

## Chapter 89 AIR POLLUTION\*

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\*Editor's note--Ord. No. 98-601, § 104, adopted Oct. 1, 1998, repealed the former Ch. 89, and Ord. §§ 101--2004 enacted a new Ch. 89 as set out herein. The former Ch. 89 saved from repeal the former air pollution ordinance, which derived from Ord. No. 85-375, adopted Sept. 30, 1985; Ord. No. 89-213, adopted April 11, 1989.

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### ARTICLE I. GENERAL PROVISIONS

Sec. 89-1. Declaration of policies and purposes.

(a) Policies. In recognition of the constitutional right of the citizens of Michigan to the conservation and development of the natural resources of the state and to the protection of the air from pollution, impairment and destruction; and in recognition of the constitutional mandate to protect the health, safety and welfare of the citizens of Michigan, it is hereby declared the policy of the county:

(1) To protect and enhance the quality of the county's air resources so as to promote the public health, safety and welfare and the productive capacity of its citizens by abating sources of air contamination and preventing adverse health effects caused by air pollution;

(2) To protect the county's air resources from pollution, impairment, or destruction;

(3) To prevent injury to plant and animal life and property and to protect the comfort and convenience of the public and the recreational resources of the county; and

(4) To develop, attract and expand industry, commerce and agriculture, consistent with the policy of protecting the county's air resources and with applicable local, state and air quality requirements.

(b) Purposes. It is therefore the purpose of this chapter:

(1) To protect the health, safety and welfare of citizens of the county and to achieve the policy declarations enumerated above by providing for an air pollution control program in the county;

(2) To provide for the administration and enforcement of this chapter by the county department of environment, air quality management division; to prescribe the powers and duties of the division and its director; and to provide penalties for violation of this chapter;

(3) To establish emission limitations, standards, permit procedures and other requirements for sources of air contaminants to ensure compliance with this chapter and maximize the potential for continued industrial and economic growth within Wayne County;

(4) To ensure that sources of air contaminants located within the county do not unreasonably interfere with the air pollution control programs of other jurisdictions;

(5) To provide a mechanism to obtain such information as is necessary to determine the current air quality of the county, the factors contributing to that air

quality and the current status of any source of air contaminants as it relates to the chapter; and

(6) To establish an air quality management program which, at a minimum, is consistent with the requirements of Act 451 Part 55 and the Clean Air Act, and rules promulgated under these acts.

(Ord. No. 98-601, § 101, eff. 10-1-98)

Sec. 89-2. Title.

This chapter shall be known and may be cited as the "Wayne County Air Quality Management Ordinance."

(Ord. No. 98-601, § 102, eff. 10-1-98)

Sec. 89-3. Effective date.

This chapter shall become effective October 1, 1998.

(Ord. No. 98-601, § 103, eff. 10-1-98)

Sec. 89-4. Construction and interpretation.

(a) Liberal construction. This chapter is adopted pursuant to the Home Rule Charter for Wayne County and is authorized by Act 451 Part 55. To give full effect to the purposes of the chapter, the provisions herein shall be liberally construed for the protection of the health, safety and welfare of the citizens of Wayne County.

(b) Headings. A heading or title of a chapter, section or subsection of the chapter shall not be considered a part of this chapter, nor shall it be used to construe this chapter more broadly or narrowly than indicated by the text of the sections, but shall be considered to be inserted for the convenience of users of this chapter.

(c) Provisions cumulative. The provisions of this chapter shall be cumulative. Therefore, except as otherwise provided, compliance with any provision of this chapter shall in no manner relieve a person of the duty to fully comply with any other provision of this chapter.

(d) Conflict.

(1) In the event that the provisions of this chapter conflict, the provision which results in the lowest permissible emission rate shall prevail, absent clear and convincing evidence that a different provision is intended to prevail.

(2) Upon the effective date of this chapter, the Wayne County Air Pollution Control Ordinance of 1985 is expressly repealed. The final order or determination of the division shall not be used as evidence of presumptive air pollution in any suit filed by any person other than the division.

(3) Nothing in this chapter, or in any rule promulgated by Wayne County or in any rule incorporated by reference in this chapter, invalidates any existing ordinance or regulation having requirements equal to or greater than the minimum applicable requirements of this chapter, or prevents any political subdivision from adopting similar provisions if their requirements are equal to or greater than the minimum applicable requirements of this chapter.

(e) Local requirements; state rules. To the extent permitted a home rule county and authorized by Act 451 Part 55 and the Clean Air Act, the provisions of this chapter shall control over less stringent or inconsistent rules, regulations, or ordinances enacted by a local governmental entity for the control of air pollution.

Unless otherwise specifically provided in this chapter, the provisions of this chapter shall control over less stringent rules of the Michigan Department of Environmental Quality, unless contrary to law.

(f) State and federal rules. State or federal rules or regulations referenced herein are the state or federal rules or regulations in effect on the effective date of this chapter.

(g) Severability. The provisions of this chapter shall be severable. If any provision of this chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, the remaining provisions of this chapter shall remain valid and enforceable.

(h) Nuisances. This chapter shall not be construed in any manner as authorizing or legalizing the creation or maintenance of nuisance. Compliance by an emission source with the provisions of this chapter shall not be a bar to a claim of nuisance by the county or any other person.

(i) Burden of proof. In any proceeding arising out of the provisions of this chapter or out of an order issued or action taken pursuant to this chapter, any person claiming entitlement to an exemption provided for in this chapter or an order issued pursuant to this chapter, or any person claiming that a provision or interpretation other than the one resulting in the lowest permissible emission rate was intended to prevail, shall bear the burden of proof and the burden of going forward with evidence to such claim.

(j) Savings clause. In the event a section or subsection of this chapter is declared to be invalid or unconstitutional, the applicable section or subsection of the Wayne County Air Pollution Control Ordinance of 1985 shall be substituted and become effective and enforceable.

(Ord. No. 98-601, § 104, eff. 10-1-98)

Sec. 89-5. Administration and organization.

(a) Administration. This chapter shall be implemented, administered and enforced by the county department of environment, air quality management division.

(b) Duties of the director of air quality management division.

(1) In accordance with the provisions of this chapter and rules promulgated hereunder, the director shall:

a. Supervise the implementation of this chapter in conjunction with the division's policies and procedures;

b. Accept, receive and give receipts for monies, for and on behalf of the county, given by the federal government or the state for air pollution control activities, surveys, investigations, research or programs, subject to the laws of the state and county;

c. Issue memoranda, statements or implementing instructions to division personnel for the administration of this chapter, as required;

d. Do any and all acts which may be necessary for the successful prosecution of the purpose and intent of this chapter.

(2) In accordance with the provisions of this chapter and rules promulgated hereunder, the director may:

- a. Enter into, modify or cancel orders which require the control or abatement of air pollution in accordance with the provisions of this chapter and rules promulgated hereunder;
- b. Institute in a court of competent jurisdiction proceedings to compel compliance with any provision of this chapter or rule promulgated hereunder or any determination or order that may be promulgated or issued under this chapter;
- c. Recommend a fee schedule sufficient to cover the reasonable costs of reviewing and acting upon any application for a permit to install, inspection fees, fees related to non-Title V activities, and the reasonable costs of implementing and enforcing the terms and conditions of any permit which is issued;
- d. Recommend additions, modifications or amendments to this chapter or recommend rules to further implement the provisions of this chapter;
- e. Revoke any permit, for cause, issued by the division;
- f. Seek the appropriate order to close a facility operating in noncompliance with this chapter or any permit issued by the division.

(c) Duties of the division.

(1) In accordance with the provisions of this chapter and rules promulgated hereunder, the division shall:

- a. Issue permits for the construction and operation of sources, processes, and process equipment, subject to enforceable emission limitations and standards and other conditions reasonably necessary to assure compliance with all applicable requirements of this chapter, Act 451 Part 55 and the Clean Air Act;
- b. Maintain the county's capacity to implement the renewable operating permit program under Title V of the Clean Air Act, the applicable requirements of Act 451 Part 55, and all rules promulgated thereunder and rules promulgated pursuant to this chapter;
- c. On behalf of the county, impose and collect fees in the manner prescribed in article IX of this chapter on all fee-subject facilities subject to this chapter and located within the corporate boundaries and subject to the delegated program of the county, notwithstanding any other provision of this chapter or Act 451 Part 55.
  - i. Pay to the state the pro rata share of the state's support services for Title V programs attributable to the county;
  - ii. Request the county treasurer to create an emissions control fund within the county treasury. The county treasurer may receive money from any source for deposit into the fund. The county treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments;
  - iii. Money in the emission control fund at the close of the fiscal year shall remain in the fund and shall not lapse to the county general fund;
  - iv. Upon the expenditure or appropriation of funds raised through fees in article IX of this chapter for any purpose other than those specifically listed in article IX of this chapter, authorization to collect fees under this section is suspended until such time as the funds expended or appropriated for purposes other than those listed in this Section are returned to the emissions control fund.

(2) In accordance with the provisions of this chapter and rules promulgated hereunder, the division may:

- a. Deny, terminate, modify or revoke and reissue permits for cause. If an application for a permit is denied or is determined to be incomplete, the division shall state in writing the reasons for denial or the determination of incompleteness, and, if applicable, the provision of this chapter or a rule which may be promulgated under this chapter that controls the decision;
- b. Compel the attendance of witnesses at proceedings of the division upon reasonable notice;
- c. Make findings of fact and determinations;
- d. Make, modify or cancel orders that require, in accordance with this chapter, the control of air pollution and management of air quality;
- e. Enforce permits, air quality fee requirements and the requirements to obtain a permit;
- f. Institute in the appropriate court or venue proceedings to compel compliance with this chapter, rules which may be promulgated under this chapter or any determination or order issued under this chapter;
- g. Enter and inspect any property as authorized by this chapter;
- h. Receive and initiate complaints of air pollution in alleged violation of this chapter, rules which may be promulgated under this chapter or any determination, permit or order issued under this chapter, and take action with respect to the complaint as provided in this chapter;
- i. Require reports on sources and the quality and nature of emissions, including, but not limited to, information necessary to maintain an emissions inventory;
- j. Prepare and develop a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution;
- k. Encourage voluntary cooperation by all persons in controlling air pollution and air contamination;
- l. Encourage the formulation and execution of plans by cooperative groups or associations of cities, villages and counties or districts, or other governmental units, industries and others who severally or jointly are or may be the source of air pollution, for the control of pollution;
- m. Cooperate with the appropriate agencies of the United States, the State of Michigan, other states or any interstate agencies or international agencies with respect to the control of air pollution and air contamination or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements;
- n. Conduct or cause to be conducted studies and research with respect to air pollution control, abatement or prevention;
- o. Conduct and supervise programs of air pollution control education, including the preparation and distribution of information relating to air pollution control;
- p. Provide advisory technical consultation services to local communities;
- q. Perform such activities as necessary, proper or desirable to enforce this chapter and rules which may be promulgated hereunder, or any determination, permit or order issued under this chapter, Act 451 Part 55, or the Clean Air Act;

r. Perform such other duties as may be delegated to the division by the county department of environment, the county executive, the state, the federal government, the Home Rule Charter for Wayne County, as amended, a county reorganization plan or additional ordinance.

