FINAL RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA CODE CH. 127]

The Environmental Quality Board (Board) amends Chapter 127, Subchapter I (relating to plan approval and operating permit fees) to read as set forth in Annex A. This final-form rulemaking satisfies Federal and state obligations to establish a Title V annual emission fee sufficient to cover the reasonable direct and indirect costs of administering the operating permit program and other related requirements mandated under Title V of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7661—7661f).

This final-form rulemaking was adopted by the Board at its meeting of ____________, 2013.

A. *Effective Date*

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

The final-form rulemaking will be submitted to the United States Environmental Protection Agency (EPA) upon publication for approval as a revision to the Commonwealth's State Implementation Plan (SIP) and as an amendment to the Title V Program Approval codified in 40 CFR Part 70, Appendix A (relating to approval status of state and local operating permits programs).

B. *Contact Persons*

For further information, contact Dean Van Orden, Assistant Director, Bureau of Air Quality, P.O. Box 8468, Rachel Carson State Office Building, Harrisburg, PA 17105-8468, (717) 783-9264; or Robert "Bo" Reiley, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available through the Department of Environmental Protection's (Department) web site at www.dep.state.pa.us.

C. *Statutory Authority*

This final-form rulemaking is authorized under section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3), which grants to the Board the authority to adopt regulations to establish fees to cover the indirect and direct costs of administering the air pollution control program, operating permit program required by Title V of the CAA, other requirements of the CAA (42 U.S.C.A. §§ 7401—7671q), 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.

D. *Background and Purpose*

Title V annual emission fees are payable by the owners and operators of facilities in this Commonwealth that are classified as major sources of air pollution under section 501 of the

CAA (42 U.S.C.A. § 7661) and are subject to the permitting provisions of Title V of the CAA. Section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)) required the EPA to adopt rules establishing the minimum elements of Title V operating permit programs including a requirement that the owner or operator of all sources subject to the requirements obtain a permit under Title V of the CAA and pay an annual emission fee to state and local agencies sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V of the CAA.

On July 30, 1996, the EPA granted full approval of the Commonwealth's Title V Operating Permits Program in accordance with Title V of the CAA and implementing regulations in 40 CFR Part 70 (relating to state operating permit programs). See 61 FR 39597 (July 30, 1996). Pursuant to 40 CFR § 70.9(a) and (b) (relating to fee determination and certification), the state program must "require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs." The fee schedule must result in the collection and retention of revenues sufficient to cover the permit program costs.

In addition to authorizing the establishment of fees sufficient to cover the permitting program required under Title V of the CAA, section 6.3(a) of the APCA also authorizes the Board to adopt regulations to establish fees to support the air pollution control program authorized by the APCA and not covered by fees required by section 502(b) of the CAA. The emission fees currently apply to emissions of up to 4,000 tons of any regulated pollutant. For Title V annual emission fee purposes, the term "regulated pollutant," as defined in section 502 of the CAA and § 127.705(d) (relating to emission fees), means a volatile organic compound, each pollutant regulated under sections 111 and 112 of the CAA (42 U.S.C.A. §§ 7411 and 7412) and each pollutant for which a National Ambient Air Quality Standard (NAAQS) has been promulgated, except that carbon monoxide shall be excluded from this reference.

The final-form rulemaking amends the Title V annual emission fee requirements codified in § 127.705. An adequate fee must result in the collection and retention of revenue sufficient to cover the costs of administering the air permit program as required under section 6.3 of the APCA. The Department has established a uniform Title V annual emission fee across the Commonwealth. The local air pollution control agencies in Allegheny and Philadelphia Counties collect the Title V annual emission fee revenue for sources under their jurisdictions. Minor clarifying amendments are made for § 127.701 (relating to general provisions).

