AIR POLLUTION ACT

Act 348, 1965, p. 683; Imd. Eff. July 23.

AN ACT to control air pollution in this state; to create an air pollution control commission within the state health department; to prescribe its powers and duties; and to provide penalties.

The People of the State of Michigan enact:

336.11 Air pollution act; short title. [M.S.A. 14.58(1)]

Sec. 1. This act shall be known and may be cited as the "air pollution act".

336.12 Air pollution act; definitions. [M.S.A. 14.58(2)]

Sec. 2. As used in this act.

(a) "Commission" means the air pollution control commission.

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

(c) "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 which are injurious to human life or property or which unreasonably interfere with the enjoyment of life and property, and which are reasonably detrimental to plant and animal life in this state and excludes all aspects of employer-employee relationships as to health and safety hazards. With respect to motor vehicles, nothing in this act or in the rules and regulations promulgated under the authority of this act shall be inconsistent with the federal regulations, emission limits, standards or requirements on motor vehicles.

(d) "Air cleaning device" means any method, process or equipment which removes, reduces or renders less noxious air contaminants discharged into the atmosphere.

HISTORY: Am. 1966, p. 116, Act 95, Imd. Eff. June 16; Am. 1967, p. 122, Act 97, Eff. Nov. 2.

336.13 Air pollution control commission; membership; terms; filling vacancies; compensation; expenses. [M.S.A. 14.58(3)]

Sec. 3. (1) For the purpose of administering and carrying out the provisions of this act, there is created an air pollution control commission within the state department of health. The commission shall consist of the commissioner of health, who shall act as chairman of the commission; the director of conservation; the director of agriculture; and 6 citizens of the state to be appointed by the governor by and with the advice and consent of the senate. Each of the state officers may designate a deputy of his department to serve in his stead as a member of the commission.

(2) Of the 6 citizens so appointed by the governor, 2 shall be representative of industrial management, 1 of whom shall be a registered professional engineer trained and experienced in matters of air pollution measurement and control; 2 shall be representatives of local governing bodies, 1 of whom shall be a full-time air pollution control officer; 2 shall be representatives of the general public, 1 of whom shall be a licensed doctor of medicine who shall be experienced and competent in the toxicology of air contaminants.

(3) Each appointed member shall serve for a term of 3 years except that, of the members first appointed, 2 shall be appointed for a term of 1 year, 2 for 2 years, and 2 for 3 years. Vacancies shall be filled for the unexpired terms in the same manner as original appointments. Members of the commission shall receive no compensation, but shall be entitled to actual and necessary expenses incurred in the performance of official duties under this act.

HISTORY: Am. 1966, p. 116, Act 95, Imd. Eff. June 16.

336.14 Organization; procedural rules; meetings; special meetings; quorum. [M.S.A. 14.58(4)]

Sec. 4. The commission shall organize and make its own rules governing its formal and informal procedures, and shall meet at least twice each year and shall keep a record of its proceedings and all its functions. Special meetings of the commission may be called by the chairman and must be called upon receipt of a written request signed by 2 or more members of the commission. Six members of the commission shall constitute a quorum.

336.16 Commissioner of health, duties; investigative and scientific services. [M.S.A. 14.58(6)]

Sec. 6. The state commissioner of health shall act as the authorized agent for the commission in effecting the purposes of this act. All investigative, technical, scientific and other services shall be performed by the commissioner or his authorized deputies.

336.17 Rules or regulations; amendments, repeals; approval. [M.S.A. 14.58(7)]

Sec. 7. (1) A rule or regulation or any amendment or repeal thereof shall require a vote of approval in writing of not less than 6 members of the commission.

(2) Rules or regulations and the amendment and repeal thereof shall be adopted in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948. A public hearing shall be held before rules and regulations and the amendment and repeal thereof shall be adopted.

(3) Any rule or regulation or any amendment thereof may differ in its terms and provisions as between particular types, characteristics, quantities and conditions and circumstances of air pollution and the duration; as between particular air pollution sources; and as between particular areas of the state.

(4) In exercising the power conferred upon it by this act, the commission shall give due recognition to the fact that the quantity, types or characteristics, quantities and circumstances or air contaminants or the duration of their presence in the atmosphere, which may cause air pollution in one area of the state, may cause less or no air pollution in another area of the state, and it shall take into consideration in this connection such factors, among others found by it to be proper and just, as existing physical conditions topography and prevailing wind directions and velocities, predominant land usage, and also the fact that a rule or regulation and the degree of conformance therewith which may be proper as to an essentially residential area of the state may not be proper as to a highly developed industrial area of the state.

