



## AIR QUALITY DIVISION POLICY AND PROCEDURE

### AQD-035 - Waivers Affecting Fee Assessment; Closures Affecting Fee Applicability

Original Effective Date: February 3, 2022

Revision Date: January 11, 2024

Distribution: External/Non-interpretive

#### ISSUE

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More than 1,700 facilities in Michigan are required to submit an annual air emissions report through MiEnviro Portal. Over 1,500 of those facilities are also subject to the annual air quality fee program per the definition of fee-subject facility in Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451). An adequately funded fee program is a requirement for Michigan to implement the federal Clean Air Act Title V air program on behalf of the United States Environmental Protection Agency (USEPA). A fee funding target is set every four years during the legislative reauthorization of the fee program, identifying the level of revenue sufficient to support the Title V program. The fee funding target considers the waiver of fees for certain source types.

Under Sec. 5522 of Act 451, the requirement for facilities to pay air quality fees is established. Also set forth is the ability of EGLE to assess those fees. The statutory language indicates EGLE “may” assess fees, which implies some discretion in EGLE’s ability to levy and collect fees from fee-subject facilities.

- 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.

Air quality fee invoices are assessed in January of each year. They include a facility charge based on the current status of the facility as a fee-subject source, and in most cases, an emissions charge for emissions of fee-subject pollutants reported to MiEnviro Portal.

The Air Quality Division (AQD) strives to assess air quality fee invoices consistently for all sources. There are some types of facilities that are subject to fees but pose regulatory implementation hurdles for several reasons. Also addressed are cases where facilities have closed and may qualify for removal from the annual air quality fee program.

## STAKEHOLDER INVOLVEMENT

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The waiver of fees for certain source types is discussed with stakeholder groups during the fee reauthorization process. Stakeholders have an opportunity to consider and affirm the continuation of those waivers, with the understanding that the reauthorization process must account for the removal of those sources within the fee calculations and fee funding target for that cycle.

## DEFINITIONS

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**Fee-subject facility** – As defined in [Sec. 5501\(p\)](#) of Act 451, this means one or more of the following:

- A major source of criteria pollutants or Hazardous Air Pollutants
- A source that is subject to federal New Source Performance Standards (NSPS)
- A source that is subject to an area source standard such as a Maximum Achievable Control Technology standard
- Any affected source under Title IV
- Any other source in a source category designated by the administrator of the USEPA as required to obtain an operating permit under Title V, when the standard, limitation, or other requirement becomes applicable to that source
- A facility that holds an opt-out permit enabling it to opt out of the requirements of Title V

**Fee-subject air pollutant** – As defined in [Sec. 5501\(n\)](#) of Act 451, this means particulates, expressed as particulate matter less than 10 microns in diameter, 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.

**MiEnviro Portal** – A web-based application for reporting annual emissions by sources required to report pursuant to Michigan Air Pollution Control Rule 336.202 (Rule 2). The data submitted through MiEnviro Portal is the basis for the AQD's facility and point inventories.

**Portable plant** – As defined in [40 CFR Part 60 Subpart OOO](#)—Standards of Performance for Nonmetallic Mineral Processing Plants:

“Portable plant means any nonmetallic mineral processing plant that is mounted on any chassis or skids and may be moved by the application of a lifting or pulling force. In addition, there shall be no cable, chain, turnbuckle, bolt, or other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor, slab, or structure, including bedrock that must be removed prior to the application of a lifting or pulling force for the purpose of transporting the unit.”

Examples include aggregate facilities and asphalt batch plants. These are NOT devices that are moved around within a stationary source (e.g., welding machines).