The final-form amendment to the existing Title V annual emission fee is designed to cover all reasonable costs required to develop and administer the Title V permit requirements. These reasonable costs include the cost for certain activities related to major facility operations, including the review and processing of plan approvals and operating permits; emissions and ambient monitoring; preparing applicable regulations and guidance; modeling, analyses and demonstrations; and preparing emission inventories and tracking emissions. Direct and indirect program costs include personnel costs, operating expenses such as telecommunications, electricity, travel, auto supplies and fuel, and the purchase of fixed assets such as air samplers and monitoring equipment, vehicles and trailers.

To meet these obligations, the final-form rulemaking increases the Title V annual emission fee paid by the owner or operator of a Title V facility to $85 per ton of emissions of “regulated pollutant” for emissions of up to 4,000 tons of each regulated pollutant beginning with emission fees payable by September 1, 2014, for emissions occurring in calendar year 2013. The initial Title V annual emission fee, established at 24 Pa.B. 5899, November 26, 1994, was $37 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant per Title V facility. As provided in § 127.705(e), the emission fee imposed under § 127.705(a) has been increased in each year after November 26, 1994, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year. Under the existing regulatory framework, the Title V annual emission fee has not been revised since 1994. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is $57.50 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant. In order to collect fees sufficient to cover Title V program costs, the increase to the Title V annual emission fee is an increase of $27.50 per ton of emissions of each regulated pollutant from 2013 levels.

Title V annual emission fee revenues collected are no longer sufficient to cover program costs. Installation of air pollution control technology over the past two decades on major stationary sources, the retirement or curtailment of operations by major sources including certain refineries and coal-fired power plants, and the conversion at many major facilities from burning coal or oil to burning natural gas has resulted in the decreased emission of regulated pollutants that are subject to the annual emission fee, and revenues collected have been decreasing as a result. The increase to the Title V annual emission fee considers the impact on collected Title V annual emission fee revenues from the retirement of certain sources and the announced retirement of sources, including certain electric generating units. The decline in interest rates paid on savings account balances has also affected the funds as the investments earn less interest in the current economy compared to the early years of the program.

Failure to adjust the emission fee structure to adequately cover program costs may cause significant reductions in the Title V staffing complement, currently 214 positions, and technical services. Reduced staffing will cause delays in processing and issuing plan approvals for Title V facilities and Title V operating permits, potentially resulting in delays for industry to implement new or improved processes and loss of revenue to industry, loss of jobs for the community and loss of tax revenue for the Commonwealth. New or modified sources of air pollution at Title V facilities cannot be constructed without a plan approval. The installation of air pollution control equipment requires Department approval of a plan approval application prior to the installation. Further, fewer staff to conduct inspections, respond to complaints and pursue enforcement actions will result in less oversight of industry compliance or noncompliance and in reduced protection of the environment and public health and welfare of the citizens of this Commonwealth.

Decreased revenues will also impact the Commonwealth’s air monitoring network, which provides the data to substantiate the Commonwealth’s progress in attaining and maintaining the NAAQS instituted by the EPA under the CAA. Decreased revenues could also impact the Small Business Stationary Source Technical and Environmental Compliance Assistance Program by reducing the amounts of grants and number of services available to small businesses. This could potentially lead to fewer viable small businesses and slow the economic recovery of the Commonwealth by reducing the numbers of available jobs. Further, a failure to attain and maintain the NAAQS and to satisfy the Commonwealth's obligations under the CAA could precipitate punitive actions by the EPA.

In accordance with 40 CFR § 70.10(b) and (c) (relating to Federal oversight and sanctions), the EPA may withdraw approval of a Title V Permit Program, in whole or in part, if the EPA finds that a State or local agency has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after the issuance of a notice of deficiency (NOD). The EPA is authorized to, among other things, withdraw approval of the program and promulgate a Federal Title V Permit Program in this Commonwealth that would be administered and enforced by the EPA. In this instance, all Title V emission fees would be paid to the EPA instead of the Department. Additionally, mandatory sanctions would be imposed under section 179 of the CAA (42 U.S.C.A. § 7509) if the program deficiency is not corrected within 18 months after the EPA issues the deficiency notice. These mandatory sanctions include 2-to-1 emission offsets for the construction of major sources and loss of Federal highway funds ($1.06 billion in 2012 if not obligated for projects approved by the Federal Highway Administration). The increase in the Title V annual emission fee avoids the issuance of a Federal Title V Permit Program NOD; Federal oversight and mandatory CAA sanctions would also be avoided. The EPA may also impose discretionary sanctions which would adversely impact Federal grants awarded under sections 103 and 105 of the CAA (42 U.S.C.A. §§ 7403 and 7405).

