

**FEE REPORT FORM**

Department of Environmental Protection  
Bureau of Air Quality  
 Agency

November 1, 2010  
 Date

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	<b>Prior Year <u>08/09</u></b>	<b>Current Year <u>09/10</u></b>	<b>1<sup>st</sup> Future Year <u>Projected</u></b>	<b>2<sup>nd</sup> Future Year <u>Projected</u></b>
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**FEE COLLECTIONS:**

Current				
Title V Fee	\$18,476,192	\$18,127,149	\$17,820,000	\$17,820,000
Permit/plan approval	<u>\$1,731,356</u>	<u>\$1,912,377</u>	<u>\$1,750,000</u>	<u>\$1,750,000</u>
Total	\$20,207,548	\$20,039,526	\$19,570,000	\$19,570,000
 Proposed				
Title V Fee			\$23,498,157	\$23,500,000
Permit/plan approval			\$2,510,000	\$2,510,000
Source Testing			<u>\$1,400,000</u>	<u>\$1,400,000</u>
Total			\$27,408,157	\$27,410,000

**FEE TITLE AND RATE:**

Current See Attached Table

Proposed See Attached Table

**FEE OBJECTIVE:**

The final-form amendments to the existing plan approval and operating permit fee schedule and annual Title V emission fee in 25 Pa. Code Chapter 127, Subchapter I (relating to plan approval and operating permit fees), the addition of fees for risk assessment applications and the addition of a schedule for source testing, test report review, auditing and monitoring fees are designed to ensure that fees are sufficient to cover the Department's indirect and direct costs of administering the air pollution control program including certain activities related to processing

of plan approvals and operating permits, and source testing, test report reviews, and auditing and monitoring of continuous emission monitoring systems (CEMS) and sources. Amending the existing fee structure provides support for continuation of the Department's air pollution control program and ensures continued protection of the environment and the public health and welfare of the citizens of this Commonwealth.

Adoption of the final-form rulemaking provides for increased fees and new fees that will be used to cover the indirect and direct costs of administering the air pollution control program. Failure to adjust the fee structure will cause expenditures to exceed revenue and may cause reductions in staff or technical services. Reduced staffing will cause delays in processing plan approvals and issuing operating permits, resulting in delays and loss of revenue to industry and reduced protection of the environment and public health and welfare. New or modified sources of air pollution cannot be constructed without a plan approval. The installation of air pollution control equipment requires receipt of a plan approval. Failure to increase the Department's revenue may result in fewer inspections and increases in environmental and public health and welfare problems. A Comparative Financial Statement for the Clean Air Fund for fiscal year 2014 (July 1, 2014-June 30, 2015) projects an ending balance of \$257,000. It is anticipated that the Clean Air Fund would be in deficit in fiscal year 2015. The permit and plan approval fees were last adjusted in 2005, in accordance with the fee schedule established in Subchapter I (24 Pa.B. 5899, November 26, 1994). The base Title V emission fee was established in 1994 and has not been revised beyond the Clean Air Act-mandated annual consumer price index (CPI) adjustment. The CPI-adjusted Title V emission fee is no longer adequate to cover Title V-related expenditures.

The rulemaking will assure the citizens of this Commonwealth that the Department's air pollution control program is adequately funded. This will allow the Department to provide adequate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to reduce emissions to achieve healthful air quality.

The final-form fee schedule rulemaking is authorized under section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3). Section 6.3(a) authorizes the Environmental Quality Board (Board) to establish fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process, operating permit program required by Title V of the Clean Air Act (CAA) (42 U.S.C. § 7661-7661f), other requirements of the CAA and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Small Business Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the Board by regulation to establish fees to support the air pollution control program authorized by this act and not covered by fees required by section 502(b) of the CAA (42 U.S.C. § 7661a(b)).

The owners and operators of approximately 800 Title V facilities in the Commonwealth must pay annual emission fees by September 1 each year for regulated pollutants emitted the previous year; this emission fee is not payable by any State entity, instrumentality or political subdivision in relation to any publicly owned or operated facility. These owners and operators will be affected by the revised base Title V emission fee and the revised plan approval and Title V operating permit fees in the final-form amendments. The final-form amendments will affect the owners or operators of approximately 2,500 non-major facilities that are subject to the plan approval and operating permit provisions of the Department's air quality regulations. The final-form amendments adjust existing plan approval and operating permit fees and establish new fees

to reflect the actual costs of providing these services to the owners or operators of affected facilities in this Commonwealth. Note that the permit and source testing fees do not apply to sources located in Philadelphia or Allegheny Counties, which have approved local air pollution control programs.

If adopted as final-form rulemaking, the amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan.