(d) Public participation.

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

(2) A copy of each permit, permit application, order, compliance plan and schedule of compliance, emissions or compliance monitoring report, sample analysis, compliance certification, or other report or information required under this chapter, or permits or orders issued under this chapter, shall be available to the public to the extent provided by the Freedom of Information Act, Public Act No. 442 of 1976, being MCL 15.231 to 15.246.

(3) The division shall establish and maintain a list of all applications for permits submitted pursuant to articles 12 and 13 of this chapter. The list shall report the status of each application. The information on the list shall be updated by the division on a monthly basis. Any person may subscribe to this list and shall reimburse the division for the costs of copying, handling, and mailing. The division also may develop an electronic data base that includes the capability of making this list available to the public. This list shall include all of the following information:

a. The name of the permit applicant;

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

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

d. The date the permit application was received by the division;

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

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

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

(4) The division shall establish and maintain a list of all proposed consent order public notices for sources within the county. This information shall be updated by the division on a monthly basis. Any person may subscribe to this list and shall reimburse the division for the costs of copying, handling, and mailing. This list shall include all of the following information:

a. The name of the parties to the proposed consent order;

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

c. A brief description of the source;

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

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

(5) The division shall not issue a permit to install or a nonrenewable permit to operate pursuant to article VII of this chapter for a major source or for a major modification under Title I of the Clean Air Act, chapter 360, 77 Stat. 392, 42 USC 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, or issue, renew, or significantly modify any operating permit issued under article VIII of this chapter, or enter into a consent order, without providing public notice, including offering an opportunity for public comment and a public hearing on the draft permit or proposed consent order. In addition, the division shall not issue a permit for which there is a known public controversy, as determined by the director, without providing public notice including an opportunity for public comment and public hearing. For the purposes of an operating permit issued under article VIII of this chapter, a significant modification does not include any modifications to a permit made pursuant to subsection 89-222(a)(4)h, i, j or k. For a general permit issued pursuant to this chapter, public notice and opportunity for public comment and a public hearing shall be provided only before the base general permit is approved, not as individual sources apply for coverage under that general permit. Public notice and an opportunity for public comment and a public hearing as required under this section shall be provided as follows:

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

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

c. The division shall provide at least 30 days for public comment, and shall give notice of any public hearing at least 30 days in advance of the hearing;

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

(6) Prior to amendment or revision to the chapter, or amendment or revision to any rules promulgated under this chapter, the division shall conduct one or more public hearings on the proposed amendment or revision. Public announcement for such comment periods or hearings shall be as set forth in subsection (5) above, and the Home Rule Charter for Wayne County.

(e) Confidentiality.

(1) Records received by the division from a person whose activities are regulated under this chapter, or other information furnished to or obtained by the division or its agents, can be designated by such persons as being for the confidential use of the division.

(2) The division shall notify the person asserting confidentiality of a request for public records under Section 5 of the Freedom of Information Act, Public Act No. 442 of 1976, being section MCL 15.235, the scope of which includes information that has been designated by the regulated person as being confidential.

(3) The person asserting confidentiality has 25 days after the receipt of the notice to demonstrate to the division that the information designated as confidential should not be disclosed because the information is a trade secret or secret process, or is production, commercial, or financial information the disclosure of which would jeopardize the competitive position of the person from whom the information was obtained, and make available information not otherwise publicly available.

(4) The division shall grant the request for the information unless the person regulated under this chapter demonstrates to the satisfaction of the division that the information should not be disclosed. If there is a dispute between the person asserting confidentiality and the person requesting information under Public Act No. 442 of 1976, the division shall make the decision to grant or deny the request. After the division makes a decision to grant a request, the information requested shall not be released until 8 business days after the regulated person's receipt of notice of the division's decision. This does not prevent the use of the information by the division in compiling or publishing analyses or summaries relating to ambient air quality if the analyses or summaries do not identify the person or reveal information which is otherwise confidential under this section. This section does not render data on the quantity, composition, or quality of emissions from any source confidential. Data on the amount and nature of air contaminants emitted from a source shall be available to the public.

(Ord. No. 98-601, § 105, eff. 10-1-98)

Sec. 89-6. Incorporation by reference.

Rules, regulations, other regulatory standards, or statutory provisions incorporated or adopted by reference in this chapter or rules promulgated pursuant to this chapter, shall have the same force and effect given to any provision promulgated under this chapter. Such rule, regulation, regulatory standard, or statutory provision shall remain effective until (i) a provision is promulgated under this chapter which covers the same or similar subject and the original rule, regulation, regulatory standard, or statutory provision is expressly rescinded; or (ii) this chapter is amended to incorporate by reference a revised

standard in replacement of the original rule, regulation, regulatory standard, or statutory provision. In order to maintain consistency with state and federal requirements, the division shall recommend this chapter be amended to include newly promulgated or revised state or federal air pollution standards.

(Ord. No. 98-601, § 106, eff. 10-1-98)

Sec. 89-7. Standards and recommended practices.

Where reference is made in this chapter to the standards or recommended practices of national technical societies, associations or other organizations, such information shall be incorporated by reference and considered an integral part of this chapter in the same manner and extent as if fully reproduced herein, provided such standards are fully identified. Not less than two copies of such standards or recommended practices of technical societies, associations, or other organizations shall be kept on file at all times in the main office of the division and shall be available for public review and copying.

(Ord. No. 98-601, § 107, eff. 10-1-98)

Sec. 89-8. Emission inventory system.

(1) The division will adopt the state's emission inventory system maintained by the Michigan Department of Environmental Quality.

(2) If the owner or operator of a major emitting facility has not submitted the information required for the emission system referenced under subsection (1) by April 15, the division 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 five percent of what the owner's or operator's bill for that major emitting facility would be under article IX, using the previous year's emission data, for each month the information is late, up to a maximum penalty of 25 percent of this amount. A penalty assessed under this section shall be collected at the time emission fees are collected under article IX.

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

(4) The owner or operator of a minor emitting facility shall submit to the division information regarding the facility's emissions as requested by the division and in a format acceptable by the division.

(Ord. No. 98-601, § 108, eff. 10-1-98)

Sec. 89-9. Relief from division ordinance or rules.

Application for relief from a provision of this chapter or a rule promulgated hereunder shall be made by petition to a court of competent jurisdiction. The petition shall be verified as in a civil action. Each petition shall contain a plain and concise statement of the material facts on which the petitioner relies, shall set forth the rule or part of the rule that the petitioner claims is unreasonable or prejudicial to the petitioner, and shall specify the grounds for the claim. The petition may be accompanied by affidavits or other written proof and shall demand the relief to which the petitioner alleges he or she is entitled, in the alternative or otherwise. The petition may be made by one or more persons, jointly or severally, who are aggrieved by the provision.

(Ord. No. 98-601, § 109, eff. 10-1-98)

Secs. 89-10--89-30. Reserved.

## ARTICLE II. APPLICABILITY

Sec. 89-31. Effect of permits issued pursuant to this chapter.

From and after the effective date of this chapter, and until a statutory delegation of authority to the county exists under MCL 324.5523, and notwithstanding any other statutory provision, rule, or ordinance, permits to install shall be issued under this chapter and certain of the county's responsibilities under the chapter shall be implemented pursuant to lawful authorization between the Michigan Department of Environmental Quality (MDEQ) and the county department of environment, air quality management division. Such authorization shall be consistent with Act 451 Part 55, rules promulgated under Act 451 Part 55, the Clean Air Act, and the applicable provisions of the state implementation plan. Sources in Wayne County that are subject to this chapter shall not be required pursuant to such authorization to obtain separate permits to install from the division and from MDEQ for a process or process equipment. Permits to install issued by MDEQ pursuant to such lawful authorization shall have the same force and effect for purposes of implementation and enforcement of this chapter as a permit issued by the division, and shall be deemed to have been issued by the director under this chapter.

From and after the date on which a statutory delegation of authority to the county exists under MCL 324.5523, and notwithstanding any other statutory provision, rule, or ordinance, the county shall issue permits and implement its responsibilities in accordance with the delegation, Act 451 Part 55, rules promulgated under Act 451 Part 55, the Clean Air Act, this chapter, rules promulgated hereunder, and the applicable provisions of the state implementation plan. In accordance with the delegation of authority under Act 451 Part 55, permits issued by the division shall have the same force and effect as permits issued by the MDEQ.

Notwithstanding any other provision in this chapter, if a statutory delegation of authority to the county pursuant to MCL 324.5523 does not exist on October 1, 2000, then, after appropriate notice, the county shall issue permits required by this chapter and implement its responsibilities under this chapter from and after that date in accordance with this chapter, Act 451 Part 55, rules promulgated pursuant to Act 451 Part 55, the Clean Air Act, and the applicable provisions of the state implementation plan.

(Ord. No. 98-601, § 201, 10-1-98)

Sec. 89-32. Effect of fees levied pursuant to this chapter.

Whenever a delegation of authority exists under MCL 324.5523, or other lawful authorization between the MDEQ and the county department of environment, air quality management division, and notwithstanding any other statutory provision, rule, or ordinance, the county shall impose and collect fees in the manner prescribed in article IX of this chapter on all fee-subject facilities subject to this chapter and located within the corporate boundaries and subject to the delegated program of the county. The county shall not assess a fee for a program or service other than as provided for in this chapter or title V, or assess a fee covered by this part or title V greater than the fees set forth in article IX of this chapter.

(Ord. No. 98-601, § 202, eff. 10-1-98)

Secs. 89-33--89-50. Reserved.

### ARTICLE III. DEFINITIONS

Sec. 89-51. Generally.

The words and phrases used in this chapter shall have the meanings ascribed to them by this article or under Part 55 of the Natural Resources and Environmental Protection Act (NREPA), Public Act No. 451 of 1994, as amended, MCL 324.5501 et seq., or rules promulgated pursuant to this chapter. Words and phrases not defined under the provisions of this section, or under Act 451 Part 55 or rules promulgated hereunder, shall be interpreted according to their plain meaning or as the context implies. Words and phrases used in the present tense include the future; words and phrases in the masculine include the feminine and neuter; the singular number includes the plural and the plural the singular.

(Ord. No. 98-601, § 301, eff. 10-1-98)

Sec. 89-52. Words and phrases.

Act 451 Part 55 means Part 55 of the Natural Resources and Environmental Protection Act, Public Act No. 451 of 1994, as amended, MCL 324.5501 et seq.

Air contaminant means a dust, fume, gas, mist, odor, smoke, vapor, or any combination thereof.

Air pollution means the presence in the outdoor atmosphere of air contaminants in quantities, of characteristics and under conditions and circumstances, and of a duration that are or can become injurious to human health or welfare, to animal life, to plant life, or to property, or that interfere with the enjoyment of life and property in this state, and excludes all aspects of employer-employee relationships as to health and safety hazards. With respect to any mode of transportation, nothing in this chapter or in the rules which may be promulgated under this chapter shall be inconsistent with the federal regulations, emission limits, standards or requirements on various modes of transportation. Air pollution does not mean those usual and ordinary odors associated with a farm operation if the person engaged in the farm operation is following generally-accepted agricultural and management practices.

Air pollution control equipment means any method, process or equipment that removes, reduces or renders less noxious air contaminants discharged into the atmosphere.

