

**Testimony on Individual Fee Increase Proposals
House Appropriations Subcommittee on MDEQ
3/27/2007**

Good morning Mr. Chairman and committee members. Thank you for the opportunity to share our thoughts on the individual fee proposals. When I testified a few weeks ago, I offered our general thoughts on fees. Today, I will make a few general remarks and then focus on the individual fees, specifically the Air Fee, Solid Waste fee, and the two Hazardous Waste fees. Others will no doubt share thoughts on the others, but these are the big ones for us.

First, let me address the workgroup issue raised a couple weeks ago. The meetings held by the agency were much more like informational sessions, than functional workgroup sessions. Each fee was allowed one meeting, because the agency was required to make their suggestions to DMB in short order. We don't blame the agency for the short time frames, but we don't think we can call them functional workgroup sessions. Those who pay the fees do not support the proposals.

Also, we have heard the agency use the term "status quo", which means maintaining the same number of staff with automatic inflationary salary increases. In a state with a struggling economy we don't think "status quo" is acceptable. State government must increase efficiency.

I appreciate the opportunity to talk about the fee details, because it is appropriate for the legislature decide how much fee burden is appropriate, before deciding how much to spend. It would be our preference that the specific fee bills move through the process, before the appropriation bills.

Air Fee

DEQ Proposal

Current Fee

- \$11 million
- Current staff 114
- Sunset 2007

Proposed Increase

- \$5.5 million increase to \$16,576,000 (50% increase)
- Automatic Inflationary Increase
- 127 FTE's - 13 more than 2007

The agency proposes total revenue target of \$16,576,000 to support 127 staff or 13 more than 2007. This is a 50% increase over 2007 fee revenue and about \$2 million more than the agency reported as expenses in 2007. The agency reports that through efficiency improvements permit process time has been reduced from 167 days on average in 2004 down to 43 days in 2006. In addition, the total number of permit to install (PTI) applications have dropped from a total 579 in 1996 to 311 in 1999, highlighting a increased in the use of general permits to increase efficiency. However, the total number of PTI applications has continued to drop with 291 filed in 2000 and only 232 in 2006, with the low range of 202 applications occurring in both 2002 and 2005. A significant fee increase is not justified.

In addition, the agency has proposed changes in the fee structure that has been in place since the fee was first implemented in the early nineties as required by the federal Clean Air Act Amendments of 1990. The agency proposes raising the four thousand ton per pollutant caps to 8,000 tons which shifts costs increases primarily to coal fired utilities, steel manufacturers, cement manufacturers, and paper facilities. The proposal also creates significant increases on municipal electric facilities. The consensus among those companies that pay the fee, is a preference for the current fee structure.

Committee Recommendations

- 1) *The revenue goal of the Title V air fee ought to match the revenue target required by the federal Clean Air Act, known as the “federal presumptive minimum.” The MDEQ indicates the federal presumptive minimum is about \$12 million in 2007.*
- 2) *The fee ought to only fund the federally required Title V permit activities as required by the federal Clean Air Act. Michigan specific - state only requirements – ought to be funded through the general fund to accurately reflect the public’s interest in regulatory activities.*
- 3) *The fee formula should not include the agency’s request for an automatic annual inflationary increase. Such automatic increases are antithetic to the ongoing obligation of government to seek increased operational and budgetary efficiencies. The global economy does not operate on the basis of a localized inflationary factor, and government must be a partner with the manufacturing sector’s mission to remain competitive with the lowest cost locations on the globe.*
- 4) *Fee based programs must include sunset dates as an accountability measure to ensure the program delivers the services while continually reducing operational costs through increased efficiencies.*
- 5) *The biennial Auditor General’s report requirement ought to be retained to ensure appropriate governmental oversight and accountability. MDEQ called for elimination of this requirement.*
- 6) *To ensure Michigan does not increase regulatory burdens beyond other states, authorization in the statute ought to limit new rules to not exceed federal standards, without providing a cost benefit analysis to the legislature for prior approval.*
- 7) *Given the success of the systematic efficiency review in the new source review portion of the program (in this case called “value stream mapping”), a similar systematic efficiency process reviews should be required in the fee based ROP program. We believe the regulated community deserves continuous efficiency improvements in all fee based programs. Here are two examples of need for improvement:*
 - a. *Currently, ROP’s are filed electronically and then staff re-types them.*
 - b. *Currently, Michigan requires filling whole applications upon renewal, while most other states focus only on the changes in the permit.*
- 8) *The efficiency review processes discussed above should establish both speed and cost reduction metrics at the outset. The results of the effort should be reported to the legislature in terms of potentially reduced permit issuance time and FTE’s as part of the accountability report required in Section 5522 of the act.*
- 9) *The current fee structure in terms of emission fees, facility fees and billable emission caps should remain unchanged. The current structure has been in place since creation of the federally mandated fee in the early 90’s. The fee payers support this structure as it best reflects the cost of service among different sectors of the manufacturing community.*
- 10) *The MDEQ proposal proposes to increase staff by 13 FTE’s over the 2007 levels. We believe the agency should look for ways to reduce costs going forward instead of proposing an increased expenditure of \$1,690,000 (13 FTE’s x 130,000 per FTE) in*

