



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Air Quality

Final Rulemaking Air Quality Title V Emission Fee Amendments

Environmental Quality Board

September 17, 2013

Regulatory Requirements

- The Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to adopt rules that the owner or operator of Title V sources pay an annual fee sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Title V permit program.
- EPA regulations require states to demonstrate that the owners or operators of Title V sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs.
- Title V fees paid to the states must be used solely for the Title V permit program costs.

Regulatory Requirements

- The Air Pollution Control Act authorizes the Environmental Quality Board (EQB) to establish fees sufficient to cover the indirect and direct costs of administering the Title V permit program.
- The program costs include the cost to support the Small Business Compliance Assistance Programs including the Small Business Compliance Advisory Committee and the Office of Small Business Ombudsman.
- An adequate fee schedule must result in the collection and retention of revenues sufficient to cover the permit program costs.

Title V Program Costs

Title V program activities and costs include:

- Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
- Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
- General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

Title V Program Costs

- Implementing and enforcing the terms of any Part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
- Emissions and ambient monitoring;
- Modeling, analyses, or demonstrations;
- Preparing inventories and tracking emissions; and
- Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program authorized under Section 507 of the CAA.

Clean Air Fund – Title V Emission Fee Revenue

- Title V emission fee revenue has declined due to decreasing emissions of regulated pollutants as a result of the installation of control technology on stationary sources and the retirement or curtailment of operations by major sources including coal-fired power plants.
- According to the Financial Comparative Statement (dated August _ 2013) for the Title V Major Emission Facilities Account in the Clean Air Fund, **deficits of \$7.2 million, \$19.4 million, and \$32.0 million are projected** in FY 2015-2016, FY 2016-2017, and FY 2017-2018, respectively.

Title V Emission Fee Revenue

Title V emission fee revenue for a five-year period is provided as follows:

- FY 2008-2009 \$18,476,000
- FY 2009-2010 \$18,127,000
- FY 2010-2011 \$15,542,000
- FY 2011-2012 \$15,762,000
- FY 2012-2013 \$14,708,000

In FY 2012-2013, Title V fee revenue collected was approximately \$3.8 million less than the fee revenue collected in FY 2008-2009.

EQB Action on the Proposed Rulemaking

- On November 12, 2012, the EQB adopted a proposed rulemaking amending the Title V emission fee requirements in 25 Pa. Code § 127.705 (relating to emission fees).
- The proposal would establish a Title V emission fee of \$85 per ton for up to 4,000 tons of each regulated pollutant per Title V facility.
- The new Title V emission fee would be payable no later than September 1, 2014, for regulated pollutants emitted from Title V facilities in the 2013 calendar year.

EQB Public Participation Process

- The proposed amendments were published in the *Pennsylvania Bulletin* for public review and comment on February 2, 2013 (43 Pa.B. 677).
- Three public hearings were held as follows:
 - Pittsburgh March 5, 2013
 - Norristown March 6, 2013
 - Harrisburg March 7, 2013
- The Board provided a 66-day public comment period which closed on April 8, 2013.

EQB Public Participation Process

- Written comments on the proposed Title V fee amendments were received from the following commentators:
 - Connection for Oil, Gas & Environment in the Northern Tier, Inc.
 - Hercules Cement Co., L.P. (d/b/a Buzzi Unicem USA)
 - US Steel Corporation Law Department
 - State Representative, Gregory Vitali
 - The Independent Regulatory Review Commission

Summary of Public Comments

- Two commentators supported the proposed amendments for the Title V emission fees.
- Two owners and operators of Title V facilities opposed the proposal expressing concern about the magnitude of the increase, the need for the increase, and/or recommending delays in the increase.
- No comments were received from the other owners or operators of the approximately 560 Title V facilities affected by the proposed amendments.

Summary of IRRC Comments

- The Independent Regulatory Review Commission's (IRRC) comments included a summary of the comments submitted by the four public commentators.
- IRRC's comments focused on the temporary impact the fee increase will have on the Title V fund balance.
- They also focused on the balance between the need to increase revenue and the impact on industry.
- The Department has prepared a detailed response to all of the comments received from the public and IRRC.

Other States' Title V Emission Fees

| State | Title V Permit Emission Fees payable in 2013 for 2012 emissions | Emissions Cap tons per year | Number of Active Title V Facilities |
|---------------|---|-----------------------------|-------------------------------------|
| Connecticut | \$301.09 per ton | No | 74 |
| Delaware | \$5,000 to \$243,000 and user fees starting at \$2,000 | 7,500 | 61 |
| Illinois | \$21.50 per ton up to \$294,000 (based on allowable emissions) | 13,675 | 455 |
| Maryland | \$55.70 per ton | No | 122 |
| New Jersey | \$112.07 per ton | No | 301 |
| New York | \$45 to \$65 per ton | 7,000 | 417 |
| N. Carolina | \$30.77 per ton + \$6,668 base fee | 4,000 | 279 |
| Ohio | \$46.73 per ton | 4,000 | 532 |
| Pennsylvania | \$57.50 per ton | 4,000 | 560 |
| Rhode Island | \$340.30 per ton | No | 34 |
| Virginia | \$58.88 per ton + maintenance fee \$1,500 to \$10,000 | 4,000 | 276 |
| West Virginia | \$31.87 per ton | 4,000 | 207 |

Additional DEP Workload Obligations

The Department's workload continues to increase due to the implementation of additional federal requirements:

