pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Bureau of Air Quality

Air Quality Fee Schedule Amendments

25 Pa. Code Chapters 121 and 127
49 Pa.B. 1777 (April 13, 2019)
Environmental Quality Board Regulation #7-536
(Independent Regulatory Review Commission #3231)

Comment and Response Document

Air Quality Fee Schedule Amendments

On April 13, 2019, the Environmental Quality Board (Board) published a *Pennsylvania Bulletin* notice of public hearing and comment period on a proposed rulemaking to amend 25 Pa. Code Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees). The Board proposed to amend existing requirements in Subchapter F and existing air quality plan approval and operating permit fee schedules in Subchapter I. The Board also proposed new fees in Subchapter I to address the disparity between revenue and expenses for the Department of Environmental Protection's (Department) Air Quality Program. These increased fees and new fees would be used to provide a sound fiscal basis for continued air quality assessments and planning that are fundamental to protecting the public health and welfare and the environment in this Commonwealth and downwind. Increased funding for the Air Quality Program will also provide the certainty businesses need to expand or locate in this Commonwealth by continuing to allow for timely and complete review of plan approval and operating permit applications.

Three public hearings were held on the proposed rulemaking as follow:

May 13, 2019	Department of Environmental Protection Southwest Regional Office Waterfront Conference Rooms A and B 400 Waterfront Drive Pittsburgh, PA 15222
May 15, 2019	Department of Environmental Protection Southeast Regional Office Delaware and Schuylkill Conference Rooms 2 East Main Street Norristown, PA 19401
May 16, 2019	Department of Environmental Protection Southcentral Regional Office Susquehanna Conference Rooms A and B 909 Elmerton Avenue Harrisburg, PA 17110

This document summarizes the testimony received at the public hearings and the written comments received during the public comment period. In addition, the comments received from the House of Representatives, the House of Representatives Environmental Resources and Energy Committee and the Independent Regulatory Review Commission (IRRC) are summarized and responses provided. Each comment is provided with the identifying commenter number for each commenter that made that comment.

Copies of Comments

Copies of all comments received by the Board are posted on IRRC's website at http://www.irrc.state.pa.us. Search by Regulation # 7-536 or IRRC # 3231.

Acronyms used in this Comment/Response Document

APCA – Pennsylvania Air Pollution Control Act
AQTAC – Air Quality Technical Advisory Committee
CAA – Federal Clean Air Act (42 U.S.C.A. §§ 7401—7671q)
CAC – Citizens Advisory Council
CPI-U-RS – Consumer Price Index for all Urban Consumers research series
EPA – United States Environmental Protection Agency
EQB – Environmental Quality Board
FRED® – Federal Reserve Economic Data
GP – General Permit
IRRC – Independent Regulatory Review Commission
MACT – Maximum Achievable Control Technology
MWh – Megawatt hours
NAAQS – National Ambient Air Quality Standard
NACAA – National Association of Clean Air Agencies
NESHAP – National Emission Standards for Hazardous Air Pollutants
NSPS – New Source Performance Standards
NSR – New Source Review
PAL – Plantwide applicability limit
PSD – Prevention of significant deterioration
SBCAC – Small Business Compliance Advisory Committee
SIP – State Implementation Plan

LIST OF COMMENTERS ON THE PROPOSED RULEMAKING

ID #	Last Name	First Name	Affiliation	City	State
1	Norris	Thomas		Greensburg	PA
2	Krafjack	Emily		Mehoopany	PA
3	Hochheiser	Harry		Pittsburgh	PA
4	Filippini	Rachel	Group Against Smog and Pollution (GASP)	Pittsburgh	PA
5	Magidson	Pam		Ardmore	PA
6	Marrara	Carl A.	Pennsylvania Manufacturers' Association	Harrisburg	PA
7	Berry	John		Pittsburgh	PA
8	Regan	Annie		Pittsburgh	PA
9	Scanlon	Meghan		Pittsburgh	PA
10	Gray	Thalia		Pittsburgh	PA
11	Schmidt	Peg		Pittsburgh	PA
12	Castrina MD	Frank P.		Carlisle	PA
13	Kyriazi	Nicholas		Pittsburgh	PA
14	Chandler	Elizabeth		Swissvale	PA
15	Kovalchick	Shanna		Pittsburgh	PA
16	McCarter	Daniel Parnell		Ann Arbor	MI
17	Taranto	Angelo			PA
18	Nadle	Jonathan			PA
19	Fifer	Gaye			PA
20	Homan, Ph.D.	Michelle		Erie	PA
21	Langmead	Greg			PA
22	Mercurio	Joseph		New Kensington	PA
23	Mastrangelo	Dilla		Pittsburgh	PA
24	Johnson	Janis		Pittsburgh	PA
25	Au	Thomas	Clean Air Board of Central Pennsylvania	Carlisle	PA

26	Pipal	Suella			PA
27	Havrilla	Robert		Pittsburgh	PA
28	Jarvis	Naomi		Pittsburgh	PA
29	Mercurio	Arlene		New Kensington	PA
30	Harvey	James		Glenshaw	PA
31	Sunday	Kevin	Pennsylvania Chamber of Business and Industry	Harrisburg	PA
32	Henderson	Patrick	Marcellus Shale Coalition	Pittsburgh	PA
33	Moody	Kevin	PIOGA	Harrisburg	PA
34	Brisini	Vincent	Olympus Power, LLC	Morristown	NJ
35	Michalik	Sarah	U. S. Steel	Pittsburgh	PA
36	Decker	Richard		Bethlehem	PA
37	Peterson	Alan		Willow Street	PA
38	DuPaul	George		Macungie	PA
39	Lupo,OSB	Pat		Erie	PA
40	Richter	Ron		Bethlehem	PA
41	Scott	wm		Mansfield	PA
42	Kirchner	Michael		Harrisburg	PA
43	Charles	Donald		Huntingdon Valley	PA
44	Reiter	Margaret		Saylorsburg	PA
45	Gibbons	Jaret	ARIPPA	Camp Hill	PA
46	Minott, Esq.	Joseph	Clean Air Council	Philadelphia	PA
47	McPhedran	Charles	Earthjustice	Philadelphia	PA
48	Mehalik, Ph.D.	Matthew	Breathe Project	Pittsburgh	PA
49	Masur	David	PennEnvironment	Philadelphia	PA
50	Priego	Karen	PSATS		PA
51	Brown	Stephen			PA

52	Benninghoff	Kerry	PA House of Representatives
53	Bernstine	Aaron	PA House of Representatives
54	Borowicz	Stephanie	PA House of Representatives
55	Cook	Bud	PA House of Representatives
56	Cox	Jim	PA House of Representatives
57	Cutler	Bryan	PA House of Representatives
58	Delozier	Sheryl	PA House of Representatives
59	Diamond	Russ	PA House of Representatives
60	Dunbar	Goerge	PA House of Representatives
61	Dush	Cris	PA House of Representatives
62	Ecker	Torren	PA House of Representatives
63	Everett	Garth	PA House of Representatives
64	Fee	Mindy	PA House of Representatives
65	Fritz	Jonathan	PA House of Representatives
66	Gaydos	Valerie	PA House of Representatives
67	Gillen	Mark	PA House of Representatives
68	Gleim	Barbara	PA House of Representatives
69	Greiner	Keith J.	PA House of Representatives

70	Grove	Seth	PA House of Representatives
71	Hershey	Jonathan	PA House of Representatives
72	Irvin	Rich	PA House of Representatives
73	James	R. Lee	PA House of Representatives
74	Jones	Mike	PA House of Representatives
75	Keefer	Dawn	PA House of Representatives
76	Klunk	Kate	PA House of Representatives
77	Lewis	Andrew	PA House of Representatives
78	Maloney	David	PA House of Representatives
79	Mentzer	Steven	PA House of Representatives
80	Miller	Brett	PA House of Representatives
81	Moul	Dan	PA House of Representatives
82	Nelson	Eric	PA House of Representatives
83	Oberlander	Donna	PA House of Representatives
84	Owlett	Clint	PA House of Representatives
85	Pickett	Tina	PA House of Representatives
86	Pyle	Jeff	PA House of Representatives
87	Rader	Jack	PA House of Representatives

88	Rapp	Kathy	PA House of Representatives
89	Roae	Brad	PA House of Representatives
90	Rothman	Greg	PA House of Representatives
91	Saylor	Stan	PA House of Representatives
92	Ryan	Frank	PA House of Representatives
93	Schemel	Paul	PA House of Representatives
94	Schlegel Culver	Lynda	PA House of Representatives
95	Toepel	Marcy	PA House of Representatives
96	Toohil	Tarah	PA House of Representatives
97	Wheeland	Jeff	PA House of Representatives
98	Zimmerman	Dave	PA House of Representatives
99	Metcalfe	Daryl D.	PA House Environmental Resources & Energy Committee
100	Causer	Martin	PA House Environmental Resources & Energy Committee
101	Dush	Cris	PA House Environmental Resources & Energy Committee
102	Fritz	Jonathan	PA House Environmental Resources & Energy Committee

103	James	R. Lee	PA House Environmental Resources & Energy Committee
104	Mackenzie	Ryan	PA House Environmental Resources & Energy Committee
105	Walker Metzgar	Carl	PA House Environmental Resources & Energy Committee
106	O'Neal	Tim	PA House Environmental Resources & Energy Committee
107	Ortitay	Jason	PA House Environmental Resources & Energy Committee
108	Rapp	Kathy	PA House Environmental Resources & Energy Committee
109	Sankey	Thomas	PA House Environmental Resources & Energy Committee
110	Schemel	Paul	PA House Environmental Resources & Energy Committee
111	Warner	Ryan	PA House Environmental Resources & Energy Committee
112	Zimmerman	Dave	PA House Environmental Resources & Energy Committee
113	Snyder	Pamela	PA House Environmental

			Resources & Energy Committee		
114-1426	Barber	Zach	PennEnvironment, including form letter signatories	Pittsburgh	PA
1427	Sumner	David	IRRC		

COMMENTS AND RESPONSES

Statutory Authority

1. Comment: The commenters believe that the Department does not have the statutory authority to propose the expansive fee increases. The Department states that section 6.3(a) of the Air Pollution Control Act (APCA) provides the authority to amend the air quality fee schedules. The commenters believe that section 6.3(a) authorizes certain fees, but does not authorize any kind of fees.

The commenters note that subsection (a) specifically refers to the whole "*section*" in its grant of authority but does not grant any particular fees in this subsection. Only later in section 6.3 does the statute delineate the particular fees that it authorizes. Had the Legislature stopped at subsection (a) then, theoretically, a broad swath of fees would be authorized. However, the statute does not stop with subsection (a). The Legislature went on to explicitly set specific parameters on the fees it was authorizing in subsequent subsections. Those specific fees that are authorized are listed in subsections (c) and (j). Subsection (c) authorizes the emission fee for Title V sources, and subsection (j) authorizes "*the following categories of fees not related to Title V of the Clean Air Act.*" These Non-Title V fees are for:

1. The processing of any application for plan approval.
2. The processing of any application for an operating permit.
3. Annual operating permit administration.

Subsection (j) also states: "*In regard to fees established under this subsection, individual sources required to be regulated by Title V of the Clean Air Act shall only be subject to plan approval fees authorized in this subsection.*" 35 P.S. § 4006.3 (j). In other words, Title V sources can only be assessed an emission fee and plan approval fees. Non-Title V sources can only be assessed fees for: plan approvals, operating permits, and annual operating permit administration. Any other fees that go beyond the explicit authorization in these subsections goes beyond statutory authority. (52—98, 1427)

Response: This final-form 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 Clean Air Act (CAA), which in this case relate to fees under Title V of the CAA (42 U.S.C.A. § 7661-7661f).

Implementing the provisions of the federal CAA is only one of the many reasons why the General Assembly enacted the APCA. The APCA is also intended to protect the air resources of this Commonwealth for the protection of public health and welfare and the environment, including plant and animal life and recreational resources, as well as development, attraction and expansion of industry, commerce and agriculture. The Department was also provided with specific duties under section 4 of the APCA (35 P.S. § 4004) related to the regulation and

enforcement of air contamination sources within this Commonwealth. To fulfill this statutory obligation, the Department needs sufficient funding.

Subsection 6.3(a) of the APCA provides the Board with broad authority to establish fees sufficient to cover the indirect and direct costs of administering the Air Quality Program, including the air pollution control plan approval process, operating permit program required by Title V of the CAA and other requirements of the CAA. The fees, in this rulemaking, are used to support the air pollution control program authorized under the APCA. The succeeding subsections, including subsections (c) and (j), authorize certain types of fees but do not limit the Board's authority under subsection 6.3(a) to establish other fees. Under section 1922 of the Statutory Construction Act (1 Pa.C.S.A. § 1922), "in ascertaining legislative intent, one may presume that "the General Assembly intends the entire statute to be effective and certain." In other words, there would be no reason for the General Assembly to add section 6.3(a) if they did not intend to hold it effective.

The current regulations which were last revised in 1994 with staged plan approval and operating permit application increases over an ensuing 10 years have a similar fee structure to the final-form regulations. *See* 24 Pa.B. 5899 (November 26, 1994). As required under section 5(a) the RRA, 71 P.S. § 745.5(a), the Department submitted a copy of the 1994 rulemaking to the Chairpersons of the House Conservation Committee and the Senate Environmental Resources and Energy Committee for review and comment, and those regulations were deemed approved by both Committees on October 11, 1994. *See* 24 Pa.B. at 5910. Consequently, it is difficult to see how the final-form rulemaking exceeds the APCA statutory authority.

Subsection 6.3(e) and 6.3(j) both reference interim fees. Subsection 6.3(e) specifies the interim fee amounts for Title V sources for processing operating permit applications and an annual operating permit administration fee. Subsection 6.3(j) specifies the interim fee amounts for non-Title V sources for processing plan approval applications, processing operating permit applications, and an annual operating permit administration fee. Further, subsection 6.3(j) must be read in conjunction with subsection 6.3(e). Subsection 6.3(e) does not specify the interim plan approval application fee for Title V sources. Instead, subsection 6.3(j) clarifies that Title V sources are only subject to the interim plan approval fees in subsection (j) because the Title V sources are already subject to the interim operating permit application and annual operating permit administration fees in subsection 6.3(e). It should also be noted that the interim fees in subsection 6.3(j) were only in place until the Board adopted regulations that established fees for non-Title V sources and the interim fees in subsection 6.3(e) were no longer applicable once the Board established the alternative fees under subsection 6.3(c).

Additionally, under 40 CFR 70.9 (relating to fee determination and certification), the Department's Air Quality Program is required to establish fees that are sufficient to cover the permit program costs, including costs related to preparing regulations or guidance, reviewing permit applications, general administrative costs of running the program, implementing and enforcing the terms of a permit, emissions and ambient monitoring, modeling, analyses, or demonstrations, preparing inventories and tracking emissions, and providing small business assistance.

While the plain language of Section 6.3(a) is unambiguous and grants the Board broad authority to establish fees, the legislative history in this case is also instructive. A review of the 1992 House and Senate Journals for the consideration of Senate Bill 1650 of the Session of 1992 show no comments limiting the structure of the fees schedule to specific fees. See Senate Legislative Journals for June 16, 1992, pages 2273, 2281—2287; June 17, 1992, pages 2291—2295; and June 30, 1992, pages 2450 and 2451; and House Legislative Journal for June 29, 1992, pages 1580—1587. Weblinks:
Senate Journal June 16, 1992:
https://www.legis.state.pa.us/WU01/LI/SJ/1992/0/Sj19920616.pdf#page=14
Senate Journal June 17, 1992:
https://www.legis.state.pa.us/WU01/LI/SJ/1992/0/Sj19920617.pdf#page=2
Senate Journal June 30, 1992:
https://www.legis.state.pa.us/WU01/LI/SJ/1992/0/Sj19920630.pdf#page=40
House Journal June 29, 1992:
https://www.legis.state.pa.us/WU01/LI/HJ/1992/0/19920629.pdf#page=24

2. Comment: The commenters assert that it is clear that a plain reading of the statute prohibits most of the Department's fee proposals. In its proposal, the Department seems to concentrate only on the authority granted to cover the costs of the program and thereby ignores the fact that the Legislature only authorized specific fees. The fees that are outside specific legislative authorization are as follow; first, the statute does not allow the Department to increase the operating permit fee for Title V sources. *In fact, this fee is only allowed for Non-Title V sources in subsection (j), which raises questions about the legality of the Department's current annual operating permit administration fee for Title V fees in 25 Pa Code § 127.704*. (52—98)

Response: The amendments to the fee schedules are authorized under section 6.3 of the APCA. Subsection 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, 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 the APCA and not covered by fees required by section 502(b) of the CAA. Implementing the provisions of the federal CAA is only one of the many reasons why the General Assembly enacted the APCA. The APCA is also intended to protect the air resources of this Commonwealth for the protection of public health and welfare and the environment, including plant and animal life and recreational resources, as well as development, attraction and expansion of industry, commerce and agriculture. The Department was also provided with specific duties under section 4 of the APCA (35 P.S. § 4004) related to the regulation and enforcement of air contamination sources within this Commonwealth. To fulfill this statutory obligation, the Department needs sufficient funding.

The Department's authority is not limited to the fees listed in subsections 6.3(c) and (j). Subsection 6.3(j) says that the Board may by regulation establish the following categories of fees not related to Title V of the CAA. Subsection 6.3(j) does not say that the Board shall establish these fees or may establish only these fees. Under 40 CFR 70.9, state programs shall establish

fees that are sufficient to cover the permit program costs, including costs related to preparing regulations or guidance, reviewing permit applications, general administrative costs of running the program, implementing and enforcing the terms of a permit, emissions and ambient monitoring, modeling, analyses, or demonstrations, preparing inventories and tracking emissions, and providing small business assistance. The Pennsylvania Title V operating permit program was implemented on November 26, 1994. See 24 Pa.B. 5899 (November 26, 1994). The operating permit program was approved as part of the Commonwealth's State Implementation Plan (SIP) and received full approval as a Part 70 operating permit program effective August 29, 1996. See 61 FR 39597 (July 30, 1996). Please see the response to Comment 1 for further information on statutory authority.

