

Executive Summary

Air Quality Fee Schedule Amendments

The Department of Environmental Protection (Department) proposes to amend existing requirements and fee schedules in Chapter 127, Subchapter I (relating to plan approval and operating permit fees) to ensure that fees are sufficient to cover the costs of administering the air pollution control program required by section 502(b) of the Clean Air Act (CAA) and section 6.3 of the Air Pollution Control Act (APCA). Fee increases are proposed to the existing fee schedules for applications for plan approvals and for both Title V and Non-Title V operating permits.

Purpose of the Proposed Rulemaking

The proposed rulemaking is authorized under section 5(a)(1) of the APCA (35 P.S. § 4005(a)(1)), which grants the Environmental Quality Board (Board) the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth, and section 5(a)(8) of the APCA (35 P.S. § 4005(a)(8)), which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the CAA. The proposed amendments to the fee schedules are authorized under section 6.3 of the APCA.

Section 6.3(a) authorizes the 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 CAA (42 U.S.C.A. § 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, the Small Business Compliance Advisory Committee, and the 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.

Section 502(b) of the CAA requires the Commonwealth to adopt regulations that the owner or operator of all sources subject to the requirement to obtain a permit under Title V of the CAA pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V.

The proposed increased and new fees are needed to cover the Department's costs related to performing the air pollution control plan approval program and operating permit program activities required under the CAA and APCA to attain and maintain the National Ambient Air Quality Standards (NAAQS) for air pollutants including ozone, particulate matter, lead, carbon monoxide, nitrogen dioxide, and sulfur dioxide, as well as other requirements of the CAA, APCA, and regulations promulgated thereunder.

The revenue from the fees is deposited in restricted accounts in the Commonwealth's Clean Air Fund to support the air pollution control program activities. A comparative financial statement for the Clean Air Fund restricted accounts shows an overall zero balance occurring sometime during Fiscal Year 2021/2022. Because deficit spending is not allowed, the Air Quality Program

expenditures would need to decrease by approximately \$10 million per year should a regulatory fee package not be approved. . This would include reducing the ambient air quality monitoring network and eliminating all air toxics monitoring in Pennsylvania, leaving large swaths of rural Pennsylvania with no air monitoring at all. Most of the cost reduction would result in significant decreases in air quality staff at all levels in both the Air Quality Program and the Department's six regional offices. Conservatively, a decrease of at least 30% would be needed. This would severely impact the ability of the Air Quality Program to process and review permit applications; inspect facilities and respond to citizen complaints; initiate compliance and enforcement activities; and develop federally required regulatory and State Implementation Plan (SIP) revisions. Reductions in staff would likely be unacceptable to the regulated industry, local governments, EPA, and the public.

Overall, the citizens of Pennsylvania would suffer from the loss of continued air quality planning, monitoring, permitting and inspection that are all fundamental to the economy and protecting public health and welfare and the environment. With this proposed rulemaking, the Air Quality Program could gradually fill 17 currently vacant Title V positions; expand its air monitoring network in shale gas areas; and develop new and improved IT systems, including ePermitting and publicly available online air quality data.

If published in the *Pennsylvania Bulletin* as a final rulemaking, the final-form regulation will be submitted to the United States Environmental Protection Agency (EPA) as a SIP revision or 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), as appropriate.

Summary of Proposed Rulemaking

The proposed rulemaking amends 25 Pa. Code § 121.1 to add a definition of “synthetic minor facility” and corrects a cross-reference in section 127.424. Section 127.465 is proposed to establish procedures for significant operating permit modifications. Sections 127.702, 127.703, and 127.704 (relating to plan approval fees; operating permit fees under Subchapter F; and Title V operating permit fees under Subchapter G) are amended to revise the existing fee structures for plan approval applications and operating permits. New fees are established in section 127.702 for plan approval applications for plantwide applicability limits and ambient air impact modeling of certain plan approval applications. The annual operating permit administration fee required under sections 127.703(c) and 127.704(c) is proposed to be replaced with an annual operating permit maintenance fee that would be due on or before December 31 of each year for the next calendar year. Minor amendments are proposed to section 127.705 to clarify implementation of the Consumer Price Index adjustment.

Sections 127.708, 127.709, 127.710, and 127.711 (relating to risk assessment; asbestos abatement or regulated demolition or renovation project notification; fees for requests for determination; and fees for claims of confidential information) are added to establish fees to support risk assessment analysis, the submission of asbestos notifications, requests for determination, and claims of confidential information. Section 127.712 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H) is added to

allow the Department to establish application fees for the use of general plan approvals and general operating permits for stationary or portable sources.

Affected Parties

The proposed rulemaking would affect the owners and operators of air contamination sources in Pennsylvania, including all Title V and non-Title V facilities, subject to the plan approval and permitting requirements of the CAA and APCA and implementing regulations, as well as asbestos demolition and renovation contractors. The universe of permitted sources in Pennsylvania includes approximately 562 Title V permitted facilities, 2,700 permitted non-Title V facilities, and 2,000 environmental remediation contractors or other entities submitting approximately 7,000 asbestos notifications annually. State and local government agencies would also be affected if they have a permitted air contamination source.

Advisory Groups

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) in the development of this proposed rulemaking. A fiscal analysis of the Clean Air Fund, the Air Quality Program budget, and the proposed fee concepts, including three Title V fee options, were discussed with AQTAC on December 14, 2017. On June 14, 2018, the draft proposed rulemaking Annex A, containing the Department's recommended fee structure, was presented. At that meeting, AQTAC concurred with the Department's recommendation to present the proposed rulemaking to the Board for consideration for publication as a proposed rulemaking.

The Department also conferred with the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight Committee concerning this proposed rulemaking on June 15 and June 25, 2018. The full CAC discussed this proposed rulemaking on July 17, 2018, and concurred with the Department's recommendation to move the proposed rulemaking forward to the Board for consideration, with consideration of the concerns included in the letter of concurrence. An overview of this proposed rulemaking was presented to the Small Business Compliance Advisory Committee (SBCAC) on July 25, 2018. SBCAC voted unanimously to concur with the Department's recommendation to move the proposed rulemaking forward to the Board for consideration.

Public Comments and Board Hearings

The Department recommends a 60-day public comment period on the proposed rulemaking and an opportunity for three public hearings at DEP regional offices in Norristown, Harrisburg and Pittsburgh, PA.