant to 40 C.F.R. 70.7(e)(2), that may be

made immediately after the source files an application with the department, if all of the following criteria are met:

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

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

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

(*iv*) The change does not seek to establish or modify an emission limitation, standard, or other condition of the operating permit that the source has assumed to avoid an applicable requirement of this part, the rules promulgated under this part, or the clean air act, to which the source would otherwise be subject.

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

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

(*i*) Correction of a typographical error.

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

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

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

(*v*) Incorporation into the operating permit of the requirements of a permit to install issued pursuant to section 5505, if the permit to install has met procedural requirements that are substantially equivalent to the requirements of this section, including the content of the permit, and the provisions for participation by the United States environmental protection agency and other affected states and participation of the public under section 5511.

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

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

(n) A schedule of the dates when submittal of an application for an operating permit is required for the source categories subject to this section and a phased schedule for taking final action on those applications.

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

(6) Each operating permit issued pursuant to this section shall include those enforceable emissions limitations and standards applicable to the source, if any, and other conditions necessary to assure compliance with the applicable requirements of this part, rules promulgated under this part, and the clean air act, a schedule of compliance, and a requirement that the owner or operator of a source submit to the department, at least every 6 months, a report summarizing the results of any required monitoring. Each operating permit issued pursuant to this section shall also include a severability clause to ensure the continued validity of the unchallenged terms and conditions of the operating permit if any portion of a permit is challenged.

(7) The department shall require revision of an operating permit prior to the expiration of the permit consistent with section 5506(4)(g), for any of the following reasons or to do any of the following:

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

expiration date of the permit.

(b) To incorporate new applicable standards and requirements of the acid rain program under title IV into the operating permits of sources affected by that program.

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

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

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

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

(10) The department shall not approve or otherwise issue any operating permit for a source required to obtain an operating permit pursuant to section 502(a) of title V of the clean air act, chapter 360, 104 Stat. 2641, 42 U.S.C. 7661a, if the administrator of the United States environmental protection agency objects to issuance of the permit in a timely manner pursuant to section 505(b) of title V of the clean air act, chapter 360, 104 Stat. 2643, 42 U.S.C. 7661d.

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

(a) The permit specifically includes the applicable requirement.

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

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

(13) Subsection (11) does not apply to a change at a source made pursuant to subsection (4)(h), (i), or (j). Subsection (11) does not apply to a change in a source made pursuant to subsection (4)(k) until the change is incorporated into the operating permit.

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

(15) The failure of the department to act on a technically and administratively complete application or renewal application for an operating permit in accordance with a time requirement established pursuant to subsection (3) and rules promulgated under subsection (4)(n) is final permit action solely for the purposes of obtaining judicial review in a court of competent jurisdiction to require that action be taken by the department without additional delay on the application or renewal application.

(16) The department may, after notice and opportunity for public hearing, pursuant to the requirements of section 5511, issue a general permit covering numerous similar sources, processes, or process equipment, or a permit that authorizes operation of a source at numerous temporary locations. A general permit or a permit

that authorizes operation of a source at numerous temporary locations shall comply with all requirements applicable to operating permits pursuant to this section. A permit that authorizes operation of a source at numerous temporary locations shall include terms and conditions necessary to assure compliance with all applicable requirements of this part, rules promulgated under this part, and the clean air act, including those necessary to assure compliance with all applicable ambient air standards, applicable emission limits, and applicable increment and visibility requirements pursuant to part C of title I of the clean air act, chapter 360, 91 Stat. 731, 42 U.S.C. 7470 to 7479 and 7491 to 7492, at each authorized location and shall require the owner or operator of the source to notify the department at least 10 days in advance of each change in location. A source covered by a general permit is not relieved from the obligation to file an application for a permit pursuant to subsections (3) and (5).

(17) As used in this section, "technically complete" means, for the purposes of an application for an operating permit required by this section, all of the information required for an administratively complete application and any other specific information requested by the department that may be necessary to implement and enforce all applicable requirements of this part, the rules promulgated under this part, or the clean air act, or to determine the applicability of those requirements. An application is not technically complete if it omits information needed to determine the applicability of any lawful requirement or to enforce any lawful requirement or any information necessary to evaluate the amount of the annual air quality fee for the source.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5507 Administratively complete action; exemption from information requirements; "compliance plan" defined.

Sec. 5507. (1) An administratively complete application means an application for an operating permit required in section 5506 that is submitted on standard application forms provided by the department and includes all of the following:

(a) Source identifying information, including company name and address, owner's name, and the names, addresses, and telephone numbers of the responsible official and permit contact person.

(b) A description of the source's processes and products using the applicable standard industrial classification codes.

(c) A description of all emissions of air contaminants emitted by the source that are regulated under this part, the rules promulgated under this part, and the clean air act.

(d) A schedule for submission of annual compliance certifications during the permit term, unless more frequent certifications are specified by an underlying applicable requirement.

(e) A certification by a responsible official of the truth, accuracy, and completeness of the application. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete.

(f) For each process, except for any insignificant processes listed by the department pursuant to subsection (2), all of the following:

(*i*) A description of the process using the standard classification code.

(*ii*) Citation and description of all applicable requirements, including any applicable test method for determining compliance with each applicable requirement.

(*iii*) Actual and allowable emission rates in tons per year and in terms that are necessary to establish compliance with all applicable emission limitations and standards, including all calculations used to determine those emission rates. Actual emission information shall be used for verifying the compliance status of the process with all applicable requirements. Actual emission information shall not be used, except at the request of the permit applicant, to establish new emission limitations or standards or to modify existing emission limitations or standards unless such limitation or standard is required to assure compliance with a specific applicable requirement.

(*iv*) Information on fuels, fuel use, raw materials, production rates, and operating schedules, to the extent it is needed to determine or regulate emissions.

(*v*) Limitations on source operation affecting emissions or any work practice standards, if applicable.

(*vi*) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(*vii*) Identification and description of all emission points in sufficient detail to establish the basis for fees or to determine applicable requirements.

(*viii*) Other information required by any applicable requirement.

(*ix*) A statement of the methods proposed to be used for determining compliance with the applicable requirements under the operating permit, including a description of monitoring, record keeping, and reporting requirements and test methods.

(*x*) An explanation of any proposed exemptions from otherwise applicable requirements.

(*xi*) Information necessary to define any alternative operating scenarios that are to be included in the operating permit or to define permit terms and conditions implementing section 5506(4)(*l*).

(*xii*) A compliance plan.

(*xiii*) A schedule of compliance.

(2) The department shall promulgate a list of insignificant processes or activities, which are exempt from all or part of the information requirements of this section. For any insignificant processes or activities that are exempt because of size or production rate, the application shall include a list of the insignificant processes and activities.

(3) As used in section 5506 and this section, "compliance plan" means a description of the compliance status of the source with respect to all applicable requirements for each process as follows:

(a) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(b) For applicable requirements that will become effective during the permit term, a statement that the source will meet these requirements on a timely basis.

(c) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5508 "Section 112" defined; source, process, or process equipment not subject to best available control technology for toxics requirements or health based screening level requirements.

Sec. 5508. (1) As used in this section, "section 112" means section 112 of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412.

(2) A new, modified, or existing source, process, or process equipment for which standards have been promulgated under section 112(d) or for which a control technology determination has been made pursuant to section 112(g) or 112(j) is not subject to the best available control technology for toxics (T-BACT) requirements of rules promulgated under this part for any of the following:

(a) The hazardous air pollutants listed in section 112(b).

(b) Other toxic air contaminants that are volatile organic compounds, if the standard promulgated under section 112(d) or the determination made under section 112(g) or 112(j) controls similar compounds that are also volatile organic compounds.

(c) Other toxic air contaminants that are particulate matter, if the standard promulgated under section 112(d) or the determination made under section 112(g) or 112(j) controls similar compounds that are also particulate matter.

(d) Other toxic air contaminants that are similar to the compounds controlled by the standard promulgated under section 112(d) or controlled by the determination made under section 112(g) or 112(j).