3. Comment: The commenters assert that the statute only authorizes an annual operating permit "*administration"* fee, therefore it cannot be replaced with an annual operating permit "*maintenance"* fee. When asked if the Department had the statutory authority to charge a maintenance fee, as noted in the EQB Meeting Minutes for December 18, 2018, deputy Hartenstein responded affirmatively, but with no justification, citation, or explanation. He then said the maintenance fee was the same, conceptually, as the operating administrative fee and that the names are adjusted as they apply to different facilities to avoid confusion. While we applaud any effort to avoid confusion, it does not change the fact that the statute is void of any such authorization for a "maintenance" fee and any confusion over wording can just as successfully be avoided by merely referring to it simply as it is in the statute: an administration fee. (52—98, 1427)

Response: Subsection 6.3(j)(3) of the APCA provides for an annual operating permit administration fee, an undefined term in the act. It does not, however, limit the Board to using that exact name for the fee. The annual operating permit maintenance fee in this final-form rulemaking is the annual operating permit administration fee. The Board merely adjusted the name of the fee to better describe its purpose since these fees are used to cover the Department's costs for evaluating the facility to ensure that it is 'maintaining' compliance, including the costs of inspections, reviewing records, and reviewing permits. It is reasonable and appropriate for the Board to adjust the name of a fee to better describe its purpose. This name change is also evident by the fact that the Department will stop assessing the currently titled annual operating permit administration fee after December 31, 2020. The Board did not receive comments formally or informally from owners and operators or the general public stating that the name change would cause confusion.

4. Comment: The commenters further assert that the APCA does not authorize the Department to split apart the plan approval application into disparate parts only to then add them together for a higher cumulative fee. Plantwide applicability limits, ambient air impact modeling of certain plan approval applications, and risk assessments are not plan approval fees, they are newly invented fees. Furthermore, although the Department claims the risk assessment fee is a plan approval fee, it does not even include it in the plan approval fee subsection (25 Pa Code § 127.702) but instead gives risk assessments its own section (proposed § 127.708). This is not a new plan approval fee; this is simply an altogether new fee. The Department cannot invent new fees and call them plan approval fees and claim they are authorized by the statute. (52—113, 1427)

Response: The Department did not split apart the plan approval application fees into disparate parts and add them back together for a higher cumulative fee as part of this final-form rulemaking. On November 26, 1994, after significant public input, including several hearings and public meetings, and an evaluation of the fee structure by an outside consultant, the Board's amendments to the Department's plan approval and operating permit program were established as required to be consistent with the 1992 APCA amendments. See 24 Pa.B. 5937, 5938. As a result of public comments opposing the proposed fee structure and recommendations that the Department establish fees based on the time necessary to process the plan approval application, the Department established the six categories of plan approval fees to better reflect the actual cost to the Commonwealth of evaluating plan approval applications. See 24 Pa.B. 5903. As required under section 5(a) the Regulatory Review Act (RRA) (71 P.S. 745.5(a)), the Department submitted a copy of the proposed rulemaking to the Chairpersons of the House Conservation Committee and the Senate Environmental Resources and Energy Committee for review and comment, and the final-form regulation was deemed approved by both Committees on October 11, 1994. See 24 Pa.B. 5910.

In the 1994 regulatory amendments, the Department stated that "the fees for plan approvals are still based on the complexity of the plan approval application" and that "the new fee structure is a better reflection of the actual cost to the Commonwealth for evaluating plan approval applications." See 24 Pa.B. 5902. The Department's position and the plan approval fee structure remains unchanged in this final-form rulemaking. The Department still holds that applicants should only have to pay for the service rendered, particularly considering that every plan approval application is different and requires a level of review based on the number and complexity of the components. The six categories of plan approval fees required under § 127.702(b)—(g) were established in 1994. Thus, applicants have been paying separate fees for the processing of the components of plan approval applications since implementation of the fee schedule in 1994.

That is, an applicant for a plan approval for construction, modification, or reactivation of a source or installation of an air cleaning device on an air contamination source requiring approval under Chapter 127, Subchapter B (relating to plan approval requirements) that is not subject to New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), or Maximum Achievable Control Technology (MACT) Standards, New Source Review (NSR), or Prevention of Significant Deterioration (PSD), only pays the applicable fee required under § 127.702(b) (relating to plan approval fees).

An applicant for a plan approval requiring approval under Chapter 127, Subchapter B and Subchapter E (relating to new source review) pays the applicable fee under § 127.702(c) in addition to the applicable fee under § 127.702(b).

An applicant for a plan approval requiring approval under Chapter 127, Subchapter B that is subject to one or more standards adopted under Chapter 122 (relating to National standards of performance for new stationary sources), one or more standards adopted under Chapter 124 (relating to National emission standards for hazardous air pollutants), one or more standards under § 127.35(b) (relating to maximum achievable control technology standards for hazardous air pollutants), or to standards under a combination of Chapters 122 and 124 and § 127.35(b), pays the applicable fee under § 127.702(b) and the applicable fees under § 127.702(d). The

amendments to § 127.702(d) in this final-form rulemaking establish that the applicant will pay the fees for up to and including three applicable standards, but the Department's review will include all applicable standards if there are more than three applicable standards. This amendatory language to § 127.702(d) merely clarifies what has been the Department's practice since implementation of the fee schedule in 1994.

Additionally, an applicant for a plan approval requiring approval under Subchapter B that is subject to a MACT standard under the requirements of § 127.35(c), (d), or (h) pays the applicable fee under § 127.702(e) in addition to the applicable fee under § 127.702(b).

The applicant for a plan approval requiring approval under Chapter 127, Subchapter B and Subchapter D (relating to prevention of significant deterioration of air quality) pays the applicable fee under § 127.702(f) in addition to the applicable fee under § 127.702(b). The fee under § 127.702(f) includes the Department's review and permitting activities for new construction at a major facility or a modification at a major facility that is located in an attainment area subject to PSD requirements.

The fee in § 127.702(f) for approval of a plan approval in an attainment area subject to PSD requirements also includes the Department's review and permitting activities for a plantwide applicability limit (PAL), if submitted by the facility owner or operator as part of the plan approval application requiring approval under Subchapter D. A PAL is an emissions limit expressed in tons per year for a pollutant at a major facility that is enforceable as a practical matter and established facility-wide in accordance with § 127.218 (relating to PALs). The PAL is incorporated into the major facility permit and is based on the facility's baseline actual emissions of all emissions units at the facility that emit or have the potential to emit the PAL pollutant. A PAL permit allows the owner or operator of the major facility to avoid the major NSR permitting review process and the major NSR permitting review fees when making subsequent changes to the facility or individual emissions units. Changes under the PAL are not exempt from state permitting requirements and a PAL requires recordkeeping, monitoring, and reporting. In return for this flexibility, emissions must be monitored at all sources of emissions included in the PAL. The benefit to the owner or operator of the facility is that a process or source change may be made without applying for a revised Federally-enforceable NSR operating permit or going through an emissions netting review if the additional emissions of the PAL pollutant do not exceed the PAL limit. In summary, a PAL will allow quick changes at the facility without the need to submit a new plan approval application and save the owner or operator of the facility money by not having to pay the major NSR permitting review fees. The applicant for a plan approval requiring approval under Subchapter D pays the applicable fee under § 127.702(f) in addition to the applicable fee under § 127.702(b) whether or not a PAL is requested.

Likewise, the applicant for a plan approval requiring approval under Chapter 127, Subchapter B and Subchapter E (relating to new source review) for new construction or modification of a facility that is located in a nonattainment area or in an attainment area that has an impact on a nonattainment area may apply for a PAL permit under § 127.218(b), may apply to cease a PAL permit under § 127.218(j), or may apply to increase a PAL under § 127.218(l), if submitted by the applicant as part of the plan approval requiring approval under Subchapter E. The applicant pays the applicable fee under § 127.702(g) in addition to the applicable fee under § 127.702(b).

An applicant may submit a plan approval application requesting a PAL only, which does not require the Department's extensive PSD or NSR review and permitting activities for new construction or modification at the major facility under Subchapter D or Subchapter E. These applicants are, however, currently subject to the fee in § 127.702(f), § 127.702(g), or both, even though the application does not require the complete PSD or NSR permitting review. Industry representatives have expressed concern about paying these comprehensive fees for a plan approval application that is only for a PAL. The Department is addressing this industry concern by amending § 127.702 with revised subsection (h) to establish the fee that is paid for a PAL application that is not submitted under subsection (f) or subsection (g). This fee is added to the applicable fee in § 127.702(b) and saves the applicant money because they are no longer required to pay the fee in subsection (f) or subsection (g), or both, for PSD or NSR permitting review services that are not needed.

The Department disagrees that the fees for an ambient impact analysis or a reassessment of a control technology determination that is required when the owner or operator of a source proposes a revision to a plan approval application are new fees rather than plan approval application fees. This analysis or reassessment results from the owner or operator of the source proposing a revision or a modification to a plan approval application for which the Department has completed its technical review. Generally, ambient air impact modeling is required when the source is subject to PSD requirements under Subchapter D. A revision to the plan approval application that requires a change in the modeling analysis may be construed as a modification to the previously submitted plan approval application and the Department may charge the fee in § 127.702(f) for a full review of the revised PSD plan approval application. As discussed above for the PAL fees, however, the revised plan approval application may not require a full review of the PSD requirements, but only a new analysis of ambient impacts or a reassessment of the control technology determination. The Department established a separate fee for these instances so that the applicant will not be charged the fee in § 127.702(f) for a full review of PSD requirements, thereby saving the applicant money.

The Department agrees that the risk assessment fees should be included in the plan approval application fees section rather than be a stand-alone section and has addressed the commenters' concern by moving proposed § 127.708 (relating to risk assessment) to § 127.702 as subsection (k) in this final-form rulemaking. A risk assessment analysis report is prepared by the Department in response to a proposal in a plan approval application that includes the presence of hazardous air pollutants, which include carcinogenic and teratogenic compounds. The risk assessment analysis is conducted by the Department to assess the potential adverse public health and welfare effects under both current and planned future conditions caused by the presence of hazardous air pollutants after the source is controlled. Only a few are conducted each year depending on the applications received for certain sources including cement kilns, incinerators, and landfills. Risk assessment analyses are complex and require extensive staff time to research and to develop the report of potential adverse public health and welfare effects. This cost to the Department is currently borne by the owners and operators of all permitted facilities through the plan approval application and permitting fees that they pay. The Department proposed the risk assessment fee to reduce the financial burden incurred by all owners and operators of permitted sources. Without this separate fee for risk assessment analyses, plan approval application fees applicable to all owners and operators of permitted sources would have to be adjusted higher. Because risk assessment analyses are not required for all plan approval applications, the

Department believes establishing the risk assessment fee is appropriate to allocate these costs to the users of the service.

The complexity of the Department's air quality permitting program has increased since its implementation in 1994 as new and more stringent requirements have been promulgated by the EPA. These revised fees are designed to recover the Department's costs for certain activities related to processing of applications for plan approvals and operating permits, including risk assessments and ambient air impact modeling of certain plan approval applications, without burdening all owners and operators of permitted sources with costs for services that they do not use or need. Establishing this fee structure will provide support for the continuation of the Department's Air Quality Program and ensure continued protection of the environment and the public health and welfare of the citizens of this Commonwealth.

5. Comment: The commenters assert that the Department adds other proposed brand new fees, namely: asbestos abatement or demolition or renovation project notifications (asbestos notifications); and requests for determination or for claims of confidential information which are, likewise, statutorily unauthorized. (52—113, 1427)

Response: Subsection 6.3(a) provides the Board with broad authority to establish sufficient fees 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, other requirements of the CAA and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, 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 the APCA and not covered by fees required by section 502(b) of the CAA. Implementing the provisions of the federal CAA is only one of the many reasons why the General Assembly enacted the APCA. The APCA is also intended to protect the air resources of this Commonwealth for the protection of public health and welfare and the environment, including plant and animal life and recreational resources, as well as development, attraction and expansion of industry, commerce and agriculture. The Department was also provided with specific duties under section 4 of the APCA related to the regulation and enforcement of air contamination sources within this Commonwealth. (35 P.S. § 4004). To fulfill this statutory obligation, the Department needs sufficient funding. The fees in this case are authorized under subsection 6.3(a) of the APCA and used to recover the Department's costs for certain activities, including the review of asbestos abatement or demolition or renovation project notifications and requests for determination. Under 40 CFR 70.9, state programs shall establish fees that are sufficient to cover the permit program costs, including costs related to preparing regulations or guidance, reviewing permit applications, general administrative costs of running the program, implementing and enforcing the terms of a permit, emissions and ambient monitoring, modeling, analyses, or demonstrations, preparing inventories and tracking emissions, and providing small business assistance.

The Department receives upwards of 5,000 initial asbestos notifications and a total of about 7,000 asbestos notifications each year, which require staff review and site inspections. The Department currently inspects about 200 asbestos projects per year due to staffing constraints. The final-form fee applies only to the initial notification by an owner or operator of an asbestos abatement or regulated demolition or renovation project that is subject to 40 CFR Part 61,

Subpart M (relating to National emission standards for hazardous air pollutants) or the Asbestos Occupations Accreditation and Certification Act (Act 1990-194) (63 P.S. §§ 2101—2112) and which is not located in Philadelphia County or Allegheny County. The asbestos notification fee will help defray the costs to the Department of processing the asbestos notifications and inspecting the projects.

For comparison purposes, the Philadelphia County Department of Health, Air Management Services (AMS) receives about 1,800 asbestos notifications per year and the Allegheny County Health Department (ACHD) receives about 1,200 per year. Philadelphia AMS receives revenue of approximately $300,000 annually from asbestos notification fees and ACHD received revenue of approximately $520,000 in calendar year 2019 from asbestos notification fees.

The request for determination (RFD) process allows an owner or operator to obtain a written case-by-case exemption from the requirement to apply for a plan approval or operating permit, if the Department determines the requestor meets the exemption criteria in § 127.14 (relating to exemptions). The RFDs are reviewed by Department staff in much the same way as other applications and this final-form rulemaking establishes a fee to recover the costs to the Department.

The proposed amendments to the Title V and Non-Title V plan approval application and operating permit fee schedules and the establishment of fee schedules for risk assessment review, asbestos notifications, and requests for determination are designed to recover the Department's costs for these activities and provide the needed financial support for continuation of the Department's Air Quality Program as well as ensure continued protection of public health and welfare and the environment.

Please see the response to Comment 8 for a discussion about the proposed fee for claims of confidentiality, which has been removed from this final-form rulemaking.

6. Comment: The commenters assert that there is no authorization to establish Title V general operating permit fees (which are unspecified) for stationary or portable sources under Chapter 127, Subchapter H (relating to general plan approvals and operating permits). (52—98)

Response: Subsection 6.3(a) provides the Board with broad authority to establish fees sufficient to cover the indirect and direct costs of administering the Air Quality Program. The Department has not proposed to change any fee associated with issued general plan approvals and general operating permits. The application fees for the authorization to use each general plan approval or general operating permit are proposed along with the general plan approval or general permit and published in the *Pennsylvania Bulletin* for public review and comment for 45 days prior to establishing or modifying the general plan approval or general operating permit and its application fees.

While § 127.712 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H) is new, the substance of the provision was promulgated in 1994, including for Title V sources. See 24 Pa.B. 5899 (November 26, 1994). The U.S. Environmental Protection Agency (EPA) promotes the use of general operating permits where possible. See 57 FR 32259 (July 21, 1992). A general plan approval or a general operating permit is a single

permitting document issued by the Department which can cover a category or class of many similar sources. Public participation and the opportunity for EPA and affected State review must be provided by the Department before issuing the general plan approval or general operating permit for use by the regulated entities.

The owner or operator's application for authorization to use a specific issued general plan approval or general operating permit is evaluated under the terms of the general plan approval or general operating permit. If the application meets the requirements of the general plan approval or general operating permit, the Department issues an authorization to use the general plan approval or general operating permit to the applicant. The plan approval or operating permit approval process for an eligible source can thus be greatly simplified, which substantially reduces the administrative burden and costs on both the owner and operator of the source and the permitting authority.

The established process for general plan approvals and general operating permits requires the Department develop a proposed general plan approval or general operating permit along with the proposed application fees and provide notice in the *Pennsylvania Bulletin* and the opportunity to comment. See §§ 127.611 (relating to general plan approvals and general operating permits); 127.612(b)(4) (relating to public notice and review period); 127.631 (relating to general plan approvals and operating permits for portable sources); 127.632(b)(4) (relating to public notice and review period); 127.702(i) (relating to plan approval fees); 127.703(d) (relating to operating permit fees under subchapter F); and 127.704(d) (relating to Title V operating permits fees under subchapter G). The Department may also revise the application fee for an existing general plan approval or general operating permit and provide notice in the *Pennsylvania Bulletin* and an opportunity to comment on the revised application fee as provided in §§ 127.612 and 127.632. The Department has developed and issued general plan approvals and general operating permits for 19 source categories since 1996.

Please note that proposed § 127.712 is renumbered at final to § 127.710 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H).

7. Comment: The plain reading of the APCA does not authorize most of the Department's proposed new fees or fee increases. (52—98)

Response: Subsection 6.3(a) provides the Board with broad authority to establish fees sufficient to cover the indirect and direct costs of administering the Air Quality Program. The succeeding subsections in section 6.3 do not further limit that authority. Additionally, subsection 6.3(d) of the APCA provides that, "the board shall establish a permanent air emission fee which considers the size of the air contamination source, the resources necessary to process the application for plan approval or an operating permit, the complexity of the plan approval or operating permit, the quantity and type of emissions from the sources, the amount of fees charged in neighboring states, the importance of not placing existing or prospective sources in this Commonwealth at a competitive disadvantage and other relevant factors." Please see the responses to Comments 1 through 6 for more information.

8. Comment: The commenters believe that the proposed fee for claims of confidentiality is statutorily unauthorized and abusive in the exercise of state authority. (52—98)

Response: While the Department has broad authority under the APCA to establish fees, the Department determined that the proposed fee for claims of confidentiality is unneeded at this time and removed it from this final-form rulemaking.