Category I facility means a fee-subject facility that is a major stationary source as defined in Section 302 of Title III of the Clean Air Act, 77 Stat. 400, 42 USC 7602, an affected source as defined pursuant to Section 402 of Title IV of the Clean Air Act, Chapter 360, 104 Stat. 2641, 42 USC 7651a, or a major stationary source, as defined in Section 169a of Subpart 2 of Part C of Title I of the Clean Air Act, Chapter 360, 91 Stat. 742, 42 USC 7491.

Category II facility means a fee-subject facility that is a major source, as defined in Section 112 of Part A of Title I of the Clean Air Act, 84 Stat. 1685, 42 USC 7412 or a facility subject to requirement of Section 111 of Part A of Title I of the Clean Air Act, Chapter 360, 84 Stat. 1683, 42 USC 7411, except that a Category II facility that also meets the definition of a Category I facility is a Category I facility.

Category III facility means any fee-subject facility that is not a Category I or Category II facility.

CFR means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20402.

Clean Air Act means Chapter 360, 69 Stat. 322, 42 USC 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f and 7671 to 7671q, and regulations promulgated under the Clean Air Act.

County means the County of Wayne.

Department means the Wayne County Department of Environment, the director of this department, or his or her designee.

Division means the Air Quality Management Division of the Wayne County Department of Environment.

Director means the Director of the Air Quality Management Division of the Wayne County Department of Environment.

Emission means the emission of an air contaminant.

Fee-subject air pollutant means particulates, sulfur dioxide, volatile organic compounds, nitrogen oxides, ozone, lead and any pollutant, regulated under Section 111 or 112 of Part A of Title I of the Clean Air Act, Chapter 360, 84 Stat. 1683 and 1685, 42 USC 7601 to 7612, 7614 to 7617, 7619 to 7622 and 7624 to 7627.

Fee-subject facility means the following sources:

- (a) Any major source, as defined in 40 CFR 70.2
- (b) Any source, including an area source, subject to a standard, limitation or other requirement under Section 111 of Part A of Title I of the Clean Air Act, Chapter 360, 84 Stat. 1683, 42 USC 7411, when the standard, limitation or other requirement becomes applicable to that source.
- (c) Any source, including an area source, subject to a standard, limitation or other requirement under Section 112 of Part A of Title I of the Clean Air Act, 84 Stat. 1685, 42 USC 7412, when the standard, limitation or other requirement becomes applicable to that source. However, a source is not a fee-subject facility solely because it is subject to a regulation, limitation or requirement under Section 112(r) of Part A of Title I of the Clean Air Act, Chapter 360, 84 Stat. 1685, 42 USC 7412.
- (d) Any affected source under title IV of the Clean Air Act, Chapter 360, 104 Stat. 2584, 42 USC 7651 to 7651o.
- (e) Any other source in a source category designated by the administrator of the United States Environmental Protection Agency as required to obtain a renewable operating permit under Title V, when the standard, limitation or other requirement becomes applicable to that source.

Fund means the emissions control fund created by Wayne County Treasurer.

General permit means a permit to install authorized by rules promulgated pursuant to article VII of this chapter, or an operating permit under article VIII of this chapter, for a category of similar sources, processes, or process equipment.

General provisions for issuance of general permits shall be provided for by rules promulgated under this chapter.

Health officer means the head of the Wayne County Department of Health or that person's duly authorized representative.

Major emitting facility means a stationary source that emits 100 tons or more per year of any of the following:

- (a) Particulates.
- (b) Sulfur dioxides.
- (c) Volatile organic compounds.
- (d) Oxides of nitrogen.

Major source means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (a), (b) or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e. all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) A major source under section 112 of the Clean Air Act, which is defined as:

i. For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Clean Air Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as may be established by rule.

Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

ii. For radionuclides, "major source" shall have the meaning specified by the Clean Air Act and rules promulgated thereunder.

(b) A major stationary source of air pollutants, as defined in section 302 of the Clean Air Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant.

(c) A major stationary source as defined in part D of title I of the Clean Air Act, including:

i. For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25 and 10 tpy

of nitrogen oxides shall not apply with respect to any source for which the United States Environmental Protection Agency Administrator has made a finding, under section 182(f)(1) or (2) of the Clean Air Act, that requirements under section 182(f) of the Clean Air Act do not apply;

ii. For ozone transport regions established pursuant to section 184 of the Clean Air Act, sources with the potential to emit 50 tpy or more of volatile organic compounds;

iii. For carbon monoxide nonattainment areas:

a. Areas that are classified as "serious," and

b. Areas in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator of the United States Environmental Protection Agency, sources with the potential to emit 50 tpy or more of carbon monoxide; and

iv. For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

NESHAP means a national emission standard for hazardous air pollutants set by the United States Environmental Protection Agency.

NSPS means new source performance standards for new stationary sources set by the United States Environmental Protection Agency.

Ordinance means the Wayne County Air Quality Management Ordinance.

Person means a natural person, trustee, court-appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, government corporation, municipal corporation, city, county, municipality, district, or other political subdivision, department, bureau, agency or instrumentality of federal, state or local government, or other entity recognized by law as the subject of rights and duties.

Process means an action, operation, or a series of operations, at a source that emits or has the potential to emit an air contaminant.

Process equipment means all equipment, devices and auxiliary components, including air pollution control equipment, stacks and other emission points, used in a process.

Responsible official means for the purposes of signing and certifying the truth, accuracy and completeness of permit applications, monitoring reports and compliance certifications any of the following:

(a) For a corporation; a president, secretary, treasurer or vice-president in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation, or an authorized representative of that person if the representative is responsible for the overall operation of 1 or more manufacturing, production or operating facilities applying for or subject to a permit under this chapter and either the facilities employ more than 250 persons or have annual sales or expenditures exceeding \$25,000,000; or the delegation of authority to the representative is approved in advance by the division.

(b) For a partnership or sole proprietorship; a general partner or the proprietor.

(c) For a county, city, village, township, state, federal or other public agency; either a principal executive officer or a ranking elected official. For this purpose, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(d) For sources affected by the acid rain program under Title IV, the designated representative insofar as actions, standards, requirements or prohibitions under that title are concerned.

State implementation plan means that plan defined at 40 CFR 52.

Stack height required to minimize downwash means that stack height which is calculated to be equal to or greater than the sum of the product of 1.5 and the lesser dimension of the height or width of the influencing structure and the product of 3.0 and the inside stack diameter. In such calculation, the width is the dimension of the influencing structure perpendicular to the wind direction. In no case shall this require a stack greater than good engineering practice stack design.

Synthetic fuels means fuels other than wood; bark, peat, lignite, bituminous coal, anthracite coal, Nos. 1, 2, 4, 5, or 6 fuel oils, crude oil, natural gas, propane or butane.

Title I means Title I of the Clean Air Act, 104 Stat. 2399; 42 USC 7407 to 7520.

Title II means Title II of the Clean Air Act, 104 Stat. 2472; 42 USC 7521 to 7590.

Title III means Title III of the Clean Air Act, 104 Stat. 2531; 42 USC 7601 to 7627.

Title IV means Title IV of the Clean Air Act, pertaining to acid deposition control, Chapter 360, 104 Stat. 2584, 42 USC. 7651 to 7651o.

Title V means Title V of the Clean Air Act, Chapter 360, 104 Stat. 2635, 42 USC 7661 to 7661f.

USC means United States Code, U.S. Government Printing Office, Superintendent of Documents, Washington, D.C. 20402.

Waste-burning emission source or equipment means a device, contrivance, or equipment, and all appurtenances thereto, designed and used principally, but not exclusively, for the destruction by burning of garbage, refuse, rubbish, sewage sludge, sewage scum, sewage grit, waste liquids, waste gases or other combustible wastes or all combinations thereof, in which the products of combustion are emitted into the outer air by passing through a stack or chimney. (Ord. No. 98-601, § 302, eff. 10-1-98)

Secs. 89-53--89-70. Reserved.

#### ARTICLE IV. EMISSION LIMITATIONS AND PROHIBITIONS

##### DIVISION 1. GENERALLY

Secs. 89-71--89-90. Reserved.

##### DIVISION 2. FEDERAL EMISSION STANDARDS

Sec. 89-91. Federal emissions standards.

(a) New source performance standards (NSPS). A person shall not cause or permit an emission source subject to the provisions of the Clean Air Act, and the rules entitled "Standards of Performance for New Stationary Sources," 40 CFR Part 60, to exceed any applicable standard contained in 40 CFR Part 60, unless

a waiver from such requirement has been secured pursuant to the provisions of section 111(j) of the Clean Air Act. The requirements of 40 CFR Part 60, and any appendices included therein are hereby incorporated by reference.

(b) National Emission Standards for Hazardous Air Pollutants (NESHAPs). A person shall not cause or permit an emission source subject to the provisions of the Clean Air Act, and the rules entitled "National Emission Standards for Hazardous Air Pollutants," 40 CFR Parts 61, 63, to exceed any applicable standard contained in 40 CFR Parts 61, 63. The requirements of 40 CFR Parts 61, 63, and any appendices included therein, are hereby incorporated by reference.

(c) Prevention of Significant Deterioration (PSD). A person shall not cause or permit an emission source subject to the provisions of the Clean Air Act, and the rules entitled "Prevention of Significant Deterioration of Air Quality," 40 CFR Part 52.21, to exceed any applicable standard or requirement contained in 40 CFR Part 52.21. The requirements of 40 CFR Part 52.21, and any appendices included therein, are hereby incorporated by reference.

(d) Acid deposition control. A person shall not cause or permit an emission source subject to the provisions of the Clean Air Act, and the rules entitled "Permit Regulations (Acid Rain)," 40 CFR Part 72, to exceed any applicable standard or requirement contained in 40 CFR Part 72. The requirements of 40 CFR Part 72, and any appendices included therein, are hereby incorporated by reference.

(e) Full compliance. A person who owns or operates an emission source complying with the emission limitations and prohibitions of subsections (a), (b), (c) and (d) above shall not be exempt from complying with the emission limitations and prohibitions contained in this chapter.

(Ord. No. 98-601, § 401, eff. 10-1-98)

Secs. 89-92--89-100. Reserved.

### DIVISION 3. TOXIC AIR CONTAMINANTS

Sec. 89-101. Promulgation of rules for air toxins.

In accordance with the provisions of the Home Rule Charter for Wayne County, the division will promulgate rules establishing emission limitations and prohibitions for toxic air contaminants.

(Ord. No. 98-601, § 501, eff. 10-1-98)

Sec. 89-102--89-110. Reserved.

### DIVISION 4. PARTICULATE MATTER

Sec. 89-111. Promulgation of rules for emission limitations and prohibitions.

In accordance with the provisions of the Home Rule Charter for Wayne County, the division will promulgate rules establishing emission limitations and prohibitions for particulate matter.

(Ord. No. 98-601, § 601, eff. 10-1-98)

Sec. 89-112. Particulate emissions from spray painting operations.

The allowable particulate emissions from non-production spray painting operations (paint usage of less than 20 gallons per day), shall be 0.02 pounds of particulate per 1000 standard pounds of exhaust gas.

(Ord. No. 98-601, § 602, eff. 10-1-98)

Secs. 89-113--89-120. Reserved.