The final-form rulemaking does not establish a fee structure for carbon dioxide and other greenhouse gases (GHG) including hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons and sulfur hexafluoride. On June 3, 2010, the EPA finalized the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). See 75 FR 31514 (June 3, 2010). As the Tailoring Rule relates to the applicability of Title V annual emission fees for a "regulated pollutant" as defined in section 502 of the CAA, the EPA did not mandate revisions to state and local Title V programs to account for these emissions. See 75 FR 31514, 31585. The EPA reasoned that it would be difficult to apply this fee to GHGs, based on the large amount of GHG emissions relative to other pollutants and the need for better data to establish a GHG-specific fee amount. See 75 FR 31514, 31585. However, the EPA did commit to addressing this issue in a future rulemaking and to work with states to develop a workable fee approach. See 75 FR 31514, 31586. The EPA has not yet proposed a fee schedule under the CAA for GHG emissions. Consequently, the Board did not impose Title V emission fees for GHG emissions from stationary sources in this Commonwealth.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) in the development of this final-form rulemaking. At its June 13, 2013, meeting, the AQTAC concurred with the Department's recommendation to advance the rulemaking to the Board for consideration as final-form rulemaking.

The Department also conferred with the Citizens Advisory Council concerning the final-form rulemaking on July 16, 2013, and with the Small Business Compliance Advisory Committee on July 24, 2013.

E. *Summary of the Final-form Rulemaking and Changes from Proposed to Final-form Rulemaking*

The Board did not make changes to the rulemaking from proposed to final-form.

The final-form rulemaking revises § 127.701 to clarify that fees paid to the Department are deposited into the Pennsylvania Clean Air Fund. The final amendment also retained some additional editorial changes to this section.

The final-form rulemaking revises § 127.705 to establish a Title V annual emission fee of $85 per ton for emissions of up to 4,000 tons of regulated pollutant, beginning with the fees due by September 1, 2014, for emissions from Title V facilities occurring in the 2013 calendar year.

F. *Summary of Comments and Responses*

Major Comments and Responses on the Proposed Rulemaking

The Board approved publication of the proposed rulemaking at its meeting of November 20, 2012. The proposed rulemaking was published at 43 Pa.B. 677 (February 2, 2013). Three public hearings were held on March 5, 6, and 7, 2013, in Pittsburgh, Norristown, and Harrisburg, PA, respectively. The public comment period closed on April 8, 2013, for a 66-day public comment period.

Public comments were received from four commentators. The Independent Regulatory Review Commission (IRRC) also provided comments.

A commentator says that the proposed increase in the Title V fee shows that the Department has been operating at a level of insufficient funding. There is a concern about the Bureau of Air Quality’s ability to purchase air sampling and monitoring equipment, perform modeling analysis and add monitors in the Marcellus Shale counties.

The Board disagrees. The significant drop in Title V revenue that has occurred recently is due to the installation of air pollution control equipment at Title V facilities, reductions in emissions from Title V facilities, and the closure or deactivation of certain large facilities including electric generating units. The Department is able to purchase and operate air monitoring and other equipment using other funds. The Department has recently installed a permanent air monitoring site in Bradford County.

Some commentators oppose the proposed increase in the Title V fee.

The Board understands this resistance, but there is both a Federal and state obligation to revise the Title V emission fee to maintain the Federally mandated Title V permitting program. For instance, section 502(b) of the CAA requires the Department to adopt rules to require the owners and operators of sources subject to the requirement to obtain a Title V permit to pay an annual fee sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Title V permit program requirements. Similarly, section 6.3 of the APCA authorizes the establishment of fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process and operating permit program required by Title V of the CAA.