9. Comment: The commenters assert that when the Legislature intends to delegate expansive authority for funding means to an agency, it expressly does so. And when the Legislature intends to delegate a narrow authority for funding means to an agency, it expresses the specific and limited categories of its authorization. The latter scenario is precisely the case with the fee authorization section of the APCA. Because the statute provides authorization only for a specific Title V fee, and limited categories of Non-Title V fees, we must therefore conclude that the Legislature only intended to delegate a narrow authority for funding means to the Department. The fees proposed by the Department are vastly expansive in kind and ought not to be approved on the grounds of exceeding legislative intent. (52—98)

Response: The Legislature expressly provided the Board with broad authority to establish fees sufficient to cover the indirect and direct costs of administering the Air Quality Program in subsection 6.3(a) of the APCA. The succeeding subsections, including subsections (c) and (j), authorize certain types of fees but do not limit the Board's authority under subsection 6.3(a) to establish other fees. The fees, in this rulemaking, are used to support the air pollution control program authorized under the APCA. Under section 1922 of the Statutory Construction Act (1 Pa.C.S.A. § 1922), "in ascertaining legislative intent, one may presume that 'the General Assembly intends the entire statute to be effective and certain.'" In other words, there would be no reason for the General Assembly to add section 6.3(a) if they did not intend to hold it effective. Under 40 CFR 70.9, state programs shall establish fees that are sufficient to cover the permit program costs, including costs related to preparing regulations or guidance, reviewing permit applications, general administrative costs of running the program, implementing and enforcing the terms of a permit, emissions and ambient monitoring, modeling, analyses, or demonstrations, preparing inventories and tracking emissions, and providing small business assistance.

While the plain language of Section 6.3(a) is unambiguous and grants the Board broad authority to establish fees, the legislative history in this case is also instructive. A review of the 1992 House and Senate Journals for the consideration of Senate Bill 1650 of the Session of 1992 show no comments limiting the structure of the fees schedule to specific fees. See Senate Legislative Journals for June 16, 1992, pages 2273, 2281—2287; June 17, 1992, pages 2291—2295; and June 30, 1992, pages 2450 and 2451; and House Legislative Journal for June 29, 1992, pages 1580—1587. Weblinks:
Senate Journal June 16, 1992:
https://www.legis.state.pa.us/WU01/LI/SJ/1992/0/Sj19920616.pdf#page=14
Senate Journal June 17, 1992:
https://www.legis.state.pa.us/WU01/LI/SJ/1992/0/Sj19920617.pdf#page=2
Senate Journal June 30, 1992:
https://www.legis.state.pa.us/WU01/LI/SJ/1992/0/Sj19920630.pdf#page=40
House Journal June 29, 1992:
https://www.legis.state.pa.us/WU01/LI/HJ/1992/0/19920629.pdf#page=24

10. Comment: The commenters believe that the revenue for the Department's Air Quality Program must be raised through changing the statute, not through regulations. If the Department perceives an inadequacy in the statutorily designed fee structure, then the Department should discuss their desired changes to the statutory fee structure with the Legislature. (52—98)

Response: The Legislature expressly provided the Board with broad authority to establish fees sufficient to cover the indirect and direct costs of administering the Air Quality Program in subsection 6.3(a) of the APCA. The fees, in this rulemaking, are used to support the air pollution control program authorized under the APCA. The succeeding subsections in section 6.3 do not further limit that authority. Under 40 CFR § 70.9, state programs shall establish fees that are sufficient to cover the permit program costs, including costs related to preparing regulations or guidance, reviewing permit applications, general administrative costs of running the program, implementing and enforcing the terms of a permit, emissions and ambient monitoring, modeling, analyses, or demonstrations, preparing inventories and tracking emissions, and providing small business assistance.

11. Comment: The commenters state that the Department is familiar with statutory restrictions as evidenced by the fact that the Department states in box 26 of the proposed rulemaking Regulatory Analysis Form (RAF) that it could not consider increasing the cap of 4,000 tons of regulated pollutants to increase emission fee revenue because it is a statutory cap. However, the Department could simply ask the Legislature to amend this cap. (52—98)

Response: The 4,000 tons of regulated pollutants cap in the APCA is based on the language in section 502(b) of the CAA (42 U.S.C.A. § 7661a) which states that "the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant." The Department determined not to request an increase in the cap, because relying primarily on revenue from the emission fee is no longer a sustainable option for funding the Air Quality Program. As emissions of regulated pollutants continue to decrease overall, raising the cap on the tons per year of regulated pollutant would continue to concentrate the burden of supporting the costs of the Department's Air Quality Program permitting activities for all Title V sources onto the owners and operators of fewer and fewer Title V sources. Amending the fees-for-services schedule spreads the costs of supporting the program more equitably across all users of the Department's Air Quality Program services. Surrounding states are also finding it necessary to adjust their fee schedules away from a reliance on emission fee revenue.

12. Comment: The commenters understand that the APCA requires the Department to cover the indirect and direct costs of administering the program by fees, but if the Department believes that the current fees, as well as the current fee structure, are inadequate, then the legitimate venue for remedy is through legislation, not regulation. In other words, if the Department would like to shift away from reliance on the current fee structure to the various fees that it is requesting, then the Department must ask the Legislature to consider amending the statute to authorize other types of fees. Until then the Department must abide by the current statutory fee structure in effect. (52—98)

Response: The Legislature has already expressly provided the Board with broad authority to establish fees sufficient to cover the indirect and direct costs of administering the Air Quality

Program in section 6.3(a) of the APCA. The fees, in this rulemaking, are used to support the air pollution control program authorized under the APCA. The Department's Air Quality Program analyzed the time and costs required to review and issue plan approvals and permits and put together the fee schedule that was published as a proposed rulemaking in the Pennsylvania Bulletin on April 13, 2019. Please see the response to Comment 10.

13. Comment: These commenters state that the authority and indeed the requirement for the Amendments are presented in the Department's Regulatory Analysis Form ("Form") submission to IRRC. The Department writes on page 2 of the Form,

> "Section 6.3(a) of the APCA [Air Pollution Control Act] 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 [Clean Air Act], 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."

The key phrase is "fees sufficient to cover the indirect and direct costs." The Clean Air Act, through the Pennsylvania State Implementation Plan, requires that funding be sufficient to cover adequate personnel and funds to carry out the Plan. 42 U.S.C.A. § 7410(a)(2)(E)(i). (46, 47, 48, 49)

Response: The Department appreciates the concern about collecting sufficient fees to cover adequate personnel. The Department believes that the final-form fees will be sufficient to cover the indirect and direct costs of the program.

14. Comment: These commenters state that there is no question that the Department has the authority under the APCA to raise fees to cover its costs. Absent additional funding from another source, the CAA compels it to do so. (36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49)

Response: The Department agrees that it has the authority under the APCA for this final-form rulemaking. The General Assembly enacted the APCA to protect the air resources of this Commonwealth for the protection of public health and welfare and the environment, including plant and animal life and recreational resources, as well as development, attraction and expansion of industry, commerce and agriculture. The Department was also provided with specific duties under section 4 of the APCA (35 P.S. § 4004) related to the regulation and enforcement of air contamination sources within this Commonwealth. To fulfill this statutory obligation, the Department needs sufficient funding. Please see the responses to Comments 1—12.

15. Comment: The commenter requests that the Board work with all interested parties, particularly members of the Legislature to address the issues raised in their comment letters with the goal of devising a funding structure that is authorized by statute, meets the intent of the General Assembly and ensures adequate revenue to fund the Air Quality Program. (1427)

Response: This final-form rulemaking is authorized by the Board's statutory authority provided by the General Assembly, the APCA, and ensures adequate funding of the Air Quality Program. In particular, the House of Representatives Environmental Resources and Energy Committee approved the current fee structure in 1994. Additionally, the members of the Legislature have extensive involvement in the development of the Department's rulemakings, including appointed members on the Department's advisory committees and four seats on this Board, in addition to the review outlined under the RRA. Lastly, the Board and the Department consistently seek opportunities to engage productively with interested parties, including the Legislature. The Department's Legislative Office works to address issues and ensure that the Legislature is informed of actions by the Department and the Board.

Emission fee model

16. Comment: The commenters assert that the current fee structure for the Department as authorized by the APCA for the Title V program is based on an emission fee model. The Legislature through the APCA, and Congress through the CAA, clearly intended for the emission fee to be the main source of revenue for the Title V program. (52—98)

Response: The commenters are correct that the current fee structure for the Department as authorized by the APCA for the Title V program is based, in part, on an emission fee model. In fact, a number of the fees referenced in section 6.3 of the APCA are considered emission fees. Under subsection 6.3(d) of the APCA, "the board shall establish a *permanent air emission fee* which considers the size of the air contamination source, the resources necessary to process the application for plan approval or an operating permit, the complexity of the plan approval or operating permit, the quantity and type of emissions from the sources, the amount of fees charged in neighboring states, the importance of not placing existing or prospective sources in this Commonwealth at a competitive disadvantage and other relevant factors." Subsection 6.3(f) further states that the fees referenced in subsections (b), (c), and (j) are emissions fees.

However, the legislators seem to be referencing the *permanent annual air emission fee* required under subsection 6.3(c). The APCA includes the annual air emission fee as required for regulated pollutants under section 502(b) of the CAA but does not stipulate that the annual air emission fee is to provide a certain percentage of the revenue for the Title V program, only that the annual air emission fee is a component of the fee schedule for the Title V program. Further, the Department does not agree that Congress through the CAA clearly intended for the annual air emission fee to be the main, or only, source of revenue for the Title V program.

In the EPA's July 21, 1992, final rule addressing the Part 70 operating permit program, the EPA stated that "… an important benefit is that the permit program contained in these regulations will ensure that States have resources necessary to develop and administer the program effectively. In particular, the permit fees provisions of title V will require sources to pay the cost of developing and implementing the permit program. *To the extent the fees are based on actual emission levels, the fees will create an incentive for sources to reduce emissions* [emphasis added]." See 57 FR 32251 (July 21, 1992). The EPA further stated that "…[*t*]he EPA interprets title V to offer *permitting authorities flexibility in setting variable fee amounts for different pollutants or different source categories* [emphasis added], as long as the sum of all fees collected is sufficient

to meet the reasonable direct and indirect costs required to develop and administer the provisions of title V of the Act, including section 507 as it applies to part 70 sources." See 57 FR 32258. Additionally, the EPA stated that "…[*t*]he final part 70 regulations clarify that States have a great deal of discretion in using the fee schedule to allocate permit program costs among part 70 sources. Even if the State relies on the $25/tpy [*tons per year*] presumptive minimum, the State fee schedule does not need to assess fees at $25/tpy. *The State is not required to assess fees on any particular basis and can use application fees, service-based fees, emissions fees based on either actual or allowable emissions, other types of fees, or any combination thereof* [emphasis added]." See 57 FR 32292.

These statements clearly demonstrate that the EPA, and Congress as the legislating body, did not require that the annual air emission fee be the primary source of revenue for the Title V program or even a source of revenue if a state demonstrated sufficient revenue through other types of fees. This final rule has not been revised materially since its issuance in 1992, indicating that Congress and the EPA maintain this interpretation of the CAA requirements.

Prior to implementing the plan approval application and operating permit fee schedules in 1994, the Department engaged the services of a consultant, Apogee Research, Inc., to assist in evaluating the fee structure that would be necessary to support the Department's air pollution control program as required by section 502(b)(3) of the CAA. See the August 1993 Final Report, entitled "Resource Needs Analysis and Financial Plan," prepared for the Commonwealth of Pennsylvania Air Quality Program by Apogee Research, Inc., Bethesda, MD, (1993 Apogee Report), at http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Current%20Events/1993%20Apogee%20Fees%20Final%20Report%20posted.pdf and the August 1993 Report Appendices at http://files.dep.state.pa.us/Air/AirQuality/AQPortalFiles/Current%20Events/1993%20Apogee%20Fees%20Report%20Appendices%20posted.pdf.

The Executive Summary to the 1993 Apogee Report (page vii (PDF page 8)) stated that the financial plan presented in this study builds on the principles of creating and maintaining funding diversity, applying the user-pay principle to the greatest extent possible, building equity considerations into choices among funding sources, and applying a cost basis to the assessment of all user fees where possible. The key to successful implementation of this financial plan is early recognition of potential funding shortfalls in any one funding category and replacement or augmentation of that funding source with new funding mechanisms. In order to achieve this, it is important for the state to build and maintain a diverse funding base across the full air program and within as many individual program components as feasible.

The 1993 Apogee Report summarized the EPA's Part 70 operating permit program final rule fee options succinctly as:

> While the permit rule is fairly explicit as to the program activities that must be funded through Title V fees, federal requirements provide considerable flexibility to states in the design of their fee structures. For example, provided that adequate aggregate revenue is raised, states may:
> - Charge a single fee or a combination of fees to Part 70 sources;
> - Determine fees on a basis other than emissions (e.g., service-based fees);

- Base fees on either actual or allowable emissions;
- Exclude emissions above a certain level from the fee requirement;
- Differentiate fees based on source categories or type of pollutant;
- Exempt certain classes of sources from fee requirements; or
- Charge fees covering any period of time (e.g., annual, permit term).

See 1993 Apogee Report, page 44 (PDF page 54).

The 1993 Apogee Report projected a need to develop a fees-for-service schedule as the program matured and became more complex. On December 14, 2013, the Board promulgated a final-form rulemaking that increased the Title V emission fee only but noted that a revised fee schedule would be needed within 3 years, due, in part, to decreasing emissions of regulated pollutants subject to the Title V emissions fee. (See 43 Pa.B. 7268).

Further, as stated in the response to Comment 17, by generating approximately 70% to 72% of the Title V revenue from the annual air emission fees in the proposed fee structure, the annual air emission fee revenue is still a primary source of revenue for the program.

Given the current and future projected downward trajectory of emissions, the Department cannot rely on an emissions-based fee as its primary source of Title V revenue going forward. In accordance with 40 CFR 70.10(b) and (c) (relating to federal oversight and sanctions), the EPA may withdraw approval of a Part 70 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.

17. Comment: The commenters state that previously, when the Department needed more revenue for this program, the Department would amend the emission fee, as it did in 2013 by increasing the emission fee 48% (in addition to also receiving additional revenue through automatic increases tied to the Consumer Price Index). (52—98)

Response: The final-form rulemaking published at 43 Pa.B. 7268 increased only the Title V annual air emission fee. At that time, the Department projected that the increased Title V annual air emission fee would not be sufficient to maintain the Title V fund and noted that a revised fee schedule would be needed within 3 years, due, in part, to decreasing emissions of regulated pollutants subject to the Title V annual air emission fee. Please see the response to Comment 15 for more information.

18. Comment: The commenters state that the Department, in its current proposal, has chosen not to follow its former practice, which comported with the law. Instead, in box 26 of the proposed rulemaking RAF the Department discusses the three options that it considered but then rejected the two options that increased this emission fee. This is interesting in light of the fact that the

current fee structure provides for 97% of the program's revenue, but under the proposed new fee structure it would drop down to just 70% (according to Table 7 in RAF box 26). Thus, the Department's proposal shifts away from the Legislature's intention that the emission fee be the main revenue source for the Title V program. Since the Regulatory Review Act requires that IRRC "*determine … whether the regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based."* (71 P.S. § 745.5b), it is our contention that a clear review of these facts in light of section 6.3(c) of the APCA shows that the Department's proposal exceeds the intent of the Legislature, and thus, IRRC must disapprove the proposal. (52—98)

Response: The Department disagrees that the proposal exceeds the intent of the Legislature. Reviewing Table 7 in box 26 of the RAF to the proposed rulemaking, the Department interprets the commenters' assertion that the current emission fee schedule provides 97% of program revenue to be based on comparing the current emission fee revenue of $15,230,000 to total Title V facility revenue in FY 2020-2021 of $15,665,125 (($15,230,000 / $15,665,125) x 100 = 97%). The Department interprets the commenters' assertion that the emission fee revenue under the proposed fee schedule of Option 1 would provide only 70% of the program revenue to be based on comparing the emission fee revenue of $15,230,000 to the projected total Title V facility revenue in FY 2020-2021 under Option 1 of $21,601,800 (($15,230,000 / $21,601,800) x 100 = 70%). Likewise, using the updated revenue numbers for Option 1 from Table 7 in box 26 of the RAF to the final-form rulemaking, the percentage rises to 72% (($14,082,723 / $19,454,523) x 100 = 72%). Regardless, generating 70% to 72% of the Title V operating permit program revenue from Title V emission fees satisfies the commenters' assertion that the Legislature's intent was that Title V emission fees be the *main* revenue source for the Title V operating permit program.

Section 6.3(c) states that the Board shall establish by regulation a permanent annual air emission fee as required for regulated pollutants by section 502(b) of the CAA to cover the reasonable direct and indirect costs of administering the operating permit program required by Title V of the CAA. Section 6.3(c) does not specify what percentage of the total Title V revenue must be generated by the Title V emission fee, only that the emission fee is a component of the fee schedule. Under 40 CFR 70.9, state programs shall establish fees that are sufficient to cover the permit program costs, including costs related to preparing regulations or guidance, reviewing permit applications, general administrative costs of running the program, implementing and enforcing the terms of a permit, emissions and ambient monitoring, modeling, analyses, or demonstrations, preparing inventories and tracking emissions, and providing small business assistance.

Annual operating permit maintenance fee

19. Comment: One of the most significant new fees created, that DEP notes will generate a large portion of these additional funds, is the creation of an annual maintenance fee for Title V facilities. This proposed fee starts at $10,000 and increases to $15,600 by 2031. DEP notes that this fee is necessary because revenues from the Title V emission fee, which is collected based on the amount of emissions of regulated pollutants, have decreased by 41% since 2000 and are continuing to decrease. (99—113)

Response: The annual operating permit maintenance fee is not a newly created fee. Please see the responses to Comments 3, 17, 19, 22, and 23 for a discussion of the annual operating permit maintenance fee.

