

HOUSE BILL No. 4502

March 7, 1991, Introduced by Reps. Alley, Middaugh, Bartnik, Weeks, Rocca, Owen, Ostling, Trim, London, Hoekman, Harder and Van Singel and referred to the Committee on Conservation, Recreation and Environment.

A bill to amend the title and sections 2, 5, 5a, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 25, and 26 of Act No. 348 of the Public Acts of 1965, entitled as amended

"Air pollution act,"

section 2 as amended by Act No. 218 of the Public Acts of 1987, section 5a as added by Act No. 23 of the Public Acts of 1990, and section 15 as added by Act No. 25 of the Public Acts of 1987, being sections 336.12, 336.15, 336.15a, 336.16, 336.17, 336.18, 336.19, 336.20, 336.21, 336.23, 336.24, 336.25, 336.26, 336.27, 336.29, 336.30, 336.31, 336.32, 336.33, 336.35, and 336.36 of the Michigan Compiled Laws; to add section 27; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 2, 5, 5a, 6, 7, 8, 9, 10,
2 11, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 25, and 26 of Act

1 No. 348 of the Public Acts of 1965, section 2 as amended by Act
 2 No. 218 of the Public Acts of 1987, section 5a as added by Act
 3 No. 23 of the Public Acts of 1990, and section 15 as added by Act
 4 No. 25 of the Public Acts of 1987, being sections 336.12, 336.15,
 5 336.15a, 336.16, 336.17, 336.18, 336.19, 336.20, 336.21, 336.23,
 6 336.24, 336.25, 336.26, 336.27, 336.29, 336.30, 336.31, 336.32,
 7 336.33, 336.35, and 336.36 of the Michigan Compiled Laws, are
 8 amended and section 27 is added to read as follows:

9 TITLE

10 An act to control air pollution in this state; ~~to create an~~
 11 ~~air pollution control commission within the state health depart-~~
 12 ~~ment; to prescribe its powers and duties;~~ to prescribe the
 13 powers and duties of certain ~~county~~ STATE AND LOCAL agencies
 14 AND OFFICIALS; to provide for the establishment of fees; and to
 15 provide penalties AND REMEDIES.

16 Sec. 2. As used in this act:

17 (a) "Commission" means the ~~air pollution control~~ commis-
 18 sion OF NATURAL RESOURCES.

19 (B) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL RESOURCES.

20 (C) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT OR HIS
 21 OR HER DESIGNEE.

22 (D) ~~(b)~~ "Air contaminant" means a dust, fume, gas, mist,
 23 odor, smoke, vapor or any combination thereof.

24 (E) ~~(c)~~ "Air pollution" means the presence in the outdoor
 25 atmosphere of air contaminants in quantities, of characteristics
 26 and under conditions and circumstances and of a duration which
 27 are or can become injurious to human health or welfare, to animal

1 life, to plant life or to property, or which interferes with the
2 enjoyment of life and property in this state and excludes all
3 aspects of employer-employee relationships as to health and
4 safety hazards. With respect to any mode of transportation,
5 nothing in this act or in the rules promulgated under the author-
6 ity of this act shall be inconsistent with the federal regula-
7 tions, emission limits, standards or requirements on various
8 modes of transportation. Air pollution shall not be construed to
9 mean those usual and ordinary odors associated with a farm opera-
10 tion within a zoned agricultural area if the person engaged in
11 the farm operation is following generally accepted agricultural
12 and management practices.

13 (F) ~~(d)~~ "Air cleaning device" means any method, process or
14 equipment which removes, reduces or renders less noxious air con-
15 taminants discharged into the atmosphere.

16 (G) ~~(e)~~ "Farm operation" has the meaning ascribed to it in
17 the Michigan right to farm act, Act No. 93 of the Public Acts of
18 1981, being sections 286.471 to 286.474 of the Michigan Compiled
19 Laws.

20 (H) ~~(f)~~ "Generally accepted agricultural and management
21 practices" has the meaning ascribed to it in the Michigan right
22 to farm act, Act No. 93 of the Public Acts of 1981, being sec-
23 tions 286.471 to 286.474 of the Michigan Compiled Laws.

24 (I) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
25 ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.

26 (J) "RULE" MEANS A RULE PROMULGATED PURSUANT TO THE
27 ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC

1 ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN
2 COMPILED LAWS.

3 Sec. 5. (1) The ~~commission~~ DIRECTOR may DO 1 OR MORE OF
4 THE FOLLOWING:

5 ~~(a) Establish standards for ambient air quality and for~~
6 ~~emissions.~~

7 (A) ~~(b)~~ Issue permits for the construction and the opera-
8 tion of air pollution control facilities and source emissions and
9 to require reports of the operation of the air pollution control
10 facilities.

11 (B) ~~(c)~~ Compel the attendance of witnesses at ~~proceedings~~
12 ~~of~~ HEARINGS SCHEDULED BY the ~~commission~~ DIRECTOR upon reason-
13 able notice.