A commentator believes that imposing a spike or jolt in the Title V emissions fee without phasing the increase in is inappropriate.

The Board did investigate the potential for increasing the Title V emission fee in phases. However, a phased-in emission fee increase would not address the projected deficit in the Clean Air Fund Title V Major Emission Facilities Account. A deficit of $7,235,000 is projected for the Title V Major Emission Facilities Account by the end of fiscal year 2015-2016. Funds sufficient to support the program need to be collected before the fund is in deficit.

A commentator says that the current and proposed fee structure assumes that the amount of emissions correlate directly with the amount of resources needed to administer the Title V program. This is not true, as a smaller but more complex source may be more demanding of the Department’s resources.

The Board agrees that the Title V annual emission fee is directly related to the quantity of emissions of regulated pollutant released from a facility and that a lower emitting facility may not be paying a fee representative of the administrative resources dedicated to that lower emitting facility. However, the Department has stated that it intends to conduct a comprehensive review of all air quality fees in order to develop an equitable and sustainable fee program. At this time, the Board thinks the most equitable and feasible approach to this issue is to ensure that the Title V fee revenues adequately cover the expense of the program.

A commentator asserts that the fees are substantially out of line with fees collected in other states with a strong manufacturing base.

The Board disagrees. The fee is similar to those in other states and will not place the Commonwealth at a competitive disadvantage. All states are required by the CAA to collect Title V annual emission fees and to adjust the fees annually based on the Consumer Price Index. Several nearby states have already taken action to address the issue of declining revenues due to declining emissions of regulated pollutants. Connecticut, Maryland, New York and New Jersey no longer limit emission fee applicability to 4,000 tons per regulated pollutant. In 2013, Connecticut’s Title V emission fee is $301.09 per ton of regulated pollutant based on an “Inventory Stabilization Factor,” upwards from a fee of $283.46 per ton imposed in 2012 and with no cap on the amount of emissions of regulated pollutants subject to this fee. In 2012, New York assessed a Title V annual emission fee ranging from $45 per ton of regulated pollutant for emissions of less than 1,000 tons per year to $65 per ton of regulated pollutant for emissions of more than 5,000 tons per year; the fee is applied to emissions up to 7,000 tons of any regulated pollutant. The New York Title V emission fee for 2013 has not changed from 2012 levels. For 2013, the state of New Jersey imposes a Title V annual emission fee of $112.07 per ton of emissions of regulated pollutant with no cap on emissions, upwards from $106.67 per ton in 2012. Maryland’s 2013 Title V fee is $55.70 plus a $200 base fee; Maryland has no cap on the amount of emissions of regulated pollutants subject to the fee. West Virginia’s 2013 Title V annual emission fee is $31.87 per ton of emissions of regulated pollutant with a 4,000 ton cap. Virginia’s 2013 Title V annual emission fee is $58.88 per ton of emissions of regulated pollutant (4,000 ton cap); further, in 2012 Virginia established additional Title V facility fees including yearly maintenance fees ranging from $1,500 to $10,000 and Title V Permit application and Title V Permit renewal fees of $20,000 and $10,000, respectively.

A commentator recommends that the Board consider a facility cap as opposed to a fee per pollutant cap.

The Board disagrees. The fee per pollutant cap of 4,000 tons of any regulated pollutant is established in section 502(b) of the CAA and section 6.3 of the APCA. Any revision to the cap would require legislative action and is beyond the scope of the final-form rulemaking.

The commentator thinks that imposing an increase for the current calendar year is essentially a "retroactive tax" because the regulated community did not have prior knowledge of the proposal.

The Board disagrees with the assertion that the Title V annual emission fee is a tax. Neither the Board nor the Department has the authority to establish taxes. The General Assembly retains the authority to propose and pass bills which establish taxes. Moreover, the Department is statutorily mandated under both the APCA and CAA to establish fees to ensure the continued viability of the air quality program.