(3) A new, modified, or existing source, process, or process equipment for which standards have been promulgated under section 112(f) is not subject to the health based screening level requirements in rules promulgated under this part for the hazardous air pollutants listed in section 112(b).

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5509 "Malfunction" defined; rules; prohibition; actions taken by department; enforcement; conditions for applicability of subsections (3) to (5).

Sec. 5509. (1) As used in this section, "malfunction" means any sudden failure of a source, air pollution control equipment, process, or process equipment to operate in a normal or usual manner. A malfunction exists only for the time reasonably necessary to implement corrective measures. Malfunction does not include failures arising as a result of substandard maintenance that does not conform to industry standards, or periods when the source is being operated carelessly or in a manner that is not consistent with good engineering practice or judgment.

(2) By May 13, 1995, the department shall promulgate general rules, and may promulgate rules that pertain to specific categories of sources, that are consistent with, but are not limited to, the requirements of the clean air act, to establish standards of performance, emission standards, and requirements for monitoring, record keeping, and reporting that will apply during start-up, shutdown, and malfunction of a source, process, or process equipment. The rules shall require that during periods of start-up, shutdown, and malfunction, the operator shall to the extent reasonably possible operate a source, process, or process equipment in a manner consistent with good air pollution control practices for minimizing emissions.

(3) During periods of start-up, shutdown, or malfunction of a source, process, or process equipment, the emission of an air contaminant in excess of a standard or emission limitation, or a violation of any other requirement, established by this part, a rule promulgated under this part, or specified in a permit to install, a permit to operate authorized pursuant to rules promulgated under section 5505(6), or an operating permit under section 5506, is prohibited unless the following applicable requirements and any applicable rules promulgated pursuant to subsection (2) are complied with:

(a) At all times, including periods of start-up, shutdown, and malfunction, owners and operators shall, to the extent practicable, operate a source, process, or process equipment in a manner consistent with good air pollution control practice for minimizing emissions.

(b) Notice of a malfunction of a source, process, or process equipment that results in excess emissions of an air contaminant shall be provided to the department if the malfunction results in excess emissions that continue for more than 2 hours. Notice by any reasonable means includes but is not limited to oral, telephonic, or electronic notice, and shall be provided as soon as reasonably possible, but no later than 2 business days after the discovery of the malfunction. Written notice of malfunction shall be provided within 10 days after the malfunction has been corrected. Written notice shall specify all of the following:

(*i*) The cause of the malfunction, if known.

(*ii*) The date, time, location, and duration of the malfunction.

(*iii*) The actions taken to correct and prevent the reoccurrence of the malfunction.

(*iv*) Actions taken to minimize emissions during the malfunction, if any.

(*v*) The type and, where known or where it is reasonably possible to estimate, the quantity of any excess emissions of air contaminants.

(*vi*) Contemporaneous operational logs and continuous emission monitoring information where continuous emission monitoring is required by the clean air act or rules promulgated under this part or is specified as a condition of a permit issued under this part or an order entered under this part.

(c) The malfunctioning source, process, or process equipment shall have been maintained and operated in a manner consistent with the applicable provisions of a malfunction abatement plan approved under this part, if any.

(d) During start-up or shutdown, the source, process, or process equipment shall be operated in accordance with applicable start-up or shutdown provisions of its installation permit, nonrenewable permit to operate, or operating permit, if any.

(4) Notwithstanding the provisions of subsection (3), the department may take action under section 5518(1) to immediately discontinue and take action to contain an imminent and substantial endangerment to public health, safety, or welfare.

(5) Notwithstanding the provisions of subsection (3), enforcement action may be taken against a person who violates section 5531(4), (5), or (6).

(6) Subsections (3) to (5) do not apply upon the effective date of the general rules required under subsection (2) or November 13, 1996, whichever is first.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Compiler's note: The general rules referenced in subsection (6) were promulgated and became effective July 26, 1995.

Popular name: Act 451

Popular name: NREPA

324.5510 Denial or revocation of permit; circumstances.

Sec. 5510. In accordance with this part and rules promulgated under this part, the department may, after notice and opportunity for public hearing, deny or revoke a permit issued under this part if any of the following circumstances exist:

(a) Installation, modification, or operation of the source will violate this part, rules promulgated under this part, or the clean air act, unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order.

(b) Installation, construction, reconstruction, relocation, alteration, or operation of the source presents or

may present an imminent and substantial endangerment to human health, safety, or welfare, or the environment.

(c) The person applying for the permit makes a false representation or provides false information during the permit review process.

(d) The source has not been installed, constructed, reconstructed, relocated, altered, or operated in a manner consistent with the application for a permit or as specified in a permit.

(e) The person owning or operating the source fails to pay an air quality fee assessed under this part.

(f) The person proposes a major offset source or the owner or operator of a proposed major offset modification that owns or operates another source in the state that has the potential to emit 100 tons or more per year of any air contaminant regulated under the clean air act and that source is in violation of this part, rules promulgated under this part, the clean air act, or a permit or order issued under this part, unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5511 List of permit applications; list of consent order public notices; notice, opportunity for public comment and public hearing required for certain permit actions.

Sec. 5511. (1) The department shall establish and maintain a list of all applications for permits submitted pursuant to sections 5505 and 5506. The list shall report the status of each application. The information on the list shall be updated by the department on a monthly basis. The department shall send a copy of the pertinent sections of the list to the chairperson of the county board of commissioners of each county. Any other person may subscribe to this list on a countywide or statewide basis and shall reimburse the department for the costs of copying, handling, and mailing. The department shall make the list available at district offices selected by the department. The department may also develop an electronic data base that includes the capability of making this list available to the public. This list shall include all of the following information:

(a) The name of the permit applicant.

(b) The street address, if available, the county, and the municipality in which the source is located or proposed to be located.

(c) The type of application, such as installation, operation, renewal, or general permit.

(d) The date the permit application was received by the department.

(e) The date when the permit application is determined to be administratively complete, if applicable.

(f) A brief description of the source, process, or process equipment covered by the permit application.

(g) Brief pertinent comments regarding the progress of the permit application, including the dates of public comment periods and public hearings, if applicable.

(2) The department shall establish and maintain a list of all proposed consent order public notices. This information shall be updated by the department on a monthly basis. Any other person may subscribe to this list on a countywide or statewide basis and shall reimburse the department for the costs of copying, handling, and mailing. The department shall make the list available at district offices selected by the department. This list shall include all of the following information:

(a) The name of the parties to the proposed consent order.

(b) The street address, if available, and the county and municipality in which the source is located.

(c) A brief description of the source.

(d) A brief description of the alleged violation to be resolved by the proposed consent order.

(e) A brief description of the respondent's position regarding the alleged violation if the respondent requests such inclusion and supplies to the department a brief statement of the respondent's position regarding the alleged violation.

(3) The department shall not issue a permit to install or a nonrenewable permit to operate pursuant to section 5505 for a major source or for a major modification under title I of the clean air act, chapter 360, 77 Stat. 392, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, or issue, renew, or significantly modify any operating permit issued under section 5506, or enter into a consent order, without providing public notice, including offering an opportunity for public comment and a public hearing on the draft permit or proposed consent order. In addition, the department shall not issue a permit for which there is a known public controversy without providing public notice including an opportunity for public comment and public meeting. For the purposes of an operating permit issued under section 5506, a significant modification does not include any modifications to a permit made pursuant to section 5506(4)(h), (i), (j), or (k). For a general permit issued pursuant to section 5505(4) or section 5506(16), public notice and opportunity for public comment and a public hearing shall only be provided before the base general permit is approved,

not as individual sources apply for coverage under that general permit. Public notice and an opportunity for public comment and a public hearing as required under this section shall be provided as follows:

(a) Public notice shall be provided by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice, and by other means determined to be necessary by the department to assure adequate notice to the public. Notice shall also be provided to persons on a mailing list, developed by the department, including those persons who request in writing to be on that list, and to any other person who requests in writing to be notified of a permit action involving a specific source.