additional staff. As noted in the agency's presentation, they have made significant gains in permit issuance time and they have continued with that success at current staffing levels.

- 11) Historically, the agency's funding requests have been substantially higher than what they have needed to meet the federal presumptive minimum or needed to issue permits in a timely manner. In 2005, with approximately \$4.5 million surplus in the fund, the agency called for a \$16 million revenue target. The legislature subsequently froze the fee at about \$11 million and instructed the agency to reduce the surplus.*
- 12) Recognizing that the number of ROP facilities are dropping as companies adjust to the global economy, we should advocate changes to the statute to require the agency to report the number of ROP facilities, the number of synthetic minor permits, and the number of permits that drop out of the system – facility closures.*
- 13) The subcommittee suggested we begin to point out that several facilities have closed and will therefore, drop out of the ROP program.*
- 14) The "Rent" portions of the program have risen significantly. A few years ago the state decided to purchase Constitution Hall instead of leasing, which increased the cost imposed on the program. So, the regulated community is forced to pay the cost of the buying the building without input on that decision and not gaining an ownership interest in exchange for the fee.*
- 15) There were several suggestions to add to the list of agency accountability reporting requirements in Sec 5522 of the statute in addition to the # of ROP facilities, and reporting potential FTE reductions from efficiency measures mentioned above. Here are a list of other proposed changes:*
 - a. Describe on going efficiency measures in each regulatory program*
 - b. Describe any new efficiency measures implemented during the year.*
 - c. Describe the results of the efficiency measures, expressed in terms of potential FTE reductions.*
 - d. Number of FTE vacancies*
 - e. Report the amount of funds sent to the Department of Information Technology.*
 - f. Report the amount of funds dedicated to rent costs.*
 - g. Report the average cost of FTE used to calculate program revenue needs.*
 - h. Report the amount and percentage of each FTE's cost dedicated to executive office operation.*
 - i. Report annually regulations that exceed the federal standards*
 - j. Report annually state regulations that are duplicative of federal regulations.*

Solid Waste Fee

DEQ Proposal

Current Fee

- 7 cents per ton or 21 cents per cubic yard
- Sunsets Oct. 2007
- Generates \$4.3 million
- Current Fund Surplus \$2 million

Increase

- DEQ proposing increase of \$1.8 million (43% increase)
- No increase in 2008
- Graduated fee increase beginning FY 2009 \$.01/ cubic yard per year through 2011
- Current Staff 42 FTEs (though HFA Decision Document says 50, and MDEQ Report says 44¹)

¹ MDEQ Report of Activities Funded by the Staff Account of the Solid Waste Management Account

- Number of construction permit applications in 2004 = 10
- Number of Operating Licenses issued in 2004 = 73

Committee Recommendation

Like every other MDEQ fee proposal the agency is calling for a “status quo” proposal that assumes automatic 4% wage increases, but no savings from efficiency increases. MMA members are shocked to see funding proposals that do not include continuous efficiency mechanisms, and benchmarking measurers to verify efficiency increases at least annually.

Amendments should be made to the statute to require the implementation of efficiency evaluation mechanisms similar to the successful use of the “value stream mapping” process in the air program a few years ago. The mechanism must establish efficiency measures to identify and implement the efficiency increases. Moreover, the potential efficiencies identified in the process should be reported to the legislature and expressed in terms of FTE reductions. The report to the legislature should include information, such as the total number of FTEs, the number of FTE’s expressed as a ratio the number of operating permits and construction permits issued, and report on the timeliness of permits.

We propose that the sunset on the current fee be extended one year. MDEQ indicated in their presentation to stakeholders that the current surplus in the fund is about \$2 million. This fact is reflected in the agency’s proposal, which would not increase the fee in 2008. Extending the sunset one year comports with the agency’s proposal and allows one year for the agency to evaluate and implement efficiency measures and report to the legislature on their results, before asking the legislature to increase fees on manufactures, and Michigan citizens.