#### DIVISION 5. SULFUR-BEARING COMPOUNDS

Sec. 89-121. Promulgation of rules for emission limitations and prohibitions--  
Sulfur-bearing compounds.

In accordance with the provisions of the Home Rule Charter for Wayne County,  
the division will promulgate rules establishing emission limitations and  
prohibitions for sulfur-bearing compounds.

(Ord. No. 98-601, § 701, eff. 10-1-98)

Secs. 89-122--89-130 Reserved.

#### DIVISION 6. EXISTING AND NEW SOURCES OF VOLATILE ORGANIC COMPOUND EMISSIONS

Sec. 89-131. Promulgation of rules for emissions for existing sources.

In accordance with the provisions of the Home Rule Charter for Wayne County,  
the division will promulgate rules dealing with emissions from existing sources of  
volatile organic compounds.

(Ord. No. 98-601, § 801, eff. 10-1-98)

Sec. 89-132. Promulgation of rules for emissions for new sources.

In accordance with the provisions of the Home Rule Charter for Wayne County,  
the division will promulgate rules dealing with emissions from new sources of  
volatile organic compounds.

(Ord. No. 98-601, § 802, eff. 10-1-98)

Secs. 89-133--89-140. Reserved.

#### DIVISION 7. MISCELLANEOUS

Sec. 89-141. Air contaminant or water vapor; when prohibited.

A person shall not cause or permit the emission of an air contaminant or water  
vapor in quantities that cause, alone or in reaction with other air contaminants,  
either of the following:

- (a) Injurious effects to human health or safety, animal life, plant life of  
significant economic value, or property.
- (b) Unreasonable interference with the comfortable enjoyment of life and  
property.

(Ord. No. 98-601, § 901, eff. 10-1-98)

Sec. 89-142. Odor.

When applying section 89-141 to odorous emissions, division personnel shall  
classify the intensity of the odors according to the following scale:

- 0 A concentration of an odorant which  
produces no sensation.
- 1 Concentration which is just barely  
detectable.
- 2 A distinct and definite odor whose  
characteristic is clearly detectable.

- 3 An odor strong enough to cause a person to attempt to avoid it completely.
- 4 An odor so strong as to be overpowering and intolerable for any length of time.

An odor which has an odor intensity of 2 or more but does not cause a reasonable person to believe that the odor unreasonably interferes with the comfortable enjoyment of life and property, in accordance with section 89-141, does not constitute a violation of this chapter. A person in violation of this section is subject to enforcement activities pursuant to this chapter.

(Ord. No. 98-601, § 902, eff. 10-1-98)

Sec. 89-143. Promulgation of rules for miscellaneous emission limitations.

In accordance with the provisions of the Home Rule Charter for Wayne County, the division will promulgate rules dealing with miscellaneous emission limitations and prohibitions.

(Ord. No. 98-601, § 903, eff. 10-1-98)

Sec. 89-144. Waste-burning emission source or equipment.

(a) Prohibition. A person shall not cause or permit the use, installation or operation of any waste-burning emission source or equipment except:

- (1) Commercial and industrial waste-burning sources;
- (2) Crematory and pathological burning equipment designed and used for the burning of human and animal remains consisting of carcasses, organs, and solid organic wastes from hospitals, laboratories, abattoirs, animal pounds and similar emission sources;
- (3) Liquid and gaseous waste-burning equipment owned and operated by the person generating the waste and designed and used solely for the burning of gaseous, liquid, or semi-liquid wastes such as tars, paints, solvents and fumes generated at the same geographical site;
- (4) Burning equipment designed and used for the destruction of United States currency notes or postage stamps;
- (5) Burning equipment designed and used for the removal of insulation from electric motors, electrical wires, or for cleaning of steel drums;
- (6) Burning equipment designed and used for the disposal of sewage sludge, scum or grit;
- (7) Municipal waste burning equipment designed and used for the destruction of refuse which has a rated plant capacity in excess of 50 tons per day; or
- (8) Other special purpose waste-burning equipment, with written permission of the director.

(b) Use of authorized waste-burning emission source. A person shall not cause or permit the use or operation of any waste-burning emission source listed above unless such emission source is utilized and maintained in a manner to assure compliance with the emission limitations and prohibitions of this chapter.

(Ord. No. 98-601, § 904, eff. 10-1-98)

Sec. 89-145. Dry and wet blasting.

A person shall not conduct the dry blasting of the exterior of any structure without the prior written approval of the division. Prior to the commencement of any dry blasting activity, the division shall conduct an inspection of the structure.

Facilities where emission sources are regulated by this chapter are exempt from this section. The owner or operator of wet blasting or cleaning equipment shall at the end of each shift clean up the site where blasting is done so as to prevent the spent abrasive or scale from becoming airborne or scattered by the wind.

(Ord. No. 98-601, § 905, eff. 10-1-98)

Secs. 89-146--89-160. Reserved

#### ARTICLE V. EMISSION AVERAGING AND EMISSION REDUCTION CREDIT TRADING

Sec. 89-161. Promulgation of rules for emission averaging and emission reduction credit trading.

In accordance with the provisions of the Home Rule Charter for Wayne County, the division may promulgate rules establishing an emission averaging and emission reduction credit trading program.

(Ord. No. 98-601, § 1001, eff. 10-1-98)

Secs. 89-162--89-180. Reserved.

#### ARTICLE VI. FUGITIVE EMISSIONS

Sec. 89-181. Application.

(a) Regulation of emissions.

(1) The provisions of this article, including subsection (2) below, shall apply to any fugitive dust source at all mining operations, standard industrial classification major groups 10 through 14; manufacturing operations, standard industrial classification major groups 20 through 39; railroad transportation, standard industrial classification major group 40; motor freight transportation and warehousing, standard industrial classification major group 42; electric services, standard industrial classification group 491; sanitary services, standard industrial classification group 495; and steam supply, standard industrial classification group 496, which will be set forth in rules to be promulgated pursuant to this chapter.

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

(3) In addition to the requirements of subsection (2) above, and except as provided in subsections 89-181(a)(3)e., f. and g., a person shall control fugitive dust emissions in a manner that results in compliance with all of the following provisions:

- a. Potential fugitive dust sources shall be maintained and operated so as to comply with all of the following applicable provisions:
  - i. All storage piles of materials, where the total uncontrolled emissions of fugitive dust from all such piles at a facility is in excess of 50 tons per year and where such piles are located within a facility with potential particulate emissions from all sources including fugitive dust sources and all other sources exceeding 100 tons per year, shall be protected by a cover or enclosure or sprayed with water or a surfactant solution, or treated by an equivalent method, in accordance with the operating program required by subsection 89-181(a)(4).
  - ii. All conveyor loading operations to storage piles specified in subsection i. above shall utilize spray systems, telescopic chutes, stone ladders, or other equivalent methods in accordance with the operating program required by subsection 89-181(a)(4). Batch loading operations to storage piles specified in subsection i. above shall utilize spray systems, limited drop heights, enclosures, or other equivalent methods in accordance with the operating program required by subsection 89-181(a)(4). Unloading operations from storage piles specified in subsection i. above shall utilize rake reclaimers, bucket wheel reclaimers, under-pile conveying, pneumatic conveying with baghouse, water sprays, gravity-feed plow reclaimer, front-end loaders with limited drop heights, or other equivalent methods in accordance with the operating program required by subsection 89-181(a)(4).
  - iii. All traffic pattern access areas surrounding storage piles specified in subsection i. above and all traffic pattern roads and parking facilities shall be paved or treated with water, oils, or chemical dust suppressants. All paved areas, including traffic pattern access areas surrounding storage piles specified in subsection i. above, shall be cleaned in accordance with the operating program required by subsection 89-181(a)(4). All areas treated with water, oils, or chemical dust suppressants shall have the treatment applied in accordance with the operating program required by subsection 89-181(a)(4).
  - iv. All unloading and transporting operations of materials collected by pollution control equipment shall be enclosed or shall utilize spraying, pelletizing, screw conveying, or other equivalent methods.
  - v. Crushers, grinding mills, screening operations, bucket elevators, conveyor transfer points, conveyor bagging operations, storage bins, and fine product truck and railcar loading operations shall be sprayed with water or a surfactant solution, utilize choke-feeding, or be treated by an equivalent method in accordance with an operating program required under subsection 89-181(a)(4). This subsection v. shall not apply to high-lines at steel mills.
- b. If particulate collection equipment is operated pursuant to this article, emissions from such equipment shall not exceed 0.03 grains per dry standard cubic foot (0.07 grams per cubic meter).
- c. A person shall not cause or allow the operation of a vehicle for the transporting of bulk materials with a silt content of more than one percent without employing 1 or more of the following control methods:
  - i. The use of completely enclosed trucks, tarps, or other covers for bulk materials with a silt content of 20 percent or more by weight.

- ii. The use of tarps, chemical dust suppressants, or water in sufficient quantity to maintain the surface in a wet condition for bulk materials with a silt content of more than 5 percent but less than 20 percent.
  - iii. Loading trucks so that no part of the load making contact with any sideboard, side panel, or rear part of the load comes within six inches of the top part of the enclosure for bulk materials with a silt content of more than one percent but not more than five percent.
    - d. All vehicles for transporting bulk materials off-site shall be maintained in such a way as to prevent leakage or spillage and shall comply with the requirements of section 720 of the Michigan Vehicle Code, Public Act No. 300 of 1949, being section MCL 257.720, and with R 28.1457 of the Michigan Administrative Code.
    - e. The provisions of subsections c. and d. do not apply to vehicles with less than a 2-ton capacity that are used to transport sand, gravel, stones, peat, or topsoil.
    - f. The provisions of subdivision c.i. and c.ii. do not apply to fly ash which has been thoroughly wetted and has the property of forming a stable crust upon drying.
    - g. The provisions of subsection c. do not apply to the transportation of iron or steel slag if the vehicles do not leave the facility and the slag has a temperature of 200 degrees Fahrenheit or greater.
- (4) All fugitive dust sources subject to the provisions of this article shall be operated in compliance with both the provisions of an operating program that shall be prepared by the owner or operator of the source and submitted to the division and with applicable provisions of this article. Such operating program shall be designed to significantly reduce the fugitive dust emissions to the lowest level that a particular source is capable of achieving by the application of control technology that is reasonably available, considering technological and economic feasibility. The operating program shall be implemented with the approval of the division.
- (5) The operating program required by subsection (4) above is subject to review and approval or disapproval by the division and shall be considered approved if not acted on by the division within 90 days of submittal. All programs approved by the division shall become a part of a legally enforceable order or as part of an approved permit to install or operate. At a minimum, the operating program shall include all of the following:
- a. The name and address of the facility.
  - b. The name and address of the owner or operator responsible for implementation of the operating program.
  - c. A map or diagram of the facility showing all of the following:
    - i. Approximate locations of storage piles.
    - ii. Conveyor loading operations.
    - iii. All traffic patterns within the facility.
  - d. The location of unloading and transporting operations with pollution control equipment.

