

STATE OF MICHIGAN
IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS
(Meter, P.J., and O'Connell and Davis, J.J.)

DETROIT DIESEL CORPORATION,

Supreme Court No. 133403

Petitioner-Appellee/Cross-Appellant

Court of Appeals No. 263188

v.

Wayne Circuit Case No. 04-430915-AA
Hon. Isidore B. Torres

MICHIGAN STATE TAX COMMISSION
and MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Respondents-Appellants/Cross-Appellees,

and

CHARTER TOWNSHIP OF REDFORD,

Intervenor/Cross-Appellee.

**PETITIONER-APPELLEE/CROSS-APPELLANT DETROIT DIESEL
CORPORATION'S REPLY BRIEF ON CROSS-APPEAL**

BUTZEL LONG

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Dated: January 31, 2008

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ARGUMENT

I. The State's Position Is Contrary to Both the Plain Language and the Purpose of Part 59 and Part 55 of the NREPA, and Already Has Been Rejected By This Court.

The State's case rests exclusively on its assertion that the Equinox Line does not meet the test of MCL 324.5901(c) because it was not a process change "made to satisfy the requirements of [NREPA] part 55 and rules promulgated under that part." State's brief on cross-appeal at 3-9. The State reasons that because the new assembly line was installed to comply with Federal clean-air mandates, and because the State is prohibited from regulating motor-vehicle emissions, installation of the new line could not have been "made to satisfy the requirements of part 55."

Id.

This Court, however, specifically considered and rejected the State's position in *Covert Twp Assessor v State Tax Commission*, 407 Mich 561; 287 NW2d 895 (1980). There, the Township argued that the nuclear plant's air-pollution control facilities could not qualify for tax exemption because they could not meet the intent and purpose of the Air Pollution Act – as required by MCL 336.3 – since the nuclear plant was subject to exclusive Federal regulation.

This Court disagreed:

Contrary to the contention of the township, we find that the intent and purpose of this act is to control air pollution in the state; that the act itself contemplates that Federal agencies or other governmental units may have authority over the control of air pollution in the state; and that the commission need not have control over all activities regulating air pollution but may cooperate with other agencies or governmental units to meet the act's purpose of preventing and abating air pollution. [407 Mich at 578].

The same applies in this case. Part 55 of the NREPA, MCL 324.5501 *et seq*, entitled "Air Pollution Control," is a comprehensive statute aimed at reducing air pollution from a wide variety of sources. Its purpose is set forth in MCL 324.5540:

Purpose of part; construction of part generally

Sec. 5540. It is the purpose of this part to provide additional and cumulative remedies to prevent and abate air pollution. This part does not abridge or alter rights of action or remedies now or hereafter existing. This part or anything done by virtue of this part shall not be construed as estopping persons from the exercise of their respective rights to suppress nuisances or to prevent or abate air pollution.

Further, Part 55 defines a “process” and “process equipment” as:

- (p) “Process” means an action, operation, or a series of actions or operations at a source that emits or has the potential to emit an air contaminant.
- (q) “Process equipment” means all equipment, devices, and auxiliary components, including air pollution control equipment, stacks, and other emission points, used in a process. [MCL 324.5501(p) and (q)].

The Equinox Line plainly constitutes a “process change” under those definitions. Given that Part 55’s express purpose is “to provide additional and cumulative remedies to prevent and abate air pollution,” and that the statute expressly states that it is not intended to bar anyone from, among other things, “exercise[ing] their respective rights to prevent or abate air pollution,” it defies logic to argue that installation of the Equinox Line somehow does not satisfy Part 55. While it is undisputed that Federal mandates led Detroit Diesel to install the Equinox Line, the line just as clearly “satisf[ies] the requirements of part 55 and rules promulgated under that part,” for purposes of MCL 324.5901(c). The State offers nothing to support its view that the Federal Clean Air Act and Part 55 are mutually exclusive – nor can it, given this Court’s ruling in *Covert Twp*, and given MCL 324.5540’s unambiguous statement that Part 55 “shall not be construed as estopping persons from the exercise of their respective rights to suppress nuisances or to prevent or abate air pollution.”

Unambiguous statutes are enforced as written. *South Haven v Van Buren Co Bd of Comm’rs*, 478 Mich 518, 525; 734 NW2d 533 (2007) (citation omitted). Further, statutes should

be construed to avoid absurd results. *Tyler v Livonia Pub Schools*, 459 Mich 382, 395; 590 NW2d 560 (1999) (citation omitted). Both of those principles require rejection of the State's strained construction of MCL 324.5901(c). The intent and purpose of Part 55 is to control air pollution, and the statute clearly contemplates that Federal regulation does not preclude State tax exemption. The State's reading not only ignores the purposes of Part 55, as set forth in MCL 324.5540, and *Covert Twp*, but also would rewrite the statute's definitions of "process" and "process equipment" to exempt from those definitions all operations, and equipment, related to motor-vehicle production. In a State whose economy for decades has been built around the auto industry, that would be a strange way indeed for the Legislature to encourage industry to reduce air pollution.

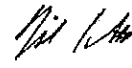
CONCLUSION/RELIEF REQUESTED

For the reasons set forth above and in its December 7, 2007 brief on cross-appeal, Detroit Diesel asks that this Court reverse in limited part the January 30, 2007 Opinion of the Court of Appeals, hold that Detroit's Diesel's Equinox Line is entitled to tax exemption on 25 percent of its cost under MCL 324.5901(c) and remand the matter to the STC with instructions that the STC both approve air-pollution control tax-exemption certificates for application No. 1-3112 (Equinox Line) starting with the 2003 tax year, and issue Detroit Diesel a refund for taxes wrongfully paid.

In the alternative, Detroit Diesel asks that this Court vacate that portion of the Opinion dealing with the Equinox Line and remand the matter to the STC with instructions that it provide the company with a hearing that comports with due process, i.e. one in which the STC sits as an independent decision-maker.

Respectfully submitted,

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