The Board first proposed a Title V fee amendment in 2009 at 39 Pa.B. 6049 (October 17, 2009). While the 2009 proposal was not finalized, the regulated community has been on notice of the need for additional fees. The current proposal was published in the early part of 2013, which allows companies to adequately plan for the increase based on 2013 emissions. Furthermore, the emission fees required by this amendment are due on or before September 1 of each year for emissions from the previous calendar year. Consequently, emissions for 2013 do not need to be paid until September 1, 2014. This is not retroactive.

The commentator asserts that the reduction in emissions and the shutdown of sources will reduce the Department's workload and should reduce the need for additional fees.

The Board disagrees. The announced facility shutdowns will not reduce the Department's workload. Proposed shutdowns in coal-fired power plants are being offset by the proposed construction of additional natural gas-fired power plants. To date there are nine plan approval applications in various stages of approval with the Department related to the construction of new natural gas-fired power plants. Department air program staff must continue to implement the air pollution laws and regulations, issue plan approvals and operating permits including renewals and amendments, conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, and monitor the ambient air in the Commonwealth. Air program staff operate and maintain a source testing program to ensure compliance with applicable requirements. Significant staff resources have been devoted to permitting and inspection of unconventional natural gas development activities. Further, the Department projects an increased workload due to the implementation of new or revised Federal regulations. Implementation of the new and revised Federal permitting rules will require increased numbers of inspections and permitting actions and outreach to and education of the impacted industry. These Federal rules may require promulgation of new or revision to existing state regulations.

The commentator thinks that the Board fails to recognize the inordinate regulatory costs borne by the manufacturing industry.

The Board disagrees. The Board acknowledges the number of new or revised regulations that impact manufacturing facilities. However, the CAA and APCA require that a Title V fee structure that is sufficient to cover the cost of the Title V permitting program be established.

The commentator notes that 40% of the Title V fees paid in Allegheny County would be paid by one company and that this is not commensurate with the resources needed to administer the Title V program.

The Board agrees that the commentator is correct that the owners or operators, or both, of a few major emitting facilities will pay a large portion of the Title V emission fees assessed by the air program. However, the commentator's facilities are also among the highest emitting facilities in Allegheny County. The Board agrees that the fee structure established by the APCA needs to be reviewed as part of the analysis of all air quality fees that will be conducted over the next 2 years. However, at this time, the most equitable and feasible approach to this issue is to ensure that the Title V annual emission fee revenues adequately cover the expense of the program.

A commentator supports the Board's decision to not establish a fee structure for carbon dioxide and greenhouse gases.

The Board thanks the commentator for their support of the decision. As stated in the proposed rulemaking notice, this rulemaking does not establish a fee structure for carbon dioxide and other GHG including hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride. On June 3, 2010, the EPA finalized the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). See 75 FR 31514. As the Tailoring Rule relates to the applicability of Title V annual emission fees for a "regulated pollutant" as defined in section 502 of the CAA, the EPA did not mandate revisions to state and local Title V programs to account for these emissions. The EPA reasoned that it would be difficult to apply the Title V fee to GHG gases, based on the large amount of GHG emissions relative to other pollutants and the need for better data to establish a GHG-specific fee amount. However, the EPA did commit to addressing this issue in a future rulemaking and to work with states to develop a workable fee approach. The EPA has not yet proposed a fee schedule under the CAA for GHG emissions. Consequently, the Board did not propose to impose Title V emission fees for GHG emissions from stationary sources in this Commonwealth.

The commentator urges the Board to make any Title V emission fee increase temporary, because the Title V fee revenue will return once the economy improves.

The Board disagrees. The reduction in Title V emission fee revenue is expected to continue to decline due mainly to the closure of certain large coal-fired electric generating units. As a result, Title V fee revenue is not expected to return to previous levels once the economy improves. Therefore, the Title V fee revision must be promulgated to cover the cost of administering the Title V program.

The commentator questions why the same numbers of Department staff are needed for inspections when the number of Title V facilities is decreasing.