14 (C) ~~(d)~~ Make findings of fact and determinations.

15 (D) ~~(e)~~ Make, modify, or cancel orders ~~which~~ THAT
16 require, in accordance with ~~the provisions of~~ this act, the
17 control of air pollution.

18 (E) ~~(f)~~ Institute in a court of competent jurisdiction
19 proceedings to compel compliance with ~~the provisions of~~ any
20 rule PROMULGATED BY THE COMMISSION UNDER THIS ACT or any determi-
21 nation or order which ~~it~~ THE DIRECTOR may ~~promulgate or~~ issue
22 under this act.

23 (F) ~~(g)~~ Do ~~such~~ other things ~~as it may deem~~ THAT THE
24 DIRECTOR CONSIDERS necessary, proper, or desirable ~~in order that~~
25 ~~it may~~ TO enforce rules promulgated BY THE COMMISSION under this
26 act.

1 (G) ~~(h)~~ Accept, or when ~~deemed~~ CONSIDERED necessary by
2 the ~~commission~~ DIRECTOR require to be submitted to it, and
3 consider for approval, plans for air cleaning devices or any part
4 ~~thereof~~ OF AIR CLEANING DEVICES and inspect the installation
5 for compliance with the plans.

6 (H) ~~(i)~~ Enter and inspect any property at reasonable times
7 and places pursuant to reasonable notice for the purpose of
8 investigating either an actual or suspected source of air pollu-
9 tion or ascertaining compliance or noncompliance with ~~any~~ A
10 rule ~~which it may promulgate~~ PROMULGATED BY THE COMMISSION
11 under this act. If in connection with ~~such~~ THE investigation
12 or inspection, samples of air contaminants are taken for analy-
13 sis, a duplicate of the analytical report shall be furnished
14 promptly to the person who is suspected of causing ~~such~~ THE air
15 pollution.

16 (I) ~~(j)~~ Receive and initiate complaints of air pollution
17 in alleged violation of ~~any~~ A rule ~~which it may promulgate~~
18 PROMULGATED BY THE COMMISSION under this act and take ENFORCEMENT
19 action ~~with respect thereto as hereinafter~~ AS provided in this
20 act.

21 (J) ~~(k)~~ Prepare and develop a general comprehensive plan
22 for the control or abatement of existing air pollution and for
23 the control or prevention of any new air pollution.

24 (K) ~~(l)~~ Encourage voluntary cooperation by all persons in
25 controlling air pollution and air contamination.

26 (L) ~~(m)~~ Encourage the formulation and execution of plans
27 by cooperative groups or associations of cities, villages, and

1 counties or districts, or other governmental units, industries,
2 and others who severally or jointly are or may be the source of
3 air pollution, for the control of pollution.

4 (M) ~~-(n)-~~ Cooperate with the appropriate agencies of the
5 United States or other states or any interstate agencies or
6 international agencies with respect to the control of air pollu-
7 tion and air contamination, or for the formulation for the sub-
8 mission to the legislature of interstate air pollution control
9 compacts or agreements.

10 (N) ~~-(o)-~~ Conduct or cause to be conducted studies and
11 research with respect to air pollution control, abatement, or
12 prevention.

13 (O) ~~-(p)-~~ Conduct and supervise programs of air pollution
14 control education including the preparation and distribution of
15 information relating to air pollution control.

16 (P) ~~-(q)-~~ Determine by means of field studies and sampling
17 the degree of air pollution in the state.

18 (Q) ~~-(r)-~~ Provide advisory technical consultation services
19 to local communities.

20 (R) ~~-(s)- Serve as the agency of the state for the receipt of~~
21 ~~moneys~~ RECEIVE MONEY from the federal government or other public
22 or private agencies and ~~to~~ expend ~~such moneys~~ THIS MONEY,
23 after appropriation ~~thereof~~ BY THE LEGISLATURE for the purpose
24 of air pollution control studies or research or enforcement of
25 this act.

26 (2) IN ADMINISTERING THIS ACT, THE DIRECTOR SHALL ACTIVELY
27 SEEK THE ADVICE OF, AND SHALL CONSULT WITH, THE DEPARTMENTS OF

1 PUBLIC HEALTH AND AGRICULTURE. THE DIRECTOR MAY ENTER INTO A
2 MEMORANDUM OF UNDERSTANDING WITH THE DIRECTOR OF THE DEPARTMENT
3 OF PUBLIC HEALTH OR AGRICULTURE THAT FURTHER DEFINES THE NATURE
4 AND PROCEDURES FOR IMPLEMENTING THIS COOPERATIVE RELATIONSHIP.

5 Sec. 5a. (1) Beginning ~~1 year after the effective date of~~
6 ~~this section~~ JUNE 6, 1991 or on the effective date of the rules
7 promulgated under subsection (5), whichever is later, a facility
8 that incinerates medical waste shall not be operated unless the
9 facility has been issued an operating permit by the ~~commission~~
10 DIRECTOR.