20. Comment: The commenter states that the EQB proposes to implement an annual maintenance fee. This $10,000 annual maintenance fee would be applicable to the owners and operators of affected Non-Title V and Title V facilities. It replaces the annual operating permit administration fee currently set at $750. In light of the comments received from lawmakers and the regulated community, the commenter believes the proposal being offered by the EQB may be a policy decision of such a substantial nature that it requires legislative review. (1427)

Response: Subsection 6.3(j)(3) of the APCA provides for an annual operating permit administration fee, an undefined term in the act. It does not, however, limit the Board to using that exact name for the fee. The annual operating permit maintenance fee in this final-form rulemaking is the annual operating permit administration fee. The Board merely adjusted the name of the fee to better describe its purpose since these fees are used to cover the Department's costs for evaluating the facility to ensure that it is 'maintaining' compliance, including the costs of inspections, reviewing records, and reviewing permits. It is reasonable and appropriate for the Board to adjust the name of a fee to better describe its purpose. This name change is also evident by the fact that the Department will stop assessing the currently titled annual operating permit administration fee after December 31, 2020.

The Department would like to clarify that the proposed $10,000 annual operating permit maintenance fee would have applied to the owners and operators of Title V facilities. Fees of $2,000 and $2,500 were proposed to apply to the owners and operators of Non-Title V facilities. In response to concerns raised at the June 14, 2018, AQTAC meeting that the annual maintenance fee for a Synthetic Minor facility should be higher, as well as concerns that the Title V facilities should not subsidize the costs of Non-Title V facilities, the Department lowered the Title V annual operating permit maintenance fee from $10,000 to $8,000 for calendar years 2021—2025 while raising the Synthetic Minor annual maintenance fee from $2,500 to $4,000 for calendar years 2021—2025. These revisions balance the anticipated revenue for the Title V and Non-Title V Accounts more closely with projected expenditures. This change is approximately revenue neutral to the Department and can be seen in Tables 24, 25, and 26 on page 36 of the Fee Report.

Please also see the responses to Comments 17, 22, and 23.

21. Comment: The commenter asks the Board to explain why it believes that replacing the annual operating permit administrative fee with an annual operating permit maintenance fee is authorized by the APCA. (1427)

Response: Subsection 6.3(j)(3) of the APCA provides for an annual operating permit administration fee, an undefined term in the act. It does not, however, limit the Board to using that exact name for the fee. The annual operating permit maintenance fee in this final-form rulemaking is the annual operating permit administration fee. The Board merely adjusted the name of the fee to better describe its purpose since these fees are used to cover the Department's costs for evaluating the facility to ensure that it is 'maintaining' compliance, including the costs

of inspections, reviewing records, and reviewing permits. It is reasonable and appropriate for the Board to adjust the name of a fee to better describe its purpose.

22. Comment: The commenter asks the Board to explain how this fee is different from the administration fee and what types of activities it covers. (1427)

Response: The annual operating permit maintenance fee is not a newly created fee. Subsection 6.3(j)(3) of the APCA provides for an annual operating permit administration fee, an undefined term in the act. The annual operating permit maintenance fee in this final-form rulemaking is the annual operating permit administration fee. The Board merely adjusted the name of the fee to better describe its purpose since these fees are used to cover the Department's costs for evaluating the facility to ensure that it is 'maintaining' compliance, including the costs of inspections, reviewing records, and reviewing permits. It is reasonable and appropriate for the Board to adjust the name of a fee to better describe its purpose.

23. Comment: Regarding the proposed annual maintenance fee, the commenters state the increase in the annual fee may almost double the annual cost for those facilities whose potential emissions are just above the Title V major source thresholds, while being a 10% or less increase for the largest facilities. Further, if a company operates multiple small Title V facilities, such as interstate transmission systems, the increase in maintenance fee may escalate to approximately $100,000 per year in total for those facilities." The commenters suggest that: "A graduated annual maintenance fee system based on total emissions, a clear path for smaller facilities to become synthetic minor sources or a not to exceed annual limitation per company are possible options which should be considered." (32, 33)

Response: The final-form annual operating permit maintenance fees are designed to recover costs to the Department for providing services to facility owners and operators that are otherwise absorbed in the revenue generated from annual air emission fees paid by the owners and operators of the Title V facilities, permitting fee revenue from the owners and operators of both Title V and Non-Title V facilities, and General Fund allocation moneys. This annual operating permit maintenance fee is in addition to the requirement of § 127.705, which requires the owner or operator of Title V facilities to pay an emissions fee per ton of each regulated pollutant emitted in the previous year with a cap set at 4,000 tons per regulated pollutant.

A facility with potential emissions just above the Title V major source thresholds still requires permitting review and issuance, inspections, and related Department activities. The annual air emission fee revenue from the facility may not cover the costs of the required Departmental services. The revised annual operating permit maintenance fee is designed to help recoup some of these costs that otherwise must be absorbed in the fees paid by other facility owners and operators.

To qualify for synthetic minor status, the owner or operator of a facility that has the potential to emit (PTE) regulated pollutants above the major source thresholds, but has actual emissions of regulated pollutants well below the major source thresholds, must be issued a permit with an enforceable limit on the facility's PTE. In this instance, the owner or operator of the facility may complete an application for a synthetic minor operating permit that includes proposed conditions

to limit the facility's PTE to below the major source thresholds. The Department will review the application and determine if a synthetic minor operating permit can be issued to the applicant.

The annual operating permit maintenance fee is per operating permit. An owner or operator that has multiple facilities may be able to combine the multiple facilities into a single operating permit if the facilities are located on one or more contiguous or adjacent properties that are owned or operated by the same person under common control.

24. Comment: The Department remarks that its proposal to institute an "annual maintenance fee" as opposed to an increase in the emissions fee is the best option because it spreads out the program costs more evenly across Title V facilities. See Fiscal Analysis at pages 33-34. The proposal has the added benefit, which the Department does not discuss, of making the program more sustainable long-term if emissions continue to decrease. There is a drawback in this approach in that it presents less of a deterrent for higher increased emissions. However, the Department's choice to go with an annual maintenance fee is a reasonable way to balance the benefits and drawbacks. (46, 47, 48, 49)

Response: The Department thanks the commenters for their support. The annual operating permit maintenance fee will not have an adverse impact on the reductions of emissions. States have an ongoing obligation under section 110 of the CAA to ensure that changes to any measure incorporated into a SIP do not interfere with attainment or maintenance of any NAAQS or with any other requirement of the CAA. The EPA cannot approve changes to SIP provisions unless the Agency can conclude that the changes would not result in backsliding, as required by section 110(l) of the CAA regarding plan revisions. See 84 FR 36304, 36323 (July 26, 2019).

Consequently, a state cannot allow the owner or operator of a source to increase its emissions of a regulated pollutant without a demonstration to the EPA that doing so will not impact the state's or area's attainment and reasonable further progress of that pollutant. Voluntary pollution reduction has leveled off, however, as Title V facility owners and operators reach the extent of their ability to reduce emissions with currently available cost-effective control technologies, as well as the extent that emissions need to be reduced throughout this Commonwealth to achieve and maintain the applicable NAAQS. Without promulgation of a lowered NAAQS by the EPA or without monitored design values in this Commonwealth that exceed the current NAAQS, there is no driver to require additional emissions reductions from the regulated industries. The work involved in reviewing and renewing permits, conducting inspections, servicing the monitors, evaluating emissions data, planning, developing and implementing regulations, policy, and guidance, and other program work to assure ongoing maintenance of the applicable NAAQS, however, does not decrease.

25. Comment: The commenter agrees with the Department in using Option 1. This proposal of an annual maintenance fee will spread out the cost obligations to all sources in an equitable manner. (35)

Response: The Department thanks the commenter for their support. Please see the response to Comment 17 for a discussion of the options that the Department considered in developing the final-form fee schedule.

Disincentive for Title V facilities to voluntarily reduce emissions

26. Comment: The commenters expressed concern that the proposed fee structure creates a disincentive for the Title V facilities. When the fees are correlated with emission volumes it encourages facilities to make voluntary technological and operational improvements to reduce its emissions because the less the sources pollute, the less they pay. The Department's newly proposed fee structure will reduce the proportionality of a reduced fee based on achieving reduced emission volumes and will slow down the progress of voluntary pollution reduction. (52—98)

Response: The Department supports the voluntary reduction of emissions which help attain and maintain the health-based National Ambient Air Quality Standards (NAAQS). However, voluntary pollution reduction has leveled off as Title V facility owners and operators reach the extent of their ability to reduce emissions with currently available cost-effective control technologies, as well as the extent that emissions need to be reduced throughout this Commonwealth to achieve and maintain the applicable NAAQS. Without promulgation of a lowered NAAQS by the EPA or without monitored design values in this Commonwealth that exceed the current NAAQS, there is no driver to require additional emissions reductions from the regulated industries. In these instances, the owner or operator of a regulated facility may find it less costly to continue to pay the Title V annual emissions fees rather than install additional controls or make process changes to further reduce emissions. The Department's work involved in reviewing and renewing permits, conducting inspections, servicing the monitors, evaluating emissions data, planning, developing and implementing regulations, policy, and guidance, and other program work to assure ongoing maintenance of the applicable NAAQS, however, does not decrease. The Department can no longer rely on Title V annual emissions fee revenue to cover most of the Title V program annual expenditures, therefore other fees must be implemented. Moreover, as stated in the response to Comment 17, by generating approximately 70% to 72% of the Title V program annual revenue from annual air emission fees in the final-form fee schedule, the Department is still relying on the annual air emission fee as a significant source of revenue for the program. This will continue to incentivize voluntary emission reductions.

Further, when the Title V program was implemented in 1994, a number of facility owners and operators elected synthetic minor status, meaning they accepted Federally enforceable caps on the facility's potential to emit to less than the Title V thresholds, rather than be subject to the Title V program requirements and annual air emission fees. These synthetic minor facility owners and operators must maintain operating permits and meet recordkeeping and reporting requirements, including reporting emissions to the Department's air emissions inventory, as well as be inspected on a regular basis for compliance evaluation. These facility plan approval and permit applications require Department review for issuance of new or renewed permits. Table 11 on page 21 of the Fee Report for the final-form rulemaking provides an estimate of 50 hours for the review of a Non-Title V operating permit, which represents approximately $2,900 in personnel costs. Table 12, also on page 21 of the Fee Report, provides 28 hours each for the review and issuance of an amendment or a minor modification to a Non-Title V operating permit. The 28 hours represents approximately $1,630 in personnel costs for each of these activities. These costs cannot be recovered from Title V program fee revenue therefore the Department has to consider reasonable approaches to funding these activities. The final-form fee

schedule amendments, including the annual operating permit maintenance fee, spread the burden of supporting the Air Quality Program among more users, including the owners and operators of Non-Title V facilities who do not pay annual air emission fees. Without the final-form fee amendments, these costs to the Department would need to be absorbed in revenue paid by other permitted sources.

27. Comment: The commenters assert that the Department's new fee structure is going in the exact opposite direction of the recent EPA policy changes which incentivize voluntary pollution reduction. In 2018 the EPA withdrew the "once in always in" policy for the classification of major sources of hazardous air pollutants. In 1995 the EPA implemented a policy that determined that any facility that emitted enough pollution to be considered a "major source" could not be unclassified as such, no matter how much it reduced the amount it polluted. The EPA understood that the 1995 policy removed a major incentive to voluntarily reduce the amount of pollution the facility emitted. Now that the EPA has withdrawn this policy, facilities will again have an incentive to make upgrades and run cleaner to get below the "major source" designation. Just as federal policy is changing its direction towards financially incentivizing Title V facilities in their voluntary reduction in pollution, so also should state policy, which heretofore, having proven to be highly effective, continue to incentivize voluntary pollution reduction via its primary reliance on the emission fee per ton structure. (52—98)

Response: The intent of the EPA's withdrawal of the 1995 once in always in (OIAI) policy is to remove the timing limitation on the classification of a source as a major source of HAP. That is, the EPA's July 26, 2019, notice of proposed rule published at 84 FR 36304 proposes to amend 40 CFR 63.1 (relating to applicability) to provide that the owner or operator of a source of HAP that moves from major source status to area source status will become subject to the requirements for area sources rather than remain subject to the requirements imposed on major sources. See 84 FR 36304, 36306 (July 26, 2019). The owners and operators of major sources of HAPs are subject to rigorous recordkeeping and monitoring requirements and under the 1995 OIAI policy, could not be relieved of these rigorous administrative requirements even if the source fell below the major source thresholds. While the withdrawal of the 1995 OIAI policy may incentivize some owners and operators to voluntarily reduce emissions to move from major source status to area source status in order to reduce the administrative burden and associated costs, if an owner or operator of a major source (Title V) of HAP voluntarily reduces emissions to achieve area source (Non-Title V) status, the annual air emission fees collected on those emissions cease, leading to decreased revenue for the Air Quality Program. The Department's workload does not decrease, however, as the area source must still be permitted, inspected, and monitored for compliance; ambient air monitoring must be maintained; and inventory emissions must be tracked. These costs generated by an area source of emissions cannot be recovered from Title V program revenue, therefore the Department considered reasonable approaches to funding these activities. Without the final-form fee amendments, these costs to the Department would need to be absorbed in revenue paid by other permitted sources and the General Fund allocation.

Further, an owner or operator of an area source of HAP is also able to go from area source status to major source status if desired, and at that time must comply with or resume complying with the applicable major source HAP requirements. This could potentially have the effect of allowing HAP emissions to increase and thereby increase Title V annual air emission fee revenue, but this shift in classification would require significant Department activities to implement. An owner or

operator submitting a plan approval application to go from area source status to major source status for HAP would require the Department to review and revise the permit to incorporate the applicable conditions. Inspection and monitoring of the facility to evaluate compliance with the permit conditions would also continue or perhaps increase in frequency. These costs would be incurred by the Department. The final-form fee amendments allocate these costs to the users of these services rather than increasing the permitting fees for all permitted facility owners and operators or the Title V annual air emission fee for Title V facility owners and operators.

Additionally, the EPA's July 26, 2019, notice of proposed rule published at 84 FR 36304 stipulated that the proposed rulemaking does not affect states' continuing obligations under section 110 of the CAA (relating to state implementation plans for national primary and secondary ambient air quality standards) or under requirements for SIP development, including the obligation to maintain major source NESHAP requirements that may have been approved in a SIP under section 110 of the CAA. In addition, states have an ongoing obligation under section 110 of the CAA to ensure that changes to any measure incorporated into a SIP do not interfere with attainment or maintenance of any NAAQS or with any other requirement of the CAA. The EPA cannot approve changes to SIP provisions unless the Agency can conclude that the changes would not result in backsliding, as required by section 110(l) of the CAA regarding plan revisions. See 84 FR 36304, 36323.

Further, as discussed in the responses to Comments 17 and 25, the final-form Air Quality Program fee schedule amendments still rely on Title V annual air emission fees for approximately 70% to 72% of Title V program annual revenue, which will continue to incentivize the owners and operators of affected major facilities and sources to voluntarily reduce emissions of regulated pollutants. The gains in voluntary reduction of emissions of regulated pollutants have slowed as the owners and operators of Title V facilities and sources reach the extent of their ability to reduce pollutant emissions with currently available cost-effective control technologies, as well as the extent that emissions need to be reduced throughout this Commonwealth to achieve and maintain the applicable NAAQS or to comply with applicable MACT standards. The Department's workload does not decrease, though, even if emissions of regulated pollutants continue to decline or level off. The owners and operators of sources of emissions must have an operating permit to operate, therefore, the Department must continue to review and issue new or renewal permits, review plan approval applications, and conduct inspections at permitted major, nonmajor, and area source facilities on a regular basis to evaluate facility compliance with permit conditions.

28. Comment: Regarding the proposed annual maintenance fee, the commenters state that the higher maintenance fee seems counterintuitive to the 1990 Clean Air Act Amendment goal of providing an incentive for reducing emissions by charging the per ton fees.

Response: The final-form annual operating permit maintenance fees are designed to recover costs to the Department for providing services to facility owners and operators that are otherwise absorbed in the revenue generated from annual air emission fees paid by the owners and operators of the Title V facilities, permitting fee revenue from the owners and operators of both Title V and Non-Title V facilities, and General Fund allocation moneys. This annual operating permit maintenance fee is in addition to the requirement of § 127.705, which requires the owner

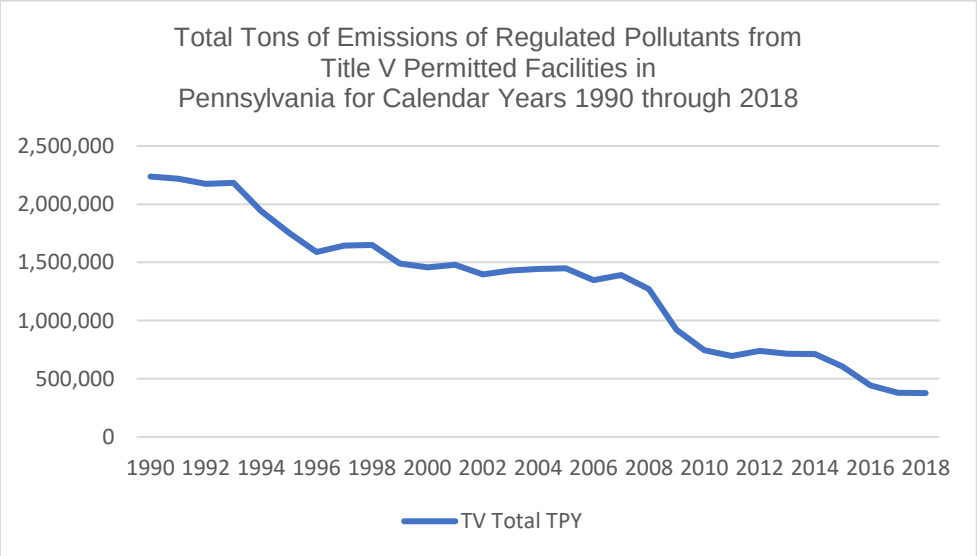
or operator of Title V facilities to pay an annual air emissions fee per ton of each regulated pollutant emitted in the previous year with a cap set at 4,000 tons per regulated pollutant.