(b) The notice shall identify the source; the name and address of the responsible official; the mailing address of the department; the activity or activities involved in the proposed permit action or consent order; the emissions change involved in any significant permit modification; the name, address, and telephone number of a representative of the department from whom interested persons may obtain additional information, including copies of the draft permit or proposed consent order, the application, all relevant supporting material, and any other materials available to the department that are relevant to the permit or consent order decision; a brief description of the comment procedures required by this section; and the time and place of any hearing that may be held, including a statement of the procedures to request a hearing.

(c) The department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(d) The department shall keep a record of the commenters and the issues raised during the public comment period and public hearing, if held, and these records shall be available to the public.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5512 Rules.

Sec. 5512. (1) Subject to section 5514, the department shall promulgate rules for purposes of doing all of the following:

(a) Controlling or prohibiting air pollution.

(b) Complying with the clean air act.

(c) Controlling any mode of transportation that is capable of causing or contributing to air pollution.

(d) Reviewing proposed locations of stationary emission sources.

(e) Reviewing modifications of existing emission sources.

(f) Prohibiting locations or modifications of emission sources that impair the state's ability to meet federal ambient air quality standards.

(g) Establishing suitable emission standards consistent with federal ambient air quality standards and factors including, but not limited to, conditions of the terrain, wind velocities and directions, land usage of the region, and the anticipated characteristics and quantities of potential air pollution sources. This part does not prohibit the department from denying or revoking a permit to operate a source, process, or process equipment that would adversely affect human health or other conditions important to the life of the community.

(h) Implementing sections 5505 and 5506.

(2) Unless otherwise provided in this part, each rule, permit, or administrative order promulgated or issued under this part prior to November 13, 1993 shall remain in effect according to its terms unless the rule or order is inconsistent with this part or is revised, amended, or repealed.

(3) Section 11522 applies to open burning.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2012, Act 102, Imd. Eff. Apr. 19, 2012;—Am. 2014, Act 417, Eff. Mar. 31, 2015.

Popular name: Act 451

Popular name: NREPA

Administrative rules: R 336.1101 et seq.; R 336.1122; and R 336.1201 et seq. of the Michigan Administrative Code.

324.5513 Car ferries and coal-fueled trains.

Sec. 5513. Notwithstanding any other provision of this part or the rules promulgated under this part, car ferries having the capacity to carry more than 110 motor vehicles and coal-fueled trains used in connection with tourism or an historical museum or carrying works of art or items of historical interest are not subject to regulation under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5514 Department of environmental quality; prohibited acts; "wood heater" defined.

Sec. 5514. (1) The department of environmental quality shall not do any of the following:

(a) Promulgate a rule limiting emissions from wood heaters.

(b) Enforce against a manufacturer, distributor, or consumer a federal regulation limiting emissions from wood heaters and adopted after May 1, 2014.

(2) As used in this section, "wood heater" means a wood stove, pellet stove, wood-fired hydronic heater, wood burning forced-air furnace, or masonry wood heater designed for heating a home or business.

History: Add. 2014, Act 417, Eff. Mar. 31, 2015.

Compiler's note: Former MCL 324.5514, which pertained to disposal of United States flag by burning, was repealed by Act 102 of 2012, Imd. Eff. Apr. 19, 2012.

Popular name: Act 451

Popular name: NREPA

324.5515 Investigation; voluntary agreement; order; petition for contested case hearing; final order or determination; review.

Sec. 5515. (1) If the department believes that a person is violating this part, a rule promulgated under this part, a permit issued under this part, or a determination other than an order issued under this part, the department shall make a prompt investigation. If after this investigation the department finds that a violation of this part, a rule promulgated under this part, a permit issued under this part, or a determination other than an order issued under this part exists, the department shall attempt to enter into a voluntary agreement with the person.

(2) If the department believes that a person is violating an order issued under this part, the department shall make a prompt investigation. If after this investigation the department finds that a person has failed to comply with the terms of an order issued under this part, the department may attempt to enter into a voluntary agreement with the person.

(3) If a voluntary agreement is not entered into under subsection (1), the department may issue an order requiring a person to comply with this part, a rule promulgated under this part, a determination made under this part, or a permit issued under this part. If the department issues an order it shall be accompanied by a statement of the facts upon which the order is based.

(4) A person aggrieved by an order issued under subsection (3) may file a petition for a contested case hearing pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. A petition shall be submitted to the department within 30 days of the effective date of the order. The department shall schedule the matter for hearing within 30 days of receipt of the petition for a contested case hearing. A final order or determination of the department upon the matter following the hearing is conclusive, unless reviewed in accordance with Act No. 306 of the Public Acts of 1969, in the circuit court for the county of Ingham or for the county in which the person resides.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5516 Public hearing; information available to the public; use of confidential information.

Sec. 5516. (1) A public hearing with reference to pollution control may be held before the department. Persons designated to conduct the hearing shall be described as presiding officers and shall be disinterested and technically qualified persons.

(2) A copy of each permit, permit application, order, compliance plan and schedule of compliance, emissions or compliance monitoring report, sample analysis, compliance certification, or other report or information required under this part, rules promulgated under this part, or permits or orders issued under this part shall be available to the public to the extent provided by the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(3) A person whose activities are regulated under this part may designate a record or other information, or a portion of a record, permit application, or other information furnished to or obtained by the department or its agents, as being only for the confidential use of the department. The department shall notify the person asserting confidentiality of a request for public records under section 5 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.235 of the Michigan Compiled Laws, the scope of which includes information that has been designated by the regulated person as being confidential. The person asserting confidentiality has 25 days after the receipt of the notice to demonstrate to the department that the

information designated as confidential should not be disclosed because the information is a trade secret or secret process, or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained, and make available information not otherwise publicly available. The department shall grant the request for the information unless the person regulated under this part demonstrates to the satisfaction of the department that the information should not be disclosed. If there is a dispute between the person asserting confidentiality and the person requesting information under Act No. 442 of the Public Acts of 1976, the department shall make the decision to grant or deny the request. After the department makes a decision to grant a request, the information requested shall not be released until 8 business days after the regulated person's receipt of notice of the department's decision. This does not prevent the use of the information by the department in compiling or publishing analyses or summaries relating to ambient air quality if the analyses or summaries do not identify the person or reveal information which is otherwise confidential under this section. This section does not render data on the quantity, composition, or quality of emissions from any source confidential. Data on the amount and nature of air contaminants emitted from a source shall be available to the public.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5517 Petition for relief from rule.

Sec. 5517. Application for relief from a rule promulgated by the department shall be made by petition to the circuit court for the county of Ingham or for the county in which the petitioner resides. The petition shall be verified as in a civil action. Each petition shall contain a plain and concise statement of the material facts on which the petitioner relies, shall set forth the rule or part of the rule that the petitioner claims is unreasonable or prejudicial to the petitioner, and shall specify the grounds for the claim. The petition may be accompanied by affidavits or other written proof and shall demand the relief to which the petitioner alleges he or she is entitled, in the alternative or otherwise. The petition may be made by 1 or more persons, jointly or severally, who are aggrieved by a rule, whether or not the petitioner is or was a party to the proceeding in which the rule was promulgated by the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5518 Notice to discontinue pollution; hearing; suit brought by attorney general in circuit court; effectiveness and duration of order; notice to county emergency management coordinator.

Sec. 5518. (1) If the department finds that a person is discharging or causing to be discharged into the atmosphere, directly or indirectly, an air contaminant and the discharge constitutes an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment, and it appears to be prejudicial to the interests of the people of the state to delay action, the department shall notify the person by written notice that he or she must immediately discontinue the air pollution or take such other action as may be necessary to contain the imminent and substantial endangerment, or both. The written notice shall specify the facts that are the basis of the allegation. Within 7 days, the department shall provide the person the opportunity to be heard and to present any proof that the discharge does not constitute an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment.