## **FEE RELATED ACTIVITIES AND COSTS:**

The increased fees and new fees proposed in the rulemaking will be used to support the Department's air quality program as authorized by the APCA. Activities supported include compliance and complaint inspections, enforcement actions, plan approval review and issuance, operating permit review and issuance, source testing, source test protocol reviews, technical assistance to the source owners and operators and the general public, and program development. The fee revisions would allow the Department to maintain staffing levels in the air quality program. This would provide a sound basis for continued air quality assessments and planning that are fundamental to protecting public health and welfare and the environment.

Increased funding for the plan approval and operating permit program would continue to allow for timely and complete review of plan approval and operating permit applications. Delays in the issuance of the plan approvals and operating permits can cause economic disruptions since the owner or operator of a regulated facility may not operate without an operating permit. The owner or operator may not install a new source or modify an existing source without a plan approval. Delays in receiving plan approvals can have a major impact on an owner or operator's decision to construct in the Commonwealth. Implementation of new fees for risk assessment applications would allow for resources to address this important area of public health and social well-being by evaluating the risks associated with observed levels of contaminants.

Implementation of the new schedule of fees proposed in Chapter 139, Subchapter D, for the source testing and monitoring program would fund observations of stack emissions source testing and audits of CEMS by Department staff. Observations and audits conducted by Department staff with expertise in source testing and monitoring would ensure that high quality test and monitoring data are collected and submitted to the Department. High quality data are critical to determining compliance with permitted air pollutant emission limits and establishing emission inventories used by the Department in developing programs to protect public health and social well-being.

## **ANALYSIS:**

The final-form rulemaking is expected to increase revenue to the Department by approximately \$7,531,000 per year through the implementation of increased fees and new fees to cover the costs of administering the air pollution control program. The Department is authorized to provide payment of a portion of the annual Title V emission fees collected by the Department to the local air pollution control agencies in Philadelphia and Allegheny Counties (*25 Pa. Code* § 127.706 (relating to Philadelphia County and Allegheny County financial assistance)). While the Allegheny County Health Department has never requested financial assistance, the Department has provided requested financial assistance to the Philadelphia County Air

Management Services (AMS), most recently \$650,000 in 2009 and \$700,000 in 2010. Philadelphia County AMS projects an increasing need for assistance under § 127.706 and may request an increase in financial assistance to implement the City Of Philadelphia's Title V Program.

The revised base fee for the annual Title V emissions fee would produce annual revenue for the Department of approximately \$23,498,000. There was a balance of \$22,901,887 in the Clean Air Fund – Major Facilities account (Title V) as of July 30, 2010. Actual expenditures for the past two fiscal years have been \$22,659,921 (FY 08-09) and \$21,876,607 (FY 09-10). The spending authority for this fund as authorized by Governor Rendell (July 1, 2010) has been established at \$24,732,000. The additional revenue from the revised annual Title V emissions fee with a drawdown of the current Title V fund balance will support projected fund expenditures.

Implementation of the revised fee schedule for permits, plan approvals, and source testing should increase revenue by approximately \$2,160,000. Income to the Mobile and Area Facilities fund also includes penalties and reimbursements for coke oven inspections. Total income for the fund was \$5,868,357 (FY 08-09) and \$10,156,571 (FY 09-10). The increase in income in FY 09-10 was the result of a one-time penalty of \$6,000,000. Actual expenditures for the past two fiscal years have been \$7,948,763 (FY 08-09) and \$6,120,724 (FY 09-10). The spending authority for this fund for FY 10-11 as authorized by Governor Rendell was established at \$6,382,000. The spending authority was increased to \$9,382,000 to provide for the one-time funding of a special project. The additional revenue from the revised fee schedule with a drawdown of the current Mobile and Area Facility fund balance is anticipated to support projected fund expenditures.

Revenue and expenditure projections show negative spending by FY 2015 without the revised fee schedule.

## **RECOMMENDATION AND COMMENT:**

The final-form Air Quality Fee Schedule amendments should be approved. The revised fee schedule will support continued operation of the Air Quality program in the Commonwealth.

The final-form rulemaking will require that every 5 years, the Department provide the Environmental Quality Board with an evaluation of the fees and recommend regulatory changes to the Environmental Quality Board to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet program costs.

The final-form revisions were discussed with the Air Quality Technical Advisory Committee (AQTAC) at its meeting of October 21, 2010. AQTAC concurred with the Department's recommendation to present the final-form rulemaking to the Board. The Department consulted with the Citizens Advisory Council (CAC) on October 18, 2010. The CAC concurred with proceeding to the Board with the final-form rulemaking. The Department discussed the comments to the proposed rulemaking with the Small Business Compliance Advisory Committee (SBCAC) on July 28, 2010. The SBCAC submitted a letter to the Secretary on October 29, 2010, with a request for consideration by the Board to reduce or waive the RFD fee for small businesses to take into account the financial resources of small business stationary sources.