- e. A detailed description of the best management practices utilized to achieve compliance with this section, including an engineering specification of particulate collection equipment, application systems for water, oil, chemicals, and dust suppressants utilized, and equivalent methods utilized.
- f. A test procedure, including record keeping, for testing all waste or recycled oils used for fugitive dust control for toxic contaminants.
- g. The frequency of application, application rates, and dilution rates if applicable, of dust suppressants by location of materials.
- h. The frequency of cleaning paved traffic pattern roads and parking facilities.
- i. Other information as may be necessary to facilitate the division's review of the operating program.

(6) The operating program required by subsection 89-181(a)(4) shall be amended by the owner or operator so that the operating program is current and reflects any significant change in the fugitive dust source or fugitive dust emissions. An amendment to an operating program shall be consistent with the requirements of this article and shall be submitted to the division for its review and approval or disapproval.

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

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

- i. The opacity limits of subsection 89-181(a)(2).
- ii. The spray requirements of subsection 89-181(a)(3)a.i. to (a)(3)a.v.

b. An alternate provision shall not be established by the division unless the division is reasonably convinced of all of the following:

- i. That a fugitive dust emitting process, operation, or activity subject to the alternate provisions is in compliance or on a legally enforceable schedule of compliance with the other rules of the division.
- ii. That compliance with the provisions of this section is not technically or economically reasonable.
- iii. That reasonable measures to reduce fugitive emissions as required by this section have been implemented in accordance with or will be implemented in accordance with a schedule approved by the division.

(8) Any alternate provisions approved by the division pursuant to subsection (7) above shall be submitted to the MDEQ for submission to United States Environmental Protection Agency as an amendment to the state implementation plan.

(Ord. No. 98-601, § 1101, eff. 10-1-98)

Sec. 89-182. Definitions.

(a) Definitions applicable to article VI.

Control equipment or pollution control equipment has the meaning ascribed to control equipment as indicated in the rules promulgated pursuant to this chapter and applicable to this article.

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

Fugitive dust has the meaning ascribed to it as indicated in the rules promulgated pursuant to this chapter and applicable to this article.

Fugitive dust source means any fugitive dust emitting process, operation, or activity regulated under section 89-181.

Opacity has the meaning ascribed to it as indicated in the rules promulgated pursuant to this chapter.

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

Potential particulate emissions means those emissions of particulate matter expected to occur without control equipment, unless such control equipment is, aside from air pollution control requirements, vital to the production of the normal product of the source or to its normal operation. Annual potential particulate emissions shall be based on the maximum annual-rated capacity of the source, unless the source is subject to enforceable permit conditions or enforceable orders which limit the operating rate or the hours of operation or both.

Enforceable agreements or permit conditions on the type or amount of materials combusted or processed shall be used in determining the potential particulate emission rate of a source.

Process or process equipment has the meaning ascribed to it as indicated in the rules promulgated pursuant to this chapter.

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

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

- a. The data reduction provisions of section 2.5 of method 9 shall be based on an average of 12 consecutive readings recorded at 15-second intervals.
- b. For roadways and parking lots, opacity observations shall be made from a position such that the observer's line of vision is approximately perpendicular to the plume direction and approximately four feet directly above the surface of the road or parking area from which the emissions are being generated. The observer shall not look continuously at the plume, but instead shall observe the plume momentarily at 15-second intervals at the point of maximum plume density. Consecutive readings must be suspended for any 15-second period if a vehicle is in the observer's line of sight. If this occurs, a "V" shall be used in lieu of a numerical value, and a footnote shall be made to indicate that "V" signifies that the observer's view was obstructed by a vehicle. Readings shall continue at the next 15-second period, and they shall be considered consecutive to the reading immediately preceding the 15-second period denoted by a "V".

Consecutive readings also shall be suspended for any 15-second period if a vehicle passes through the area traveling in the opposite direction and creates a

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

(Ord. No. 98-601, § 1102, eff. 10-1-98)

Secs. 89-183--89-200. Reserved.

#### ARTICLE VII. PERMITS TO INSTALL

Sec. 89-201. Applicability and promulgation of rules.

(a) Applicability and promulgation of rules.

Article VII shall be suspended and of no force and effect until the earlier of the following two dates, upon which date article VII shall take effect: (i) the date upon which, pursuant to MCL 324.5523, a delegation from MDEQ to the division takes effect authorizing the division to issue permits and administer and enforce Act 451 Part 55 and the rules promulgated thereunder, the Clean Air Act and the state implementation plan; or (ii) the date that is 60 days after the division has issued an appropriate public notice stating that article VII shall take effect, provided however, that the division shall not issue any such notice before August 1, 2000. Sources in the county that are subject to this chapter shall be required to comply with permit to install procedures to be established by the division.

From and after a statutory delegation of authority to the county exists under MCL 324.5523, the division shall issue permits and implement its responsibilities in accordance with the delegation, Act 451 Part 55, rules promulgated under Act 451 Part 55, the Clean Air Act, and the applicable provisions of the state implementation plan.

If a statutory delegation of authority to the county does not exist on October 1, 2000, article VII of this chapter shall be in full force and effect, and the division shall issue permits and implement its responsibilities in accordance with this chapter and rules that may be promulgated under this chapter.

(b) Installation of a process or process equipment.

(1) Except as provided in subsections (3), (4), or as provided by rules, a person shall not install, construct, reconstruct, relocate, alter, or modify any process or process equipment without first obtaining from the division a permit to install or a permit to operate authorized pursuant to rules promulgated under subsection (6) if applicable, authorizing the conduct or activity. A person requesting a permit to install shall submit two (2) copies of the permit to install application to the division.

(2) Except as provided in subsections (4), (5), or as provided by rules, the permit to install program is applicable to each new or modified process or process equipment that emits or may emit an air contaminant.

(3) No permit to install shall be required for a process or process equipment if MDEQ has determined in writing pursuant to MAC R 336.1279, that a permit to install is not required for the same type of process or process equipment located outside Wayne County.

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

(5) The division shall not exempt any new source or modification that would meet the definition of a major source or major modification under Parts C and D of Title I of the Clean Air Act, chapter 360, 91 Stat. 731, 42 USC. 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.

(6) The division may issue a permit to install, a general permit, or a permit to operate authorized under rules promulgated under this chapter, that authorizes installation, operation, or trial operation, as applicable, of a source, process, or process equipment at numerous temporary locations. Such a permit shall include terms and conditions necessary to assure compliance with all applicable requirements of this chapter, the rules promulgated under this chapter, Act 451 Part 55, and the Clean Air Act, including those necessary to assure compliance with all applicable ambient air standards, emission limits, and increment and visibility requirements pursuant to Part C of Title I of the Clean Air Act, chapter 360, 91 Stat. 731, 42 USC 7470 to 7479 and 7491 to 7492, at each location, and shall require the owner or operator of the process, source, or process equipment to notify the division at least 10 days in advance of each change in location.

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

(8) Any person may seek judicial appeal of the issuance or denial by the division of a permit to install, a general permit, or a nonrenewable permit to operate for sources, processes or process equipment that are not subject to the requirement to obtain a renewable operating permit pursuant to article VIII, for a new source. A petition for judicial review is the exclusive means of obtaining

judicial review of such a permit and shall be filed within 90 days after the final permit action. Such a petition may be filed after that deadline only if it is based solely on grounds arising after the deadline for judicial review. Such a petition shall be filed within 90 days after the new grounds for review arise.

(Ord. No. 98-601, § 1201, eff. 10-1-98)

Sec. 89-202. Denial or revocation of permit.

(a) Applicability. In accordance with this chapter, the division may, after notice and opportunity for public hearing, deny or revoke a permit issued under this chapter if any of the following circumstances exist:

(1) Installation, modification, or operation of the source will violate this chapter, or the Clean Air Act, unless the source is in compliance with a legally enforceable schedule of compliance contained in a permit or order.

(2) Installation, construction, reconstruction, relocation, alteration, or operation of the source presents or may present an imminent and substantial endangerment to human health, safety, or welfare, or the environment.

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

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

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

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

(7) The above rules also apply to all permits issued by the division.

(Ord. No. 98-601, § 1202, eff. 10-1-98)

Sec. 89-203. Air quality modeling.

In accordance with the provisions of the Home Rule Charter for Wayne County, the division will promulgate rules requiring air quality modeling and air quality modeling demonstration requirements.

(Ord. No. 98-601, § 1203, eff. 10-1-98)

Sec. 89-204. Exemptions from requirement of this ordinance.

(a) Sources, processes and process equipment.

(1) As used in this section, "section 112" means section 112 of Part A of Title I of the Clean Air Act, 84 Stat. 1685, 42 USC 7412.

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

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

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

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

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

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

(Ord. No. 98-601, § 1204, eff. 10-1-98)

Sec. 89-205--89-220. Reserved.

#### ARTICLE VIII. OPERATING PERMITS

Sec. 89-221. Applicability and promulgation of rules.

In accordance with section 89-31, from and after the effective date of this chapter and until a statutory delegation of authority to Wayne County exists under MCL 324.5523, the provisions of article VIII of this chapter shall be suspended. From and after a statutory delegation of authority to Wayne County exists under MCL 324.5523, the division shall issue renewable operating permits and implement its responsibilities in accordance with the delegation, Act 451 Part 55, rules promulgated under Act 451 Part 55, the Clean Air Act, this chapter, rules that may be promulgated pursuant to this chapter, and the applicable provisions of the state implementation plan.

(Ord. No. 98-601, § 1301, eff. 10-1-98)

Sec. 89-222. Application and administration of renewable operating permit program.

(a) Applicability.

(1) After the date established pursuant to subsections (3) and (4)(n), if an application for an operating permit is required to be submitted, a person shall not operate a source that is required to obtain an operating permit under section 502a of Title V of the Clean Air Act, chapter 360, 104 Stat. 2641, 42 USC 7661a, and which is thereby subject to the requirements of this chapter, except in compliance with an operating permit issued by the division. A permit issued under this article does not convey a property right or an exclusive privilege.

(2) If a person who owns or operates a source has submitted a timely and administratively complete application for an operating permit, including an application for renewal of an operating permit, but final action has not been taken on the application, the source's failure to have an operating permit is not a violation of subsection (1) unless the delay in final action is due to the failure of the person owning or operating the source to submit information required or requested to process the application. A source required to have a permit under this section is not in violation of subsection (1) before the date on which the

source is required to submit an application pursuant to subsections (3) and (4)(n). Except as otherwise provided in subsection (5), expiration of an operating permit terminates a person's right to operate a source. This subsection does not waive an applicable requirement to obtain a permit under article VII of this chapter.

(3) A person who owns or operates a source required to have an operating permit pursuant to this section shall submit to the division within 12 months after the date on which the source becomes subject to the requirement to obtain a permit under subsection (1), or on an earlier date specified by rule, a compliance plan and an administratively complete application for an operating permit signed by a responsible official, who shall certify the accuracy of the information submitted. The division shall approve or disapprove a timely and administratively complete application, and shall issue or deny the operating permit within 18 months after the date of receipt of the compliance plan and an administratively complete operating application, except that the division shall establish a phased schedule for acting on the timely and administratively complete operating permit applications submitted within the first full year after the operating permit program becomes effective. The schedule shall assure that at least 1/3 of the applications will be acted on by the division annually over a period not to exceed four years after the operating permit program becomes effective.