(2) Notwithstanding any other provision of this part, upon receipt of evidence that a person is discharging or causing to be discharged into the atmosphere, directly or indirectly, an air contaminant and the discharge constitutes an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment, and it appears to be prejudicial to the interests of the people of the state to delay action, the attorney general may bring suit on behalf of the state in the appropriate circuit court to immediately discontinue the air pollution or take such other action as may be necessary to contain the imminent and substantial endangerment, or both.

(3) An order issued by the department under subsection (1) is effective upon issuance and shall remain in effect for a period of not more than 7 days, unless the attorney general brings a civil action to restrain the alleged endangerment pursuant to subsection (2) or section 5530 before the expiration of that period. If the attorney general brings such an action within the 7-day period, the order issued by the department shall remain in effect for an additional 7 days or such other period as is authorized by the court in which the action is brought.

(4) Prior to taking an action under subsection (1), the department shall attempt to notify the emergency management coordinator for the county in which the source is located who is appointed pursuant to the emergency management act, Act No. 390 of the Public Acts of 1976, being sections 30.401 to 30.420 of the Michigan Compiled Laws.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5519, 324.5520 Repealed. 1998, Act 245, Imd. Eff. July 8, 1998.

Compiler's note: The repealed sections pertained to submission of emissions information to the department and payment of emission fees.

Popular name: Act 451

Popular name: NREPA

324.5521 Emissions control fund.

Sec. 5521. (1) The emissions control fund is created within the state treasury. The state treasurer may receive money from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(2) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(3) Upon the expenditure or appropriation of funds raised through fees in this part for any purpose other than those specifically listed in this part, authorization to collect fees under this part is suspended until such time as the funds expended or appropriated for purposes other than those listed in this part are returned to the emissions control fund.

(4) Beginning October 1, 1994 and thereafter money shall be expended from the fund, upon appropriation, only for the following purposes as they relate to implementing the operating permit program required by title V:

(a) Preparing generally applicable rules or guidance regarding the operating permit program or its implementation or enforcement.

(b) Reviewing and acting on any application for a permit, permit revision, or permit renewal, the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal.

(c) General administrative costs of running the operating permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry.

(d) Implementing and enforcing the terms of any operating permit, not including any court costs or other costs associated with an enforcement action.

(e) Emissions and ambient monitoring.

(f) Modeling, analysis, or demonstration.

(g) Preparing inventories and tracking emissions.

(h) Providing direct and indirect support to facilities under the small business clean air assistance program created in part 57.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998.

Popular name: Act 451

Popular name: NREPA

***** *324.5522 THIS SECTION MAY NOT APPLY: See subsection (11)* *****

324.5522 Fee-subject facility; air quality fees; calculation of emissions charge and facility charge; annual report detailing activities of previous fiscal year; action by attorney general for collection of fees; applicability of section; condition.

Sec. 5522. (1) Until October 1, 2027, 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 is 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 is 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 is 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 must 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 F 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 must identify the facility and state the grounds on which the challenge is based. Within 30 calendar days after receipt of the challenge, the department shall determine the validity of the challenge and provide the owner with notification of a revised fee or 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 must 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 under 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 each year, 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 of representatives 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 must 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 must 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) before 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 after 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) before final action, or within 240 days after receipt for those applications required to complete public participation under section 5511(3) before 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 must 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) must 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 must 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.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998;—Am. 2001, Act 49, Imd. Eff. July 23, 2001;—Am. 2005, Act 169, Imd. Eff. Oct. 10, 2005;—Am. 2007, Act 75, Imd. Eff. Sept. 30, 2007;—Am. 2011, Act 164, Imd. Eff. Oct. 4, 2011;—Am. 2015, Act 60, Eff. Oct. 1, 2015;—Am. 2019, Act 119, Imd. Eff. Nov. 15, 2019;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

Popular name: Act 451

Popular name: NREPA

324.5523 Issuance of permits and administration and enforcement of part, rules, and state implementation plan; delegation granted by department to certain counties.

Sec. 5523. (1) A county in which a city with a population of 750,000 or more is located may apply for a delegation from the department to issue state permits and administer and enforce the applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan. After a public hearing, the department shall grant the delegation if the department finds that the county's application demonstrates all of the following:

(a) That the county program complies with the applicable provisions of this part, the rules promulgated under this part, the clean air act, and the state implementation plan.

(b) That the county has, and will continue to have, the capacity to carry out the applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan including, but not limited to, adequate and qualified staff to do all of the following:

(*i*) Monitor ambient air at locations specified by the department using equipment and procedures specified by the department.

(*ii*) Process and review applications for installation permits, operating permits, tax exemptions, and construction waivers pursuant to sections 5505 and 5506, part 59, and the clean air act, demonstrating a thorough knowledge of permit applicability, procedures, and regulations by developing permits that are free of significant errors and inaccuracies as defined in the performance standards section of the annual contract between the department and participating counties.

(*iii*) Perform necessary sampling and laboratory analyses.

(*iv*) Conduct regular and complete inspections and record reviews of all significant sources of air pollution.

(*v*) Respond to citizen complaints related to air pollution.

(*vi*) Notify sources of identified violations of applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan and conduct appropriate enforcement, up to and including administrative, civil, and criminal enforcement.

(*vii*) Perform dispersion modeling analyses, collect emissions release information, and develop necessary state implementation plan demonstrations.

(*viii*) Carry out other activities required by this part, rules promulgated under this part, the clean air act, and the state implementation plan.

(c) That the county has adequate funding to carry out the applicable provisions of this part, rules promulgated under this part, the clean air act, and the state implementation plan. This shall include identification of funding from air quality fees and any federal, state, or county funds along with an identification of the activities that are funded by each funding source. The county funding shall be sufficient to provide the required grantee match for any federal air pollution grant.

(d) That the county has performed in accordance with the terms of the most recent contract, if any, between the state and the county that describes the work activities and program to be carried out by the county. This shall be demonstrated through state audit reports and the county's prompt and permanent correction of any deficiencies identified in state audit reports.

(e) That the county program contains provisions for public notice and public participation consistent with this part, the rules promulgated under this part, and the clean air act.

(f) That the county has the capacity to administer the state air quality fee program in the manner prescribed in section 5522 for all fee-subject facilities subject to this part, located within the county, and subject to the delegated program of the county. This shall include an ability to identify fee-subject facilities, calculate and assess fees, implement collections, maintain a dedicated account, and process fee challenges.

(2) A delegation under this section shall be for a term of not more than 5 years and not less than 2 years, and may be renewed by the department. The delegation shall be in the form of a written contract that does all of the following:

(a) Describes the activities the county shall carry out during the term of the delegation.

(b) Provides for the delegated program to be consistent with implementation of the state's air program, using state procedures, forms, databases, and other means.

(c) Provides for ongoing communication between the county and state to assure consistency under subdivision (b).

(3) One hundred eighty days prior to the expiration of the term of delegation, the county may submit an application to the department for renewal of their delegation of authority. The department shall hold a public hearing and following the public hearing make its decision on a renewal of delegation at least 60 days prior to the expiration of the term of the delegation. The department shall deny the renewal of a delegation of authority upon a finding that the county no longer meets the criteria described in subsection (1) or provisions of the delegation contract. The county may appeal a finding under subsection (1) or this subsection to a court of competent jurisdiction.

(4) A county delegated authority under this section annually shall submit a report to the department that documents the county's ability to meet the criteria described in subsection (1) and the delegation contract during the past 12 months.

(5) In addition to the report of the county under subsection (4), the auditor general of the state shall annually submit to the governor, the legislature, and the department an independent report regarding whether a county meets the criteria provided in subsection (1) and a review of the fiscal integrity of a county delegated authority under this section. The auditor general's report shall also determine the county's pro rata share of the state's support services for title V programs that are attributable to and payable by a county.