Please see the response to Comment 25 for a discussion about incentivizing emission reductions through assessment of the Title V annual air emission fee.

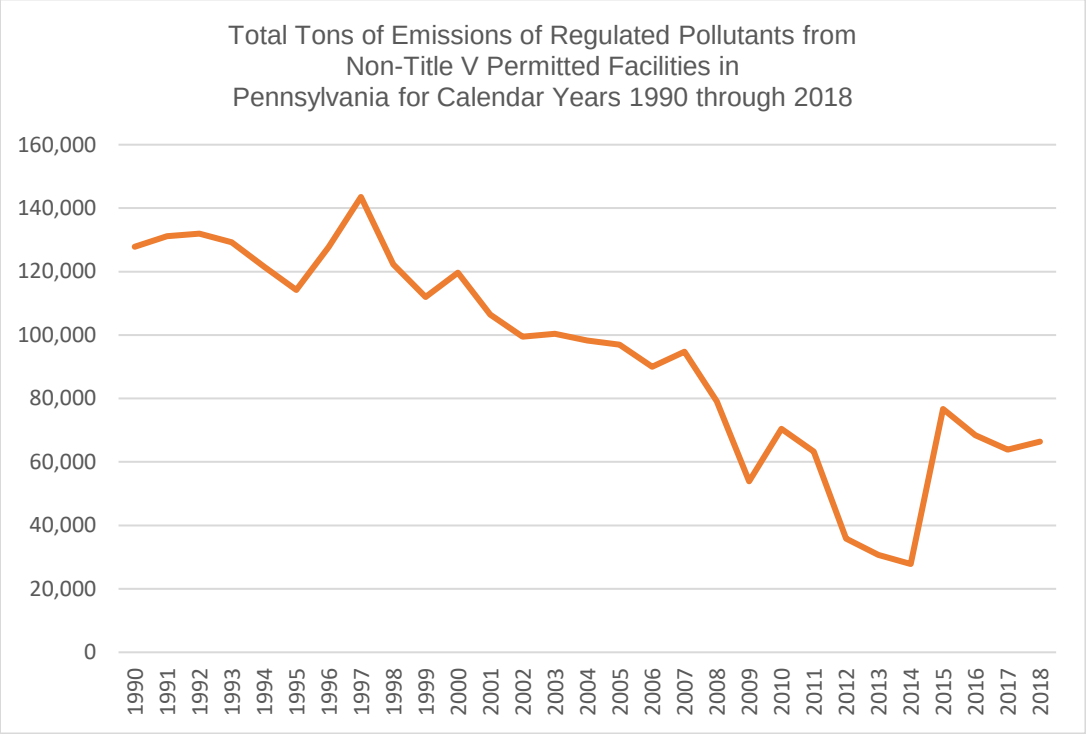
Decreasing emissions of pollutants and number of Title V facilities

29. Comment: The commenters state that the reason the Department offers for the need to increase fees, as stated in the Bulletin Notice, is because "*the Department, like many state and local agencies, has experienced shortfalls in fee revenue due to emissions reductions at major facilities*." The Title V account, as outlined in box 10 of the proposed rulemaking RAF, does portray a positive ending balance through the end of the Department's projections in 2023, but admittedly, does show a decline in revenue and an increase in expenditures. This same section of the RAF also further details the cause of the decline in revenue which is because "*emissions subject to the Title V emission fee have decreased by 41% since 2000 and continue to decrease as more emissions reductions are required to attain and maintain the revised applicable NAAQS established by the EPA*." This reflects the national trend that has seen the aggregate emissions of the six criteria pollutants identified in the Clean Air Act decline by 73% from 1970 to 2017. (52—98)

Response: The charts below show the tons of emissions reductions of regulated pollutants in this Commonwealth from 1990 to 2018 for Title V and Non-Title V permitted facilities that reported to the Department's Point Source Inventory air emissions database. For Title V annual emission fee purposes, "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 NAAQS has been promulgated, except that carbon monoxide shall be excluded from this reference. The data for these charts was retrieved from the Point Source Inventory on December 26, 2019.



Total reported emissions of regulated pollutants from Title V permitted facilities have decreased approximately 83% from a high of 2,237,605 tons in 1990 to 376,462 tons in 2018 [((2,237,605 – 376,462)/2,237,605) x 100 = 83.1%]. Decreases in chargeable emissions of regulated pollutants at Title V permitted facilities have resulted in decreased Title V annual air emission fee revenue. As annual air emission fee revenue decreases, the Department's costs for performing plan approval, permitting, inspection, and related activities for the Title V program must be covered by Title V plan approval and permitting fees.



Total reported emissions of regulated pollutants from Non-Title V permitted facilities have decreased approximately 54% from a high of 143,529 tons in 1997 to 66,415 tons in 2018 [((143,529 – 66,415)/143,529) x 100 = 53.7%]. The total reported emissions of regulated pollutants from these sources dipped to a low of 27,826 tons in calendar year 2014 as businesses recovered from the Great Recession of 2009. The owners and operators of Non-Title V permitted facilities do not pay emission fees. The Department's costs of performing plan approval, permitting, inspection, and related activities for these facilities must be covered through Non-Title V plan approval and permitting fees as well as money from fines and penalties, the General Fund allocation, grants, and the Clean Air Fund balance.

30. Comment: This decrease in emissions of pollutants is a clear sign that our business community has taken successful steps to improve the air quality in our state. When significantly less pollutants are being released into the air, it stands to reason that DEP's air quality program would not need the same amount of funding. (99—113)

Response: Please see the response to Comment 30 for a discussion of the number of Title V facilities and the need for level funding in the Clean Air Fund.

31. Comment: The commenters state that not only is the amount of pollution declining but the number of sources also appears to be declining. When the Department raised the emission fee 48% in 2013, it noted that there were approximately 560 Title V facilities in this Commonwealth. In the current proposal the Department notes that there are only 500, a decrease of 60 facilities to regulate. In the 2013 submission to the IRRC the Department noted a reduction in coal-fired power plants because of the low price of natural gas and included a list of facility shutdowns. Yet, despite a reduction in pollution and despite a reduction in pollution sources to regulate, the Department stated that it would not reduce the Department's workload. It is difficult to understand how the Department acknowledges an 11% reduction in the amount of Title V facilities to regulate, and yet is asking for a $15.5 million dollar increase in expenditures. A detailed analysis from the Department on how advancements in technology in reducing emissions combined with a reduction in the number of regulated facilities has not correspondingly reduced costs must be provided. (52—98)

Response: The Department would like to clarify that it is not requesting a $15,500,000 increase in expenditures. The final-form amendments to the plan approval application and operating permit fees are designed to bring the Air Quality Program's permitting fee revenue in line with current expenditures so that the Air Quality Program will be self-sustaining as required under the CAA. The fee schedule amendments are necessary for the collection of fees sufficient to cover the costs of administering the Air Quality Program, including the plan approval and operating permit programs, so that reviews and approvals are conducted in a timely manner. Even though emissions have decreased, the Department still needs to conduct best available technology (BAT), reasonably available control technology, NSPS, MACT, NSR, and PSD analyses for each source including monitoring, testing, and reporting requirements.

Historically, the Title V program consisted of more facilities, and therefore had more associated emissions of regulated pollutants, so the Clean Air Fund balance was large. After many years of drawing down this balance to cover Air Quality Program costs and expenditures that exceeded annual revenue, the Clean Air Fund balance is now approaching zero. The increase in revenue, from the new and amended fees, of approximately $12.2 million simply halts this decline in the Clean Air Fund balance and brings annual program revenue in line with annual program expenditures. These expenditures include restoring 17 Air Quality Program staff positions and bringing the program's filled staff complement back up to 2016 levels.

The 2013 rulemaking only amended the Title V annual air emission fee and thus referenced all of the Title V facilities required to pay that fee. The Title V annual air emission fee applies to the owners and operators of Title V facilities in all counties in this Commonwealth, including Allegheny and Philadelphia Counties. The 2013 rulemaking, therefore, included the facilities in Allegheny and Philadelphia Counties, bringing the total to 560 Title V facilities. See 43 Pa.B. 677, 679 (February 2, 2013) and 43 Pa.B. 7268, 7273 (December 14, 2013). Conversely, this final-form rulemaking amends the Department's permitting fee schedule, which only affects the owners and operators of Title V and Non-Title V facilities under the Department's jurisdiction and therefore excludes the facilities in Allegheny and Philadelphia Counties.

The number of facilities in the Department's permit tracking database fluctuates depending on a facility's plan approval application and permit review status and operating status as well as new facilities being added to the database and facilities dropping out of the database due to closure.

The types of facilities located in this Commonwealth has also fluctuated over the years. Shutdowns of coal-fired power plants have been offset by the construction of new natural gas-fired power plants, as well as conversions at coal-fired power plants to natural gas. Shutdowns of manufacturing and other regulated facilities have been offset by construction of new and complex facilities such as the Perdue soybean extraction plant in York County and the Shell Cracker in Butler County. These facilities may emit fewer regulated pollutants than coal-fired power plants, but these facilities still require extensive permitting review and inspection activities, as well as emissions and ambient air monitoring, modeling, and related activities. Revenue from the Title V annual air emission fees may not cover all of the costs incurred by the Department to perform these activities.

The Department also spends time reviewing plan approval applications for facilities which never get built or take years to begin operating. Revenue from Title V emission fees and permit renewal fees will not be generated until the facilities are fully constructed and operating. Title V facilities that have not been built or started operating also are not included in the facility tracking database and are thus not counted in the number of Title V facilities, despite the Department performing the plan approval and permitting reviews and incurring the costs of these activities. The Air Quality Program's costs to review these plan approval applications that are over and above the plan approval application fees must then be covered by Title V fee revenue generated by operating facilities.

The Department must also review plan approval and operating permit applications, as well as conduct inspections and perform related activities, for synthetic minor facilities and for certain other sources that are issued Title V permits, such as landfills, which are not subject to Title V annual air emission fees and thus do not generate Title V annual air emission fee revenue. These program costs are not declining, and the revenue from the Non-Title V plan approval application and permitting fees is not keeping pace with the costs.

While emissions have decreased due to the installation of improved air pollution control technology such as low NOx burners, selective catalytic reduction, selective non-catalytic reduction, and sulfur dioxide scrubbers, the Department's workload has increased due to the installation of these improved control technologies. These technologies require continuous emissions monitoring systems (CEMS), which require more Air Quality Program staff to review and process the CEMS data. Source testing requirements and facility inspections are also more complex, which has increased the workload for Air Quality Program staff, due to the need to inspect more complex control technologies and review CEMS recordkeeping and reporting.

The Title V plan approval application and operating permit fees must not only cover the expenditures for Title V permitting activities but also the ancillary activities for data review, source test review, inspections, vehicles, training, travel, ambient air monitoring equipment, acid rain monitoring, support for advisory committees, contracts with universities assisting with air quality monitoring and forecasting, contracts for the small business compliance assistance program, contracts for information technology support, and a grant to Philadelphia AMS. Non-Title V fee revenue covers information technology costs, utilities and office space leases, and ambient air monitoring equipment as well as vehicles, training, travel, data processing equipment, certain regional office expenses, a portion of the matching funds required for the CAA section 105 grant, contracts with universities assisting with air quality monitoring and

forecasting, and grants to local air quality partnerships. These costs and obligations do not decrease even if emissions of regulated pollutants decrease.

The Department provided a detailed analysis of how changes in technology and work effort are accounted for in this final-form rulemaking in the final-form rulemaking Fee Report. The Department reviewed the current and expected workload to assess the need for increased fees and additional fees. As a result, the final-form fee schedules were developed to ensure that fee revenue is sufficient to administer program costs.

32. Comment: The commenters believe that it is entirely reasonable that a decline in revenue for the air quality program would coincide with the significant decline in pollution and polluting facilities to be regulated. That is, in fact, the goal. As this goal is increasingly realized, Title V facilities which are regulated under this program should not have to subsidize efforts to reduce air pollution from other sources not under this program. (52—98)

Response: The Department agrees that a decline in Title V annual air emission fee revenue coinciding with the installation of improved control technologies and a decrease in emissions of regulated pollutants is to be expected. The 1993 Apogee Report to the Department forecast this decline and projected that the Department would need to find alternative ways to fund the Air Quality Program, particularly the Title V program, which is required by the CAA to be self-sustaining. Please see the response to Comment 15 for more detail about the 1993 Apogee Report.

The Department agrees that facilities regulated under the Title V program should not have to subsidize efforts to reduce air pollution from sources or facilities that are not regulated under the Title V program. Hence this final-form rulemaking includes a fee-for-service schedule designed to spread the costs of the program across more of the users rather than concentrating the burden on the Title V facilities and the declining Title V emissions. Please see the response to Comment 17 for a discussion of the three options that the Department considered in developing the final-form amendments to address the shortfall in the Clean Air Fund balance and generate sufficient revenue to bring Air Quality Program revenue in line with expenditures.

Economic and fiscal impacts

33. Comment: The commenters express that while they truly appreciate the achievements in pollution reduction and the efforts made to provide for cleaner air, they believe that this goal can be achieved while not harming our economy. The Regulatory Review Act requires the commission [IRRC] to consider the economic or fiscal impacts of a regulation, specifically the adverse effects on prices of goods and services, productivity or competition. 71 P.S. § 745.5b. (52—98)

Response: The Department understands the commenters' concern; however, the Department does not believe the final-form fee increases will have an adverse impact on the Pennsylvania economy.

34. Comment: As it is IRRC's role to analyze the economic and fiscal impacts of a regulation, this proposal will have an impact on every business which must pay these fees and make

business decisions within the Commonwealth. Additionally, these regulations will impact Pennsylvania's taxpayers and consumers as these fees will likely be passed down through the economic chain. Instead of fulfilling government's role of supporting local Pennsylvanian businesses and communities, this regulation would hurt many of those who can least afford it. Though the regulation would apply universally, smaller businesses with limited resources would be disproportionately impacted by these excessive increases should the proposed regulation take effect. (99—113)

This commenter opposes the proposed fee increase because it will hurt small businesses since they must compete with the regional and national companies. The Department should try to reduce costs internally before increasing the fees. (51)

Response: The Department maintains a Small Business Ombudsman and Small Business Assistance Program to assist smaller businesses with compliance questions. The Department partners with the Environmental Management Assistance Program (EMAP) of the Pennsylvania Small Business Development Center (SBDC) to fulfill the requirement in section 507 of the CAA and section 7.7 of the APCA to provide free and confidential technical and compliance environmental assistance to small business. In addition to providing one-on-one consulting assistance and on-site assessments, EMAP also operates a toll-free phone line (877-ask-emap or 877-275-3627) to field questions from Pennsylvania small businesses, as well as businesses wishing to start up in, or relocate to, Pennsylvania. EMAP operates and maintains a resource-rich environmental assistance website (www.askemap.org) and distributes an electronic newsletter to educate and inform small businesses about a variety of environmental compliance issues.

Since the last scheduled increases in 2005, the Department has sought to maintain parity between revenue and expenditures in the Air Quality Program through several means. In addition to streamlining the air permitting program through the Permit Decision Guarantee policy, creating the online RFD form, developing general plan approvals and general operating permits for 19 source categories, and establishing electronic emissions reporting, the Department has reduced the number of Air Quality Program staff by 72 positions from 349 to 277, or by 21%.

The final-form fee amendments are needed to cover the Department’s costs to implement the air pollution control plan approval program and operating permit program activities required under the CAA and APCA to attain and maintain the NAAQS for air pollutants. Please see the response to Comment 21 for a discussion of the Department’s detailed analysis of work effort in the final-form rulemaking Fee Report. The fees are also essential to satisfy other requirements of the CAA, APCA, and regulations promulgated thereunder to support the Department’s statutory mission to protect the public health and welfare and the environment. Attaining and maintaining the air quality standards is in the public interest, because maintaining the standards help improve public health and the environment.

35. Comment: The commenters express concerns that the $15.5 million increased annual cost will have a significant adverse effect, not just on the regulated community and their competitiveness, but also on Pennsylvania citizens who will have to bear these costs. (52—98)

Response: The Department believes that $12.2 million spread out across the entire Pennsylvania air quality regulated community will not have a significant adverse effect. Rather, by increasing

the fee revenue and providing the Department the means to increase staffing, the Department will be able to review, approve, and issue permits more quickly, thereby giving the industries the opportunity to expand their businesses and hire more people.

36. Comment: The commenters express concern about the amount of revenue the Department intends to raise off Title V sources. In table 3 of RAF box 10 the Department estimates the 2020-2021 Title V fee revenue for the proposed new fees to be $21,601,800, which is $5,936,675 more than what the current fee structure would raise. Looking back to Table 1, we see that the Department estimates total 2020-2021 expenditures of $18,601,000. This means the Department's proposed fees would raise $2,534,675 over total expenditures which violates 35 P.S. § 4006.3(c) that states that "*in no case shall the amount of the permanent fee be more than that which is necessary to comply with section 502(b) of the Clean Air Act.*" The statute clearly states that the fee must not be more than it costs to administer the Title V program, yet the Department is proposing fees that would be $2.5 million more than costs (not even accounting for expected cost savings due to less pollution and less facilities to regulate). (52—98)

Response: After many years of drawing down the Clean Air Fund balance to cover Air Quality Program costs and expenditures that exceeded annual permitting fee and Title V emissions fee revenue, the Clean Air Fund balance is now approaching zero. The projected approximately $12.2 million increase in revenue simply halts this decline in the Clean Air Fund balance and brings annual program revenue in line with annual program expenditures.

In response to concerns raised at the June 14, 2018, AQTAC meeting that the annual maintenance fee for a Synthetic Minor facility should be higher, as well as concerns that the Title V facilities should not subsidize the costs of Non-Title V facilities, the Department lowered the Title V annual operating permit maintenance fee from $10,000 to $8,000 for calendar years 2021—2025 while raising the Synthetic Minor annual maintenance fee from $2,500 to $4,000 for calendar years 2021—2025. These revisions balance the anticipated revenue for the Title V and Non-Title V Accounts more closely with projected expenditures. This change is approximately revenue neutral to the Department and can be seen in Tables 24, 25, and 26 on page 36 of the Fee Report.

