Act No. 235
Public Acts of 1993
Approved by the Governor
November 13, 1993
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STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993

Introduced by Senators Dingell and Hoffman

ENROLLED SENATE BILL No. 804

AN ACT to amend sections 14b and 14d of Act No. 348 of the Public Acts of 1965, entitled as amended "An act to control air pollution in this state; to create an air pollution control commission within the state health department; to prescribe its powers and duties; to prescribe the powers and duties of certain county agencies; to provide for the establishment of fees; and to provide penalties," as added by Act No. 6 of the Public Acts of 1993, being sections 336.24b and 336.24d of the Michigan Compiled Laws; and to add sections 4b, 14e, and 14f.

The People of the State of Michigan enact:

Section 1. Sections 14b and 14d of Act No. 348 of the Public Acts of 1965, as added by Act No. 6 of the Public Acts of 1993, being sections 336.24b and 336.24d of the Michigan Compiled Laws, are amended and sections 4b, 14e, and 14f are added to read as follows:

Sec. 4b. For the purposes of section 4a, a municipal solid waste incinerator also existed prior to June 15, 1993, if 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.

Sec. 14b. (1) By March 15 of each year through March 15, 1994, the owner or operator of a major emitting facility shall submit information regarding the facility's emissions to the department pursuant to the emission inventory system established in rules promulgated under this act.

(2) If the owner or operator of a major emitting facility has not submitted the information required under subsection (1) by April 15, the department shall use the previous year's emission data for purposes of the emission inventory system and shall assess the owner or operator a penalty. The penalty shall be 5% of what the owner's or operator's bill for that major emitting facility would be under section 14c, using the previous year's emission data, for each month the information is late up to a maximum penalty of 25% of this amount. A penalty assessed under this section shall be collected at the time emission fees are collected under section 14c.

(3) Emissions data that the department receives after April 15 of each year shall be entered into the emission inventory system when the data are quality assured.

Sec. 14d. (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 act for any purpose other than those specifically listed in this act, authorization to collect fees under this act is suspended until such time as the funds expended or appropriated for purposes other than those listed in this act are returned to the emissions control fund.

(4) The state treasurer shall establish, within the fund, a clean air act implementation account and a permit review and urban airshed study account.

(5) For the state fiscal years ending September 30, 1993 and September 30, 1994, the department shall expend money from the fund, upon appropriation, only for the following purposes:

(a) Money in the clean air act implementation account shall be used for 1 or more of the following:

(*i*) Developing and implementing requirements of Public Law 101-549, 104 Stat. 2399, commonly referred to as the clean air act amendments of 1990.

(*ii*) Emissions and ambient air monitoring.

(*iii*) Audits and inspections of source-operated monitoring programs.

(*iv*) Preparing generally applicable rules to implement requirements of Public Law 101-549, 104 Stat. 2399, commonly referred to as the clean air act amendments of 1990.

(*v*) Modeling, analyses, or demonstrations.

(*vi*) Preparing inventories and tracking emissions.

(b) Money in the permit review and urban airshed study account shall be used for both of the following:

(*i*) Not more than $545,000.00 to provide grants for local air pollution programs that collect data for the urban airshed model.

(*ii*) To process permit applications pursuant to this act until such time that all permit applications received by the department are being processed in a timely manner. When permit applications under this act are being processed in a timely manner, money in the permit review and urban airshed study account that is not allocated for grants under subparagraph (*i*) shall be used for the purposes described in subdivision (a), unless the department recommends and the appropriations committees of the senate and house of representatives approve continued use of this money or a portion of this money to process permit applications.

(6) 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 the small business clean air assistance act, Act No. 12 of the Public Acts of 1993, being sections 336.121 to 336.129 of the Michigan Compiled Laws.

Sec. 14e. (1) For the state fiscal year beginning October 1, 1994, and continuing until September 30, 1998, 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 act on the owners or operators of fee-subject facilities in this state.

(2) The annual air quality fee shall be calculated for each fee-subject facility, according to the following procedure:

(a) For category I facilities, the annual air quality fee shall be the sum of a facility charge and an emissions charge as specified in subdivision (e). The facility charge shall be $2,500.00.