(4) The division shall promulgate rules to establish an operating permit program as required by the State of Michigan and under Title V of the Clean Air Act, to be administered by the division. This permit program shall include all of the following and, at a minimum, shall be consistent with the requirements of Title V:

a. Provisions defining the categories of sources that are subject to the operating permit requirements of this article. Operating permits under this article are not required for any source category that is not required to obtain an operating permit under section 502(a) of the Clean Air Act, Title V of chapter 360, 104 Stat. 2641, 42 USC 7661a.

b. Requirements for operating permit applications, including standard application forms, the minimum information that must be submitted with an administratively complete application, and criteria for determining in a timely fashion the administrative completeness of an application.

c. A requirement that each operating permit application include a compliance plan describing how the source will comply with all applicable requirements of this chapter, rules promulgated under this chapter, Act 451 Part 55 and the Clean Air Act.

d. Provisions for inspection, entry, monitoring, record keeping, and reporting applicable to each operating permit issued under this section.

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

f. Provisions for transmitting copies of each operating permit application and proposed and final permits, including each modification or renewal, to the Michigan Department of Environmental Quality and the Administrator of the United States Environmental Protection Agency, and for notifying all other states

whose air quality may be affected and are contiguous to the State of Michigan and for providing an opportunity for those states to provide written recommendations on each operating permit application and proposed permit, pursuant to the requirements of section 505(a) and (d) of the Clean Air Act, Title V of chapter 360, 104 Stat. 2643, 42 USC 7661d.

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

h. Provisions to allow for changes within a permitted source without a revision to the operating permit, if the changes are not modifications under any provision of Title I of the Clean Air Act, chapter 360, 77 Stat. 392, 42 USC 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515, and the changes do not exceed the emissions allowed under the operating permit, if the owner or operator of the source provides the division and the Administrator of the United States Environmental Protection Agency with written notification at least seven days in advance of the proposed changes. However, the division may provide a different time frame for an emergency as defined in this chapter. The emissions allowed under the operating permit include any enforceable emission limitation, standard, or other condition, including a work practice standard, determined by the division to be required by an applicable requirement of this chapter, rules promulgated under this chapter, or the Clean Air Act, or that establishes an emission limit or an enforceable emissions cap that the source has assumed to avoid an applicable requirement of this chapter, rules promulgated under this chapter, or the Clean Air Act, to which the source would otherwise be subject. These provisions shall include the following:

1. Changes that contravene an express permit condition. Such changes shall not include changes that would violate any applicable requirement of this chapter, rules promulgated under this chapter, or the Clean Air Act, or changes that would contravene any applicable requirement for monitoring, record keeping, reporting, or compliance certification.

2. Changes that involve emissions trading if trading has been approved by the Administrator of the United States Environmental Protection Agency as a part of the state implementation plan.

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

i. The change meets all applicable requirements of this chapter, the rules promulgated under this chapter, and the Clean Air Act and does not violate any existing emission limitation, standard, or other condition of the operating permit.

ii. The change does not affect any applicable requirement of the acid rain program under Title IV and is not a modification under any provision of Title I of the Clean Air Act, chapter 360, 77 Stat. 392, 42 USC 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.

iii. The source provides prompt written notice to the division and the Administrator of the United States Environmental Protection Agency, except for

changes that qualify as insignificant processes or activities pursuant to section 89-222(a)(2).

- j. Provisions to allow changes within a permitted source, pursuant to 40 CFR 70.7(e)(2), that may be made immediately after the source files an application with the division, if all of the following criteria are met:
  - i. The change does not violate any applicable requirement of this chapter, the rules promulgated under this chapter, or the Clean Air Act.
  - ii. The change does not significantly affect an existing monitoring, record keeping, or reporting requirement in the operating permit.
  - iii. The change does not require or modify a case-by-case determination of an emission limitation or other standard, or a source-specific determination, for temporary sources, of ambient air impacts, or a visibility or increment analysis.
  - iv. The change does not seek to establish or modify an emission limitation, standard, or other condition of the operating permit that the source has assumed to avoid an applicable requirement of this chapter, the rules promulgated under this chapter, Act 451 Part 55 or the Clean Air Act, to which the source would otherwise be subject.
  - v. The change is not a modification under any provision of Title I of the Clean Air Act, chapter 360, 77 Stat. 392, 42 USC 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, and 7511 to 7515.
- k. Provisions for expeditiously handling administrative changes within a permitted source, pursuant to 40 CFR 70.7(d). These changes are limited to the following:
  - i. Correction of a typographical error.
  - ii. A change in the name, address, or phone number of any person identified in the permit, or other similar minor administrative change.
  - iii. A change that requires more frequent monitoring or reporting by the person owning or operating the source.
  - iv. A change in ownership or operational control of the source, if the department determines that no other change in the operating permit is necessary, and if a written agreement containing a specific date for transfer of operating permit responsibility, coverage, and liability between the current and new owners or operators has been submitted to the division.
  - v. Incorporation into the operating permit of the requirements of a permit to install issued pursuant to article VII of this chapter, or Act 451 Part 55, if the permit to install has met procedural requirements that are substantially equivalent to the requirements of this article, including the content of the permit, and the provisions for participation by the United States Environmental Protection Agency and other affected states and participation of the public under article I of this chapter.
- l. Provisions for including reasonably anticipated alternate operating scenarios in an operating permit, pursuant to 40 CFR 70.6(a)(9).
- m. Provisions to allow for the trading of emission increases and decreases within a permitted source solely for the purpose of complying with an enforceable emissions cap that is established in the permit pursuant to 40 CFR

70.4(b)(12)(iii), independent of any otherwise applicable requirements of this chapter, the rules promulgated under this chapter, or the Clean Air Act.

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

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

(6) Each operating permit issued pursuant to this article shall include those enforceable emissions limitations and standards applicable to the source, if any, and other conditions necessary to assure compliance with the applicable requirements of this chapter, rules incorporated by reference under this chapter, and the Clean Air Act, a schedule of compliance, and a requirement that the owner or operator of a source submit to the division, at least every six months, a report summarizing the results of any required monitoring. Each operating permit issued pursuant to this article shall also include a severability clause to ensure the continued validity of the unchallenged terms and conditions of the operating permit if any portion of a permit is challenged.

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

a. To incorporate new applicable emissions limitations, standards, or rules incorporated by reference under this chapter or regulations promulgated under the Clean Air Act, issued or promulgated after the issuance of the permit, if 3 or more years remain in the term of the permit. A revision shall occur as expeditiously as practicable, but not later than 18 months after the promulgation of the emission limitation, standard, rule, or regulation. A revision is not required if the effective date of the emission limitation, standard, rule, or regulation is after the expiration date of the permit.

b. To incorporate new applicable standards and requirements of the acid rain program under Title IV of the Clean Air Act into the operating permits of sources affected by that program.

c. If the division determines that the permit contains a material mistake; that information required by this chapter, rules promulgated under this chapter, or the Clean Air Act was omitted; or that an inaccurate statement was made in establishing the emissions limitations, standards, or conditions of the permit.

d. If the division determines that the permit must be revised to assure compliance with the applicable requirements of this chapter, rules promulgated under this chapter, or the Clean Air Act.

(8) At the request of the permit holder, a permit revision under subsection (7) may be treated as a permit renewal if it complies with the applicable

requirements for permit renewals of this chapter, rules promulgated under this chapter, and the Clean Air Act.

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

(10) The division shall not approve or otherwise issue any operating permit for a source required to obtain an operating permit pursuant to section 502(a) of Title V of the Clean Air Act, chapter 360, 104 Stat. 2641, 42 USC 7661a, if the Administrator of the United States Environmental Protection Agency objects to issuance of the permit in a timely manner pursuant to section 505(b) of Title V of the Clean Air Act, chapter 360, 104 Stat. 2643, 42 USC 7661d.

(11) Each operating permit shall contain a statement that compliance with an operating permit issued in accordance with this article is in compliance with subsection (1). In addition, the statement shall provide that compliance with the operating permit is in compliance with other applicable requirements of this chapter, rules incorporated by reference under this chapter, and the Clean Air Act, as of the date of permit issuance if either of the following requirements is met:

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

(12) An application for an operating permit may include a request that the permit include reference to specific requirements of this chapter, rules promulgated under this chapter, Act 451 Part 55, or the Clean Air Act that the person owning or operating the source believes are not applicable to the source. The operating permit shall include a determination of applicability for the requirements included in the request.

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

(14) A person who owns or operates an existing source that is required to obtain an operating permit under this article, a general permit, or a nonrenewable permit to operate for sources, processes or process equipment that are not subject to the requirement to obtain a renewable operating permit pursuant to this article, may file a petition with the division for review of the denial of his or her application for such a permit, the revision of any emissions limitation, standard, or condition, or a proposed revocation of his or her permit. This review shall be conducted pursuant to the provisions set forth in sections 89-363 and 89-364 of this chapter. Any person may seek judicial appeal of the issuance or denial of an operating permit. A petition for judicial review is the exclusive means of obtaining judicial review of a permit and shall be filed within 90 days after the

final permit action. Such a petition may be filed after that deadline only if it is based solely on grounds arising after the deadline for judicial review and if the appeal does not involve applicable standards and requirements of the acid rain program under title IV. Such a petition shall be filed within 90 days after the new grounds for review arise.

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

(16) The division may, after notice and opportunity for public hearing, pursuant to the requirements of article I of this chapter, issue a general permit covering numerous similar sources, processes, or process equipment, or a permit that authorizes operation of a source at numerous temporary locations. A general permit or a permit that authorizes operation of a source at numerous temporary locations shall comply with all requirements applicable to operating permits pursuant to this article. A permit that authorizes operation of a source at numerous temporary locations shall include terms and conditions necessary to assure compliance with all applicable requirements of this chapter, rules promulgated under this chapter, Act 451 Part 55, and the Clean Air Act, including those necessary to assure compliance with all applicable ambient air standards, applicable emission limits, and applicable increment and visibility requirements pursuant to Part C of Title I of the Clean Air Act, chapter 360, 91 Stat. 731, 42 USC 7470 to 7479 and 7491 to 7492, at each authorized location and shall require the owner or operator of the source to notify the division at least 10 days in advance of each change in location. A source covered by a general permit is not relieved from the obligation to file an application for a permit pursuant to subsections (3) and (5).

(17) As used in this article, "technically complete" means, for the purposes of an application for an operating permit required by this section, all of the information required for an administratively complete application and any other specific information requested by the division that may be necessary to implement and enforce all applicable requirements of this chapter, the rules promulgated under this chapter, Act 451 Part 55 or the Clean Air Act, or to determine the applicability of those requirements. An application is not technically complete if it omits information needed to determine the applicability of any lawful requirement or to enforce any lawful requirement or any information necessary to evaluate the amount of the annual air quality fee for the source.

(18) Upon receipt of a permit application, prior to taking final action to issue a permit, the division shall transmit to the state a copy of each administratively complete permit application, application for a permit modification or renewal, or proposed permit. The division shall transmit to the state a copy of each permit issued by the division within 30 days of issuance of the permit.

(Ord. No. 98-601, § 1302, eff. 10-1-98)

Sec. 89-223. Administratively complete action; exemptions; compliance plan  
(a) Information requirements.