The Board agrees that there has been a reduction in the number of Title V facilities. However, this reduction in the number of Title V facilities does not have a direct impact on the number of inspectors needed. This is because the inspections have become more complex, taking longer to conduct and to document than inspections that occurred at the start of the program in the early 1990s.

The commentator requests that the Board consider delaying implementation of the fee by 1 year or implementing the increase over several years.

The Board has analyzed the solvency of the Clean Air Fund Title V Major Emission Facilities Account and determined that there will not be sufficient funds to sustain the Title V permitting program beginning in fiscal year 2015-2016. Failure to address the Title V revenue shortfall now will result in a program without sufficient funds to operate. This in turn will have significant impacts on regulated industry, including the delay in revising and addressing plan approvals and operating permits including renewals and amendments.

A commentator thinks that the Board could impose a fee higher than $85 per ton and still remain below the level charged by several other states.

The Board agrees that a higher fee could have been proposed. The Title V fee of $85 per ton of emissions of up to 4,000 tons of regulated pollutant will provide a bridge to allow additional time for the development of a comprehensive fee structure for the air quality program.

A commentator asks whether the regulation will result in the air quality program operating at a loss again in just 2 years.

The Board agrees that the increase to the Title V annual emission fee is not a permanent solution to funding the air quality program. The current Comparative Financial Statement for the Clean Air Fund shows that the Title V Major Emission Facilities Account will have a negative balance at the end of fiscal year 2015-2016. As noted in the minutes of the November 20, 2012, Board meeting, the final-form rulemaking provides a “bridge” for the Department to address its imminent budget needs while allowing the Department and interested stakeholders sufficient time to examine the most appropriate means to support the Title V program in the future as new air pollution control technologies, the abundance of natural gas, and the retirement of coal-fired power plants continue to reduce emissions of regulated pollutants.

The commentator wants to know whether the Board explored offsetting all or a portion of the proposed increase through cost reductions.

The Board believes that the Department has made significant cost reductions in the Title V program. The Department has eliminated or postponed the purchase of fixed assets. The Department has reallocated program costs to the Mobile and Area Facilities Account of the Clean Air Fund where permissible to prolong the solvency of the Title V Major Emission Facilities Account. For example, the Department transferred $485,000 of expenditures from the Title V Major Emission Facilities Account to the Mobile and Area Facilities Account of the Clean Air Fund in fiscal year 2012-2013. These expenditures included staff training, certain travel expenses, computer and computer software purchases, health certifications, and certain utility charges. For fiscal year 2013-2014, the Department will transfer $240,000 in operating expenses to the Mobile and Area Facilities Account of the Clean Air Fund and reduce computer systems support spending by $150,000. The Department will continue to look for cost reductions that can be implemented without negatively impacting the Title V permitting program.

The commentator asks how the fee increase will affect employment.

The Board considered whether an increase to the Title V annual emission fee would put Pennsylvania businesses at a competitive disadvantage with comparable businesses in the surrounding states or draw business and employment opportunities away from the Commonwealth. The Board finds that in some cases, the Commonwealth would be very competitive and may be able to draw new industry on the basis of having a lower Title V annual emission fee than nearby states.

The commentator wonders whether the Board considered a delay or phase-in of the increase to allow businesses time to accommodate the full impact and whether it is reasonable to impose the fee increase on emissions that already occurred in 2013.

The Board did consider a delay and different years for the implementation of the Title V fee increase. However, assessing the revised fee on emissions of regulated pollutants occurring in calendar year 2013, due and payable by September 1, 2014, was chosen due to the projected budget deficit and anticipated retirement or deactivation of electric generating units that will have a significant negative impact on the Title V permitting program. Because of declining Title V emission fee revenue due to the installation of air pollution control technology on stationary sources and the retirement or curtailment of operations by major sources including coal-fired power plants, deficits of $7.235 million and $19.406 million in fiscal years 2015-2016 and 2016-2017, respectively, are projected for the Title V Major Facilities Account.