37. Comment: This proposed regulation is unacceptable, and if implemented would have a severe financial impact on our residents and the businesses within our districts. The commenters therefore ask IRRC to disapprove this regulation in its proposed form since the provisions of the regulation are patently unreasonable. (99—113)

Response: The Department disagrees that the proposed amendments are patently unreasonable. Historically, the Title V program consisted of more facilities, and therefore had more associated emissions of regulated pollutants, so the Clean Air Fund balance was large. After many years of drawing down this balance to cover Air Quality Program costs and expenditures that exceeded annual revenue, the Clean Air Fund balance is now approaching zero. The final-form increases in existing fees are designed to provide sufficient revenue to halt the decline in the Clean Air Fund balance and bring annual program revenue in line with annual program expenditures. These final-form fee amendments will provide the needed revenue to the Department to maintain its Air Quality Program as required by the CAA and APCA and avoid the imposition of EPA sanctions. As discussed in the response to Comment 15, the EPA may withdraw approval of a Part 70 Title

V Permit Program, in whole or in part, in accordance with 40 CFR 70.10(b) and (c) 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 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 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. These sanctions would have a serious impact on the Pennsylvania economy.

Moreover, these revenues will sustain the Department in its mission of protecting the public health and welfare and the environment from unhealthy levels of regulated air pollutants. In comparison to the annual costs of $12.7 million to the regulated industry, the EPA has estimated that the monetized public health benefits of attaining the 2008 8-hour ozone NAAQS of 0.075 ppm range from $8.3 billion to $18 billion annually on a National basis by 2020.[1] Prorating that benefit to Commonwealth residents, based on United States Census Bureau 2015 population estimates, results in an annual public health benefit of $332 million to $720 million.

Similarly, the EPA has estimated that the monetized public health benefits of attaining the 2015 8-hour ozone NAAQS of 0.070 ppm range from $1.5 billion to $4.5 billion annually on a National basis by 2025.[2] Prorating that benefit to Commonwealth residents, based on United States Census Bureau 2015 population estimates, results in an annual public health benefit of $60 million to $180 million. These EPA estimates are indicative of the health benefits to Commonwealth residents of attaining the 2008 and 2015 8-hour ozone NAAQS and maintaining healthful air quality throughout the Commonwealth. The monetized public health benefits to Commonwealth residents achieved in part through reduced emissions of regulated pollutants, are considerable in comparison to the costs of paying new and increased fees incurred by the owners and operators of permitted facilities and environmental remediation contractors.

38. **Comment:** The commenter states that the criteria in the RRA requires consideration of the economic impact of the regulation and protection of the public health, safety and welfare and raise valid concerns related to both criteria. (1427)

Response: The revenue that will be generated by the fees in this final-form rulemaking would provide essential funding for the Air Quality Program to continue fulfilling its statutory obligation of protecting the public health and welfare from harmful air pollution. The Department's Fee Report and the Regulatory Analysis Form for this final-form rulemaking, both available on the Department's website, provide additional information to address those concerns.

Comprehensive Review of Department Fees

[1] *Regulatory Impact Analysis, Final National Ambient Air Quality Standard for Ozone*, July 2011.
[2] *Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone*, September 2015.

39. Comment: The commenters believe that this fee package will cause a ripple effect throughout the economy, so it is imperative that this particular proposal be viewed in the broader context of the Department's other recently approved fee packages, currently proposed fee packages, and the Economy-wide Greenhouse Gas Cap and Trade Petition submitted to the EQB. A comprehensive look at the impact of the air quality fee increases must be considered in the context of all the fee increases in the aggregate. (52—98)

Response: The revenue from the final-form fee amendments is designed to support current staffing levels and restoration of 17 Title V positions which have remained unfilled since 2016, as well as establish sufficient revenue to cover ongoing expenditures from the Clean Air Fund balance, which is rapidly going to zero. A solvent Clean Air Fund will sustain the Department's plan approval and operating permit application program as well as the associated activities. Various regulations require the Department to review plan approval and permit applications within a certain timeframe.

Investing in the Department's Air Quality Program either through increased General Fund allocations or increased permitting fees or some alternative fee arrangement supports the Department accomplishing its mission of protecting the public health and welfare and the environment through permitting of sources of regulated air pollutants. Providing the resources for timely plan approval and permit application review and issuance of plan approvals and permits, for inspections and compliance assistance, for enforcement, and for ambient air monitoring will be a benefit to the regulated industries.

40. Comment: The commenters state that the consequences and ramifications of these fees ripple out across many dimensions of the Commonwealth and are presented here as evidence of a pattern of Departmental growth that the Legislature meant to limit when it passed the Regulatory Review Act to "*curtail excessive regulation and to require the executive branch to justify its exercise of the authority to regulate before imposing hidden costs upon the economy of Pennsylvania*." 71 P.S. § 745.2. We contend that the Department has been, and is, by the instant submission, imposing hidden and burdensome costs on the Pennsylvania economy without authority and without adequate justification. (52—98)

Response: The Pennsylvania regulatory development process provides extensive opportunity for legislative and public review and comment at both the proposed and final-form rulemaking stages, including review by the House and Senate Committees, advisory committees, and IRRC. The regulatory development process also involves public hearings and a public comment period. The final-form Air Quality Program fees are not hidden and are necessary to maintain the basic functions of the Air Quality Program. The Department has been upfront throughout the process for establishing these fee amendments, including providing options for the fee schedules and several opportunities for review. Rulemakings developed by the Air Quality Program in particular are required to have a minimum of 60 days of public comment and are reviewed by 3 advisory committees.

Competitiveness with other states

41. Comment: The commenters state that they have no reason to doubt the extensive accounting the Department has done to come up with the minimal fee schedule in the final-form rulemaking.

Viewed in comparison to similar types of fees that neighboring jurisdictions charge, the proposed fee schedule appears somewhat higher than average. The commenters state that is because the legislatures of most neighboring states have allocated more funding for their air quality programs. (46, 47, 48, 49)

Response: While it is difficult for the Department to learn the exact funding sources for the air programs in neighboring states, it is possible that a higher percentage of these states' air program budgets is funded through the state's general fund or other funding streams such as transportation revenue or waste tipping fees.

42. Comment: The commenters state that the Bureau of Air Quality gets significantly less than $10 million in general funding. Delaware has the lowest fees among neighboring states, but Delaware has a similar nominal budget allocation for its smaller air quality program compared to much larger Pennsylvania. The second lowest fees are in Ohio, a state comparably sized to Pennsylvania. Ohio's air pollution control budget allocation is $44 million. Given the far smaller budget allocations that the Pennsylvania Department receives from its legislature, the proposed permitting fees are stunningly low. (46, 47, 48, 49)

Response: The Department acknowledges the comment. Investing in the Department either through increased General Fund allocations or increased permitting fees or some alternative fee arrangement, not only supports the Department accomplishing its mission of protecting public health and welfare and the environment but positions the Department as an engine to permit economic growth and expansion. Providing the resources for timely permit application review and issuance of permits, for inspections and compliance assistance, for enforcement, and for ambient air monitoring will allow the regulated industries to maintain and increase their output, allowing for more income and growth, while protecting public health.

The revenue from the final-form fee amendments is designed to support current staffing levels and restoration of 17 Title V positions which have remained unfilled since 2016, as well as establish sufficient revenue to cover ongoing expenditures from the Clean Air Fund balance, which is rapidly going to zero. A solvent Clean Air Fund will sustain the Department's plan approval and operating permit application program as well as the associated activities. Various regulations require the Department to review plan approval and permit applications within a certain timeframe.

43. Comment: The commenters state that box 12 of the RAF asks "*[h]ow does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?*" Pennsylvania faces many challenges in its ability to stay competitive with other states. Evidence of this is shown in our population statistics. According to the Independent Fiscal Office, Pennsylvania has been losing, and will continue to lose, the economically crucial 18-34 demographic. Between 2012 and 2017 the net out-migration for this age group category was nearly 32,000. An earlier IFO [Independent Fiscal Office] report indicated that nearly 13,000 college graduates left Pennsylvania in just one year. The Senate Majority Policy Committee recently held a hearing expressing concerns about the problem of student flight (aka, "Brain Drain") from Pennsylvania and the challenges this trend will have on our economic competitiveness. (52—98)

Response: The Department understands the commenters' concerns; however, demographic shifts vary over time. A review of the IFO reports cited by the commenters indicated that the reports do not provide detail on the reasons for the in-migration and out-migration of the 18-34 age demographic, such as how many of the college graduates leaving Pennsylvania were not Pennsylvania residents but had simply come to Pennsylvania to attend a college and then return to their home location. Further, the reports do not provide detail on the fields of study pursued by these graduates and where they moved, which would offer clarity on if the out-migration was to locations that have certain growth industries, for example. Additionally, numerous studies have shown that the 18-34 age demographic strongly values their health, environment, and outdoor recreation.

44. Comment: Since the proposed fee schedule extends to 2031, the commenters suggest that the Department remain observant to ensure these proposed fees remain competitive with those of neighboring gas producing states through the period. (32, 33, 1427)

Response: The Department appreciates the comment. The Department has reviewed the fees established by surrounding states as well as data compiled by the National Association of Clean Air Agencies (NACAA) and the Mid-Atlantic Regional Air Management Association. NACAA conducted surveys of states' Title V program fees and other information in 2014 and 2018. The latest surveys are accessible at: http://www.4cleanair.org/sites/default/files/Documents/SummaryofData_2014NACAASurvey_Dec2015.pdf and http://www.4cleanair.org/sites/default/files/Documents/FINAL_NACAA_Title-V_Survey_Compilation_062518.pdf. The Department will continue to remain observant to ensure fees remain competitive with the neighboring gas producing states.

45. Comment: The commenters express concern that Pennsylvania consistently ranks in the bottom third of various state comparisons for economic and business climate attractiveness:

- ALEC-Laffer State Economic Outlook Rankings, 2018: 38th
- U.S. News and World Report Best States: 38th
- U.S. News and World Report State Economy Rankings: 44th
- WalletHub's Best & Worst States to Start a Business: 46th
- WalletHub's 2019 Tax Rates by State: 49th
- Tax Foundation's 2019 State Business Tax Climate Index: 34th

In addition to the above, factor that Pennsylvania has the second highest Corporate Net Income Tax rate in the nation, and it becomes evident that there are enormous challenges to its ability to attract businesses. The Legislature was clearly concerned about limiting the deterring nature of over-regulation when it stated its intent for the Regulatory Review Act that "[*u]nnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes.*" 71 P.S. § 745.2. Furthermore, the APCA requires the consideration of "*the importance of not placing existing or prospective sources in this Commonwealth at a competitive disadvantage*." 35 P.S. §4006.3(d). The proposal to increase costs by an additional $15.5 million will significantly disadvantage the competitiveness of Pennsylvania's business community. (52—98)

Response: The Department acknowledges the comments on economic and business climate attractiveness and Corporate Net Income Tax Rate. The Department does not believe that the anticipated final-form fee revenue increase of $12.2 million spread out across the entire air quality regulated community will have a significant adverse effect. However, failing to adequately fund the Air Quality Program will ultimately result in degraded air quality, as well as impacts to Pennsylvania's public health and welfare, the environment, and outdoor recreation. The Department believes that by increasing the Air Quality Program fee revenue and providing the Department the means to increase staffing and improve information technology resources, the Department will be able to review, approve, and issue permits more quickly, thereby benefiting the regulated industries.

The Fee Amendments are Unnecessary

46. Comment: While the state's Air Pollution Control Act, Act 787 of 1959, does authorize DEP to set some fees by regulation, DEP's proposal to introduce a number of new fees and astronomically increase existing fees is unacceptable. DEP is explicit about its intent to collect approximately 15.5 million additional dollars annually from these fee increases to support its mission regarding air quality. (99—113)

Response: Through this final-form rulemaking, the Department is only seeking to bring Air Quality Program revenue in line with Air Quality Program expenditures. Historically, the Title V program consisted of more facilities, and therefore had more associated emissions of regulated pollutants, so the Clean Air Fund balance was large. After many years of drawing down this balance to cover Air Quality Program costs and expenditures that exceeded annual revenue, the Clean Air Fund balance is now approaching zero. The final-form increases in existing fees are expected to provide sufficient revenue to halt the decline in the Clean Air Fund balance and bring annual program revenue in line with annual program expenditures.

47. Comment: The commenter strongly opposes the proposed Air Quality Fee Schedule Amendments. The anticipated increase of $15.5 million per year from the proposed fee amendment is unprecedented and the cost will be paid by the commonwealth's taxpayers and businesses, hampering growth, and ultimately threatening the effectiveness of the programs. Furthermore, this will increase the cost of doing business in Pennsylvania for the companies through the direct payment of the increased fees and additional taxation for the municipalities in which they operate. (6)

Response: The final-form fee amendments are needed to recover the Department's costs related to performing the activities for the air pollution control plan approval program and operating permit program required under the CAA and APCA to attain and maintain the 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. Importantly, the attainment and maintenance of the NAAQS will protect the public health and welfare of the approximately 12.8 million residents of this Commonwealth and reduce the negative impacts of air pollution on the environment.

Additionally, the Title V permitting program is required to be self-sustaining under the CAA. The revenue from the final-form amendments to existing plan approval application and operating

permit fees and establishment of new plan approval fees is designed to support: current staffing levels and restoration of 17 staff positions for Title V plan approval application and operating permit application reviews, compliance inspections, and complaint response activities; the ambient air monitoring network; ambient air impact modeling activities; major source SIP planning and regulatory development activities; emissions inventory and tracking; development and maintenance of an electronic permit application system for general plan approvals and general operating permits; development of an electronic fee payment system; and general administrative costs. These improvements to the air quality program would benefit the approximately 2,100 permitted facility owners and operators through continued review and action on plan approval and operating permit applications, improvements to the ambient air monitoring network to assess and demonstrate that the Commonwealth is attaining and maintaining the NAAQS. The restoration of 2016 staffing levels would provide additional resources to support the air quality and operating permit programs.

Impact to the business community

48. Comment: Government creates statutes and regulations regarding environmental quality to achieve positive results, not to sustain itself. These fee increases will not lead to more compliance by the business community, it will merely harm innovation and investment by the business community in our great Commonwealth in an effort to sustain increasingly unnecessary bureaucracy. (99—113)

Response: The Department disagrees that these fee increases will harm innovation and investment by the business community. The fee increases will support the Department in its statutorily required mission to implement the activities required by the CAA as well as permitting and regulation of stationary sources with emissions below Title V thresholds as required by the APCA. The achievements in improved air quality and the ongoing compliance by the business community are sustained through the implementation of operating permits. The Department's duties are necessary to continue to maintain existing improvements and achieve greater improvements in air quality if needed to meet ambient air quality standards. A healthy environment attracts people to live in this Commonwealth and businesses to locate in this Commonwealth as a result of a thriving population. The costs to implement the air quality operating permit program for both Title V and Non-Title V sources have increased over the years since implementation of the Air Quality Program Fee Schedule in 1994. The Department's General Fund allocation to the Air Quality Program has decreased over the years and the Clean Air Fund balance is rapidly approaching zero, therefore, the Department must increase its air quality permitting fees to maintain its Air Quality Program.

49. Comment: The commenter states: "The public good that comes from regulations is compliance. The DEP ought to act as a partner in achieving compliance rather than pricing businesses and municipalities out of progress, improvement, and innovation." (6)

Response: The amended fees are needed to cover the Department's costs to implement the air pollution control plan approval program and operating permit program activities required under the CAA and APCA to attain and maintain the ambient air quality standards for air pollutants and monitor compliance of the regulated community with their permitting conditions. The fees are also essential to satisfying other requirements of the CAA, APCA, and regulations

promulgated thereunder. Attaining and maintaining ambient air quality standards is in the public interest, because maintaining the standards help improve public health and welfare and the environment. Please also see the responses to Comments 32 and 34 for a discussion of the economic impact on Pennsylvania businesses of these final-form fee amendments.

Air Quality Program functionality

50. Comment: The commenter supports the DEP having sufficient revenues in the Title V and Non-Title V program accounts to run its program, provided that these revenues are combined with efforts to improve the functionality of the program. The commenter states: "These efforts could include committing to requesting an audit from the Auditor General to evaluate whether relevant or appropriate staff and resources are being billed to the Title V program; providing a detailed workload analysis and management plan to train staff and invest in IT resources; contracting with licensed professionals to conduct the technical review of air quality permitting; or amending regulations to provide for the authorization to engage in site preparation construction activities (but not operations) concurrent with the review of operating permits." (31)

Response: The EPA conducts evaluations of state Title V permitting programs. The most recent report for Pennsylvania is available at: https://www.epa.gov/caa-permitting/title-v-evaluation-report-pennsylvania-0.

The "Clean Air Fund Fiscal Analysis and Fee Report" for this final-form rulemaking provides a detailed workload analysis. The Department has taken steps to improve the quality, efficiency, and responsiveness of the Air Quality Program, including increasing its efforts to communicate with applicants for plan approvals and operating permits. These efforts include making greater use of pre-application conferences to help applicants with questions or concerns regarding plan approval and operating permit applications; corresponding with applicants at critical points in the plan approval and operating permit review process; and creating a series of guides about plan approvals and operating permits to provide information to applicants and the public. The Department is also working on making submittal of permit applications through online portals more user-friendly. Currently, requests for determinations, asbestos notifications, annual inventory forms, and a few general permits are processed electronically.

The Department follows the EPA's guidance and memorandums for authorization to engage in site preparation construction activities for major facilities concurrent with the plan approval or permit application review process.