(b) For category II facilities, the annual air quality fee shall be the sum of a facility charge and an emissions charge as specified in subdivision (e). The facility charge shall be $1,000.00.

(c) For category III facilities, the annual air quality fee shall be $200.00.

(d) For municipal electric generating facilities subject to category I which emit less than 18,000 tons, but more than 600 tons of fee-subject air pollutants, the annual air quality fee shall be an operating permit facility charge of $10,000.00 only.

(e) The emissions charge for category I and category II facilities equals the product of the actual tons of fee-subject air pollutants emitted and the emission charge rate. A pollutant that qualifies as a fee-subject air pollutant under more than 1 class shall be charged only once. The charge shall be calculated as follows:

(*i*) The emissions tonnage shall be calculated for the calendar year 2 years preceding the year of the billing. The actual tons of fee-subject air pollutants emitted is the sum of all fee-subject air pollutants emitted at the fee-subject facility except that for the purposes of the emissions charge calculation the actual tons charged shall not exceed either of the following:

(A) 4,000 tons.

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

(*ii*) The emission charge rate shall be $25.00 per ton of fee-subject air pollutants.

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

(4) After January 1, but before January 15 of each year beginning in 1995, 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 of the mailing date of the air quality fee notification. If an assessed fee is challenged as authorized in subsection (6), payment is due within 90 calendar days of the mailing date of the air quality fee notification or within 30 days of receipt of a revised fee or statement supporting the original fee, whichever is later. The department shall deposit all fees collected under this section to the credit of the emissions control fund created in section 14d.

(5) If the owner or operator of a fee-subject facility fails to submit the amount due within the time period specified in subsection (4), 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.

(6) If the owner or operator of a fee-subject facility desires to challenge its assessed fee, the owner or operator shall submit the challenge in writing to the department within 30 calendar days of the mailing date of the air quality fee notification described in subsection (4). A challenge shall identify the facility and state the grounds upon which the challenge is based. Within 30 calendar days of receipt of the challenge, the department shall determine the validity of the challenge and provide the owner with notification of a revised fee or a 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 (4). 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 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.

(7) If requested by the department, by March 15 of each year beginning in 1995, or within 45 days of a request by the department, whichever is later, the owner or operator of each fee-subject facility shall submit information regarding the facility's previous year's emissions to the department. The information shall be sufficient for the department to calculate the facility's emissions for that year and meet the requirements of subpart Q of 40 C.F.R. part 51.

(8) By July 1 of each year beginning in 1995, the department shall provide the owner or operator of each fee-subject facility required to pay an emission charge pursuant to this section with a copy of the department's calculation of the facility emissions for the previous year. Within 60 days of 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 before the commission of natural resources as provided for under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969.

(9) For each state department to which funds are appropriated from the emissions control fund, the director of that state department shall prepare and submit to the governor and the legislature an annual report that details the activities funded by the emissions control fund for his or her department. This report shall include, at a minimum, all of the following as it relates to each particular department:

(a) The number of full-time equated positions performing air quality enforcement, compliance, and permitting activities and the number of hours worked on title V activities in relation to hours worked on other matters.

(b) The total number of new source review and operating permit applications received by the department, including those received but not processed or issued.

(c) A breakdown of the new source review and operating permits issued based on amount of emissions as follows:

(*i*) Less than 1 ton per year.

(*ii*) Between 1 and 10 tons per year.

(*iii*) Between 10 and 50 tons per year.

(*iv*) Greater than 50 tons per year.

(d) The total number of new source review and operating permits issued over the course of the year.

(e) The total number of new source review and operating permits issued per permit reviewer.

(f) The total number of new source review and operating permits carried over from the previous year.

(g) The total number of new source review and operating permits at the start of the year that are carried over from preceding years plus the number received by the department in the current year minus the number issued.

(h) The total number of new source review and operating permits denied.

(i) The ratio of the number of new source review and operating permits rejected to the number issued.

(j) The number of letters of violation sent.

(k) The amount of penalties collected from all consent orders and judgments.

(*l*) For each enforcement action which includes payment of a penalty, a description of what corrective actions were required by the enforcement action.

(m) The average amount of time to take final action on a new source review or operating permit from the time the department first receives the application to when it issues the permit for each category listed in subdivision (c).

