

MEMORANDUM



**DATE:** May 12, 2015  
**TO:** House Appropriations Subcommittee on Environmental Quality  
**FROM:** Austin Scott, House Fiscal Agency  
**RE:** House Bill 4449, Air Quality Fee increase

House Bill 4449 would amend the Natural Resources and Environmental Protection Act (NREPA; 1994 PA 451) by extending the sunset on the air quality fees collected by the Department of Environmental Quality (DEQ). This bill would also raise the emissions fee and category 1 facility charge in order to meet minimum fee standards specified in the federal Clean Air Act and enforced by the Environmental Protection Agency (EPA). If enacted this bill would become the sixth amendatory act to the air quality fees section of NREPA (MCL 324.5522) since it was enacted 21 years ago.

**Background**

Title V of the Clean Air Act requires those facilities that emit air pollutants to pay for a permit to operate in the United States. This act delegates the authority to administer this permit program to individual states provided certain minimum standards are maintained including fee rates and emission thresholds. The DEQ was designated as Michigan’s air quality program administrator by NREPA in 1994. This act defined the air quality and emissions fees required of facilities in Michigan in accordance with EPA-mandated minimums.

**1994 PA 451 (Natural Resources and Environmental Protection Act)**

The enabling legislation created the Emissions Control Fund in the state treasury to receive air quality and emissions fees and to fund Michigan’s air quality program. These fees went into effect on October 1, 1994 and were placed on a four year cycle with sunset scheduled for September 30, 1998. Facility category definitions were established in accordance with the Clean Air Act:

- Category I – Facilities that annually emit 100 tons or more of any air pollutant
- Category II – Facilities that annually emit 10 tons or more of any single air pollutant or 25 tons or more of any combination of air pollutants. Category II facilities that meet the definition of a category I facility are considered category I facilities.
- Category III – Facilities that annually emit air pollutants but do not meet the thresholds established for category I or II facilities

An additional definition for category I facilities that are municipal electric generating facilities (category I electrics) was established to distinguish these utilities from similar, non-utility facilities. The following table illustrates the initial fees and thresholds established in NREPA:

Category I	\$2,500.00 + emissions charge
Category II	\$1,000.00 + emissions charge
Category III	\$200.00
Emissions charge/ton	\$25.00
Category I & II emissions caps	4,000 tons or 1,000 tons if pollutants (excl. CO2) < 4,000
Category I electrics	600 tons to 18,000 tons = \$10,000.00

Category I facilities were charged an air quality fee equal to \$2,500.00 plus the emissions charge (\$25.00 per ton). Category II facilities were charged an air quality fee equal to \$1,000.00 plus the emissions charge (\$25.00 per ton). Category III facilities were charged an air quality fee equal to \$200.00. The emissions charge thresholds for category I and II facilities were capped at 4,000 tons or 1,000 if fee-subject pollutants (excluding carbon dioxide) totaled less than 4,000 tons. Category I electricians that annually emit between 600 tons and 18,000 tons were charged an air quality fee equal to \$10,000.00.

#### **1998 PA 245**

The air fees section of NREPA was first amended in 1998 to extend the air quality and emissions fees' sunset by three years to September 30, 2001. Category I air quality fees were raised to \$3,375.00 plus the emissions charge while category II fees were raised to \$1,350.00 plus the emissions charge. The emissions charge itself was raised to \$34.00 per ton. Category I electricians that annually emit between 450 tons (lowered from 600 tons) and 18,000 tons saw their air quality fee raised to \$18,675.00.

#### **2001 PA 49**

In 2001 the sunset on air fees was extended by four years to September 30, 2005. Category I air quality fees were raised to \$4,485.00 plus the emissions charge while category II fees were raised to \$1,795.00 plus the emissions charge. The emissions charge itself was raised to \$45.25 per ton. Category I electricians' annual air quality fee was reformed as follows:

- 450 tons to 4,000 tons = \$24,816.00
- 4,000 tons to 5,300 tons = \$24,816.00 plus \$45.25 per ton over 4,000
- 5,300 tons to 12,000 tons = \$85,045.00
- 12,000 tons to 18,000 tons = \$159,459.00

#### **2005 PA 169**

The air fees' sunset was extended by two years to September 30, 2007. All fee rates and thresholds remained unchanged.

#### **2007 PA 75**

The air fees' sunset was extended by four years to October 1, 2011. All fee rates and thresholds remained unchanged.