The Board has analyzed the solvency of the Clean Air Fund Title V Major Emission Facilities Account and determined that there will not be sufficient funds to sustain the Title V permitting program beginning in fiscal year 2015-2016. Failure to address the Title V revenue shortfall now will result in a program without sufficient funds to operate. This will have significant impacts on industry, including the delay in revising and addressing plan approvals and operating permits including renewals and amendments since the Department will necessarily be forced to reduce staff in order to balance the budget. There will not be sufficient staff to conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, monitor the ambient air in the Commonwealth, and operate and maintain a source testing program to ensure compliance with applicable requirements. All of these factors could contribute to a loss of employment opportunities and slow the economic recovery in this Commonwealth. The Board first proposed a Title V annual emission fee increase in 2009, thereby providing notice to the affected owners and operators of Title V facilities of the need to address the revenue shortfall. Further, payment of the emission fees for emissions occurring in calendar year 2013 will not be due until September 1, 2014, 19 months after publication on February 2, 2013, of the rulemaking notice proposing the increase to the Title V annual emission fee.

The commentator asks the Board to explain how the costs imposed by the fee increase are justifiable compared to the benefits the fees produce.

Retaining sufficient staff (including permitting, monitoring, enforcement, source testing and legal personnel) to support the Title V permitting program is a critical component of improving air quality and assuring compliance with the NAAQS. The benefits of attaining and maintaining the NAAQS are significant. The EPA has estimated the monetized health benefits of attaining ambient air quality standards. For example, the EPA estimated that the monetized health benefits of attaining the 8-hour ozone standard of 0.075 ppm range from $8.3 billion to $18 billion on a National basis. See Regulatory Impact Analysis, Final National Ambient Air Quality

Standard for Ozone, July 2011, http://www.epa.gov/glo/pdfs/201107_OMBdraft-OzoneRIA.pdf. Prorating that benefit to the Commonwealth, based on population, results in a public health benefit of $337 million to $732 million. The projected costs to the regulated industry Commonwealth-wide in increased fees ranging from $5,830,000 in fiscal year 2014-2015 to $4,237,000 in fiscal year 2018-2019 pale by comparison.

The Board is not stating that these estimated monetized health benefits would all be the result of implementing the increase to the Title V annual emission fee, but the EPA estimates are indicative of the benefits of attaining the NAAQS. Ensuring that there are sufficient staff and resources to implement the Title V permitting program is one part of the overall air quality program to attain and maintain the NAAQS in this Commonwealth. Adequate funding will assure the regulated industry that their plan approval applications and permits will be reviewed in a timely manner, sustaining their profitable business and maintaining jobs. Attaining and maintaining public health and welfare goals will attract and retain residents needed to fill the jobs created by the regulated industries and small businesses. Maintaining a healthy environment will benefit the agricultural and tourism industries, both of which provide many jobs. All of these situations will increase tax revenues to the Commonwealth.

Implementing the proposed increase to the Title V annual emission fee will assure the residents of this Commonwealth that the Commonwealth's air pollution control program is adequately funded for the next few years. The anticipated increased revenues will allow the Department and approved local air pollution control agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to reduce emissions to achieve healthful air quality and ensure continued protection of the environment and the public health and welfare of the residents of this Commonwealth.

G. *Benefits, Costs and Compliance*

Benefits

The increased Title V annual emission fee revenue will be used to adequately fund the Commonwealth's air quality Title V permit programs as authorized by the APCA. Without an increase in the annual emission fee, Clean Air Fund Title V Major Emission Facilities Account deficits of $7.235 million, $19.406 million, $32.001 million and $45.028 million are projected for the Department's Title V program for fiscal years 2015-2016, 2016-2017, 2017-2018 and 2018-2019, respectively. Revenue to the Department from the fee increase will be used solely to address the projected deficits in the Title V Major Emission Facilities Account in the Clean Air Fund.