## POLICY

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There are certain source types that satisfy the definition of fee-subject facility yet pose regulatory implementation difficulties for the AQD:

- The facilities may not be permitted or receive services from the AQD. The equipment is beneath applicable thresholds for size and is therefore exempt from obtaining a Permit to Install. The AQD may not be required to inspect such facilities.
  - For example:
    - Public school buildings with small natural gas-fired boilers that are not permitted and are not inspected by the AQD yet are subject to federal standards for small boilers.
    - Inactive portable aggregate facilities or portable asphalt plants that hold a permit but have not operated, and/or may not have even been physically located in Michigan, for several years.
- Alternatively, the universe of sources may be extremely large and not fully identified, nor of regulatory interest to the AQD due to their low emissions profile. It is unlikely the AQD would be able to identify all such sources with its available resources and therefore consistent implementation of the fee program may be challenged.
  - For example, facilities that are only of interest due to their emergency generators; these sources include big box stores and shopping malls, that are not of regulatory interest to the AQD though they may qualify as fee-subject based on applicability of the federal standards.

After evaluation of the above source types, the AQD developed guidance for staff on implementation of fee waivers. Facilities that fall into one or more of the categories detailed below may be eligible for removal from the fee program if they satisfy the specified criteria. It may be necessary to periodically reappraise certain facilities for continued application of the fee waiver, if permitting actions or changes in operations or equipment modify the facility's fee applicability.

### **Natural gas-fired Subpart Dc boilers:**

Beginning in 2007, certain sources with natural gas-fired boilers subject to [40 CFR Part 60 Subpart Dc](#)—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units have been granted waivers of the air quality fee. The necessary criteria are outlined below. All the criteria must be met to qualify for the fee waiver.

- The sources are subject to fees only because of the Subpart Dc boiler classification;
- The boilers are capable of burning only natural gas (no oil backup); and
- The boilers have a maximum design heat input capacity of 50 million British thermal units per hour or less.

Staff should remove these sources from the fee program as they are identified. If a fee invoice has already been assessed, the facility may submit a timely written fee challenge for consideration.

Staff should require an air emissions report from Subpart Dc facilities meeting the above criteria only if they otherwise qualify for emissions reporting pursuant to Policy and Procedure [AQD-013](#).

Note, as an exception to the above, a facility which has Subpart Dc boilers qualifying for the fee waiver, and also has a Title V opt-out permit, would be subject to [Category E](#) fees as an opt-out source. Such a facility would also be required to report annually through MiEnviro Portal due to the opt-out permit. However, the combination of the fee-exempt Subpart Dc boilers, and the opt-out permit, would not result in the facility being reclassified to the higher [Category D](#) fee category based on applicability of the federal NSPS. This allows for the consistent treatment of all facilities with Subpart Dc boilers regardless of their permitted status.

### **Subpart IIII and JJJJ internal combustion engines:**

Another category of interest is internal combustion engines such as the emergency generators in use at retail stores. These may be subject to [40 CFR Part 60 Subpart IIII](#)—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines (Subpart IIII) or [40 CFR Part 60 Subpart JJJJ](#)—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines (Subpart JJJJ). As with the Subpart Dc sources, all the criteria must be met.

To qualify for the fee waiver, the following criteria must be met:

- The Subpart IIII or Subpart JJJJ engines are the AQD's sole interest in the source and
- The engines are exempt per Rule 336.1285(2)(g).

Staff should remove these sources from the fee program as they are identified. If a fee invoice has already been assessed, the facility may submit a timely written fee challenge for consideration.

Staff should require an air emissions report from Subpart IIII or Subpart JJJJ facilities meeting the above criteria only if they otherwise qualify for emissions reporting pursuant to Policy and Procedure [AQD-013](#).

As an exception to the above, a facility with Subpart IIII or JJJJ engines meeting the above criteria, that also has an opt-out permit, would be subject to [Category E](#) fees as an opt-out source. The facility would also be required to report emissions through MiEnviro Portal annually due to the opt-out permit. However, the combination of the fee-exempt Subpart IIII and/or Subpart JJJJ engines and the opt-out permit would not result in the facility being reclassified to the higher Category D fee category. This allows for the consistent treatment of all facilities with Subpart IIII and/or Subpart JJJJ engines regardless of their permitted status.