11 (2) An application for an operating permit under subsection
12 (1) shall be submitted in the form and contain the information
13 required by the ~~commission~~ DIRECTOR. The ~~commission~~ DIRECTOR
14 shall issue an operating permit only if the facility is in com-
15 pliance with this act and the rules promulgated under this act.

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

18 (4) Within 2 years after the effective date of the rules
19 promulgated under subsection (5), the ~~commission~~ DIRECTOR shall
20 review all operating permits issued under this act for facilities
21 that incinerate medical waste that were issued permits prior to
22 the promulgation of the rules under subsection (5). If, upon
23 review, the ~~commission~~ DIRECTOR determines that the facility
24 does not meet the requirements of the rules promulgated under
25 subsection (5) and cannot be retrofitted to comply with these
26 rules, the ~~commission~~ DIRECTOR shall issue an interim operating
27 permit that is valid for 2 years only. If the facility only

1 needs retrofitting in order to comply with the rules, the
2 facility shall be granted an interim permit that is valid for 1
3 year only. However, in either case the facility shall comply
4 with this act and all other rules promulgated under this act for
5 the interim period. An interim operating permit shall provide
6 that if the facility is within 50 miles of another facility that
7 is in compliance with the rules promulgated under subsection (5),
8 the facility operating under the interim operating permit may
9 receive only medical waste that is generated on the site of that
10 facility, at a facility owned and operated by the person who owns
11 and operates that facility, or at the private practice office of
12 a physician who has privileges to practice at that facility, if
13 the facility is a hospital. The ~~commission~~ DIRECTOR shall
14 renew an operating permit for a facility only if the facility is
15 in compliance with this act and the rules promulgated under this
16 act.

17 (5) The commission shall promulgate rules to do both of the
18 following:

19 (a) Regulate facilities that incinerate medical waste.

20 These rules shall cover at least all of the following areas:

21 (i) Incinerator design and operation.

22 (ii) Ash handling and quality.

23 (iii) Stack design.

24 (iv) Requirements for receiving medical waste from genera-
25 tors outside the facility.

26 (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.

~~(c) "Rule" means a rule promulgated 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.~~

Sec. 6. (1) ~~The state commissioner of health shall act as the authorized agent for the commission in effecting the purposes of this act. All investigative, technical, scientific and other services shall be performed by the commissioner or his authorized deputies~~ DIRECTOR MAY HOLD A PUBLIC HEARING PRIOR TO MAKING A

1 DECISION ON AN APPLICATION FOR A PERMIT UNDER THIS ACT. THE
 2 DIRECTOR SHALL HOLD A PUBLIC HEARING UPON THE REQUEST OF 1 OR
 3 MORE PERSONS.

4 (2) PERMIT DECISIONS MADE BY THE DIRECTOR UNDER THIS ACT
 5 SHALL BE IN WRITING AND SHALL CONTAIN A RATIONALE FOR THE
 6 DECISION.

7 (3) IF A PERSON FEELS HIMSELF OR HERSELF AGGRIEVED BY A
 8 PERMIT DECISION OF THE DIRECTOR, HE OR SHE MAY FILE A SWORN PETI-
 9 TION WITH THE COMMISSION, WITHIN 30 DAYS AFTER RECEIVING THE
 10 PERMIT DECISION, SETTING FORTH THE GROUNDS AND REASONS FOR HIS OR
 11 HER PETITION AND ASKING FOR A HEARING ON THE MATTER INVOLVED PUR-
 12 SUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306
 13 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF
 14 THE MICHIGAN COMPILED LAWS.

15 Sec. 7. ~~(1) A rule or amendment or repeal thereof shall~~
 16 ~~require a vote of approval in writing of not less than 6 members~~
 17 ~~of the commission. (2) The commission shall promulgate rules~~
 18 ~~in accordance with and subject to Act No. 306 of the Public~~
 19 ~~Acts of 1969, as amended, being sections 24.201 to 24.315 of the~~
 20 ~~Compiled Laws of 1948~~ for ALL OF THE FOLLOWING purposes: ~~of:~~

21 (a) Controlling or prohibiting air pollution.

22 (b) Complying with the ~~federal~~ clean air act, ~~being 42~~
 23 ~~U.S.C., section 1857 et sequence, as amended~~ CHAPTER 360,
 24 69 STAT. 322, 42 U.S.C. 7401 TO 7431, 7470 TO 7479, 7491 TO 7492,
 25 7501 TO 7509a, 7511 TO 7515, 7521 TO 7525, 7541 TO 7545, 7547 TO
 26 7550, 7552 TO 7554, 7571 TO 7574, 7581 TO 7590, 7601 TO 7612,

1 7614 TO 7617, 7619 TO 7622, 7624 TO 7627, 7641 TO 7642, 7651 TO
2 7651o, 7661 TO 7661f, AND 7671 TO 7671q.