- Maximum Achievable Control Technology (MACT) standards for boilers
- MACT standards for electric generating units
- MACT standards for Commercial and Industrial Solid Waste Incinerators
- MACT standards for Reciprocating Industrial Combustion Engines
- Area source MACT standards
- New Source Performance Standards (NSPS) including standards for the natural gas industry
- NSPS for Sewage Sludge Incinerators and
- NSPS for Kraft Pulp and Paper Mills
- NSPS for Hospital Medical Infectious Waste Incinerators

Additional DEP Workload Obligations

The Department's workload continues to increase due to the implementation of additional federal requirements:

- NSPS for Hospital Medical Infectious Waste Incinerators
- National Ambient Air Quality Standards (NAAQS) for Lead (revised November 12, 2008)
- NAAQS for Sulfur Dioxide (revised June 22, 2010)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised October 17, 2006)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised January 15, 2013)
- NAAQS for Nitrogen Dioxide (revised February 9, 2010)
- NAAQS for Ozone (revised March 27, 2008)
- Title V Permit Renewals and Amendments
- Reasonably Available Control Technology Requirements

Clean Air Fund: Major Facilities Account

Major Facilities (Title V) Account in thousands of dollars
w/o fee amendments

| | FY 2011-12 | FY 2012-13 | FY 2013-14 | FY 2014-15 | FY 2015-16 | FY 2016-17 | FY 2017-18 |
|---------------------------|-----------------|-----------------|-----------------|----------------|------------------|-------------------|-------------------|
| | ACTUAL | ACTUAL | REBUDGET | PLAN YR.1 | PLAN YR.2 | PLAN YR.3 | PLAN YR.4 |
| Beginning Balance | \$25,460 | \$22,804 | \$20,404 | \$12,674 | \$3,073 | (\$7,235) | (\$19,406) |
| Total Revenue | \$17,399 | \$16,064 | \$13,600 | \$10,748 | \$10,448 | \$9,000 | \$9,000 |
| Total Expenditures | \$20,055 | \$18,464 | \$21,330 | \$20,349 | \$20,756 | \$21,171 | \$21,595 |
| Ending Balance | \$22,804 | \$20,404 | \$12,674 | \$3,073 | (\$7,235) | (\$19,406) | (\$32,001) |

Clean Air Fund: Major Facilities Account

Major Facilities (Title V) Account in thousands of dollars
with fee amendments

| | FY 2011-12 | FY 2012-13 | FY 2013-14 | FY 2014-15 | FY 2015-16 | FY 2016-17 | FY 2017-18 |
|---------------------------|-----------------|-----------------|-----------------|----------------|----------------|------------------|-------------------|
| | ACTUAL | ACTUAL | REBUDGET | PLAN YR.1 | PLAN YR.2 | PLAN YR.3 | PLAN YR.4 |
| Beginning Balance | \$25,460 | \$22,804 | \$20,404 | \$12,674 | \$8,166 | \$2,951 | (\$5,720) |
| Total Revenue | \$17,399 | \$16,064 | \$13,600 | \$15,841 | \$15,540 | \$12,500 | \$12,500 |
| Total Expenditures | \$20,055 | \$18,464 | \$21,330 | \$20,349 | \$20,756 | \$21,171 | \$21,595 |
| Ending Balance | \$22,804 | \$20,404 | \$12,674 | \$8,166 | \$2,951 | (\$5,720) | (\$14,815) |

Final Air Quality Fee Revision

The final rulemaking establishes a Title V annual emission fee of \$85/ton of each “regulated pollutant” for up to 4,000 tons payable beginning in 2014 for emissions during the 2013 calendar year.

| | |
|---|-----------------|
| FY 2014/2015 DEP Emission Fee Revenue w/o Fee Increases | \$10.3 Million |
| FY 2014/2015 Increased DEP Emission Fee Revenue w/\$85 per ton Title V Fee | \$5.1 Million |
| FY 2014/2015 DEP Emission Fee Revenue w/\$85 per ton Title V Fee Amendment | \$15.4 Million |
| FY 2014/2015 Increased Emission Fee Revenue for Philadelphia AMS w/\$85 per ton Title V Fee | \$0.167 Million |
| FY 2014/2015 Increased Emission Fee Revenue for Allegheny County w/\$85 per ton Title V Fee | \$0.570 Million |
| Total Fee Increase (DEP, AMS, ACHD) in FY2014/2015 w/\$85 per ton Title V Fee | \$5.837 Million |

▶ Advisory Committee Action

- On June 13, 2013, the Air Quality Technical Advisory Committee concurred with the DEP recommendation to forward the final Title V emission fee amendments for consideration by the EQB.
- On July 16, 2013, the Citizens Advisory Council concurred with the DEP recommendation to forward the final Title V fee amendments to EQB for consideration.
- On July 24, 2013, the Small Business Compliance Advisory Committee concurred with presenting the final Title V fee amendments to the EQB for consideration.

Title V Emission Fee Final Rulemaking

- After consideration of the comments, the Department recommends that there be no changes from proposed to final rulemaking.
- The final rulemaking establishes a Title V annual emission fee of \$85 per ton of each “regulated pollutant” for up to 4,000 tons payable beginning in 2014 for emissions during the 2013 calendar year.

Title V Emission Fee Final Rulemaking

- The Department recommends that the EQB approve the final rulemaking.
- The final-form rulemaking will be submitted to EPA upon publication for approval as a revision to the Commonwealth's State Implementation Plan and as an amendment to the Title V Program Approval.



Thank you.

Vincent J. Brisini, Deputy Secretary
Waste, Air, Radiation and Remediation

Joyce E. Epps, Director
Bureau of Air Quality