#### **2011 PA 164**

The air fees' sunset was extended by four years to October 1, 2015. The emissions charge was increased for the first time since 2001 to its present rate of \$47.95 per ton. The annual air quality fee for category I electricians was also increased for the first time since 2001 as follows:

- 5,250 tons to 12,000 tons = \$127,000
- 730 tons to 5,250 tons = \$37,000.00
- Less than 730 tons = \$47.95 per ton (emissions charge)
- Category II facilities that are municipal electric generating facilities = \$47.95 per ton (emissions charge)

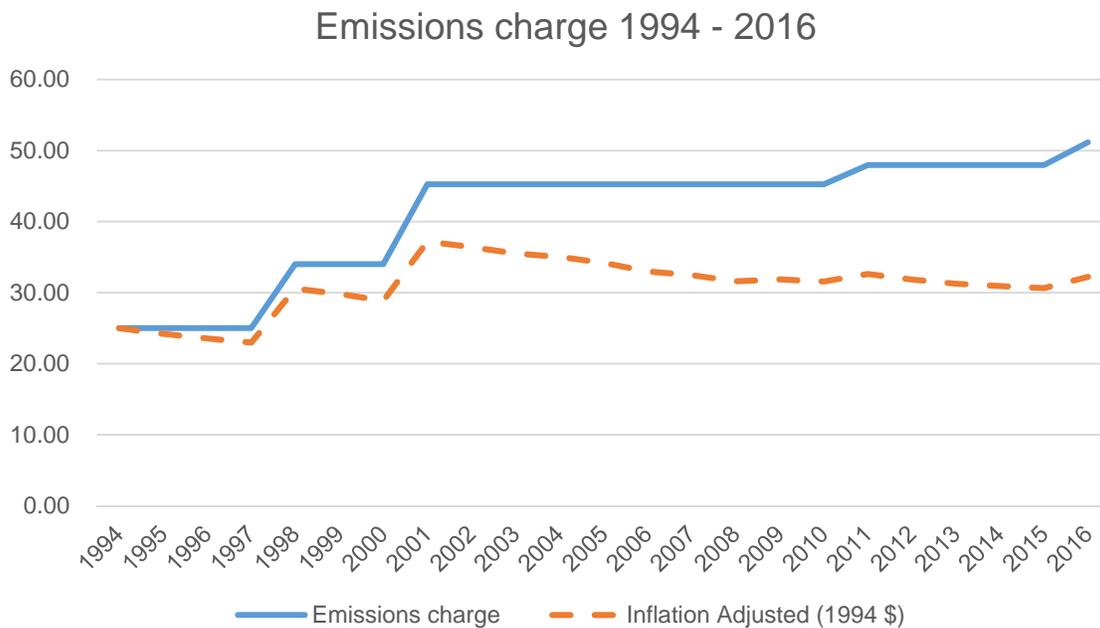
This act also instituted emissions charge caps for category I electricians and category II electricians of 5,250 tons or 1,250 if fee-subject pollutants (excluding carbon dioxide) totaled less than 5,250 tons.

## House Bill 4449

The FY 2015-16 Executive Budget Recommendation proposed to raise the emissions charge from \$47.95 per ton to \$65 per ton. House Bill 4449 amends this proposed increase to \$51.15 per ton. The new emissions charge rate would go into effect on October 1, 2015 and would be scheduled to sunset four years later on October 1, 2019. This rate is the product of DEQ working with fee-paying facilities to arrive at an agreement that would meet EPA requirements for air fees in order for Michigan to maintain control of its own air quality program. The EPA does not allow general fund dollars to support a state's air quality program. There are currently over 800 fee-subject facilities statewide.

If Michigan's air emissions charge is not increased then DEQ is at risk of not generating the necessary air fee revenue to meet the EPA's annual minimum. Failing to meet this minimum could result in DEQ losing authority over Michigan's air quality program, with permitting authority lapsing to the EPA. Facilities would be required to pay an annual emissions fee directly to the EPA at a rate that would be higher than DEQ's proposed emissions charge increase. Facilities would also be subject to inspection by the EPA with enforcement actions being conducted by the EPA and the US Department of Justice.

The loss of air permitting authority by DEQ would also require all fee-subject facilities to direct their respective questions and concerns to the EPA's offices in Chicago and Washington, DC. The DEQ estimates that response times for permitting requests submitted to the EPA would be considerably longer than the current response times for requests submitted to DEQ. Inquiries into the status of a given facility's air permit or emissions levels would also be directed to EPA rather than being addressed at the state level.



**NOTE:** Graph assumes increased emissions charge of \$51.15 per ton included in HB 4449. The emissions charge is charted from the enactment of NREPA in FY 1994-95 through HB 4449 in FY 2015-16. Fee amounts are also shown in inflation adjusted dollars.