3 (c) Controlling any mode of transportation ~~which~~ THAT is
4 capable of causing or contributing to air pollution.

5 (d) Reviewing proposed locations of stationary emission
6 sources.

7 (e) Reviewing modifications of existing emission sources.

8 (f) Prohibiting locations or modifications of emission
9 sources which impair the state's ability to meet federal ambient
10 air QUALITY standards.

11 (g) Establishing suitable emission standards consistent with
12 ambient air quality standards established by the federal govern-
13 ment and factors, including but not limited to, conditions of the
14 terrain, wind velocities and directions, land usage of the
15 region, and the anticipated characteristics and quantities of
16 potential air pollution sources. This act does not prohibit the
17 ~~commission~~ DIRECTOR from denying or revoking a permit to oper-
18 ate a control facility that would adversely affect human health
19 or other conditions important to the life of the community.

20 Sec. 8. (1) If a written complaint is filed with the
21 ~~commission~~ DIRECTOR and the ~~commission~~ DIRECTOR believes, or
22 if the ~~commission~~ DIRECTOR ON HIS OR HER OWN believes that
23 ~~any~~ A person is violating this act or ~~any~~ A rule promulgated
24 by the commission by causing or permitting air pollution, the
25 ~~commission~~ DIRECTOR shall make a prompt investigation. If
26 after ~~such~~ AN investigation ~~it~~ THE DIRECTOR finds that a
27 violation of ~~any~~ THIS ACT OR A rule ~~of~~ PROMULGATED BY the

1 commission exists, ~~it~~ HE OR SHE shall endeavor to enter into a
2 voluntary agreement with ~~such~~ THAT person as provided in sub-
3 section (2).

4 (2) In consideration of the provisions of this section or
5 other sections of this act the ~~commission~~ DIRECTOR, after due
6 notice and opportunity for public hearing, may enter into a vol-
7 untary agreement ~~or a performance contract~~ with a person to
8 abate pollution under conditions agreed upon by the ~~commission~~
9 DIRECTOR and the person. ~~, which~~ THE VOLUNTARY agreement may
10 provide for the enforcement of its terms by specific
11 performance.

12 (3) If in the opinion of the ~~commission~~ DIRECTOR the
13 person violates the terms of the VOLUNTARY agreement, ~~or~~
14 ~~contract~~ the ~~commission can~~ DIRECTOR MAY proceed to enforce
15 the conditions of the VOLUNTARY agreement ~~or contract~~ by order
16 or by the institution in a court of competent jurisdiction of an
17 action for specific performance or such other legal or equitable
18 relief as the ~~commission deems~~ DIRECTOR CONSIDERS appropriate.

19 (4) Whenever a person other than a party to the agreement
20 feels himself OR HERSELF aggrieved by ~~an~~ A VOLUNTARY agreement
21 entered pursuant to subsection (2), he OR SHE may file a sworn
22 petition with the commission within 30 days of the issuance of
23 notice of the agreement setting forth the grounds and reasons for
24 his OR HER complaint and asking for a hearing ~~of~~ ON the matter
25 involved PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969,
26 ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO
27 24.328 OF THE MICHIGAN COMPILED LAWS. ~~Thereupon the commission~~

~~1 shall set a date for a hearing to be held not more than 60 days~~
~~2 from the date the petition is filed and shall notify the peti-~~
~~3 tioner thereof. At the hearing the petitioner and any other~~
~~4 interested party may appear, present witnesses and submit~~
~~5 evidence. A final order or determination of the commission upon~~
~~6 the matter following the hearing shall be conclusive, unless~~
~~7 reviewed in accordance with Act No. 306 of the Public Acts of~~
~~8 1969, as amended, in the circuit court for the county of Ingham~~
~~9 or for the county in which the person resides.~~

10 Sec. 9. If a voluntary agreement under section 8 is not
11 entered into within a reasonable time, set by the ~~commission~~
12 DIRECTOR, the ~~commission~~ DIRECTOR may issue and serve upon the
13 person complained against a written notice, together with a copy
14 of the complaint, which shall specify the facts ~~which~~ THAT are
15 the basis for the alleged violation and a proposed order for cor-
16 rective action ~~which~~ THAT states the time schedule and stan-
17 dards or rules that are to be met by the person complained
18 against. If a person who is served with a complaint and proposed
19 order agrees with the proposed restrictions of polluting content,
20 waste, or pollution and period of time for abatement of pollution
21 ~~which~~ THAT the ~~commission deems~~ DIRECTOR CONSIDERS necessary,
22 and notifies the ~~commission thereof before the date set for~~
23 ~~hearing, unless the person complained against requests a hearing~~
24 ~~before the commission within 30 days after he receives the~~
25 ~~order,~~ DIRECTOR OF HIS OR HER AGREEMENT, disposition of the case
26 may be made with the approval BY ALL PARTIES of the ~~commission~~
27 ~~by stipulation or~~ consent order without further hearing. ~~An A~~

1 CONSENT order adopted by the ~~commission~~ DIRECTOR shall be A
2 final ORDER.

3 Sec. 10. ~~(1) The respondent to the complaint may file a~~
4 ~~written answer thereto and may appear at the hearing in person or~~
5 ~~by representative, with or without counsel, and may submit testi-~~
6 ~~mony, or may do both.~~

7 ~~(2) The commission on behalf of a party may subpoena and~~
8 ~~compel the attendance of witnesses, and require the production~~
9 ~~for examination of any book or paper relating to the matter under~~
10 ~~investigation at the hearing. The subpoena shall only be issued~~
11 ~~after application to the circuit court having jurisdiction and~~
12 ~~with the approval of the court.~~

13 ~~(3) The testimony taken at the hearing before the commission~~
14 ~~or its presiding officer shall be under oath and recorded. (4)~~
15 A hearing on a contested matter held pursuant to this act shall
16 be held BY THE COMMISSION in accordance with ~~and subject to~~ THE
17 ADMINISTRATIVE PROCEDURES ACT OF 1969, Act No. 306 of the Public
18 Acts of 1969, as amended, BEING SECTIONS 24.201 TO 24.328 OF THE
19 MICHIGAN COMPILED LAWS.

20 Sec. 11. (1) Public hearings with reference to pollution
21 control may be held before ~~any member of~~ the commission OR THE
22 DIRECTOR or their designated ~~delegates or representatives~~
23 REPRESENTATIVE. Persons designated to conduct the hearing shall
24 be described as presiding officers and shall be disinterested and
25 technically qualified persons.

26 (2) If a record, permit application, or other information
27 ~~which~~ THAT is furnished to or is obtained by the ~~commission~~

1 DIRECTOR concerning 1 or more air contaminant sources is
2 certified by the owner or operator, that the record, permit
3 application, or information ~~which~~ THAT relates to production,
4 sales figures, or to processes are unique to the owner or opera-
5 tor or would tend to affect adversely the competitive position of
6 the owner or operator, or if information relating to secret pro-
7 cesses, production, or methods of manufacture is obtained in the
8 course of an in-plant inspection, then the record, permit appli-
9 cation, or information shall be only for the confidential use of
10 the ~~commission~~ DIRECTOR in the administration of this act,
11 unless the owner or operator expressly agrees to its publication
12 or availability to the general public. This ~~shall~~ DOES not
13 prevent the use of a record, permit application, or information
14 by the ~~commission~~ DIRECTOR in compiling or publishing analyses
15 or summaries relating to the general condition of the outdoor
16 atmosphere if the analyses or summaries do not identify an owner
17 or operator or reveal information ~~which~~ THAT is otherwise con-
18 fidential under this section. Nothing in this section renders
19 data on the quantity or quality of emissions from any source
20 confidential. The data on amount and nature of emissions from
21 each source shall be public.

22 Sec. 13. Application for relief from ~~any rules or~~ A RULE
23 PROMULGATED BY THE COMMISSION OR AN order of the ~~commission~~
24 DIRECTOR shall be made by petition to the circuit court for the
25 county of Ingham, or to the county in which the petitioner
26 resides, which petition shall be verified as in a civil action.
27 Each petition shall contain a plain and concise statement of the

1 material facts on which the petitioner relies and shall set forth
2 the rule or order or part ~~thereof~~ OF THE ORDER which he ~~shall~~
3 ~~claim~~ OR SHE CLAIMS to be unreasonable or prejudicial to him OR
4 HER and shall specify the grounds ~~therefor~~ OF HIS OR HER
5 CLAIM. The petition may be accompanied by affidavits or other
6 written proof and shall demand the relief to which the petitioner
7 alleges he OR SHE is entitled, in the alternative or otherwise.
8 The petition may be made by any 1 or more persons, jointly or
9 severally, who ~~shall be~~ ALLEGE THAT THEY ARE aggrieved by ~~any~~
10 ~~rule or order~~ A RULE PROMULGATED BY THE COMMISSION OR AN ORDER
11 ISSUED BY THE DIRECTOR whether or not the petitioner is or was a
12 party to the proceeding in which the rule was adopted by the
13 commission.

14 Sec. 14. When the director ~~of public health~~ finds that
15 ~~any~~ A person is discharging or causing to be discharged into
16 the atmosphere directly or indirectly any air contaminant and the
17 discharge constitutes an immediate and serious danger to the
18 health, safety, and welfare of the people and that it appears to
19 be prejudicial to the interests of the people of the state to
20 delay action, the director shall notify the person by written
21 notice that he OR SHE must discontinue immediately the air
22 pollution. Within not more than 15 days, the ~~commission~~
23 DIRECTOR shall provide the person the opportunity to be heard and
24 to present any proof that ~~such~~ THE discharge does not consti-
25 tute a danger to the health, safety, and welfare of the people.

26 Sec. 15. (1) The provisions of this section, including
27 subsection (2), ~~shall~~ apply to any fugitive dust source at all

1 mining operations, standard industrial classification major
2 groups 10 through 14; manufacturing operations, standard indus-
3 trial classification major groups 20 through 39; railroad trans-
4 portation, standard industrial classification major group 40;
5 motor freight transportation and warehousing, standard industrial
6 classification major group 42; electric services, standard indus-
7 trial classification group 491; sanitary services, standard
8 industrial classification group 495; and steam supply, standard
9 industrial classification group 496, which are located in areas
10 listed in table 36 of R 336.1371 of the Michigan administrative
11 code.

12 (2) Except as provided in subsection (8), a person responsi-
13 ble for any fugitive dust source regulated under this section
14 shall not cause or allow the emission of fugitive dust from any
15 road, lot, or storage pile, including any material handling
16 activity at a storage pile, that has an opacity greater than 5%
17 as determined by reference test method 9d. Except as otherwise
18 provided in subsection (8) or this section, a person shall not
19 cause or allow the emission of fugitive dust from any other fugi-
20 tive dust source that has an opacity greater than 20% as deter-
21 mined by test method 9d. The provisions of this subsection shall
22 not apply to storage pile material handling activities when wind
23 speeds are in excess of 25 miles per hour (40.2 kilometers per
24 hour).

25 (3) In addition to the requirements of subsection (2), and
26 except as provided in subdivisions (e), (f), and (g), a person

1 shall control fugitive dust emissions in a manner that results in
2 compliance with all of the following provisions:

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

6 (i) All storage piles of materials, where the total uncon-
7 trolled emissions of fugitive dust from all such piles at a
8 facility is in excess of 50 tons per year and where such piles
9 are located within a facility with potential particulate emis-
10 sions from all sources including fugitive dust sources and all
11 other sources exceeding 100 tons per year, shall be protected by
12 a cover or enclosure or sprayed with water or a surfactant solu-
13 tion, or treated by an equivalent method, in accordance with the
14 operating program required by subsection (4).

15 (ii) All conveyor loading operations to storage piles speci-
16 fied in subparagraph (i) shall utilize spray systems, telescopic
17 chutes, stone ladders, or other equivalent methods in accordance
18 with the operating program required by subsection (4). Batch
19 loading operations to storage piles specified in subparagraph (i)
20 shall utilize spray systems, limited drop heights, enclosures, or
21 other equivalent methods in accordance with the operating program
22 required by subsection (4). Unloading operations from storage
23 piles specified in subparagraph (i) shall utilize rake reclaim-
24 ers, bucket wheel reclaimers, under-pile conveying, pneumatic
25 conveying with baghouse, water sprays, gravity-feed plow reclaim-
26 er, front-end loaders with limited drop heights, or other

1 equivalent methods in accordance with the operating program
2 required by subsection (4).

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

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

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

25 (b) If particulate collection equipment is operated pursuant
26 to this section, emissions from such equipment shall not exceed

1 0.03 grains per dry standard cubic foot (0.07 grams per cubic
2 meter).

3 (c) A person shall not cause or allow the operation of a
4 vehicle for the transporting of bulk materials with a silt con-
5 tent of more than 1% without employing 1 or more of the following
6 control methods:

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

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

14 (iii) Loading trucks so that no part of the load making con-
15 tact with any sideboard, side panel, or rear part of the load
16 comes within 6 inches of the top part of the enclosure for bulk
17 materials with a silt content of more than 1% but not more than
18 5%.

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

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

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

4 (g) The provisions of subdivision (c) shall not apply to the
5 transportation of iron or steel slag if the vehicles do not leave
6 the facility and the slag has a temperature of 200 degrees fahr-
7 enheit or greater.

8 (4) All fugitive dust sources subject to the provisions of
9 this section shall be operated in compliance with both the provi-
10 sions of an operating program that shall be prepared by the owner
11 or operator of the source and submitted to the ~~commission~~
12 DIRECTOR and with applicable provisions of this section. Such
13 operating program shall be designed to significantly reduce the
14 fugitive dust emissions to the lowest level that a particular
15 source is capable of achieving by the application of control
16 technology that is reasonably available, considering technologi-
17 cal and economic feasibility. The operating program shall be
18 implemented upon the approval of the ~~commission~~ DIRECTOR.

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

1 (a) The name and address of the facility.

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

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

6 (i) Approximate locations of storage piles.

7 (ii) Conveyor loading operations.

8 (iii) All traffic patterns within the facility.

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

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

16 (f) A test procedure, including recordkeeping, for testing
17 all waste or recycled oils used for fugitive dust control for
18 toxic contaminants.

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

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

24 (i) Other information as may be necessary to facilitate the
25 ~~commission's~~ DIRECTOR'S review of the operating program.

26 (6) Except for fugitive dust sources operating programs
27 approved by the FORMER AIR POLLUTION CONTROL commission pursuant

1 to R 336.1373 of the Michigan administrative code between
2 April 23, 1985 and May 12, 1987, the owner or operator of a
3 source shall submit the operating program required by
4 subsection (4) to the ~~commission~~ DIRECTOR within 90 days after
5 the effective date of the amendatory act that added this
6 section.

7 (7) The operating program required by subsection (4) shall
8 be amended by the owner or operator so that the operating program
9 is current and reflects any significant change in the fugitive
10 dust source or fugitive dust emissions. An amendment to an oper-
11 ating program shall be consistent with the requirements of this
12 section and shall be submitted to the ~~commission~~ DIRECTOR for
13 its review and approval or disapproval.

14 (8) Upon request by the owner or operator of a fugitive dust
15 source, the ~~commission~~ DIRECTOR may establish alternate provi-
16 sions to those specified in this section, if all of the following
17 conditions are met:

18 (a) The fugitive dust emitting process, operation, or activ-
19 ity is subject to either of the following:

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

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

22 (b) An alternate provision shall not be established by the
23 ~~commission~~ DIRECTOR unless the ~~commission~~ DIRECTOR is reason-
24 ably convinced of all of the following:

25 (i) That a fugitive dust emitting process, operation, or
26 activity subject to the alternate provisions is in compliance or

1 on a legally enforceable schedule of compliance with the other
2 rules of the commission.

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

5 (iii) That reasonable measures to reduce fugitive emissions
6 as required by this section have been implemented in accordance
7 with or will be implemented in accordance with a schedule
8 approved by the ~~commission~~ DIRECTOR.

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

13 Sec. 16. A person ~~who or a governmental unit~~ who fails to
14 obtain or comply with a permit ~~or~~ or comply with a final order
15 or order of determination of the ~~commission~~ DIRECTOR made under
16 this act is guilty of a misdemeanor and shall be fined not more
17 than \$10,000.00 and in the discretion of the court an additional
18 amount of not more than \$2,000.00 per day a violation continues.
19 The circuit court of the county in which the violation occurred
20 has exclusive jurisdiction. However, the person shall not be
21 subject to the penalties of this section if the discharge of the
22 emissions are in conformance with and obedient to a rule
23 PROMULGATED BY THE COMMISSION, OR A voluntary agreement or order
24 of the ~~commission~~ DIRECTOR. Upon petition by the ~~commission~~
25 DIRECTOR, the circuit court in the county where the violation
26 exists may order a person to be restrained from continuing a
27 violation. In addition the attorney general may, at the request

1 of the ~~commission~~ DIRECTOR, file an action in a court of
2 competent jurisdiction to recover the full value of the injuries
3 done to the natural resources of the state and the costs of sur-
4 veillance and enforcement by the state resulting from the
5 violation. In addition to any fine, the court in its discretion
6 may impose probation upon any person for a violation of this
7 section.

8 Sec. 17. The ~~commission~~ DIRECTOR may bring any appropri-
9 ate action in the name of the people of the state either at law
10 or in chancery, as may be necessary to carry out ~~the provisions~~
11 ~~of~~ this act and to enforce any and all laws, rules, and regula-
12 tions relating to ~~the provisions of~~ this act.

13 Sec. 19. Notwithstanding any other provision of this act,
14 the ~~commission~~ DIRECTOR may suspend the enforcement of the
15 whole or any part of ~~any~~ A rule ~~or regulation in the case of~~
16 ~~any~~ PROMULGATED BY THE COMMISSION IF A person ~~who~~ shows that
17 the enforcement ~~thereof~~ OF THE RULE would be inequitable or
18 unreasonable as to him OR HER, or the ~~commission~~ DIRECTOR may
19 suspend the enforcement ~~thereof~~ OF A RULE for any reason
20 ~~deemed~~ CONSIDERED by ~~it~~ THE DIRECTOR to be sufficient to show
21 that the enforcement ~~thereof~~ OF THE RULE would be an unreason-
22 able hardship upon the person. ~~; and upon any~~ UPON THE suspen-
23 sion of the whole or any part of ~~the~~ A rule, ~~or regulation~~
24 the ~~commission~~ DIRECTOR shall grant to the person a variance
25 ~~therefrom~~ FROM THE RULE.

26 Sec. 20. In determining under what conditions and to what
27 extent a variance from a rule ~~or regulation~~ PROMULGATED BY THE

1 COMMISSION may be granted, the ~~commission~~ DIRECTOR shall give
 2 due recognition to the progress ~~which~~ THAT the person request-
 3 ing the variance has made in eliminating or preventing air
 4 pollution. The ~~commission~~ DIRECTOR shall consider the reason-
 5 ableness of granting a variance conditioned upon the person
 6 effecting a partial control of the particular air pollution or a
 7 progressive control of the air pollution over a period of time
 8 ~~which it~~ THAT THE DIRECTOR considers reasonable under all the
 9 circumstances. ~~or the commission~~ IN ADDITION, THE DIRECTOR
 10 may prescribe other and different reasonable requirements with
 11 which the person receiving the variance shall comply.