(n) A list of state implementation plan development accomplishments.

(o) The number of inspections done on sources required to obtain a permit under section 5c and the number of inspections of other sources.

(p) The number of complaints received by the department for sources required to obtain a permit under section 5c, the number of complaints investigated, and the number of complaints not investigated.

(q) The number of compliance reports and certifications reviewed for sources required to obtain a permit under section 5c.

(r) The number of contested case hearings, civil actions, and criminal investigations and prosecutions initiated and 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 5c.

(s) The amount of criminal fines and civil fines collected from all administrative and judicial orders and judgments.

(10) Within 18 months of the effective date of this section, the department shall convene a task force made up of representatives of fee-subject facilities, environmental groups, the general public, and any state department to which funds are appropriated from the emissions control fund. Within 2 years of the effective date of this section, the task force shall consult with the auditor general and submit to the legislature an interim report on the same information required in the report due on July 1, 2000. Not later than July 1, 2000, the task force shall provide to the legislature a final report on the adequacy of the fee revenues and appropriateness of program activities and shall recommend changes to this section, as appropriate, to match fee revenues to program costs.

(11) The attorney general may bring an action for the collection of the fees imposed under this section and any penalty assessed under section 14b.

Sec. 14f. (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 permits and administer and enforce the applicable provisions of this act, rules promulgated under this act, the clean air act, and the state implementation plan. After a public hearing, the department shall grant the delegation if the county demonstrates both of the following:

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

(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. 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 90 days prior to the expiration of the term of the delegation. The department may deny the renewal of a delegation of authority only upon a finding that the county is materially in violation of applicable provisions of this act, rules promulgated under this act, the clean air act, the state implementation plan, or provisions of the delegation agreed to between the department and the county. The county may appeal a finding under subsection (1) or this subsection to a court of competent jurisdiction.

(3) A county delegated authority under this section annually shall submit a report to the department that demonstrates all of the following:

(a) That the county has the capacity to implement the permitting program under title V, the applicable requirements of this act, rules promulgated under this act, and the clean air act.

(b) That the county program complies with the applicable provisions of this act, the rules promulgated under this act, and the clean air act.

(c) That the county program contains provisions for public notice and public participation consistent with this act, the rules promulgated under this act, and title V, where applicable.

(d) That the fees collected pursuant to section 14e have been expended in accordance with section 14d(5).

(4) In addition to the report of the county under subsection (3), 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 (3) 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.

(5) Within 60 days after a county delegated authority under this section submits its annual report as required under subsection (3), 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 requirements of subsection (3). 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 director fails to notify the county within 60 days, the report shall be deemed satisfactory for the purposes of this subsection.

(6) Notwithstanding any other statutory provision, rule, or ordinance, a county delegated authority to administer and enforce this act under this section shall issue permits and implement its responsibilities only in accordance with its delegation, this act, rules promulgated under this act, the clean air act, and the applicable provisions of the state implementation plan. 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 a county issues a permit pursuant to this section, no other state or county permit is required pursuant to this act.

(7) Upon receipt of a permit application, prior to taking final action to issue a 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 permit issued by the county and consent order entered within 30 days of issuance of the permit or entry of the consent order.

(8) Notwithstanding a delegation under this act, the department retains the authority to bring any appropriate enforcement action under sections 8, 11, 14, 16a, 16b, 16c, 16d, 16e, 16f, and 16g as authorized under this act and the rules promulgated under this act to enforce this act and the rules promulgated under this act. The department has authority to bring any appropriate action to enforce a permit issued or a consent order entered into by a county to which authority is delegated.

(9) Notwithstanding any other provision of this act, in a county that has been delegated authority under this section, that county shall impose and collect fees in the manner prescribed in section 14e on all fee-subject facilities subject to this act 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 act or title V or assess a fee covered by this act or title V greater than the fees set forth in section 14e. 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.

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

(11) 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 14d(5), the rules promulgated under this act, and the clean air act.

Section 2. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

(a) Senate Bill No. 46.

(b) House Bill No. 4865.

This act is ordered to take immediate effect.

Secretary of the Senate.

Co-Clerk of the House of Representatives.

Approved _____

Governor.