(6) Within 60 days after a county delegated authority under this section submits its annual report as required under subsection (4), the department shall notify the county, in writing, whether the report of the county meets the requirements of this section or states, with particularity, the deficiencies in that report or any findings in the auditor general's report that render the county in noncompliance with the criteria in subsection (1). The county shall have 90 days to correct any stated deficiencies. If the department finds that the deficiencies have not been corrected by the county, the department shall notify the county, in writing, within 30 days of the submission of the county's corrections and may terminate a county's delegation. The county shall have 21 days from receipt of the decision of termination in which to appeal the department's decision to a court of competent jurisdiction. If the department fails to notify the county within 60 days, the report shall be considered satisfactory for the purposes of this subsection.

(7) Notwithstanding any other statutory provision, rule, or ordinance, a county delegated authority under this section to administer and enforce this part shall issue state permits and implement its responsibilities only in accordance with its delegation, the delegation contract, this part, rules promulgated under this part, the clean air act, and the applicable provisions of the state implementation plan. State permits issued by a county that is delegated authority under this section have the same force and effect as permits issued by the department, and if such a county issues a state permit pursuant to section 5505 or 5506, no other state or county permit is required pursuant to section 5505 or 5506, respectively.

(8) Upon receipt of a permit application, prior to taking final action to issue a state permit or entering into a consent order, the county shall transmit to the department a copy of each administratively complete permit application, application for a permit modification or renewal, proposed permit, or proposed consent order. The county shall transmit to the department a copy of each state permit issued by the county and consent order entered within 30 days of issuance of the state permit or entry of the consent order.

(9) Notwithstanding a delegation under this part, the department retains the authority to bring any appropriate enforcement action under sections 5515, 5516, 5518, 5526, 5527, 5528, 5529, 5530, 5531, and 5532 as authorized under this part and the rules promulgated under this part to enforce this part and the rules promulgated under this part. The department may bring any appropriate action to enforce a state permit issued or a consent order entered into by a county to which authority is delegated.

(10) Notwithstanding any other provision of this part, in a county that has been delegated authority under this section, that county shall impose and collect fees in the manner prescribed in section 5522 on all fee-subject facilities subject to this part and located within the corporate boundaries and subject to the delegated program of the county. The department shall not levy or collect an annual air quality fee from the owner or operator of a fee-subject facility who pays fees pursuant to this section. A county that is delegated authority under this section shall not assess a fee for a program or service other than as provided for in this part or title V or assess a fee covered by this part or title V greater than the fees set forth in section 5522. A county that is delegated authority under this section shall pay to the state the pro rata share of the state's support services for title V programs attributable to the county.

(11) Fees imposed and collected by a county with delegated authority under this section shall be paid to the county treasury.

(12) The county treasurer of a county delegated authority under this section shall create a clean air implementation account in the county treasury, and the county treasurer shall deposit all fees received pursuant to the delegation authorized under this section in the account. The fees shall be expended only in accordance with section 5521(6), the rules promulgated under this part, and the clean air act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1998, Act 245, Imd. Eff. July 8, 1998.

Popular name: Act 451

Popular name: NREPA

324.5524 Fugitive dust sources or emissions.

Sec. 5524. (1) The provisions of this section, including subsection (2), shall apply to any fugitive dust source at all mining operations, standard industrial classification major groups 10 through 14; manufacturing operations, standard industrial classification major groups 20 through 39; railroad transportation, standard industrial classification major group 40; motor freight transportation and warehousing, standard industrial classification major group 42; electric services, standard industrial classification group 491; sanitary services, standard industrial classification group 495; and steam supply, standard industrial classification group 496, which are located in areas listed in table 36 of R 336.1371 of the Michigan administrative code.

(2) Except as provided in subsection (8), a person responsible for any fugitive dust source regulated under this section shall not cause or allow the emission of fugitive dust from any road, lot, or storage pile, including any material handling activity at a storage pile, that has an opacity greater than 5% as determined by reference test method 9d. Except as otherwise provided in subsection (8) or this section, a person shall not cause or allow the emission of fugitive dust from any other fugitive dust source that has an opacity greater than 20% as determined by test method 9d. The provisions of this subsection shall not apply to storage pile material handling activities when wind speeds are in excess of 25 miles per hour (40.2 kilometers per hour).

(3) In addition to the requirements of subsection (2), and except as provided in subdivisions (e), (f), and (g), a person shall control fugitive dust emissions in a manner that results in compliance with all of the following provisions:

(a) Potential fugitive dust sources shall be maintained and operated so as to comply with all of the following applicable provisions:

(*i*) All storage piles of materials, where the total uncontrolled emissions of fugitive dust from all such piles

at a facility is in excess of 50 tons per year and where such piles are located within a facility with potential particulate emissions from all sources including fugitive dust sources and all other sources exceeding 100 tons per year, shall be protected by a cover or enclosure or sprayed with water or a surfactant solution, or treated by an equivalent method, in accordance with the operating program required by subsection (4).

(*ii*) All conveyor loading operations to storage piles specified in subparagraph (*i*) shall utilize spray systems, telescopic chutes, stone ladders, or other equivalent methods in accordance with the operating program required by subsection (4). Batch loading operations to storage piles specified in subparagraph (*i*) shall utilize spray systems, limited drop heights, enclosures, or other equivalent methods in accordance with the operating program required by subsection (4). Unloading operations from storage piles specified in subparagraph (*i*) shall utilize rake reclaimers, bucket wheel reclaimers, under-pile conveying, pneumatic conveying with baghouse, water sprays, gravity-feed plow reclaimer, front-end loaders with limited drop heights, or other equivalent methods in accordance with the operating program required by subsection (4).

(*iii*) All traffic pattern access areas surrounding storage piles specified in subparagraph (*i*) and all traffic pattern roads and parking facilities shall be paved or treated with water, oils, or chemical dust suppressants. All paved areas, including traffic pattern access areas surrounding storage piles specified in subparagraph (*i*), shall be cleaned in accordance with the operating program required by subsection (4). All areas treated with water, oils, or chemical dust suppressants shall have the treatment applied in accordance with the operating program required by subsection (4).

(*iv*) All unloading and transporting operations of materials collected by pollution control equipment shall be enclosed or shall utilize spraying, pelletizing, screw conveying, or other equivalent methods.

(*v*) Crushers, grinding mills, screening operations, bucket elevators, conveyor transfer points, conveyor bagging operations, storage bins, and fine product truck and railcar loading operations shall be sprayed with water or a surfactant solution, utilize choke-feeding, or be treated by an equivalent method in accordance with an operating program required under subsection (4). This subparagraph shall not apply to high-lines at steel mills.

(b) If particulate collection equipment is operated pursuant to this section, emissions from such equipment shall not exceed 0.03 grains per dry standard cubic foot (0.07 grams per cubic meter).

(c) A person shall not cause or allow the operation of a vehicle for the transporting of bulk materials with a silt content of more than 1% without employing 1 or more of the following control methods:

(*i*) The use of completely enclosed trucks, tarps, or other covers for bulk materials with a silt content of 20% or more by weight.

(*ii*) The use of tarps, chemical dust suppressants, or water in sufficient quantity to maintain the surface in a wet condition for bulk materials with a silt content of more than 5% but less than 20%.

(*iii*) Loading trucks so that no part of the load making contact with any sideboard, side panel, or rear part of the load comes within 6 inches of the top part of the enclosure for bulk materials with a silt content of more than 1% but not more than 5%.

(d) All vehicles for transporting bulk materials off-site shall be maintained in such a way as to prevent leakage or spillage and shall comply with the requirements of section 720 of the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being section 257.720 of the Michigan Compiled Laws, and with R 28.1457 of the Michigan administrative code.

(e) The provisions of subdivisions (c) and (d) do not apply to vehicles with less than a 2-ton capacity that are used to transport sand, gravel, stones, peat, or topsoil.

(f) The provisions of subdivision (c)(*i*) and (*ii*) do not apply to fly ash which has been thoroughly wetted and has the property of forming a stable crust upon drying.

