

**[No. 474]**

**(HB 5839)**

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending section 5527 (MCL 324.5527).

*The People of the State of Michigan enact:*

**324.5527 Emergency; definition; affirmative defense; burden of proof.  
[M.S.A. 13A.5527]**

Sec. 5527. (1) As used in this section, "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, that requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation contained in an operating permit issued pursuant to section 5506, a permit to install or permit to operate issued pursuant to section 5505, or any rule promulgated under this part due to unavoidable increases in emissions attributable to the situation. An emergency does not include acts of noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) An emergency constitutes an affirmative defense to an action brought for non-compliance with a technology-based emission limitation contained in an operating permit issued pursuant to section 5506, a permit to install or permit to operate issued pursuant to section 5505, or any rule promulgated under this part if the emergency is demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that establishes all of the following:

(a) An emergency occurred and that the defendant can identify the cause or causes of the emergency.

(b) The source was properly operated at the time of the emergency.

(c) During the emergency the defendant took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.

(d) The defendant submitted notice of the emergency to the department within 2 working days after the emission limitation was exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(3) In any enforcement proceeding, the defendant seeking to establish the occurrence of an emergency has the burden of proof.

This act is ordered to take immediate effect.

Approved January 10, 2001.

Filed with Secretary of State January 11, 2001.

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