



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

JOHN D. CHERRY, JR.
LT. GOVERNOR

EXECUTIVE DIRECTIVE
No. 2009 – 2

**Consideration of Feasible and Prudent Alternatives in the
Processing of Air Permit Applications from Coal-Fired Power Plants**

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, under Section 8 of Article V of the Michigan Constitution of 1963, each principal department of state government is under the supervision of the Governor unless otherwise provided by the Constitution;

WHEREAS, under Section 8 of Article V of the Michigan Constitution of 1963, the Governor is responsible to take care that the laws be faithfully executed;

WHEREAS, under Section 52 of Article IV of the Michigan Constitution of 1963, the conservation and development of the natural resources of this state are matters of paramount public concern in the interest of the health, safety, and general welfare of the people;

WHEREAS, under Section 51 of Article IV of the Michigan Constitution of 1963, the public health and general welfare of the people of the state are matters of primary public concern;

WHEREAS, Part 17 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.1701 to 324.1706, provides in part that “[i]n administrative, licensing, or other proceedings, and in any judicial review of such a proceeding, the alleged pollution, impairment, or destruction of the air, water, or other natural resources, or the public trust in these resources, shall be determined, and conduct shall not be authorized or approved that has or is likely to have such an effect if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare”;

WHEREAS, Part 17 of the National Resources and Environmental Protection Act is supplemental to existing administrative and regulatory procedures provided by law;

WHEREAS, under Part 55 of the National Resources and Environmental Protection Act, 1994 PA 451, MCL 324.5501 to 324.5542, and Executive Order 1995-18, MCL 324.99903, the Department of Environmental Quality has the authority to grant permits for the construction and operation of sources of air emissions under the federal Clean Air Act, 42 USC 7401 to 7671q;

WHEREAS, Section 5541 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.5541, provides that Part 55 of the Act “does not repeal any of the laws relating to air pollution which are not by this part expressly repealed. This part is ancillary to and supplements the laws now in force, except as they may be in direct conflict with this part”;

WHEREAS, under Section 165(a)(2) of the federal Clean Air Act, 42 USC 7475(a)(2), the Department of Environmental Quality has the discretion to consider alternatives to proposed sources of air emissions when determining whether or not to grant an air permit to that source;

WHEREAS, coal-fired electricity generating plants annually emit thousands of tons of air emissions, including, but not limited to, greenhouse gases, that threaten the air, water, and other natural resources of Michigan and the health, safety, and general welfare of Michigan residents;

WHEREAS, circumstances have changed since the 21st Century Energy Plan, issued pursuant to Executive Directive 2006-2, projected that Michigan’s total electric generation requirements would grow at 1.3% annually until 2025, as evidenced by the Michigan Public Service Commission’s projection in its Winter 2008/2009 Energy Appraisal that electricity sales decreased 1.4% in Michigan in 2008;

WHEREAS, the enactment of the Clean, Renewable, and Efficient Energy Act, 2008 PA 295, MCL 460.1001 to 460.1195, has reduced the need for additional coal-fired electricity generating plants in Michigan by providing for the use of energy efficiency and renewable energy to meet future electricity needs in this state, reducing dependence on imported fossil fuels such as coal;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, direct:

A. Before issuing a permit to install under Part 55 of the National Resources and Environmental Protection Act, 1994 PA 451, MCL 324.5501 to 324.5542, for the construction of a new coal-fired electricity generating plant, the Department of Environmental Quality shall determine whether there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare that would better protect the air, water, and other natural resources of this state from pollution than the proposed coal-fired electricity generating plant.

B. Before making the determination required by Paragraph A, the Department shall first determine whether a reasonable electricity generation need exists in this state that would be served by the proposed coal-fired electricity generating plant. If a reasonable electricity generation need exists in this state, the Department shall estimate the extent of the reasonable electricity generation need.

C. The Department shall next consider alternative methods of meeting the reasonable electricity generation need, including, but not limited to, each of the following:

1. Constructing new electricity generating resources that use technologies other than the burning of coal or that generate electricity from coal using technologies that reduce or sequester emissions.

2. Reducing electricity demand and peak demand through energy efficiency programs or load management techniques.

3. Generating or purchasing electricity from existing electricity generating resources.

D. If the Department determines that a feasible and prudent alternative to the construction of a new proposed coal-fired electricity generating plant exists consistent with the reasonable requirements of the public health, safety, and welfare that would better protect the air, water, and other natural resources of this state than the proposed coal-fired electricity generating plant, the Department shall not issue a permit to install.

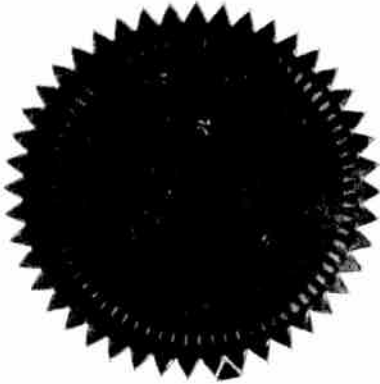
E. The Michigan Public Service Commission shall provide technical assistance to the Department in making determinations required by this Directive.

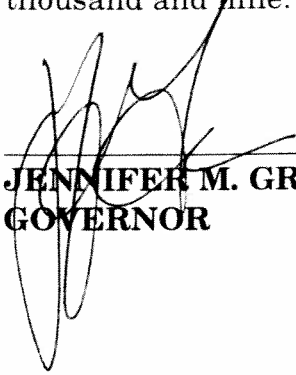
F. All departments, committees, commissioners, or officers of the executive branch of this state shall give to the Department of Environmental Quality any necessary assistance required by the Department in the performance of the duties of this Directive, so far as is compatible with its, his, or her duties. Free access shall also be given to any books, records, or documents in its, his, or her

custody, relating to matters within the scope of inquiry, study, or review of the Department under this Directive.

This Directive is effective immediately.

Given under my hand this 3rd day of February in the year of our Lord, two thousand and nine.





JENNIFER M. GRANHOLM
GOVERNOR