336.18 Violations; investigation and complaint; conference and conciliation. [M.S.A. 14.58(8)]

Sec. 8. In case any written complaint is filed with the commission and the commission believes, or if the commission believes that any person is violating this act or any rule or regulation promulgated by the commission by causing or permitting air pollution, the commission shall make a prompt investigation; and, if after such investigation it finds that a violation of any rule or regulation of the commission exists, it shall, by conference, conciliation and persuasion, endeavor to the fullest extent possible to effect such control of emissions from such source as would be required by this act or under the rules and regulations.

336.19 Violations; hearing of charges; notice, answer. [M.S.A. 14.58(9)]

Sec. 9. In case of failure by conference, conciliation and persuasion, to correct or remedy any source or cause of air pollution resulting in a violation of any rule or regulation of the commission, the commission shall issue and serve upon the person complained against a written notice, together with a copy of the complaint, which shall specify the provision of the rule or regulation of which the person is said to be in violation, and a statement of the manner in, and of the extent to which, the person is said to violate it, and shall require the person so complained against to answer the charges of the complaint at a public hearing before the commission at a specified place and time not less than 15 days after the date upon which such complaint was served upon the person complained against.

336.20 Written answer; appearance; counsel; witnesses and evidences. [M.S.A. 14.58(10)]

Sec. 10. (1) The respondent to the complaint may file a written answer thereto and may appear at the hearing in person or by representative, with or without counsel, and may submit testimony, or may do both.

(2) The commission at the request of any respondent to a complaint made pursuant to this act shall subpoena and compel the attendance of such witnesses, including commission personnel, employees and agents, as the respondent may reasonably designate, and it shall require the production for examination of any book or paper, including any commission book or paper, relating to the matter under investigation at the hearing. The subpoena shall only be issued after application to the circuit court having jurisdiction and for good cause shown and with the approval of the court.

(3) The testimony taken at the hearing before the commission or its referee shall be under oath and recorded.

336.21 Public hearings; hearing referees; subpoenas; examination of witnesses; confidentiality of information; record; transcripts; nonobedience to subpoena; trade secrets; written notice of action taken. [M.S.A. 14.58(11)]

Sec. 11. (1) Public hearings with reference to pollution control may be held before any member of the commission or their designated delegates or representatives. Persons designated to conduct the hearing shall be described as hearings referees and must be disinterested persons and technically qualified.

(2) The referee or commission conducting the hearing may issue in the name of the commission notices of hearing and subpoenas requiring attendance and testimony of witnesses, including commission personnel, employees and agents, and the production of evidence, including any commission records, investigation reports or other papers, relevant to any matter involved at any such hearing. The subpoena shall only be issued after application to the circuit court having jurisdiction and for good cause shown and with the approval of the court.

(3) The interested parties and their attorneys and the referee shall have the right to examine and cross-examine witnesses. The subpoenas shall be served and the fee paid in like manner as subpoenas issued out of the circuit court.

(4) Any information relating to secret processes, or methods of manufacture, or production ascertained or discovered by the referee or commission during any such investigation or hearing shall not be disclosed and shall be kept confidential.

(5) The record made by the referee shall be filed with the commission. The commission shall furnish a certified transcript of the record of the hearing to any party to the action upon request.

(6) In the case of refusal to obey a subpoena under this section, the circuit court within the county where the hearing was held, or the circuit court for Ingham county, upon application of the commission, may issue an order requiring the person to appear and testify in the hearing.

(7) Confidential or trade secret matters uncovered during an investigation or hearing shall not be disclosed.

(8) Any person against whom a complaint has been filed and any complainant involved shall be given written notice of the action taken by the commission following the hearing with respect to the subject matter thereof

336.22 Review of record by commission; hearing; additional testimony; final order or determination, approval. [M.S.A. 14.58(12)]

Sec. 12. (1) The record made in the hearing before the referee shall be submitted and reviewed by the commission after due notice to the respondent and other interested parties and a hearing held thereon, and the commission may make such final determination as it deems appropriate under the circumstances and notify the interested parties thereof in writing by certified mail.