51. Comment: The commenters suggest that the Department and the Board carefully review all activities funded by the proposed fee schedule to determine if they are necessary to fulfill the Department's core roles and responsibilities. (32, 33)

Response: The Department has conducted extensive reviews of its Air Quality Program workload and activities for the plan approval and permit application processes. The Department captures employee time data via the Cross-Application Time Sheet reporting system, which identifies staff activities that are covered by the Air Quality Program fees. Costs associated with other Air Quality Program operational needs are posted into the Commonwealth's SAP Accounting System. This information is included in the Department's Basic Financial Statements

that are prepared in conformity with generally accepted accounting principles as prescribed by the Governmental Accounting Standards Board. The Commonwealth's Basic Financial Statements are jointly audited by the Department of the Auditor General and an independent public accounting firm. The activities funded by the Air Quality Program fee schedule are necessary to fulfill the responsibilities and obligations of the Air Quality Program as required by the CAA and the APCA.

52. Comment: The commenters recommend that the Department commit to specified timeframes for issuance of permits since the additional revenue proposed by this fee amendment should provide the needed manpower and resources for the Department to develop a defined schedule for permit reviews and issuance. (32, 33)

Response: The revenue from the final-form fee amendments is designed to support current staffing levels and restoration of 17 Title V positions which have remained unfilled since 2016, as well as establish sufficient revenue to cover ongoing expenditures from the Clean Air Fund balance, which is rapidly going to zero. A solvent Clean Air Fund will sustain the Department's plan approval and operating permit application program as well as the associated activities. Various regulations require the Department to review plan approval and permit applications within a certain timeframe. Furthermore, the Department has a permit decision guarantee policy which mandates that the program complete the review of a plan approval application within a certain timeframe.

53. Comment: The commenters would like to emphasize the need for a predictable permit review and issuance timeframe. The commenters state: "Under the Air Pollution Control Act, air quality general permits and permit renewals are required to either be issued or denied within 30 calendar days. Too often, applicants are experiencing significant delays — in some cases of over 100 days — with respect to the issuance of a general permit. Prior to the finalization of the revised GP-5 and new GP-5A permit, both industry and the public were assured by Department leadership that these permits would not be initiated until there was confidence in meeting the mandated statutory review timeframe. It is imperative that this commitment be renewed, and tangible steps taken — beyond simply raising permit fees — to ensure this legal obligation is fulfilled." (32, 33)

Response: The Department continues to pursue practices to streamline the review of General Plan Approval and General Operating Permit applications. In the case of GP-5 and GP-5A, improvements to the ePermitting system are ongoing. In addition, the Department is developing checklists to streamline the review of applications to use a general permit. The Department is also undertaking an initiative to streamline all permit reviews, including those for the use of a general permit.

54. Comment: The commenters state that: "It is our understanding that the cost of obtaining coverage under a general permit will increase from a range of $1,375-$2,075 to $4,500-$5,000 for the application and initial operating permit fee. The fee range may be appropriate for use with a facility-wide type general permit such as the General Permit 5 (GP-5) or General Permit 5A (GP-5A). However, we are concerned that the fees may be significant and could discourage some projects involving other general permits which are equipment-specific in nature, such as small storage tanks or Petroleum Dry Cleaning." (32, 33)

Response: The Department did not propose a dollar amount for any General Plan Approval (GPA) or General Permit (GP). Instead, this final-form rulemaking established a section under Subchapter I to address fees for the application to use a GPA or GP issued by the Department under Subchapter H for stationary or portable sources. These application fees will be established when the GPA or GP is issued or revised by the Department. These application fees will be published in the *Pennsylvania Bulletin* for public comment as provided in §§ 127.612 and 127.632 (relating to public notice and review period).

55. Comment: The commenters recommend that fees for plan approval extensions only be required until an application for an operating permit is submitted. Currently a request for extension for temporary operation under a plan approval must be requested and a fee of $300 paid every 180 days until an operating permit is received. This process may require applicants to request extensions for several years until an operating permit is received.

The fee for requesting an extension is proposed to increase to the equivalent of $1,500 per year; the same cost as an application fee for a modification of a minor source plan approval, even though the level of review and approval is much less. The proposed increase in application and operating fees should provide the Department the resources needed to issue Operating Permits in a timely manner and eliminate the need for the extensions and reduce unnecessary paperwork and effort for both industry and the Department. (32, 33)

Response: Section 127.12b(d) requires that an approved plan approval must authorize temporary operation of the source pending issuance of an operating permit, not until submission of an operating permit application. Each plan approval temporary authorization may not exceed 180 days. The Department anticipates that the proposed fee increases will allow operating permits to be issued in a timely manner.

The Department provides a reasonable timeframe for companies to complete construction of projects. The temporary operating permit period starts when the source commences operation. Section 127.12b(d) authorizes temporary operation of the source for 180 days. Each plan approval extension may not exceed 180 days. However, to address the commenters' concerns, the Department amended § 127.702(i) in this final-form rulemaking to add § 127.702(i)(3), which reads as follows:

> "The fee for an extension of a plan approval will not apply if, through no fault of the applicant, an extension is required."

56. Comment: The commenters believe the increase in annual maintenance fee should cover most of the cost of typical administrative fees and filing. Administrative or RFD fees should not be required for listed exemptions. The cost for a review of an RFD is reasonable only when approval is required for potential exempted sources. (32, 33)

Response: The annual operating permit maintenance fee is designed to be used to cover the Department's costs for evaluating the facility to ensure that it is 'maintaining' compliance, including the costs of inspections, reviewing records, and reviewing permits. The RFD process allows an owner or operator to obtain written case-by-case exemptions from applying for a plan

approval or operating permit, thereby bypassing the plan approval or operating permit application process, or both, as well as relieving the applicant of the plan approval or operating permit application fees. The RFDs are reviewed by Department staff in much the same way as other applications. Currently, RFDs are not required for listed exemptions. Additionally, if no permit is required for facilities that have all sources covered under listed exemptions or RFDs, then no maintenance fee is charged.

General Fund funding

57. Comment: The Department is systematically asking to set fees at levels that are less than the estimated costs from past years, despite costs going up over time due to inflation among other things. See Fiscal Analysis at pages 27-28, Table 20. The Department then relies on the stability of its General Fund funding and federal grants to make up the difference. This assumption is unwarranted. The Department even includes a sideways acknowledgment of this in its Notice of Proposed Rulemaking at page 15: "It is unlikely that General Fund monies or Federal Grants directed toward air quality will increase in the foreseeable future." (36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49)

Response: The Department acknowledges this comment and notes that the final-form fee schedule is designed to bring Air Quality Program revenue approximately in line with Air Quality Program expenses.

58. Comment: Pennsylvania has a structural deficit, and official projections show economic growth slowing in the upcoming years. Besides the slowing of growth, the Commonwealth's budget has been shrinking in proportion to the size of the state economy. Historically, the Department has seen draconian cuts worse than the average state agency. According to analysis from the Pennsylvania Budget and Policy Center, "General Fund support for DEP has decreased 39% since 2007-08 (Figure 22); adjusted for inflation the cut is about 50%. This year, the Department of Environmental Protection would see a further 13% decrease in nominal dollar funding under Governor Wolf's proposal, from $158.5 million to $137.8 million." Governor Wolf is proposing to raid special funds to cover some of that deficit. Even if that happens, it is not a sustainable solution. (46, 47, 48, 49)

Response: The Department acknowledges this comment and notes that the final-form fee schedule is designed to bring Air Quality Program revenue approximately in line with Air Quality Program expenses. The amendments to the fee schedule increase the fees periodically out to 2031 to anticipate decreases in General Fund allocations and Federal grant funds and increases in program costs. Please see the responses to Comments 4, 5, 30, 31, and 36 for additional discussion.

59. Comment: The Department writes, "However, if either or both of the General Fund Appropriation money allocated to the Air Quality Program or Federal Grant funding decrease significantly, this will create additional pressure to implement increases to the plan approval application and operating permit fees and consider additional new fees to maintain the solvency of the Clean Air Fund." See Fiscal Analysis at page 27. This is already foreseeable. Rather than have the Department need to repeat this process shortly, the EQB should request the Department to raise the amounts of its proposed fees to adjust for the anticipated decrease in General Fund

Appropriation for the upcoming budget year, and further projected decreases due to lowered Commonwealth revenues in the years to come. (46, 47, 48, 49)

Response: The Department notes that the final-form fee schedule is designed to bring Air Quality Program revenue approximately in line with Air Quality Program expenses. The amendments to the fee schedule increase the fees periodically out to 2031 to anticipate decreases in General Fund allocations and Federal grant funds and increases in program costs.

60. Comment: The commenter believes that the DEP has initiated these fee increases to stabilize the funding for overall departmental operations because of volatile funding by the General Assembly. The overall funding of any state department or agency is a matter for the General Assembly and the Governor as the fiscal year budget is negotiated. (6)

Response: The Air Quality Program plan approval and permit fee schedule final-form rulemaking supports only activities pertaining to air quality rather than overall departmental operations. This rulemaking is authorized under section 5(a)(1) of the APCA, 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, which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the CAA, which, in this case, relate to fees under Title V of the CAA.

This final-form rulemaking is also 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, 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 the APCA and not covered by fees required by section 502(b) of the CAA. Implementing the provisions of the federal CAA is only one of the many reasons why the General Assembly enacted the APCA. The APCA is also intended to protect the air resources of this Commonwealth for the protection of public health and welfare and the environment, including plant and animal life and recreational resources, as well as development, attraction and expansion of industry, commerce and agriculture. The Department was also provided with specific duties under section 4 of the APCA (35 P.S. § 4004) related to the regulation and enforcement of air contamination sources within this Commonwealth. To fulfill this statutory obligation, the Department needs sufficient funding. The fees, in this rulemaking, are used to support the air pollution control program authorized under the APCA.

61. Comment: The commenter believes that the General Assembly should be increasing the allocation of funding to the Department rather than the Department turning to the regulated community for more and more funds. (50)

Response: The Department acknowledges this comment.

Funding and Staffing

62. Comment: The commenters state that they do not believe the Department's proposal provides adequate, sustainable Title V program funding for implementing the air pollution control plan approval and operating permit process required under the CAA and the APCA to meet the NAAQS as well as other requirements of the CAA and the APCA and the regulations promulgated to accomplish those efforts. (34, 45)

Response: After extensive review by the Department of Air Quality Program activities, the time required to perform the activities, and the costs of associated activities, the final-form fees were set at a level that will support the Air Quality Program at its current level of expenditures plus fill 17 Title V positions which have remained unfilled since 2016.

63. Comment: Assuming the Department's accounting as expressed in the Form and in its attached Clean Air Fund Fiscal Analysis and Fee Report ("Fiscal Analysis") is roughly accurate, its Title V Account will dwindle rapidly toward nothing within the next 5 years, and the Non-Title V Account will be in the red within the next year. (46, 47, 48, 49)

Response: The Department acknowledges this comment but notes that in response to comments received at the June 14, 2018, AQTAC meeting it has adjusted the amount of the Title V and Synthetic Minor final-form annual operating permit maintenance fees so both accounts are in the black for the foreseeable future. Please see the response to Comment 35.

64. Comment: The EPA has corroborated the Department's accounting. A 2014 report of the EPA Office of Inspector General criticized the Commonwealth for not raising sufficient Title V revenues to cover its costs. In 4 out of the 5 years from 2008–2012, annual Title V expenses exceeded annual Title V revenues. While Title V costs declined 3% from 2008 to 2012, Title V revenues declined 21% over that period. This is the greatest disparity among all the analyzed states. According to a 2013 Pennsylvania rulemaking, "a deficit of $7.235 million 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." (46, 47, 48, 49)

Response: The Department agrees with this comment and notes that the final-form fee schedule amendments are designed to bring revenue approximately in line with expenses.

65. Comment: On page 16 of the Proposed Rulemaking, the Department explains that "[w]ith this proposed rulemaking, the Air Quality Program could maintain its current level of effort, 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." This is not an ambitious program of work, but rather a minimal level of upkeep the Department is proposing. (46, 47, 48, 49)

Response: The Department believes that the final-form fee amendments, the number of unfilled Title V positions it allows the program to fill, and the efficiencies gained by information technology improvements will allow the Department to successfully fulfill its air quality mission.

66. Comment: These commenters strongly support the proposal to increase fees to cover costs but believe that the amount of the increases is not enough. As noted above, the Department set these rates to "maintain [the Air Quality Program's] current level of effort." Yet the Department's projection that the specified increases would meet future needs for maintaining the current level of effort is based on shaky assumptions. (36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49)

Response: The Department thanks the commenters for their comment. Please see the responses to Comments 4, 5, 30, 32, and 36 for additional discussion.

67. Comment: Even setting aside the need to raise the fees to levels high enough to compensate for foreseeable drops in General Funding, the commenters urge the EQB to set higher rates to ensure the Department can comply with the law and adequately serve the public and regulated community. The proposed fee schedule would only "maintain [the Air Quality Program's] current level of effort." Simply maintaining the current level of effort is not enough to meet the requirements of the Clean Air Act, because the Department has been starved and understaffed over the last two decades. (36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49)

Response: The Department thanks the commenters for their support. The Department notes that the final-form fee schedule is designed to bring Air Quality Program revenue approximately in line with Air Quality Program expenses. The amendments to the fee schedule increase the fees periodically out to 2031 to anticipate decreases in General Fund allocations and Federal grant funds and increases in program costs.

68. Comment: As of a year ago, 47 out of the 285 positions in the Air Quality staffing (16.5%) were vacant. See Fiscal Analysis at page 14. These positions need to be filled, but the Amendments as they stand would not accomplish that. Rather, the Amendments would only allow the Department to "gradually fill 17 currently vacant Title V positions," leaving more than a tenth of the vacant positions still unfilled. See Proposed Rulemaking at page 16. This is plainly inadequate. (46, 47, 48, 49)

Response: The Department thanks the commenters for their support and shares the urgency in filling positions within the Bureau of Air Quality.

69. Comment: The commenter states that it is needed to remedy the understaffing caused by losses of air quality positions. On pages 3 and 4 of the Form, the Department documents the decline in its funding, staffing, and services over the last fourteen years.

Looking back further, losses are even starker: "The Air Quality Program has seen significant reductions in staff since 2000 (99 positions or 26%)." See Notice of Proposed Rulemaking at page 15. The Air Quality Program's losses are not belt-tightening, they are understaffing. (46, 47, 48, 49)

Response: The Department acknowledges this comment.

70. Comment: The EPA conducted an audit of the Department's air monitoring network and found major nonconformance of the program—which was unacceptable and must be remedied—due to understaffing. Merely reaching compliance with federal law required hiring, the EPA concluded: "Vacant positions need to be filled in order to continue operating air monitoring program pursuant to 40 CFR 58 Appendix A."

The Department at the time acknowledged that "Staffing levels have been a major issue. Critical work is being completed, however the program has had to operate in reactive mode instead of proactive. Hiring has begun again in mid-2015 with a full complement expected by mid-2016." That complement did not materialize. In a comment-response document the Department drafted in October 2017, it responded to comments requesting the Department to enhance its monitoring network by remarking, "In addition, please be aware that the Department continues to be constrained by insufficient staffing levels." (46, 47, 48, 49)

Response: The Department has begun restoring air monitoring staff levels. One air monitoring staff person was hired in 2019. Three more air monitoring positions have been approved to fill in early 2020. However, even with the additional staff, the Department expects that it will be several years before the new staff are fully trained and backlogged maintenance issues are resolved.

71. Comment: These commenters further state that plenty of other evidence underscores the Department's lack of compliance due to understaffing. For example, the data show that the Department has not managed to timely process Title V Operating Permit applications. The Group Against Smog and Pollution recently analyzed the Department's records from its regional offices to determine the backlog of Title V application. It discovered that 26 major source Title V Operating Permits were backlogged or unissued (i.e. the facility is operating without the required permit), across all but one regional office. (46, 47, 48, 49)

Response: The Department appreciates the concern about the backlog. The final-form fee schedule amendments are reflective of the current complement and obligations to implement the requirements of the CAA and APCA. The Department has been reducing the backlog by streamlining review and approval measures and additional measures will be added as a result of the amended fee schedule.

72. Comment: The Department is unable to shift significant resources to the Air Quality Program from other programs because the Commonwealth has starved them too. A couple years ago, PA Environment Digest gathered documentation of deficiencies in many of the Department's programs, including four water programs and a mining program. In 2014, the Auditor General conducted a Special Performance Audit on "DEP's performance in monitoring potential impacts to water quality from shale gas development, 2009 -2012." The audit concluded that "as evidenced by this audit, DEP needs assistance. It is underfunded, understaffed, and does not have the infrastructure in place to meet the continuing demands placed upon the agency by expanded shale gas development." (46, 47, 48, 49)

Response: The Department acknowledges this comment. The final-form fee schedule amendments are reflective of the current complement and obligations to implement the requirements of the CAA and APCA.

73. Comment: The evidence is stark that the Department has not been able to fulfill its obligations due to underfunding and understaffing. Legal compliance is important, and for that reason alone, EQB should revise the proposed Department Air Program fee schedule upward to cover actual costs. (46, 47, 48, 49)

Response: The Department appreciates the comment. The final-form fee schedule amendments are reflective of the current complement and obligations to implement the requirements of the CAA and APCA.

74. Comment: However, we should not lose track of the crucial role the Department's air quality program plays in preventing premature deaths, chronic disease, crop damage, and overall harm to Pennsylvania residents and local ecologies. Our lives depend on the purity and stability of our air and climate. The Department is the agency at the front lines charged with preserving them. (46, 47, 48, 49)

Response: The Department agrees and thanks the commenters for their support.

75. Comment: Better funding would remedy the main complaint industry has about the Department as well—its slowness in processing permit applications. Without enough staff, the Department can neither process nor enforce permits adequately. (46, 47, 48, 49)

Response: The Department thanks the commenters for their support. Investing in the Department's Air Quality Program either through increased General Fund allocations or increased permitting fees or some alternative fee arrangement, not only supports the Department accomplishing its mission of protecting the public health and welfare and the environment through permitting of sources of regulated air pollutants, but also positions the Department as an engine to drive economic growth and expansion. Providing the resources for timely plan approval and permit application review and issuance of plan approvals and permits, for inspections and compliance assistance, for enforcement, and for ambient air monitoring will allow the regulated industries to maintain and increase their output, allowing for more income and growth.