(1) An administratively complete application means an application for an operating permit required in subsection 89-222(a) that is submitted on standard application forms provided by the division and includes all of the following:

- a. Source identifying information including company name and address, owner's name, and the names, addresses, and telephone numbers of the responsible official and permit contact person.
- b. A description of the source's processes and products using the applicable standard industrial classification codes.
- c. A description of all emissions of air contaminants emitted by the source that are regulated under this chapter, the rules promulgated by this chapter, Act 451 Part 55, and the Clean Air Act.
- d. A schedule for submission of annual compliance certifications during the permit term, unless more frequent certifications are specified by an underlying applicable requirement.
- e. A certification by a responsible official of the truth, accuracy, and completeness of the application. The certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the application are true, accurate, and complete.
- f. For each process, except for any insignificant processes listed by the division pursuant to subsection (2), all of the following:
  - i. A description of the process using the standard classification code.
  - ii. Citation and description of all applicable requirements, including any applicable test method for determining compliance with each applicable requirement.
  - iii. Actual and allowable emission rates in tons per year and in terms that are necessary to establish compliance with all applicable emission limitations and standards, including all calculations used to determine those emission rates. Actual emission information shall be used for verifying the compliance status of the process with all applicable requirements. Actual emission information shall not be used, except at the request of the permit applicant, to establish new emission limitations or standards or to modify existing emission limitations or standards unless such limitation or standard is required to assure compliance with a specific applicable requirement.
  - iv. Information on fuels, fuel use, raw materials, production rates, and operating schedules, to the extent it is needed to determine or regulate emissions.
  - v. Limitations on source operation affecting emissions or any work practice standards, if applicable.
  - vi. Identification and description of air pollution control equipment and compliance monitoring devices or activities.
  - vii. Identification and description of all emission points in sufficient detail to establish the basis for fees or to determine applicable requirements.
  - viii. Other information required by any applicable requirement.

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

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

xi. Information necessary to define any alternative operating scenarios that are to be included in the operating permit or to define permit terms and conditions implementing subsection 89-222(a)(4)l.

xii. A compliance plan.

xiii. A schedule of compliance.

(2) The division shall adopt the Michigan Department of Environmental Quality's list of insignificant processes or activities, which are exempt from all or part of the information requirements of MCL 324.5507. For any insignificant processes or activities that are exempt because of size or production rate, the application shall include a list of the insignificant processes and activities.

(3) As used in subsection 89-222(a) and this section, "compliance plan" means a description of the compliance status of the source with respect to all applicable requirements for each process as follows:

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

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

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

(Ord. No. 98-601, § 1303, eff. 10-1-98)

Secs. 89-224--89-240. Reserved.

#### ARTICLE IX. FEES

Sec. 89-241. Calculation of fees.

(a) Air quality fees.

(1) Whenever a delegation of authority exists to the division under MCL 324.5523, 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 article. On behalf of the county, the division may levy and collect an annual air quality fee from the owner or operator of each fee-subject facility in the county. The state intends that the fees required under this article 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 chapter on the owners or operators of fee-subject facilities in the county.

(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 subsection (e). The facility charge shall be \$2,500.

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 subsection (e). The facility charge shall be \$1,000.

c. For Category III facilities, the annual air quality fee shall be \$200.

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 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 of the Clean Air Act. 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, the division 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 division shall deposit all fees collected under this section to the credit of the emissions control fund created by this chapter.

(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 division shall assess the owner or operator a penalty of five percent of the amount of the unpaid fee for each month that the payment is overdue up to a maximum penalty of 25 percent 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 division 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 division 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 to appeal the assessed fee pursuant to procedures set forth in article XV of this chapter.

(7) If requested by the division, by March 15 of each year, or within 45 days of a request by the division, 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 division. The information shall be sufficient for the division to calculate the facility's emissions for that year and meet the requirements of subpart Q of 40 CFR part 51.

(8) By July 1 of each year, the division shall provide the owner or operator of each fee-subject facility required to pay an emission charge pursuant to this article with a copy of the division'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 division. The division 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 division, the owner or operator may appeal this determination pursuant to procedures set forth in article XV of this chapter.

(9) The county corporation counsel may bring an action for the collection of the fees imposed under this section and any penalty assessed under subsection 5.

(Ord. No. 98-601, § 1401, eff. 10-1-98)

Sec. 89-242. Emissions control fund.

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

(b) Deposits. Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse into the general fund.

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

(d) Limitations on expenditures. As of the effective date of this chapter, money shall be expended from the fund, upon appropriation, only for the following purposes as they relate to implementing the renewable operating permit program required by Title V of the Clean Air Act:

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

- (2) 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;
- (3) General administrative costs of running the operating permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;
- (4) Implementing and enforcing the terms of any operating permit, not including any court costs or other costs associated with an enforcement action;
- (5) Emissions and ambient monitoring;
- (6) Modeling, analysis, or demonstration;
- (7) Preparing inventories and tracking emissions;
- (8) Pay to the state the pro rata share of the state's support services for Title V programs attributable to the county.

(Ord. No. 98-601, § 1402, eff. 10-1-98)

Secs. 89-243--89-260. Reserved.

#### ARTICLE X. COMPLIANCE AND ENFORCEMENT

Sec. 89-261. Investigation; voluntary agreement; order; appeal.

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

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

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

(4) A person aggrieved by an order issued under subsection (3) may appeal pursuant to the procedures set forth in article XV of this chapter. A final order or determination upon the matter following the hearing as set forth in article XV is conclusive, unless reviewed in accordance with applicable law in the county circuit court.

(Ord. No. 98-601, § 1501, eff. 10-1-98)

Sec. 89-262. Violation of ordinance, rule, terms of permit, or order; agreement to correct violation; consent order; public notice and opportunity for public comment; providing copy of proposed consent order.

(a) (1) If the division believes that a violation of this chapter or a rule promulgated under this chapter exists, or a violation of the terms of a permit

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

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

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

(Ord. No. 98-601, § 1502, eff. 10-1-98)

Sec. 89-263. Notice to discontinue pollution; other orders.

(a) Imminent and substantial endangerment orders.

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

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

(3) An order issued by the division under subsection (1) is effective upon issuance and shall remain in effect for a period of not more than 7 days, unless the county corporation counsel brings a civil action to restrain the alleged endangerment pursuant to subsection (2) or section 89-266 before the expiration of that period. If the county corporation counsel brings such an action within the seven day period, the order issued by the division shall remain in effect for an additional seven days or such other period as is authorized by the court in which the action is brought.

(4) Prior to taking an action under subsection (1), the division shall attempt to notify the emergency management coordinator for the county who is appointed pursuant to the emergency management act, Public Act No. 390 of 1976, being sections MCL 30.401 to 30.420.

(Ord. No. 98-601, § 1503, eff. 10-1-98)

Sec. 89-264. Right of entry.

(a) Requirements for entry. The division may, upon the presentation of credentials and other documents as may be required by law, and upon stating the authority and purpose of the investigation, enter and inspect any property at reasonable times for the purpose of investigating either an actual or suspected source of air pollution or ascertaining compliance or noncompliance with this chapter, rules promulgated under this chapter, Act 451 Part 55, the Clean Air Act, a permit issued under this chapter, or any determination or order issued under this chapter. If in connection with an investigation or inspection, samples of air contaminants are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person who is suspected of causing the air pollution. In implementing this subsection, the division or its authorized representative may do any of the following:

(1) Have access to and copy, at reasonable times, any records that are required to be maintained pursuant to this chapter, rules promulgated under this chapter, Act 451 Part 55, the Clean Air Act, a permit issued under this chapter, or any determination or order issued under this chapter.

(2) Inspect at reasonable times any facility, equipment, including monitoring and air pollution control equipment, practices, or operations regulated or required under this chapter, rules promulgated under this chapter, Act 451 Part 55, the Clean Air Act, a permit issued under this chapter, or any determination or order issued under this chapter.

(3) Sample or monitor at reasonable times substances or parameters for the purpose of determining compliance with this chapter, rules promulgated under this chapter, Act 451 Part 55, the Clean Air Act, a permit issued under this chapter, or any determination or order issued under this chapter. The division may enter into a contract with a person to sample and monitor as authorized under this subdivision.

(b) Petition or civil action for right of entry.

(1) If the division, or an authorized representative of the division, is refused entry or access to records and samples under subsection (a) for the purposes of utilizing this section, the county corporation counsel or the county prosecutor's office, where appropriate, on behalf of the county, may do either of the following:

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

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

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

a. A full- or part-time employee of the division or other county department or agency to which the division delegates certain duties under this section.

b. For the purpose of utilizing the powers conferred in subsection (a)(3) above, a contractor retained by Wayne County as a county to which authority has been delegated under MCL 324.5523.

(Ord. No. 98-601, § 1504, eff. 10-1-98)

Sec. 89-265. Agreements, contracts and arrangements.

The director, on behalf of and with the appropriate county approval, may enter into agreements, contracts or arrangements necessary or appropriate to assist the division in carrying out its duties and functions with respect to this article.

(Ord. No. 98-601, § 1505, eff. 10-1-98)

Sec. 89-266. Violations, penalties and injunctions.

(a) Enforcement.

(1) The county corporation counsel may bring any appropriate civil action in the name of the county, either at law or equity, as may be necessary to enforce the provisions of this chapter. The county prosecutor may bring any appropriate criminal action in the name of the county, as may be necessary to enforce criminal violations of the provisions of this chapter.

(b) Administrative fines.

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

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

(3) Within 28 days of being assessed an administrative fine from the division, a person may appeal the issuance of the fine assessed under this section pursuant to the provisions set forth in article XV of this chapter.

(4) All fines assessed under this section will be deposited by the division into the county environmental enhancement fund.

(c) Civil actions and injunctions.

(1) The county corporation counsel may commence a civil action against a person for appropriate relief, including injunctive relief, and a civil fine as provided in subsection (2) below, for any of the following:

a. Violating this chapter or a rule incorporated by reference in this chapter.

b. Failure to obtain a permit under this chapter.

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

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

e. Failure to comply with the inspection, entry, and monitoring requirements of this chapter.

f. A violation described in section 89-263(a)(2).

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

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

(4) A civil action brought under this subsection may be brought in any court of competent jurisdiction.

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

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

(d) Misdemeanors.

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

(2) A person who knowingly makes a false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file any notice, application, record, report, plan, or other document required to be submitted pursuant to this chapter or a rule promulgated under this chapter, or who knowingly fails to notify or report information required to be submitted under this chapter or a rule promulgated under this chapter, or who knowingly falsifies, tampers with, renders inaccurate, or knowingly fails to

install any monitoring device or method required under this chapter or a rule promulgated under this chapter, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year and a fine of not more than \$10,000.00 per day, for each violation.

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

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

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

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

(e) Factors in assessment.

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

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

a. The size of the business;

b. The economic impact of the penalty on the business;

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

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

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

f. The economic benefit of noncompliance;

g. The seriousness of the violation;

h. Such other factors as justice may require.

(f) Affirmative defenses.