The Title V annual emission fee of $85 per ton for emissions of up to 4,000 tons of each regulated pollutant will result in projected increased revenue to the Department of $5.1 million in the Title V Account for fiscal years 2014-2015 and 2015-2016, and $3.5 million for fiscal years 2016-2017, 2017-2018 and 2018-2019, if the fee is imposed beginning with emissions occurring in calendar year 2013 and payable by September 1, 2014. An increase in the Title V annual emission fee will provide projected increased emission fee revenue of approximately $570,000 and $167,000 for the approved local air pollution control agency Title V programs in Allegheny County and Philadelphia County, respectively. The increase in the Title V annual emission fee will result in a combined projected increase of revenue to the three agencies of $5.8 million in fiscal year 2014-2015.

The increase to the Title V annual emission fee will assure the regulated industry that their plan approval applications and permits are reviewed in a timely manner, sustaining their business and maintaining jobs. Adoption of the revised Title V emission fee will ensure that the Commonwealth's Title V air pollution control permit program is adequately funded for the next few years. The anticipated increased revenue will allow the Department and approved local air pollution control agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to further reduce emissions of regulated pollutants to achieve healthful air quality and ensure continued protection of the environment and the public health and welfare of the residents of this Commonwealth.

Compliance Costs

The owners and operators of approximately 560 Title V facilities in this Commonwealth, including facilities in Allegheny and Philadelphia Counties, will be required to comply with the revised Title V annual emission fee on emissions of up to 4,000 tons of each regulated pollutant. The financial impact on the owners and operators of Title V facilities regulated by the Department, collectively, will be additional annual emission fee costs of approximately $5.1 million per year for fiscal years 2014-2015 and 2015-2016; additional annual emission fee costs in fiscal years 2016-2017, 2017-2018 and 2018-2019 for these owners and operators are expected to be about $3.5 million per year due to decreasing amounts of emissions of regulated pollutants as major sources install additional air pollution controls, convert to burning natural gas (a cleaner energy source) instead of coal or oil, or shut down certain facilities. Costs to the owners and operators of Title V facilities regulated by the approved local air pollution control agencies are expected to be about $570,000 and $167,000 in fiscal year 2014-2015 in Allegheny County and Philadelphia County, respectively. The revised Title V annual emission fee will result in total projected increased costs of $5.8 million for the regulated community in Title V emission fee payments to the three agencies in fiscal year 2014-2015.

No new legal, accounting or consulting procedures would be required.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding the newly revised requirements and how to comply with them. This outreach initiative will be accomplished through the Department's ongoing compliance assistance program.

Paperwork Requirements

There are no additional paperwork requirements associated with this proposed rulemaking with which the industry would need to comply.

H. *Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. The anticipated increased revenues will allow the Department and approved local air pollution control agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth, sustain the gains made in healthful air quality, and ensure continued protection of the environment and the public health and welfare of the residents of this Commonwealth.

I. *Sunset Review*

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

J. *Regulatory Review*

Under section 5(a) and (f) of the Regulatory Review Act (71 P. S. § 745.5(a) and (f)), on January 22, 2013, the Department submitted a copy of the notice of proposed rulemaking, published at 43 *Pa.B.* 677, to the Independent Regulatory Review Commission (IRRC). In accordance with Section (f) of the Regulatory Review Act (71 P.S. § 745.5(f)), the Department submitted a copy of the notice of proposed rulemaking to the Chairpersons of the House and Senate Environmental Resources and Energy Committees on February 21, 2013.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on xxxx, xx, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on xxxx, xx, 2013, and approved the final-form rulemaking.

K. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code* §§ 7.1 and 7.2.

(2) At least a 60-day public comment period was provided as required by law, and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 43 Pa.B. 677.

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

(5) These regulations are reasonably necessary to cover the indirect and direct costs of administering the air pollution control program, operating permit program required by Title V of the CAA, other requirements of the CAA (42 U.S.C.A. §§ 7401—7671q), 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.

L. *Order of the Board*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, 25 *Pa. Code* Chapter 127 are amended by amending §§ 127.701 and 127.705 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This final-form rulemaking will be submitted to the EPA as an amendment to the Pennsylvania SIP.

(f) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

E. CHRISTOPHER ABRUZZO
Acting Chairman