### **Inactive portable facilities subject to Subpart OOO or Subpart I:**

Fee waivers are granted by the AQD in cases where portable facilities subject to [40 CFR Part 60 Subpart OOO](#)—Standards of Performance for Nonmetallic Mineral Processing Plants

(Subpart 000) or to [40 CFR Part 60 Subpart I](#) - Standards of Performance for Hot Mix Asphalt Facilities were inactive in Michigan for the most recent two or more calendar years at the time the invoices are assessed. For example, an invoice that would typically be assessed in January 2024 can be waived for a portable facility which has been inactive in Michigan (zero activity and emissions) throughout calendar years 2022 and 2023. The waiver originally addressed portable aggregate facilities that were physically located outside of Michigan for several years yet were permitted by the AQD. Over time, the waiver was made available to inactive portable NSPS-subject facilities physically located in Michigan.

Once district staff determine a facility qualifies as an inactive portable source, the facility should be removed from the fee program in advance of the next fee assessment.

The AQD should require an air emissions report from inactive Subpart 000 and Subpart I facilities meeting the above criteria only if they otherwise qualify for emissions reporting pursuant to Policy and Procedure [AQD-013](#). These steps reduce the effort associated with processing the yearly fee challenges needed to cancel the fees, and with reporting zero activity and emissions.

The facilities should be re-evaluated each fall by the AQD as the next year's air emissions reporting list is prepared. If the facilities have resumed operations, district staff must reinstate them for notifications and fee assessments to be sent the following January. For example, an inactive portable plant that resumed operations during the 2023 calendar year is no longer classified as an inactive facility. They should receive a notification and an annual air quality fee in January 2024. If there were no reported air emissions to bill, the fee invoice will consist of the [Category D](#) facility charge and no emissions charge.

Note, as an exception to the above, an inactive portable facility that qualifies for the waiver of their fee as a Category D fee source, and also has an opt-out permit, would be subject to Category E fees as an opt-out source. Such a facility would also be required to report air emissions annually due to the facility having an active opt-out permit.

### **Subpart 0000a**

During the fiscal years 2024 through 2027, the AQD is not assessing air quality fees for facilities that would only be fee-subject based on the applicability of [40 CFR Part 60 Subpart 0000a](#)—Standards of Performance for Crude Oil and Natural Gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015 (Subpart 0000a).

Reconsideration of this standard at the federal level began in 2018, while the latest fee structure was being reauthorized. The USEPA issued the final policy and technical amendments to Subpart 0000a on August 13, 2020. However, Congress has disapproved the 2020 rule and reinstated the 2016 rule. Further updates to the regulation are expected.

Changes to Subpart 0000a may affect which facilities are subject to the standard and thereby Michigan's air quality fee program. Due to the regulatory uncertainty at the time of the fee

reauthorization, the fee for this group of sources was waived for the current four-year fee cycle. As such, income from this group of sources was not included in projected fee calculations.

The AQD should require an air emissions report from Subpart OOOOa facilities only if they otherwise qualify for emissions reporting pursuant to Policy and Procedure [AQD-013](#). If a facility subject to Subpart OOOOa holds an opt-out permit, then annual air emissions reporting through MiEnviro Portal and assessment of a Category E fee, based on the facility having an active opt-out permit, is expected.

#### **Facilities that meet fee waiver qualifications for more than one standard:**

Some facilities may be subject to more than one of the standards listed within this document and may fulfill the fee waiver qualifications for each one. Being subject to two or more standards of interest to the AQD would not cause the facility to be subject to fees and air emissions reporting if the facility meets the fee waiver criteria for each standard individually. For example, if a facility with Subpart Dc boilers, and Subpart IIII or JJJJ engines, meets the fee waiver criteria for Subpart Dc and also meets the fee waiver criteria for Subpart IIII or JJJJ, the air quality fee would be waived. The facility would also qualify for removal from the air emissions reporting requirement.

As an exception to the above, if such a facility also holds an opt-out permit, then annual air emission reporting through MiEnviro Portal and assessment of a Category E fee, based on the facility having an active opt-out permit, is required.