(2) The commission may hold the original hearing and if, in the opinion of the commission, it appears desirable that additional testimony be taken to supplement the record made at the referee's hearing, the same may be referred back to the referee for the taking of additional testimony.

(3) Any final order or determination or other final action by the commission shall be approved by not less than 6 members of the commission who shall have been present at the meeting at which such order was adopted.

336.23 Violations; hearing; final order of determination, content; de novo review; relief; procedure. [M.S.A. 14.58(13)]

Sec. 13. (1) When, in the opinion of the commission after a hearing, any person has violated or is about to violate the provisions of this act or the rules and regulations promulgated in furtherance thereof, and fails to control its air pollution, the commission shall make a final determination containing a statement of the specific violation which the commission has found to exist and shall order correction of the problem within a reasonable time. The final order or determination of the commission upon such matters shall be conclusive, but the order may be reviewed de novo in the circuit court for the county of Ingham in chancery, or for the county in which such alleged violator resides, or for the county in which the alleged violation occurred, upon petition therefor, filed within 15 days after the mailing of the final order or determination. In such de novo review, the commission shall have the burden of proving the correctness of its order or determination.

(2) Application for relief from any rules, regulations or order of the commission shall be made by petition to the circuit court for the county of Ingham, or to the county in which the petitioner resides, which 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 and shall set forth the rule, regulation or order or part thereof which he shall claim to be unreasonable or prejudicial to him and shall specify the grounds therefor. The petition may be accompanied by affidavits or other written proof and shall demand the relief to which the petitioner alleges he is entitled, in the alternative or otherwise. The petition may be made by any one or more persons, jointly or severally, who shall be aggrieved by any rule, regulation or order whether or not the petitioner is or was a party to the proceeding in which the rule or regulation was adopted by the commission. The commission shall have the burden of proving the correctness of such challenged rules, regulation or order of the commission.

336.24 Air contaminants, unlawful discharge; notice to discontinue; hearing, proof. [M.S.A. 14.58(14)]

Sec. 14. When the commissioner of health finds that any person is discharging or causing to be discharged into the atmosphere directly or indirectly any air contaminant and the discharge constitutes an immediate and serious danger to the health of the people and that it appears to be prejudicial to the interests of the people of the state to delay action for a period of 15 days as provided in section 9, the commissioner of health shall notify the person by written notice that he must discontinue immediately the air pollution. Within not more than 15 days, the commission shall provide the person the opportunity to be heard and to present any proof that such discharge does not constitute a danger to the health and welfare of the people.

336.25 Violations by permitting air pollution; corrective measures, time; progress reports; confidentiality of reports. [M.S.A. 14.58(15)]

Sec. 15. If at a hearing, the commission determines that the person against whom a complaint was made is violating this act or any rule or regulation promulgated by the commission by causing or permitting air pollution, it shall fix a time, which shall be reasonable under all the circumstances and which may be extended by the commission from time to time, during which the person shall be required to take such measures as may be necessary to prevent the violation and to give periodic progress reports thereon. Any information as to secret processes or secret methods of manufacture or production which shall be revealed by the periodic progress reports shall be kept confidential.

336.26 Violations; penalty; action to recover penalty; injunction; settlement of action. [M.S.A. 14.58(16)]

Sec. 16. (1) Any person who is found to have violated this act or any rule or regulation promulgated by the commission and who shall not have taken such preventive or corrective measures as are required by the commission within the time fixed by it,

either originally or as extended, shall be liable for a penalty not to exceed the sum of $500.00 and an additional penalty of not to exceed $100.00 for each day during which the violation continues, commencing on the first day after the expiration of the time fixed in the order of the commission for the taking of preventive or corrective measures. The penalties shall be levied by the circuit court of the county in which the violation occurred. In addition thereto, the person may be enjoined from continuing the violation.

(2) The penalty provided in this section shall be recoverable in an action brought in the name of the people of the state by the attorney general.

(3) An action or cause of action for the recovery of a penalty under this act may be settled or compromised by the attorney general after proceedings are brought to recover such penalties prior to the entry of judgment therefor.

336.27 Enforcement of laws; rules and regulations. [M.S.A. 14.58(17)]

Sec. 17. The commission may bring any appropriate action in the name of the people of the state either at law or in chancery, as may be necessary to carry out the provisions of this act and to enforce any and all laws, rules and regulations relating to the provisions of this act.