(g) The provisions of subdivision (c) do not apply to the transportation of iron or steel slag if the vehicles do not leave the facility and the slag has a temperature of 200 degrees fahrenheit or greater.

(4) All fugitive dust sources subject to the provisions of this section shall be operated in compliance with both the provisions of an operating program that shall be prepared by the owner or operator of the source and submitted to the department and with applicable provisions of this section. Such operating program shall be designed to significantly reduce the fugitive dust emissions to the lowest level that a particular source is capable of achieving by the application of control technology that is reasonably available, considering technological and economic feasibility. The operating program shall be implemented with the approval of the department.

(5) The operating program required by subsection (4) is subject to review and approval or disapproval by the department and shall be considered approved if not acted on by the department within 90 days of submittal. All programs approved by the department shall become a part of a legally enforceable order or as part of an approved permit to install or operate. At a minimum, the operating program shall include all of the following:

(a) The name and address of the facility.

(b) The name and address of the owner or operator responsible for implementation of the operating program.

(c) A map or diagram of the facility showing all of the following:

(*i*) Approximate locations of storage piles.

(*ii*) Conveyor loading operations.

(*iii*) All traffic patterns within the facility.

(d) The location of unloading and transporting operations with pollution control equipment.

(e) A detailed description of the best management practices utilized to achieve compliance with this section, including an engineering specification of particulate collection equipment, application systems for water, oil, chemicals, and dust suppressants utilized, and equivalent methods utilized.

(f) A test procedure, including record keeping, for testing all waste or recycled oils used for fugitive dust control for toxic contaminants.

(g) The frequency of application, application rates, and dilution rates if applicable, of dust suppressants by location of materials.

(h) The frequency of cleaning paved traffic pattern roads and parking facilities.

(i) Other information as may be necessary to facilitate the department's review of the operating program.

(6) Except for fugitive dust sources operating programs approved by the department pursuant to R 336.1373 of the Michigan administrative code between April 23, 1985 and May 12, 1987, the owner or operator of a source shall submit the operating program required by subsection (4) to the department by August 12, 1987.

(7) The operating program required by subsection (4) shall be amended by the owner or operator so that the operating program is current and reflects any significant change in the fugitive dust source or fugitive dust emissions. An amendment to an operating program shall be consistent with the requirements of this section and shall be submitted to the department for its review and approval or disapproval.

(8) Upon request by the owner or operator of a fugitive dust source, the department may establish alternate provisions to those specified in this section, if all of the following conditions are met:

(a) The fugitive dust emitting process, operation, or activity is subject to either of the following:

(*i*) The opacity limits of subsection (2).

(*ii*) The spray requirements of subsection (3)(a)(*i*) to (*v*).

(b) An alternate provision shall not be established by the department unless the department is reasonably convinced of all of the following:

(*i*) That a fugitive dust emitting process, operation, or activity subject to the alternate provisions is in compliance or on a legally enforceable schedule of compliance with the other rules of the department.

(*ii*) That compliance with the provisions of this section is not technically or economically reasonable.

(*iii*) That reasonable measures to reduce fugitive emissions as required by this section have been implemented in accordance with or will be implemented in accordance with a schedule approved by the department.

(9) Any alternate provisions approved by the department pursuant to subsection (8) shall be submitted to the United States environmental protection agency as an amendment to the state implementation plan.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5525 Definitions.

Sec. 5525. As used in section 5524:

(a) "Control equipment or pollution control equipment" has the meaning ascribed to control equipment in R 336.1103 of the Michigan administrative code.

(b) "Fine product" means materials which will pass through a 20-mesh screen or those particles with aerodynamic diameters of 830 microns or less.

(c) "Fugitive dust" has the meaning ascribed to it in R 336.1106 of the Michigan administrative code.

(d) "Fugitive dust source" means any fugitive dust emitting process, operation, or activity regulated under section 5524.

(e) "Opacity" has the meaning ascribed to it in R 336.1115 of the Michigan administrative code.

(f) "Particulate" means any air contaminant existing as a finely divided liquid or solid, other than uncombined water, as measured by a reference test specified in subsection (5) of R 336.2004 of the Michigan administrative code or by an equivalent or alternative method.

(g) "Potential particulate emissions" means those emissions of particulate matter expected to occur without

control equipment, unless such control equipment is, aside from air pollution control requirements, vital to the production of the normal product of the source or to its normal operation. Annual potential particulate emissions shall be based on the maximum annual-rated capacity of the source, unless the source is subject to enforceable permit conditions or enforceable orders which limit the operating rate or the hours of operation or both. Enforceable agreements or permit conditions on the type or amount of materials combusted or processed shall be used in determining the potential particulate emission rate of a source.

(h) "Process" or "process equipment" has the meaning ascribed to it in R 336.1116 of the Michigan administrative code.

(i) "Silt content" means that portion, by weight, of a particulate material which will pass through a number 200 (75 micron) wire sieve as determined by the American society of testing material, test C-136-76.

(j) "Test method 9D" means the method by which visible emissions of fugitive dust shall be determined according to test method 9 as set forth in appendix A-reference methods in 40 CFR, part 60, with the following modifications:

(*i*) The data reduction provisions of section 2.5 of method 9 shall be based on an average of 12 consecutive readings recorded at 15-second intervals.

(*ii*) For roadways and parking lots, opacity observations shall be made from a position such that the observer's line of vision is approximately perpendicular to the plume direction and approximately 4 feet directly above the surface of the road or parking area from which the emissions are being generated. The observer shall not look continuously at the plume, but instead shall observe the plume momentarily at 15-second intervals at the point of maximum plume density. Consecutive readings must be suspended for any 15-second period if a vehicle is in the observer's line of sight. If this occurs, a "V" shall be used in lieu of a numerical value, and a footnote shall be made to indicate that "V" signifies that the observer's view was obstructed by a vehicle. Readings shall continue at the next 15-second period, and they shall be considered consecutive to the reading immediately preceding the 15-second period denoted by a "V". Consecutive readings also shall be suspended for any 15-second period if a vehicle passes through the area traveling in the opposite direction and creates a plume that is intermixed with the plume being read. If this occurs, an "I" shall be used in lieu of a numerical value, and a footnote shall be made to indicate that "I" signifies that the readings were terminated due to interference from intermixed plumes. Readings shall continue when, in the judgment of the observer, the plume created by the vehicle traveling in the opposite direction no longer interferes with the plume originally being read; and they shall be considered consecutive to the reading immediately preceding the 15-second period denoted by an "I". Intermixing of plumes from vehicles traveling in the same direction represents the road conditions, and reading shall continue in the prescribed manner. A reading encompassing an unusual condition (such as a broken bag of cement on the pavement) cannot be used to represent the entire surface condition involved. In such cases, another set of readings, encompassing the average surface condition, must be conducted. For all other fugitive dust sources except roadways and parking lots, opacity observations shall be made from a position that provides the observer a clear view of the source and the fugitive dust with the sun behind the observer. A position at least 15 feet from the source is recommended. To the extent possible, the line of sight should be approximately perpendicular to the flow of fugitive dust and to the longer axis of the emissions. Opacity observations shall be made for the point of highest opacity within the fugitive dust. Since the highest opacity usually occurs immediately above or downwind of the source, the observer should normally concentrate on the area or areas of the plume close to the source.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5526 Investigation; inspection; furnishing duplicate of analytical report; powers of department or authorized representative; entry or access to records refused; powers of attorney general; “authorized representative” defined.

Sec. 5526. (1) The department may, upon the presentation of credentials and other documents as may be required by law, and upon stating the authority and purpose of the investigation, enter and inspect any property at reasonable times for the purpose of investigating either an actual or suspected source of air pollution or ascertaining compliance or noncompliance with this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part. If in connection with an investigation or inspection, samples of air contaminants are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person who is suspected of causing the air pollution. In implementing this subsection, the department or its authorized representative may do any of the following:

(a) Have access to and copy, at reasonable times, any records that are required to be maintained pursuant to this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part.