#### **Cancellation of fees for closed facilities:**

Another area where the AQD receives periodic requests for cancellation of air quality fees is where facilities have closed. What constitutes a facility closure can be very subjective, therefore the qualifications for removing a closed facility from the fee program are clear and unambiguous.

District staff may receive verbal or written communications from a facility stating they have closed or intend to close. However, the shutdown may be temporary in nature, or the facility may retain its equipment or permits, preserving the physical ability or the legal capability to operate. In such cases, the facility is still classified as a fee-subject facility under Sec. 5501(p) of Act 451. The facility is also required to continue to report annually, even if the reporting just affirms the presence of zero activity and emissions at the facility.

If a facility seeks to be removed from the air quality fee program, a permit void request must be submitted by the facility with sufficient time to allow for processing of the permit void request prior to the date of fee assessment in January.

Permit void requests received or processed after the fee assessment date in January will not affect the current fee assessment but may remove the facility from fee assessments in subsequent years. By July 1 of each year, as required by Act 451, the AQD notifies fee-subject facilities with an estimate of their billable emissions based on their air emissions submittal earlier



that year. This notification provides advance notice of the fee to be assessed the following January. Any facility considering closing, or voiding their permits, has the opportunity within the next several months to modify their permitted status and fee applicability before the actual assessment.

It should be noted that cancellation of fees for closed facilities is not a waiver of the fee invoices. A facility that has voided its permits in advance of the air quality fee assessment is no longer considered a fee-subject facility under Sec. 5501(p) of Act 451.

A facility that closes, voids its permits, and is removed from the air quality fee program before the next fee assessment, may still be required to report air emissions for their remaining months of operation. If there was zero activity and emissions during their final year, they may still be required to document that in MiEnviro Portal.

## PROCEDURE

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Steps 1-3 can occur at any time; however, it is preferable that they occur before invoices are assessed. Steps 4-7 only occur if invoices are already assessed.

Step	Who	Does What
Step 1 – Identification of sources for fee waiver consideration	Facility and District staff	Staff can become aware of a facility that may qualify for a fee waiver, or removal from the fee program, through different points of contact. These include: facility inspections; correspondence with the facility owner or operator; requests submitted by the facility in response to the billable emissions estimate notification specified in <a href="#">Sec. 5522(7)</a> of Act 451; or receipt of a timely written fee challenge from the facility in accordance with <a href="#">Sec. 5522(5)</a> of Act 451. District staff should then consult this document to determine if the necessary conditions are met for eligibility.
Step 2 – Verification of fee waiver eligibility	District staff, Fee Coordinator	District staff may need to contact the Fee Coordinator for evaluation of the fee waiver applicability if the circumstances are nuanced.
Step 3 – Fee status updates	District staff, Fee Coordinator	If a facility meets the criteria for the fee waiver, a modification to the fee category needs to occur in the proper location in MiEnviro Portal. Additionally, if the fee status change occurs after invoicing preparations have begun, the Fee Coordinator must be notified. The Fee Coordinator will ensure the invoicing data in the accounts receivable system is modified to match the edited data in MiEnviro Portal. Otherwise, the assessed fee will not align with the latest fee information in MiEnviro Portal.

Step	Who	Does What
Step 4 – Challenging the fee invoice	Facility	If an invoice has already been assessed, a timely written fee challenge must be submitted to the district office by the facility within 45 days of the assessment date of the invoice, as specified in <a href="#">Sec. 5522(5)</a> of Act 451. An email will be acknowledged by the AQD as a written challenge.
Step 5 – Responding to the fee challenge	District staff	District staff must draft a fee challenge response letter, and an invoice revision form if appropriate, affirming or denying the request. Templates are available on EGLE’s SharePoint under Forms and Templates. The proposed action will be guided by the criteria set forth in this document. An invoice revision form must also be prepared by district staff, when applicable.
Step 6 – Approval of the fee challenge	Fee Coordinator, Division Director	The draft documents must be provided to the Fee Coordinator who will review for consistency with Act 451 and document. The documents will then be forwarded for approval and signature by the Division Director. If a facility does not qualify for a fee waiver or the fee challenge is untimely, the fee challenge response will contain a denial stating the reasons the AQD cannot grant the fee challenge request.
Step 7 – Revision or cancellation of the invoice	Administration Section staff, clerical staff	If revision or cancellation of the invoice is approved, Administration Section staff will process the adjustment prior to mailing the fee challenge response letter by the AQD clerical staff. If the challenge is denied, a copy of the original invoice will be provided by Administration Section staff to facilitate payment.

