

Executive Summary
Air Quality Fee Schedule Amendments
25 Pa. Code Chapters 121 and 127

The Environmental Quality Board (Board) amends Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees) as set forth in Annex A. This final-form rulemaking amends existing requirements in Subchapter F and amends and adds to the existing fee schedules in Subchapter I to address the disparity between revenue and expenses for the Department of Environmental Protection's (Department) Air Quality Program. These amendments ensure that fees are sufficient to cover the costs of administering the air pollution control program required under section 502(b) of the Clean Air Act (CAA) and section 6.3 of the Air Pollution Control Act (APCA). Fee increases are for the existing fee schedules for applications for plan approvals and for both Title V and Non-Title V operating permits.

Summary and Purpose of the Final Rulemaking

The final-form rulemaking is authorized under section 5(a)(1) of the APCA (35 P.S. § 4005(a)(1)), which grants the 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 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.

These fee increases 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 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 decline balance occurring after 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 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, the U.S. Environmental Protection Agency (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 final-form 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.

The final-form rulemaking will be submitted to the EPA for approval as a revision to the Commonwealth's SIP upon publication in the *Pennsylvania Bulletin*.

Affected Parties

The final-form 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 application and operating permit requirements of the CAA and APCA, and regulations promulgated thereunder. The rulemaking would also affect environmental remediation contractors who submit asbestos notifications. State and local government agencies would also be affected if they have a permitted air contamination source.

The owners and operators of the approximately 500 Title V facilities and the 2,100 permitted non-Title V facilities would be impacted by the revisions to the plan approval application fees and operating permit fees. These owners and operators have been paying these fees since the establishment of the Air Quality Program plan approval application and operating permit fee schedules in November 1994 and have the relative technical capacity to implement the amendments to the fee schedules.

Approximately 2,000 environmental remediation contractors who submit approximately 7,000 asbestos notifications per year would be affected by the new fee for asbestos notifications. These contractors are familiar with submitting the asbestos notification form, but they have not been assessed a fee, to date, for the Department's review and processing of these forms. However, many of these contractors have worked in Philadelphia County, Allegheny County or

surrounding states which have fees in place for asbestos notifications. The Department will provide guidance to contractors on how to submit the fee through the Department's online asbestos notification system.

The operators of the state and local government permitted facilities have been required to submit plan approval application and operating permit fees since November 1994. These entities have the relative technical capacity to implement the amendments to the fee schedules.

Advisory Groups

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) on December 12, 2019, and AQTAC concurred with the Department's recommendation to move this final-form rulemaking forward to the Board for consideration.

The Department also conferred with the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight Committee concerning this final-form rulemaking on January 6, 2020. The full CAC discussed this final-form rulemaking on January 21, 2020 and concurred with the Department's recommendation to move the final-form rulemaking forward to the Board for consideration. An overview of this final-form rulemaking was presented to the Small Business Compliance Advisory Committee (SBCAC) on January 22, 2020. SBCAC voted to concur with the Department's recommendation to move the final-form rulemaking forward to the Board for consideration.

Public Comments and Board Hearings

The Board adopted the proposed rulemaking at its meeting on December 18, 2018. On April 13, 2019, the proposed rulemaking was published in the *Pennsylvania Bulletin* for a 66-day public comment period. (49 Pa.B. 1777). Three public hearings were held on May 13, 15 and 16, 2019, in Pittsburgh, Norristown and Harrisburg, respectively. The public comment period closed on June 17, 2019. The Department received comments from 1,426 commenters including the House of Representatives Environmental Resources and Energy Committee and the House of Representatives. The Independent Regulatory Review Commission separately provided comments on the proposed rulemaking.