(b) Inspect at reasonable times any facility, equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required under this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part.

(c) Sample or monitor at reasonable times substances or parameters for the purpose of determining compliance with this part, rules promulgated under this part, the clean air act, a permit issued under this part, or any determination or order issued under this part. The department may enter into a contract with a person to sample and monitor as authorized under this subdivision.

(2) If the department, or an authorized representative of the department, is refused entry or access to records and samples under subsection (1) for the purposes of utilizing this section, the attorney general, on behalf of the state, may do either of the following:

(a) Petition the court of appropriate jurisdiction for a warrant authorizing entry or access to records and samples pursuant to this section.

(b) Commence a civil action to compel compliance with a request for entry and access to records and samples pursuant to this section, to authorize entry and access to records and samples provided for in this section, and to enjoin interference with the utilization of this section.

(3) As used in this section, "authorized representative" means any of the following:

(a) A full- or part-time employee of the department of natural resources or other state department or agency to which the department delegates certain duties under this section.

(b) A county to which authority is delegated under section 5523.

(c) For the purpose of utilizing the powers conferred in subsection (1)(c), a contractor retained by the state or a county to which authority is delegated under section 5523.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5527 Emergency; definition; affirmative defense; burden of proof.

Sec. 5527. (1) As used in this section, "emergency" means a situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, war, strike, riot, catastrophe, or other condition as to which negligence on the part of the person 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 pursuant to section 5506, a permit to install or permit to operate issued pursuant to section 5505, or any rule promulgated under this part 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.

(2) An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation contained in an operating permit issued pursuant to section 5506, a permit to install or permit to operate issued pursuant to section 5505, or any rule promulgated under this part if the emergency is demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that establishes all of the following:

(a) An emergency occurred and that the defendant can identify the cause or causes of the emergency.

(b) The source was properly operated at the time of the emergency.

(c) 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.

(d) The defendant submitted notice of the emergency to the department within 2 working days after the emission limitation was exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(3) In any enforcement proceeding, the defendant seeking to establish the occurrence of an emergency has the burden of proof.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2000, Act 474, Imd. Eff. Jan. 11, 2001.

Popular name: Act 451

Popular name: NREPA

324.5528 Violation of part, rule, terms of permit, or order; agreement to correct violation;

consent order; public notice and opportunity for public comment; providing copy of proposed consent order.

Sec. 5528. (1) If the department believes that a violation of this part or a rule promulgated under this part exists, or a violation of the terms of a permit issued under this part exists, the department shall provide the person responsible for the alleged violation with the opportunity to enter into an agreement with the department to correct the alleged violation. The agreement may provide for monetary or other relief as agreed upon by the parties. The agreement shall be in the form of a consent order and shall provide for compliance with this part and rules promulgated under this part and compliance with any applicable permit issued under this part. In addition, each consent order shall contain a compliance schedule that provides for reasonable progress toward full compliance by a designated date.

(2) If the department believes that a violation of an order issued under this part exists, the department may provide the person responsible for the alleged violation with the opportunity to enter into an agreement with the department to correct the alleged violation. The agreement may provide for monetary or other relief as agreed upon by the parties. The agreement shall be in the form of a consent order and shall provide for compliance with this part and rules promulgated under this part and compliance with any applicable permit or order issued under this part. In addition, each consent order shall contain a compliance schedule that provides for reasonable progress toward full compliance by a designated date.

(3) The department shall provide public notice and an opportunity for public comment on the terms and conditions of a consent order. Upon the request of any person the department shall provide a copy of the proposed consent order.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5529 Administrative fine; limitation; petition for review of fine.

Sec. 5529. (1) The department may assess an administrative fine of up to $10,000.00 for each instance of violation and, if the violation continues, for each day of continued noncompliance, if the department, on the basis of available information, finds that the person has violated or is in violation of this part or a rule promulgated under this part, has failed to obtain a permit required under this part, violates an order under this part, or has failed to comply with the terms of a permit issued under this part. If a single event constitutes an instance of violation of any combination of this part, a rule promulgated under this part, or a permit issued or order entered under this part, the amount of the administrative fine for that single event shall not exceed $10,000.00 for that violation. The assessment of an administrative fine may be either a part of a compliance order or a separate order issued by the department.

(2) The authority of the department under this section is limited to matters where the total administrative fine sought does not exceed $100,000.00 and the first alleged date of violation occurred within 12 months prior to initiation of the administrative action. Except as may otherwise be provided by applicable law, the department shall not condition the issuance of a permit on the payment of an administrative fine assessed pursuant to this section.

(3) Within 28 days of being assessed an administrative fine from the department, a person may file a petition with the department for review of this fine. Review of the fine shall be conducted pursuant to the contested case procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws. If issued as part of a consent order issued pursuant to section 5528, only the amount of the administrative fine and the alleged violation on which the fine is based are subject to the contested case procedures of Act No. 306 of the Public Acts of 1969.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5530 Commencement of civil action by attorney general; relief; costs; jurisdiction; defenses; fines.

Sec. 5530. (1) The attorney general may commence a civil action against a person for appropriate relief, including injunctive relief, and a civil fine as provided in subsection (2) for any of the following:

(a) Violating this part or a rule promulgated under this part.

(b) Failure to obtain a permit under this part.

(c) Failure to comply with the terms of a permit or an order issued under this part.

(d) Failure to pay an air quality fee or comply with a filing requirement under this part.

(e) Failure to comply with the inspection, entry, and monitoring requirements of this part.

(f) A violation described in section 5518(2).

(2) In addition to any other relief authorized under this section, the court may impose a civil fine of not more than $10,000.00 for each instance of violation and, if the violation continues, for each day of continued violation.

(3) In addition to other relief authorized under this section, the attorney general may, at the request of the department, file an action in a court of competent jurisdiction to recover the full value of the injuries done to the natural resources of the state.

(4) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including, but not limited to, reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party if the court determines that such an award is appropriate.

(5) A civil action brought under this section may be brought in the county in which the defendant is located, resides, or is doing business, or in the circuit court for the county of Ingham, or in the county in which the registered office of a defendant corporation is located, or in the county where the violation occurred.

(6) General defenses and affirmative defenses, that may otherwise apply under state law may apply in an action brought under this section as determined to be appropriate by a court of competent jurisdiction.

(7) Fines imposed under this section shall be assessed for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5531 Violations as misdemeanors; violations as felonies; fines; defenses; definitions.

Sec. 5531. (1) A person who knowingly violates any requirement or prohibition of an applicable requirement of this part or a rule promulgated under this part or who fails to obtain or comply with a permit or comply with a final order or order of determination issued under this part is guilty of a misdemeanor punishable by a fine of not more than $10,000.00 per day, for each violation.

(2) A person who knowingly makes a false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file any notice, application, record, report, plan, or other document required to be submitted pursuant to this part or a rule promulgated under this part, or who knowingly fails to notify or report information required to be submitted under this part or a rule promulgated under this part, or who knowingly falsifies, tampers with, renders inaccurate, or knowingly fails to install any monitoring device or method required under this part or a rule promulgated under this part, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year and a fine of not more than $10,000.00 per day, for each violation.

(3) A person who knowingly fails to pay any air quality fee owed under this part is guilty of a misdemeanor punishable by a fine of not more than $10,000.00.

(4) A person who knowingly releases into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or both, contrary to applicable federal, state, or local requirements, or contrary to a permit issued under this part, and because of the quantities or concentrations of the substance released knows or should have known at the time that the release places another person in imminent danger of death or serious bodily injury is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $10,000.00, or both.

(5) A person who knowingly releases or causes the release into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or both, contrary to applicable federal, state, or local requirements, or contrary to a permit issued under this part, and who knows or should have known at the time that the release places another person in imminent danger of death or serious bodily injury, and the release results in death or serious bodily injury to any person is guilty of a felony punishable by imprisonment for not more than 6 years or a fine of not more than $25,000.00, or both.