12 Sec. 21. The ~~commission~~ DIRECTOR shall grant a variance
 13 from ~~any~~ A rule ~~or regulation to,~~ and suspend the enforcement
 14 ~~thereof as to, any~~ OF THE RULE IF A person ~~who~~ shows ~~in the~~
 15 ~~case of the person and of the activity which the person then~~
 16 ~~operates~~ that ~~a~~ compliance by him OR HER with the rule, ~~or~~
 17 ~~regulation,~~ and ~~that~~ the acquisition, installation, operation,
 18 and maintenance of facilities and equipment required or necessary
 19 to accomplish the compliance, would constitute an undue hardship
 20 on the person and would be out of proportion to the benefits to
 21 be obtained ~~thereby~~ BY COMPLIANCE. A variance shall not be
 22 granted under ~~the provisions of~~ this section where the person
 23 applying ~~therefor~~ FOR THE VARIANCE is causing air pollution
 24 which is injurious to the public health. ~~Any~~ A variance
 25 granted UNDER THIS ACT shall not be construed ~~as~~ to relieve the
 26 person ~~who shall receive it~~ RECEIVING THE VARIANCE from any

1 liability imposed by other law for ~~the commission or maintenance~~
2 of CAUSING OR MAINTAINING a nuisance.

3 Sec. 22. ~~Any~~ A variance granted pursuant to ~~the provi-~~
4 ~~sions of~~ this act shall be granted for such period of time, not
5 exceeding 1 year, as is specified by the ~~commission~~ DIRECTOR at
6 the time of granting it, but ~~any~~ A variance may be continued
7 from year to year. ~~Any~~ A variance granted by the ~~commission~~
8 DIRECTOR may be granted on the condition that the person receiv-
9 ing it shall make reports to the ~~commission~~ DIRECTOR periodi-
10 cally, as the ~~commission~~ DIRECTOR shall specify, as to the
11 progress which the person has made toward reaching ~~a~~ compliance
12 with the ~~rule or regulation of~~ RULES PROMULGATED BY the
13 commission.

14 Sec. 23. The ~~commission~~ DIRECTOR may revoke or modify by
15 written order, after a public hearing held upon not less than 10
16 days' notice, any order permitting a variance.

17 Sec. 25. This act shall not be construed as repealing any
18 of the laws relating to air pollution ~~which~~ THAT are not by
19 this act expressly repealed, but it shall be held and construed
20 to be as ancillary to and supplementing the laws now in force,
21 ~~excepting~~ EXCEPT as they may be in direct conflict with this
22 act. The final order or determination of the ~~commission~~
23 DIRECTOR shall not be used in evidence of presumptive air pollu-
24 tion in any suit filed by any person other than ~~this commission~~
25 THE DIRECTOR.

26 Sec. 26. (1) Nothing in this act or in any rule ~~or~~
27 ~~regulation which shall be~~ promulgated ~~pursuant to~~ UNDER this

1 act ~~shall be deemed to invalidate any~~ INVALIDATES AN existing
2 ~~ordinances~~ ORDINANCE or ~~regulations~~ REGULATION having
3 requirements equal to or greater than the minimum applicable
4 requirements of this act or ~~prevent~~ PREVENTS any political sub-
5 division from adopting similar provisions if their requirements
6 are equal to or greater than the minimum applicable requirements
7 of this act.

8 (2) When a political subdivision or enforcing official
9 ~~thereof~~ OF A POLITICAL SUBDIVISION fails to enforce properly
10 the provisions of the political subdivision's ordinances, laws,
11 or regulations ~~which do~~ THAT afford ~~equal~~ protection to the
12 public ~~as that~~ EQUAL TO THOSE provided in this act, the ~~air~~
13 ~~pollution control commission~~ DIRECTOR, after consultation with
14 the local official or governing body of the political subdivi-
15 sion, may take ~~such~~ appropriate action as may be necessary for
16 enforcement of the applicable provisions of this act.

17 (3) The ~~air pollution control commission~~ DIRECTOR shall
18 counsel and advise local units of government on the administra-
19 tion of this act. ~~In their respective fields, they~~ THE
20 DIRECTOR shall cooperate in the enforcement of this act with
21 local officials upon request.

22 SEC. 27. THE AMENDATORY ACT THAT ADDED THIS SECTION SHALL
23 NOT BE CONSTRUED TO ALTER THE PROVISIONS OF ANY PERMIT, ORDER,
24 RULE, OR STIPULATION IN EFFECT ON THE EFFECTIVE DATE OF THIS
25 SECTION.

1 Section 2. Sections 3, 4, and 14a of Act No. 348 of the
2 Public Acts of 1965, being sections 336.13, 336.14, and 336.24a
3 of the Michigan Compiled Laws, are repealed.

4 Section 3. This amendatory act shall not take effect unless
5 all of the following bills of the 86th Legislature are enacted
6 into law:

7 (a) House Bill No. 4173.

8 (b) House Bill No. 4177.