## LINKS TO ADDITIONAL INFORMATION

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[Sec. 5501](#) of Act 451

[Sec. 5522](#) of Act 451

[Policy and Procedure AQD-013](#)

The [Fee Challenges](#) webpage provides information on the different fee categories and how fees are assessed.

The [Fee Challenges](#) webpage provides information for the public on the fee challenge process.

## APPENDICES

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Appendix A: Table of Fee Categories and Calculations



## APPROVING AUTHORITY

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Annette Switzer, Director  
Air Quality Division

## HISTORY

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Policy No.	Action	Date	Title
AQD-035	Original	02/03/2022	Waivers Affecting Fee Assessment; Closures Affecting Fee Applicability
AQD-035	Revised	01/11/2024	Waivers Affecting Fee Assessment; Closures Affecting Fee Applicability

## CONTACT / UPDATE RESPONSIBILITY

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Any questions or concerns regarding this policy and procedure should be directed to Dennis McGeen, Fee Coordinator, at [McGeenD1@Michigan.gov](mailto:McGeenD1@Michigan.gov) or 517-899-6819.

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**APPENDIX A: Table of Fee Categories and Calculations**

Fee Basis	FEE FORMULA			
	Category Type	Emissions Range (tons)	Facility Charge	Emissions Charge/Ton
Major for CRIT, EP	A	≥ 6100 tons	\$45,000.00	\$53.00
Major for CRIT, EP	A	≥ 1000	\$30,000.00	\$53.00
Major for CRIT, EP	A	≥ 100	\$15,750.00	\$53.00
Major for CRIT, EP	A	≥ 60	\$12,500.00	\$53.00
Major for CRIT, EP	A	≥ 6	\$10,500.00	\$53.00
Major for CRIT, EP	A	≥ 0	\$5,250.00	\$53.00
Major for CRIT, non-EP	B	≥ 2000 tons	\$21,000.00	\$53.00
Major for CRIT, non-EP and MU	B	≥ 200	\$15,750.00	\$53.00
Major for CRIT, non-EP and MU	B	≥ 60	\$10,500.00	\$53.00
Major for CRIT, non-EP and MU	B	≥ 6	\$7,500.00	\$53.00
Major for CRIT, non-EP and MU	B	≥ 0	\$5,250.00	\$53.00
Major for CRIT, MU	B – Municipal Utility Only	≥ 646 tons	\$50,000	NA
Major for HAPs	C	≥ 60 tons	\$4,500.00	\$53.00
Major for HAPs	C	≥ 6	\$3,500.00	\$53.00
Major for HAPs	C	≥ 0	\$2,500.00	\$53.00
NSPS	D	≥ 60 tons	\$2,500.00	\$53.00
NSPS	D	≥ 6	\$2,000.00	\$53.00
NSPS	D	≥ 0	\$1,795.00	\$53.00
Opt out only	E	≥ 60 tons	\$1,795.00	\$0.00
Opt out only	E	≥ 6	\$250.00	\$0.00
Area source MACT	F	NA	\$250.00	\$0.00
<b>ANNUAL FEE = FACILITY CHARGE + EMISSIONS CHARGE</b>				
For Category A and B facilities, the following caps limit the quantity of individual and total pollutants which are charged for: <ul style="list-style-type: none"> <li>• Category A - Electric Providers is 1,500 tons per Pollutant or 6,100 tons Total</li> <li>• Category B - Major Criteria Pollutants is 1,250 tons per Pollutant or 4,500 tons Total</li> </ul>				
CRIT – criteria pollutants, EP – Electric Power, MU – Municipal Utility				