336.28 Civil liability; exemptions. [M.S.A. 14.58(18)]

Sec. 18. The civil liabilities which shall be imposed pursuant to the provisions of this act upon persons violating the provisions of any rule or regulation shall not be so construed as to include any violation which was caused by an act of God, war, strike, riot, catastrophe or other condition as to which negligence or wilful misconduct on the part of such person was not the proximate cause.

336.29 Suspension of enforcement; reasons; variance. [M.S.A. 14.58(19)]

Sec. 19. Notwithstanding any other provision of this act, the commission may suspend the enforcement of the whole or any part of any rule or regulation in the case of any person who shows that the enforcement thereof would be inequitable or unreasonable as to him, or the commission may suspend the enforcement thereof for any reason deemed by it to be sufficient to show that the enforcement thereof would be an unreasonable hardship upon the person; and upon any suspension of the whole or any part of the rule or regulation the commission shall grant to the person a variance therefrom.

336.30 Variance, considerations effecting. [M.S.A. 14.58(20)]

Sec. 20. In determining under what conditions and to what extent a variance from a rule or regulation may be granted, the commission shall give due recognition to the progress which the person requesting the variance has made in eliminating or preventing air pollution. The commission 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 which it considers reasonable under all the circumstances; or the commission may prescribe other and different reasonable requirements with which the person receiving the variance shall comply.

336.31 Variance; granting for undue hardship. [M.S.A. 14.58(21)]

Sec. 21. The commission shall grant a variance from any rule or regulation to, and suspend the enforcement thereof as to, any person who shows in the case of the person and of the activity which the person then operates that a compliance by him with the rule or regulation, and that the acquisition, installation, operation and maintenance of facilities and 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 thereby. A variance shall not be granted under the provisions of this section where the person applying therefor is causing air pollution which is injurious to the public health. Any variance granted shall not be construed as to relieve the person who shall receive it from any liability imposed by other law for the commission or maintenance of a nuisance.

336.32 Variance; period granted; reports; conditions. [M.S.A. 14.58(22)]

Sec. 22. Any variance granted pursuant to the provisions of this act shall be granted for such period of time, not exceeding 1 year, as is specified by the commission at the time of granting it, but any variance may be continued from year to year. Any variance granted by the commission may be granted on the condition that the person receiving it shall make reports to the commission periodically, as the commission shall specify, as to the progress which the person has made toward reaching a compliance with the rule or regulation of the commission

336.33 Variance; revocation or modification of order; public hearing; notice. [M.S.A. 14.58(23)]

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

336.34 Purpose of act; alteration of existing rights of actions or remedies. [M.S.A. 14.58(24)]

Sec. 24. It is the purpose of this act to provide additional and cumulative remedies to prevent and abate air pollution. Nothing in this act contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provision of this act or anything done by virtue of this act be construed as estopping individuals, counties, cities, townships or villages or other governmental units from the exercise of their respective rights to suppress nuisances or to prevent or abate air pollution.

336.35 Construction of act; evidentiary effect of determination by commission. [M.S.A. 14.58(25)]

Sec. 25. This act shall not be construed as repealing any of the laws relating to air pollution which are not by this act expressly repealed, but it shall be held and construed to be as ancillary to and supplementing the laws now in force, excepting as they may be in direct conflict with this act. The final order or determination of the commission shall not be used in evidence of presumptive air pollution in any suit filed by any person other than this commission.

336.36 Effect on existing regulations; local enforcement; cooperation with local governmental units. [M.S.A. 14.58(26)]

Sec. 26. (1) Nothing in this act or in any rule or regulation which shall be promulgated pursuant to this act shall be deemed to invalidate any existing ordinances or regulations having requirements equal to or greater than the minimum applicable requirements of this act or prevent any political subdivision from adopting similar provisions if their requirements are equal to or greater than the minimum applicable requirements of this act.

(2) When a political subdivision or enforcing official thereof fails to enforce properly the provisions of the political subdivision's ordinances, laws or regulations which do afford equal protection to the public as that provided in this act, the air pollution control commission, after consultation with the local official or governing body of the political subdivision may take such appropriate action as may be necessary for enforcement of the applicable provisions of this act.

(3) The air pollution control commission shall counsel and advise local units of government on the administration of this act. In their respective fields, they shall cooperate in the enforcement of this act with local officials upon request.