Hazardous Waste Fee

Pollution Prevention Program Fee – Waste Reduction Fund

DEQ Proposal

Current Fee

- \$2.5 million
- \$10/ ton
- 31 FTE’s

Increase

- Increase from \$10 per ton to \$16 per ton (60% increase)

Alternative:

- Freeze current fee and create new fee on TRI Reports
- Increase of \$2.4 million (96% increase)
- Total after increase \$4.9 million

Committee Recommendation

The amount of hazardous waste generated in Michigan has been reduced by 83% in the last 20 years. Increasing this fee highlights the perverse incentive created with regulatory fees based on declining amounts of material. As the amount of pollution drops, the fee rises, essentially punishing success.

The TRI proposal was not discussed in any detail in the workgroup and is not supported by the fee payers. The proposal forces manufactures to pay double on emissions as the other fees are based on the same emissions.

MMA recommends keeping the current fee going forward, without increases. The ESSD provides programs that many businesses appreciate, but going forward the state must find ways

to live within its means and Michigan businesses' ability to pay. If the educational programs the agency offers are truly in demand, then they should be able to charge per program fee commensurate with the cost of delivering those services. This will bring a more market based approach to the services provided by the agency, which are the same terms under which the private sector must provide services. We recognize that the ESSD has been innovative and adaptive in the past, and are probably in the best position to adapt in the future.

Hazardous Waste User Charge (Environmental Pollution Prevention Fund)

DEQ Proposal

- Increase Total Fee Revenue from \$1,600,000 to \$2,800,000 (a 75% increase)
- Current Sunset is March 31, 2008
- 61 FTE's

Increase Details:

1. Facility ID Number (for nonhazardous liquid waste generators)- increased from \$50 to \$100.
2. There is a new provision that allows the MDEQ to annually evaluate the need and if needed, to increase the fee up to \$120.00.
3. Hazardous waste manifest is increased from \$8 to \$20
4. The upper limit that the MDEQ can charge (the fee can be adjusted annually) for each manifest increased from \$8 to 32\$
5. The penalty (a fine) for not paying the manifest fee on time was changed. Originally, the MDEQ could assess a 5% fine each month that the payment was delinquent. Now, it is 5% for the first month and 10% thereafter.
6. Act 451 Part 111- Section 324.11153 (Hazardous Waste - Site ID Number and User Charges)
6. Facility ID Number (for Hazardous Waste - Site ID Number and User Charges) increased from \$50 to \$100.
7. There is a new provision that allows the MDEQ to annually evaluate the need and if needed, to increase the fee up to \$120.00.
8. The user charge fee for a small quantity hazardous waste generator increased from \$100 to \$200
9. The user charge fee for a large quantity hazardous waste generator increased from \$400 to \$1,000
10. The user charge fee for a very large quantity hazardous waste generator increased from \$1,000 to \$3,000
11. The user charge fee for an active hazardous waste treatment, storage and disposal (TSD) facility increased from \$2,000 to \$6,000.
12. The concept of an active TSD and inactive TSD is introduced. I could not find any definitions in the Act or rules except the terms "Active Portion" - a portion of a TSD facility that stored, treated or disposed hazardous waste and has not been closed or Active Life - a time of initiate receipt to the date MDEQ certification of final closure is issued.
13. The user charge for an inactive TSD remains at \$2,000

Committee Recommendation

The amount of hazardous waste generated in Michigan has dropped 83% over the past 20 years. The number of staff in the HW section has remained about the same for 10 years. The agency's proposal going forward assumes the same number of staff, with automatic inflationary increases. The agency has not proposed any efficiency measures or mechanisms to increase efficiency. As we have said in response to all other fees, this approach is unacceptable. While the agency indicated that both federal support and general fund support has dropped, we believe that the agency must respond with corresponding decreases in expenditures. Converting the reductions

in other funding sources and retaining current staff levels, while increasing salaries, amounts to a tax increase for job providers.

We propose a one year sunset extension, with no increase in the fee and suggest the MDEQ propose, perform, and report on efficiency efforts next year, so the legislature can evaluate their performance.

Specific Program Concerns

- *There remains too much bureaucracy in the process. The agency relies on the companies to “verify” fee amounts. The verification process should only be invoked when a payer disputes the bill sent to them by the agency.*
- *The agency has attempted to increase collections of out of state sources. We encourage the agency to increase those efforts.*
- *Penalty provision – the proposal doubles the monthly late payment penalties to a rate of 120% per annum. Leave current law at 5% per month up to 25%.*