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

(2) As used in this subsection, "emergency" means a situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, war, strike, riot, catastrophe, or other condition as to which

negligence on the part of the person was not the proximate cause, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation contained in a renewable operating permit issued pursuant to this chapter, due to unavoidable increases in emissions attributable to the emergency. An emergency does not include acts of noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(3) An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation contained in a renewable operating permit issued pursuant to this chapter if the affirmative defense of emergency is demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that establish all of the following:

- a. An emergency occurred and that the permit holder can identify the cause or causes of the emergency.
- b. The permitted source was properly operated at the time of the emergency.
- c. During the emergency the permit holder took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.
- d. The permit holder submitted notice of the emergency to the division within two working days of the time when an emission limitation was exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emission, and corrective actions taken.

(4) In any enforcement proceeding, the permit holder seeking to establish the occurrence of an emergency has the burden of proof.

(g) Malfunctions.

(1) In accordance with the provisions of the Home Rule Charter for Wayne County, the division will promulgate rules relating to malfunctions.

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

(Ord. No. 98-601, § 1506, eff. 10-1-98)

Secs. 89-267--89-280. Reserved.

## ARTICLE XI. VARIANCES

Sec. 89-281. Factors.

(a) Progress.

(1) Notwithstanding any other provision of this part, the division may suspend the enforcement of the whole or any part of any rule as it applies to any person who shows that the enforcement of the rule would be inequitable or unreasonable as to that person, or the division may suspend the enforcement of the rule for any reason considered by it to be sufficient to show that the

enforcement of the rule would be an unreasonable hardship upon the person. Upon any suspension of the whole or any part of the rule the division shall grant to the person a variance from that rule. The division shall not suspend enforcement or grant a variance under this article that would violate the Clean Air Act.

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

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

(c) Period of time. Any variance granted pursuant to this article shall be granted for a period of time, that does not exceed one year, as is specified by the division at the time of granting it, but any variance may be continued from year to year. Any variance granted by the division may be granted on the condition that the person receiving it shall report to the division periodically, as the division specifies, as to the progress which the person has made toward compliance with the rule of the division.

(d) Revocation. The division may revoke or modify any order permitting a variance by written order, after a public hearing held upon not less than ten days' notice.

(Ord. No. 98-601, § 1601, eff. 10-1-98)

Secs. 89-282--89-300. Reserved.

## ARTICLE XII. TESTING AND SAMPLING

Sec. 89-301. Promulgation of rules.

In accordance with the provisions of the Home Rule Charter for Wayne the division will promulgate rules dealing with intermittent testing and sampling.

(Ord. No. 98-601, § 1701, eff. 10-1-98)

Sec. 89-302--89-320. Reserved.

## ARTICLE XIII. CONTINUOUS EMISSION MONITORING AND RECORDING

Sec. 89-321. Promulgation of rules.

In accordance with the provisions of the Home Rule Charter of Wayne County, the division will promulgate rules dealing with continuous emission monitoring. (Ord. No. 98-601, § 1801, eff. 10-1-98)

Sec. 89-322--89-340. Reserved.

#### ARTICLE XIV. INCINERATORS

Sec. 89-341. Municipal solid waste incinerators.

(a) Permits to install or operating permits.

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

- a. Any residential dwelling;
- b. A public or private elementary or secondary school;
- c. A preschool facility for infants or children;
- d. A hospital;
- e. A nursing home.

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

(3) For the purposes of this article, a municipal solid waste incinerator existed prior to June 15, 1993 if it was issued a permit to operate or a permit for installation, construction, modification, alteration or retrofit prior to June 15, 1993, unless it was denied a permit to operate prior to June 15, 1993.

(b) Existence prior to June 15, 1993. For the purposes of this section, 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. 89-342. Medical waste incinerator facilities.

(a) Operating permit.

(1) Subject to section 89-201, on and after the effective date of this chapter, a facility that incinerates medical waste shall not be operated unless the facility has been issued an operating permit by the division, or is operating under an approved trial operation as set forth in the permit to install and as authorized by the division, or is operating in compliance or in accordance with an administrative consent order.

(2) An application for a permit to install so as to effect facility operation under subsection (1), shall be submitted in the form and contain the information required by the division. The division shall issue an operating permit only if the facility is in compliance with the conditions of the permit to install, this chapter and any rules that may be promulgated under this chapter or any rules that may be promulgated under Act 451 Part 55 or the Clean Air Act.

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

(4) Within two years after the effective date of this chapter, the division shall review all certificates of operation issued under the Wayne County Air Pollution Control Ordinance of 1985 for facilities that incinerate medical waste that were issued permits prior to the effective date of this chapter. If, upon review, the division determines that the facility does not meet the requirements of this chapter and cannot be retrofitted to comply with this chapter, the division shall issue an interim operating permit that is valid for two years only. If the facility only needs retrofitting in order to comply with this chapter, the facility shall be granted an interim operating permit that is valid for 1 year only. However, in either case the facility shall comply with this chapter and all other rules that may be promulgated under this chapter or promulgated under Act 451 Part 55 or the Clean Air Act for the interim period. An interim operating permit shall provide that if the facility is within 50 miles of another facility that is in compliance with this chapter, the facility operating under the interim operating permit may receive only medical waste that is generated on the site of that facility, at a facility owned and operated by the person who owns and operated that facility or at the private practice office of a physician who has privileges to practice at that facility, if the facility is a hospital. The division shall renew an operating permit for a facility only if the facility is in compliance with this chapter.

(5) A permit issued under this article 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.

(Ord. No. 98-601, § 1902, eff. 10-1-98)

Secs. 89-343--89-360. Reserved.

#### ARTICLE XV. APPEALS

Sec. 89-361. Applicability.

In accordance with section 89-31, from and after the effective date of this chapter and until a statutory delegation of authority to Wayne County exists under MCL 324.5523, except as otherwise provided herein, the provisions of this article shall be suspended, and appeals procedures set forth in Act 451 Part 55 and rules promulgated under Act 451 Part 55 shall be applicable to appeals from the action of the director or division with respect to the denial, modification, or revocation of a permit to install, an operating permit, or any other permit issued pursuant to this chapter. Notwithstanding any provision of this chapter to the contrary, the provisions of this article shall not be suspended, and shall be in full force and effect, with respect to the appeal of any action taken by the director prior to the effective date of this chapter, or to any action of the director with respect to any variance, order, administrative fine, or other determination under the chapter. From and after a statutory delegation of authority to the county exists under MCL 324.5523, appeals from the action of the director or division shall be governed by the delegation, Act 451 Part 55, rules promulgated under Act 451 Part 55, the Clean Air Act, and the applicable provisions of the state implementation plan.

If a statutory delegation of authority to the county does not exist on October 1, 2000, this article shall, with notice as provided for in section 89-201(a), be in full force and effect, and appeals from the action of the director or division from and after that date shall be governed by this chapter.

(Ord. No. 98-601, § 2001, eff. 10-1-98)

Sec. 89-362. Appealable actions.

(a) Reasons. Any person aggrieved by one of the following actions of the director or division may appeal under the procedure established herein:

- (1) Revocation of a permit to install, an operating permit or any other permit issued pursuant to this chapter;
- (2) Denial of a permit application as set forth in article VIII of this chapter;
- (3) Denial or revocation of a variance;
- (4) Issuance of any order, administrative fine or other determination under this chapter;
- (5) Assessment of an air quality fee pursuant to this chapter.

For purposes of this article, an aggrieved person is a person whose legal rights or pecuniary interest are directly affected by an appealable action of the director or division.

(Ord. No. 98-601, § 2002, eff. 10-1-98)

Sec. 89-363. Appeals procedure.

(a) For purposes of this article, the director shall not be precluded from pursuing any civil or criminal proceeding available under law or equity, unrelated to the appealable action, during the appeal period.

(b) An appeal shall act as a stay of the action until a final decision is rendered by the director under subsection (f) below. The stay shall not be construed to abridge the rights of the director to avoid, correct, or remove an imminent danger pursuant to 89-263, and in conjunction with the health officer and pursuant to the Public Health Code, MCL 333. 2451.

(c) Time. The filing of a petition for an administrative hearing shall be made within 30 days of issuance of an appealable decision; otherwise, the decision rendered by the director or the division shall become final and shall not be subject to further administrative appeal. Two hundred fifty dollars (\$250.00) shall be paid at the time the petition is filed with the division to cover the costs of processing the appeal. This amount, however, may be reduced or waived at the discretion of the director where extenuating circumstances exist and upon request of the applicant.

(d) Petition. The petition for an administrative hearing need not be in any particular form, but shall be signed by the petitioner, and shall include:

- (1) The name, address and telephone number of the petitioner; and
- (2) A short statement of the matters in question.

(e) Hearing officer; notice. The department will appoint an impartial, disinterested and qualified hearing officer who shall be responsible for holding an administrative hearing within 21 days after filing of a petition. The hearing shall be preceded by written notification to the petitioner which shall include:

- (1) A statement of the date, time, place and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held; and

(3) A short and plain statement of the issues involved.

The division shall make available to the hearing officer the petition, the response of the division, and responses from any other parties to the appealable action.

(f) Recommendations; decision. Upon conclusion of a hearing, the hearing officer shall prepare a written report for the division which shall include the reasons and recommendation for disposition. Provisions for exception shall be provided upon request. Within 14 days of the conclusion of a hearing, the director shall either affirm, dismiss, or modify in writing the action of the division, and the reasons therefore. The decision of the director shall be considered final and shall be subject to judicial review in a court of competent jurisdiction if an appeal is made within 56 days following issuance of the director's decision.

(Ord. No. 98-601, § 2003, eff. 10-1-98)

Sec. 89-364. Appeals hearings.

(a) Conduct of hearing. Hearings held pursuant to this article shall provide for the following:

(1) The opportunity for the petitioner to be represented by an attorney or other representative of his/her choice;

(2) The opportunity for parties to question any witnesses;

(3) The opportunity for parties to bring witnesses and documentary evidence;

(4) The opportunity for parties to request, for review and copying, records or documents relevant to the issue(s) on appeal. The cost of duplicating records or documents shall be borne by the party seeking copies of such records or documents. The director, however, may waive the cost under appropriate circumstances.

(5) All testimony shall be provided under oath or affirmation.

(b) Hearing officer; powers. The hearing officer shall conduct a fair and impartial proceeding, assure the facts are fully elicited, adjudicate issues on appeal and avoid delay. The hearing officer shall also have authority to recommend any determination of the appealable matter to the director.

(c) Hearing officer; bias. On the filing in good faith by a party to an appeal of a timely and sufficient affidavit of personal bias or disqualification of a hearing officer, the director of the department of environment shall determine the matter within 14 days of receipt. This determination shall be subject to judicial review at the conclusion of the appeal proceedings. When a hearing officer is disqualified or it is impracticable for the officer to continue the hearing, another hearing officer may be assigned to continue the appeal unless it is shown that substantial prejudice to the party will result therefrom.

(d) Failure to appear. If a party fails to appear for a hearing on the given date, unless for good cause, the hearing officer may proceed with the hearing and a decision may be rendered by the director even in absence of the party.

(e) Stipulation; disposition. The parties to a hearing may agree upon any fact involved in the controversy by filing a written stipulation with the hearing officer. The stipulation shall be used as evidence at the hearing and be binding upon the

parties. Except as otherwise provided by law, disposition may be made of a hearing by stipulation.

(Ord. No. 98-601, § 2004, eff. 10-1-98)