(6) A person who knowingly releases into the ambient air any specific chemical or any hazardous air pollutant listed in 40 C.F.R. part 68, section 68.130 (January 19, 1993) pursuant to the authority of section 112(r) of part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, or both, contrary to applicable federal, state, or local requirements, or contrary to a permit issued under this part, and who intended at that time to place another person in imminent danger of death or serious bodily injury, and whose actions do result

in death or cause serious bodily injury to any person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $250,000.00, or both.

(7) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury as required under subsections (4), (5), and (6), the defendant is responsible only for actual awareness or actual belief possessed, and knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant. However, in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(8) Fines imposed under this section shall be assessed for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(9) A defendant may establish an affirmative defense to a prosecution under this section by showing by a preponderance of the evidence that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of any of the following:

(a) An occupation, a business, or a profession.

(b) Medical treatment or medical or scientific experimentation conducted by professionally approved methods if the person had been made aware of the risks involved prior to giving consent.

(10) All general defenses, affirmative defenses, and bars to prosecution that may otherwise apply with respect to state criminal offenses may apply under this section and shall be determined by the courts of this state having jurisdiction according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed by the courts in the light of reason and experience.

(11) Fines shall not be imposed pursuant to this section for a violation that was caused by an act of God, war, strike, riot, catastrophe, or other condition to which negligence or willful misconduct on the part of the person was not the proximate cause.

(12) As used in this section:

(a) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(b) "Specific chemical" means a hazardous air pollutant listed in section 112(b)(1) of Part A of title I of the clean air act, 84 Stat. 1685, 42 U.S.C. 7412, except for the following compounds:

(*i*) Antimony compounds.
(*ii*) Arsenic compounds (inorganic including arsine).
(*iii*) Beryllium compounds.
(*iv*) Cadmium compounds.
(*v*) Chromium compounds.
(*vi*) Cobalt compounds.
(*vii*) Coke oven emissions.
(*viii*) Cyanide compounds.
(*ix*) Glycol ethers.
(*x*) Lead compounds.
(*xi*) Manganese compounds.
(*xii*) Mercury compounds.
(*xiii*) Fine mineral fibers.
(*xiv*) Nickel compounds.
(*xv*) Polycyclic organic matter.
(*xvi*) Radionuclides (including radon).
(*xvii*) Selenium compounds.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5532 Civil or criminal fines; factors to be considered in determining amount.

Sec. 5532. (1) A civil or criminal fine assessed, sought, or agreed upon under this part shall be appropriate to the violation.

(2) In determining the amount of any fine levied under this part, all of the following factors shall be considered:

(a) The size of the business.

(b) The economic impact of the penalty on the business.

(c) The violator's full compliance history and good faith efforts to comply.

(d) The duration of the violation as established by any credible evidence, including evidence other than the applicable test method.

(e) Payment by the violator of penalties previously assessed for the same violation.

(f) The economic benefit of noncompliance.

(g) The seriousness of the violation.

(h) Such other factors as justice may require.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5533 Award; eligibility; rules.

Sec. 5533. The department may pay an award of up to $10,000.00 to an individual who provides information resulting in the assessment of a civil fine by a court in an action brought by the attorney general pursuant to section 5530, or leading to the arrest and conviction of a person under section 5531. An officer or employee of the United States, state of Michigan, an authorized representative of the department as defined in section 5526(3), or any other state or local government who furnishes information described in this section in the performance of an official duty is ineligible for payment under this section. In addition, an employee of the department of natural resources, a designee of the department of natural resources, or a person employed by the department of attorney general is ineligible to receive an award under this section regardless of whether the reported information came to his or her attention while functioning in an official capacity or as a private citizen. A person may not receive an award under this section for a violation of this part made by that person alone or in conjunction with others. An award shall not be made under this section until rules are promulgated by the department prescribing the criteria for making awards.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5534 Repealed. 1999, Act 231, Imd. Eff. Dec. 28, 1999.

Compiler's note: The repealed section pertained to certain violations exempt from penalties.

Popular name: Act 451

Popular name: NREPA

324.5535 Suspension of enforcement; reasons; variance.

Sec. 5535. Notwithstanding any other provision of this part, the department may suspend the enforcement of the whole or any part of any rule as it applies to any person who shows that the enforcement of the rule would be inequitable or unreasonable as to that person, or the department may suspend the enforcement of the rule for any reason considered by it to be sufficient to show that the enforcement of the rule would be an unreasonable hardship upon the person. Upon any suspension of the whole or any part of the rule the department shall grant to the person a variance from that rule. The department shall not suspend enforcement or grant a variance under this section that would violate the clean air act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5536 Variance; considerations effecting.

Sec. 5536. In determining under what conditions and to what extent a variance from a rule or regulation that would not violate the clean air act may be granted, the department shall give due recognition to the progress which the person requesting the variance has made in eliminating or preventing air pollution. The department shall consider the reasonableness of granting a variance conditioned upon the person effecting a partial control of the particular air pollution or a progressive control of the air pollution over a period of time that it considers reasonable under all the circumstances or the department may prescribe other and different reasonable requirements with which the person receiving the variance shall comply.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5537 Variance; granting for undue hardship.

Sec. 5537. The department shall grant a variance from any rule to, and suspend the enforcement of the rule as it applies to, any person who shows in the case of the person and of the source, process, or process equipment that the person operates that his or her compliance with the rule or regulation, and that the acquisition, installation, operation and maintenance of a source or process, or process equipment required or necessary to accomplish the compliance, would constitute an undue hardship on the person and would be out of proportion to the benefits to be obtained by compliance. A variance shall not be granted under this section if the person applying for the variance is causing air pollution that is injurious to the public health or if the granting of the variance would violate the clean air act. Any variance granted shall not be construed as relieving the person who receives it from any liability imposed by other law for the maintenance of a nuisance.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5538 Variance; period granted; report; conditions.

Sec. 5538. Any variance granted pursuant to sections 5535, 5536, and 5537 shall be granted for a period of time, that does not exceed 1 year, as is specified by the department at the time of granting it, but any variance may be continued from year to year. Any variance granted by the department may be granted on the condition that the person receiving it shall report to the department periodically, as the department specifies, as to the progress which the person has made toward compliance with the rule of the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5539 Variance; revocation or modification of order; public hearing and notice required.

Sec. 5539. The department may revoke or modify any order permitting a variance by written order, after a public hearing held upon not less than 10 days' notice.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5540 Purpose of part; alteration of existing rights of actions or remedies.

Sec. 5540. It is the purpose of this part to provide additional and cumulative remedies to prevent and abate air pollution. This part does not abridge or alter rights of action or remedies now or hereafter existing. This part or anything done by virtue of this part shall not be construed as estopping persons from the exercise of their respective rights to suppress nuisances or to prevent or abate air pollution.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5541 Construction of part; evidentiary effect of determination by commission.

Sec. 5541. This part does not repeal any of the laws relating to air pollution which are not by this part expressly repealed. This part is ancillary to and supplements the laws now in force, except as they may be in direct conflict with this part. The final order or determination of the department shall not be used as evidence of presumptive air pollution in any suit filed by any person other than the department.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5542 Effect on existing ordinances or regulations; local enforcement; cooperation with local governmental units.

Sec. 5542. (1) Nothing in this part or in any rule promulgated under this part invalidates any existing ordinance or regulation having requirements equal to or greater than the minimum applicable requirements of this part or prevents any political subdivision from adopting similar provisions if their requirements are equal to or greater than the minimum applicable requirements of this part.

(2) When a political subdivision or enforcing official of a political subdivision fails to enforce properly the provisions of the political subdivision's ordinances, laws, or regulations that afford equal protection to the public as provided in this part, the department, after consultation with the local official or governing body of

the political subdivision, may take such appropriate action as may be necessary for enforcement of the applicable provisions of this part.

(3) The department shall counsel and advise local units of government on the administration of this part. The department shall cooperate in the enforcement of this part with local officials upon request.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA