



Michigan  
*Office of the Auditor General*  
**REPORT SUMMARY**

*Performance Audit*

Report Number:  
761-0143-11

*Fee Adequacy Within the Air Quality Division*

*Department of Environmental Quality*

Released:  
October 2011

*Title V of the Clean Air Act established a comprehensive Renewable Operating Permit (ROP) Program that all states were required to implement. Title V of the Clean Air Act requires the ROP Program to collect, in the aggregate, an amount not less than \$25 per ton of each regulated pollutant or such other amount determined to adequately reflect the reasonable costs of the ROP Program. Section 324.5522(3) of the Michigan Compiled Laws states that the Auditor General shall conduct a biennial audit of the federally mandated operating permit program required in Title V of the Clean Air Act.*

**Background:**

Act 451, P.A. 1994 (specifically, Section 324.5522(2) of the *Michigan Compiled Laws*), established the State's ROP Program fee schedule. Act 75, P.A. 2007, effective October 1, 2007, extended the fee schedule presented within Section 324.5522(2) of the *Michigan Compiled Laws* until October 1, 2011.

**Audit Objective:**

To assess the sufficiency of the statutory fees for the ROP Program to meet the minimum requirements of the Clean Air Act.

These minimum requirements specify that the owner/operator of all sources subject to permit shall pay fees sufficient to cover all reasonable direct and indirect costs required to administer the permit program; that adequate personnel and funding shall exist to administer the program; that the State Legislature must establish the fee amount; and that permit applications shall be processed timely.

**Audit Conclusion:**

We concluded that the statutory fees for the ROP Program were not sufficient to meet the minimum requirements of the Clean Air Act. However, the Department of Environmental Quality (DEQ) carried forward fees from prior years to sufficiently cover expenditures. Section 324.5521(2) of the *Michigan Compiled Laws* allows fees from the ROP Program to carry forward to subsequent years and not lapse to the State General Fund. We noted two reportable conditions (Findings 1 and 2).

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**Reportable Conditions:**

DEQ had not established a fee system for the ROP Program to generate sufficient revenues to meet the legal requirements of Title 40, Part 70, section 9 of the *Code of Federal Regulations (CFR)* and the Clean Air Act for fiscal years 2008-09, 2009-10, and 2010-11 (through March 31, 2011). Also, fees charged to facilities are not projected to generate sufficient revenues to cover ROP Program

costs for fiscal year 2010-11. The ROP Program relied on its fund balance to cover excess expenditures for fiscal years 2008-09 and 2009-10 and planned to do the same for fiscal year 2010-11. (Finding 1)

DEQ did not complete annual inspections or process permit applications within the appropriate time frames as required by federal regulation 40 *CFR* 70.9 and the Clean Air Act. (Finding 2)

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***Agency Response:***

Our audit report contains 2 findings and 2 corresponding recommendations. DEQ's preliminary response indicates that it agrees with the recommendations.

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A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: <http://audgen.michigan.gov>



Michigan Office of the Auditor General  
201 N. Washington Square  
Lansing, Michigan 48913

**Thomas H. McTavish, C.P.A.**  
Auditor General

**Scott M. Strong, C.P.A., C.I.A.**  
Deputy Auditor General