76. Comment: The Department writes to IRRC, "The proposed fee structure would ensure the continued protection of public health and welfare of the approximately 12.8 million Commonwealth residents and the environment, and allow the Commonwealth to meet the obligations required by the CAA." Form at page 4. Not quite so. The proposed fee structure would help the Department avoid major declines in its ability to protect the health and welfare of Pennsylvanians, but it is not enough to ensure protection, nor enough to achieve legal compliance. For that, the EQB must raise the fees substantially from the proposed rates in the Amendments. (46, 47, 48, 49)

Response: The Department thanks the commenters for their support. The Department notes that the final-form fee schedule is designed to bring Air Quality Program revenue approximately in line with Air Quality Program expenses. The amendments to the fee schedule increase the fees periodically out to 2031 to anticipate decreases in General Fund allocations and Federal grant funds and increases in program costs.

Support for increased fees to sustain the air quality program

77. Comment: These commenters support the Department's proposed Title V permit fee schedule changes, stating that the revenue generated by the existing fee schedule is no longer adequate to fund the operations of the Air Quality Program. The Program's expenditures now exceed its revenues. (3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 27, 30)

Response: The Department agrees with the commenters and thanks them for their support of the proposed rulemaking amendments.

78. Comment: These commenters further state that this revenue gap has resulted in reductions in Air Quality Program staffing, which negatively impacts both the time it takes the Program to issue plan approvals and operating permits and the Program's ability to effectively conduct inspections, respond to complaints, and pursue enforcement actions when necessary. (3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 27, 30)

Response: The Department agrees with the commenters.

79. Comment: The commenters state that an inadequately-funded air quality program could threaten to negatively impact Pennsylvania's economy, by slowing or altogether preventing businesses from investing in new facilities and modernizing their existing facilities in the Commonwealth. (3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30)

Response: The Department acknowledges the comment.

80. Comment: These commenters state that the potential negative impacts to the environment and public health that could result from an inadequately-funded air quality program are obvious. Air quality may deteriorate. Issuance of permits will be delayed. Determinations will not be issued. (3, 4, 22, 25, 27, 28, 29, 30)

Response: The Department agrees with the commenters.

81. Comment: These commenters strongly support the spirit of the Amendments. There is an urgent need for increased fees to make ends meet at the Department. However, the Amendments do not go far enough to ensure the solvency and quality of the air quality program. The Amendments only maintain the existing level of funding when using overly optimistic projections of the number of other sources of funding. Moreover, the existing level of funding is not enough to adequately protect air quality in Pennsylvania. Therefore, these commenters urge the EQB to revise the proposed fee schedule upward to fully staff the air quality program and bring Pennsylvania into compliance with the CAA. (36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49)

Response: The final-form fees have been set at a level that will sustain the costs of the Air Quality Program at its current level plus fill 17 Title V positions which have remained unfilled

since 2016. The final-form fee amendments will also allow expansion of the Department's online plan approval and permit application portals and information technology capabilities.

82. Comment: These commenters strongly urge the Environmental Quality Board to adopt the proposed Air Quality Fee Schedule Amendments after making upward adjustments of the rates to compensate for (1) the forecast drop in General Funding for the Department and (2) the need to restore the Air Quality Program and bring it back into legal compliance. (36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49)

Response: The Department thanks the commenters for their support of the final-form rulemaking amendments. The final-form fee schedule amendments are designed to provide for the collection of fees sufficient to cover the costs of administering the Air Quality Program, including the plan approval application and operating permit programs, so that reviews and approvals are conducted in a timely manner. The final-form fees have been set at a level that will support the Air Quality Program at its current level plus fill 17 Title V positions which have remained unfilled since 2016. The amendments to the fee schedule increase the fees periodically out to 2031 to anticipate decreases in General Fund allocations and Federal grant funds and increases in program costs.

83. Comment: These commenters state that the proposed amendments would, for the first time, impose fees on regulated sources of air pollution for certain of the determinations and assessments that the Department regularly performs for the regulated community, including requests for determination, risk assessments, and confidential business information determinations. The commenters believe that it is appropriate for members of the regulated community to pay for these determinations and assessments because they benefit from them and because performing the determinations and assessments consumes a significant portion of the Air Quality Program's staff time. (4, 25)

Response: The Department acknowledges this comment. Please see the response to Comment 8 for a discussion about the proposed fee for claims of confidentiality, which has been removed from this final-form rulemaking.

84. Comment: The commenters state that the proposed amendments to the Department's Air Quality Fee Schedule will help get the Department's Air Quality Program back on sound financial footing and keep it there for the foreseeable future. The proposed amendments will also do a better job of matching the amount of work that the Air Quality Program performs for members of the regulated community with the fees it charges them to perform that work. The proposed amendments to the Air Quality Fee Schedule are thus a necessary and overdue step that will help the Department protect Pennsylvania's environment and improve its ability to serve the regulated community in Pennsylvania. (4, 25)

Response: The Department agrees with the commenters and thanks them for their support of the fee amendments.

85. Comment: These commenters state that the potential negative impact of an inadequately funded air program will negatively impact Pennsylvania's economy, by slowing or preventing businesses from investing in new facilities and modernizing their existing facilities. The

proposed amendments to the Air Quality Fee Schedule are necessary and should have been done earlier to allow the Department to protect Pennsylvania's environment and improve the Department's ability to serve regulated community in Pennsylvania. (4, 25)

Response: The Department acknowledges this comment.

86. Comment: This commenter states that it costs a substantial amount of money to administer an effective air quality program which protects the public health and welfare. Every aspect of the Department's Air Quality Program – from informing the public of air quality "action days" to issuing a determination of reasonably available control technology – involves staff time, engineering expertise, and professional judgment. The Department's Air Quality Program has been constrained by budgetary resources for many years. It is time to make corrections to the fee schedule. (25)

Response: The Department thanks the commenter for their support.

87. Comment: These commenters state that the proposed amendments to the Air Quality Fee Schedule would not change the per ton fee on emissions from Title V sources, which was set in 2013 and is indexed to inflation. On the other hand, the proposed amendments would increase the application fees for Plan Approvals and Operating Permits and the annual administration fees charged to Operating Permit holders. Those fees were set according to a schedule that was developed in the early 1990s and were last increased in 2005. (4, 25)

Response: The Department acknowledges this comment.

88. Comment: These commenters state that they support the Department's proposed Title V permit fee schedule changes, which include increasing the fees for new source review, operating permits, and for administrating operating permits. (22, 28, 29)

Response: The Department thanks the commenters for their support.

89. Comment: These commenters state that it is more than appropriate that the companies that benefit from their regulated right to pollute the air provide the funds to fairly and fully support the monitoring and follow-through of those regulations through adequate permit application fees. (22, 29)

Response: The Department acknowledges this comment.

90. Comment: This commenter states that they definitely do not want to see rollbacks to clean air programs or pollution monitoring. In fact, this is a time when the Department should be hiring additional scientists and engineers and working toward improving the air quality in PA. (5)

Response: The Department agrees with the commenter and thanks them for their support of the fee amendments. The final-form fee schedule amendments are necessary for the collection of fees sufficient to cover the costs of administering the Air Quality Program, including filling 17 Title V positions that have remained unfilled since 2016, so that the

Department can continue to carry out its statutory mandate to protect the public health and welfare and the environment.

91. Comment: This commenter states that fees for major source pollution emission permits should be hiked to a level where they more than cover the Department's administrative costs and an annual escalator should be built in so that companies can't count on delayed reviews to whittle them away. The commenter further states that there is no need to be deferential. The Department represents the public, the companies represent private interests. (26)

Response: The Department acknowledges this comment. The final-form fee schedule amendments are designed to provide for the collection of fees sufficient to cover the costs of administering the Air Quality Program, including the plan approval and operating permit programs, so that reviews and approvals are conducted in a timely manner. The final-form fees have been set at a level that will support the Air Quality Program at its current level plus fill 17 Title V positions which have remained unfilled since 2016. The amendments to the fee schedule increase the fees periodically out to 2031 to anticipate decreases in General Fund allocations and Federal grant funds and increases in program costs.

92. Comment: These commenters state that they support raising fees on the largest air polluters in order to fund the Department's clean air programs. (5, 114—1426)

Response: The Department acknowledges this comment. The Department notes, however, that the fee-for-service schedule is designed to spread the costs of the program across more of the users rather than concentrating the burden on the largest air polluters, generally Title V facilities, and the declining Title V facility emissions of regulated pollutants. Please see the response to Comment 15 for a discussion of the three options that the Department considered in developing this final-form rulemaking to address the shortfall in the Clean Air Fund balance and generate sufficient revenue to bring Air Quality Program revenue in line with Air Quality Program expenditures.

93. Comment: The commenters support the proposed fees and strongly urge the Environmental Quality Board to adopt the proposed Air Quality Fee Schedule Amendment. The commenters believe that the proposed fees need to be further increased to support the work and mission of the Pennsylvania Department of Environmental Protection's Air Program. (2, 36—44)

Response: The Department appreciates the commenters' support.

94. Comment: The commenters support the proposed Air Quality Fee Schedule. The Air Quality Program's expenses now exceed its revenue because the existing fee schedule is not adequate to fund the program. The Air Quality Program must have adequate funds to fulfill its mission to ensure public health and the economic viability of the state. The lack of adequate funds has resulted in a reduction in Air Quality Program staffing, which negatively affects the turnaround time for issuance of plan approvals and operating permits. The revenue gap impacts the Department's ability to effectively conduct inspections, respond to complaints, and pursue enforcement actions. Reducing enforcement will negatively impact the environment and public health. (7—24, 27—30)

Response: The Department thanks the commenters for their support.

95. Comment: In short, increases in the current fee schedule are warranted and very much needed. Fee increases are not just needed, they are urgent and have been urgent for years. (46, 47, 48, 49)

Response: The Department agrees with the commenters and thanks them for their support of the fee amendments.

96. Comment: Commenters have not identified any significant problems in the other details of the Amendments besides the fee schedule needing an upward adjustment. (46, 47, 48, 49)

Response: The Department thanks the commenters for their support. The Department notes that the proposed fee schedule is designed to bring Air Quality Program revenue approximately in line with Air Quality Program expenses. The amendments to the fee schedule increase the fees periodically out to 2031 to anticipate decreases in General Fund allocations and Federal grant funds and increases in program costs.

Adverse health effects

97. Comment: This commenter states that many Pennsylvanians live in areas that received a grade of "F" from the American Lung Association for soot and smog pollution. This commenter further states that they work for a health system and know that too many of our children suffer from asthma and that they are seeing a scary rise in lung cancer among non-smokers. (5)

Response: The Department understands the commenter's concern. According to the PA Department of Health *2015 Asthma Prevalence in Pennsylvania Fact Sheet*, 9.6% or 955,374 adults and 10.2% or 269,423 children currently suffer from asthma. This is significantly higher than the national average of 8.3% for both children and adults. A 2018 report from the Asthma and Allergy Foundation of America lists Philadelphia as the 4th most challenging U.S. metropolitan city for people with asthma to live in based on air quality, the portion of residents with asthma, and the number of asthma-related medical incidents. Scranton ranked 21st and Allentown ranked 27th.

Air quality is improving across this Commonwealth due to the implementation of regulatory requirements to address emissions of particulate matter and other criteria pollutants, as well as regulated pollutants including HAPs, many of which are carcinogenic and teratogenic compounds. The Department's ongoing review and renewal of operating permits implements technological advancements in air pollution control in air quality permits as the opportunities arise. The final-form fee schedule amendments are necessary for the collection of fees sufficient to cover the costs of administering the Air Quality Program, including the plan approval and operating permit programs, so that the Department can continue to carry out its statutorily required mission to protect the public health and welfare and the environment.

98. Comment: The commenters state that western Pennsylvania's air quality is ranked as some of the worst air quality in the country and the proposed increases in air permit fees is fair, appropriate, and necessary. The commenters further say: "The DEP needs these funds to conduct

the oversight necessary to ensure our right to clean air, as guaranteed by the Environmental Rights Amendment." (3, 22)

Response: The Department agrees that the fee schedule amendments are necessary for the collection of fees sufficient to cover the costs of administering the Air Quality Program, including the plan approval and operating permit programs, so that the Department can continue to carry out its statutorily required mission to protect the public health and welfare and the environment.

99. Comment: This commenter also states that the Pittsburgh area has recently experienced some of the difficulties that might be associated with insufficient oversight, as fires at the Clairton works last fall spread pollutants across the area. Although there is no guarantee that more stringent oversight would have prevented this incident, it is certainly possible that the additional capacity provided by higher fees might prevent similar incidents in the future. (3)

Response: The Department acknowledges this comment.

100. Comment: This commenter expresses concern that in the Department's Southwest Region, applications for renewals of operating permits for 15 of the region's 61 Title V sites — the largest facilities that pollute the most — have been pending for longer than the 18 months permitted by the Federal Clean Air Act and the Department's own regulations, presumably because the Department lacks the staff needed to process those applications in a timely manner. (4)

Response: The Department appreciates the concern regarding the backlog. The final-form fee schedule amendments are reflective of the current complement and obligations to implement the requirements of the CAA and APCA. The Department has been reducing the backlog by streamlining review and approval measures and additional measures will be added upon implementation of the amended fee schedule.

101. Comment: This commenter states that the Air Quality Program is important for public health and also recreation. Nobody wants to run or ride a bike through dirty air, or to risk developing or exacerbating respiratory problems. This has a negative effect on the income brought by trail users to local communities. (28)

Response: The Department acknowledges this comment.

Amount of Fee increases

102. Comment: The Department estimates that the fee schedule established in this regulation is expected to produce an additional $12.7 million ($5.9 million for Title V facilities; $6.8 million for non-Title V) which will increase the total fees collected per year to $29.6 million. The potential impact on the owners and operators of small business is estimated to be approximately $4.8 million in increased plan approval applications, operating permit and asbestos notification costs.

In some instances, the EQB is proposing to increase existing fees by over 500 percent while also instituting a number of new fees. The Preamble states that the increased fees and new fees will allow the Department to maintain staffing levels as well as cover operating expenses.

The commenters are concerned about the economic and fiscal impact of this rulemaking on small businesses and ultimately the Commonwealth's taxpayers. They strongly object to the "exponential" fee increases being put forth by the EQB and remark that the decline in revenues due to a decrease in emissions is to be expected because, it is, in fact the goal of the Clean Air Act. They question the need for the program to have the same amount of funding if there are significantly less pollutants being released into the air. In addition, the commenters assert the Department's proposed fees, which are expected to generate revenue in excess of its expenditures, violate the APCA which states that "in no case shall the amount of the permanent fee be more than that which is necessary to comply with section 502(b) of the Clean Air Act." 35 P.S. § 4006.3(c).

Based on the concerns of the Committee and lawmakers, the EQB should address the issues relating to statutory authority and intent of the General Assembly. It should also explain its rationale for the timeline for implementation of the proposed air quality fee schedule amendments. How did the EQB determine that the incremental approach for fee increases until 2031 is appropriate? How will the EQB assess whether fees moving forward will be commensurate with the activities being performed, fair to the regulated community, and competitive with other states?

Response: Please see the responses to Comments 1—12 for a discussion of the issues relating to statutory authority. Please see the responses to 60, 61, 71, 80, 86, 95, and 100 for a discussion of the incremental approach to the fee increases, the relationship of the fees to the activities being performed, fairness to the regulated community, and competitiveness with the other states.

Compliance with the RRA

103. Comment: The commenter states that the Summary of Regulatory Requirements provided in the Preamble to the proposed regulation lacks an explanation for the new fees in §§ 127.708, 127.709, 127.711, and 127.712. The commenter asks the Board to provide a detailed description in the Preamble to the final-form rulemaking of the amendments proposed for each section and why the amendments are required. (1427)

Response: Proposed §§ 127.708, 127.709, 127.711, and 127.712 are renumbered in this final-form rulemaking. The provisions of proposed § 127.708 are moved to § 127.702(k). Section 127.709 is renumbered to § 127.708; § 127.710 to § 127.709; and § 127.712 to § 127.710. Proposed § 127.711 is deleted in this final-form rulemaking. Section D of the preamble to this final-form rulemaking includes a detailed description of the amendments for final-form §§ 127.702(k), 127.708, 127.709, and 127.710 and why these amendments are required.

Section 127.465. Significant operating permit modification procedures.

104. Comment: These commenters state that the rulemaking contains a new § 127.465, titled Operating Permit Modifications and request that the Department provide a more complete explanation of the purpose of this section. (46, 47, 48, 49)

This commenter states that § 127.465(e) provides for the Department's role once it has taken final action on the proposed change for the significant modification of an operating permit. The commenter asks: What is meant by final action? Does final action by the Department result in an approval or disapproval of the modification request? Subsection (e) should be revised to define final action. Also, the Department should specify a time period from final action within which it will publish notice in the Pennsylvania Bulletin. (1427)

Response: This section is consistent with a similar requirement for administrative amendments found in § 127.450(e), which states that, "The Department will take final action on the administrative amendment and publish notice of the final action in the *Pennsylvania Bulletin*." This section is also consistent with a similar requirement for minor modifications found at § 127.462(h), which states that, "The Department will take final action on the proposed change within 60 days of receipt of the complete application for the minor permit modification and, after taking final action, will publish notice of the action in the *Pennsylvania Bulletin*." In both cases, final action is not defined and a timeframe to publish the final action in the *Pennsylvania Bulletin* is not specified. Final action is understood to mean issuance or denial of the authorization. Final-form § 127.465(e) is revised to specify that the Department will take final action on the proposed change within 180 days of receipt of the complete application for the significant operating permit modification and, after taking final action, will publish notice of the action in the *Pennsylvania Bulletin*.

105. Comment: The commenters suggest that language be included in § 127.465 to allow the submission of permit applications and other documents via "reputable express services," such as Federal Express and UPS, which are commonplace and effective for this purpose. (32, 33)

Response: Limitations on the method of submission were not included in § 127.465, thereby allowing for hand delivery, US Mail, reputable express services, and electronic submission.

Section 127.709. Asbestos abatement or regulated demolition or renovation project notification.

106. Comment: These commenters state that § 127.709 establishes an asbestos abatement project notification fee for owners and operators of a project not located in Philadelphia or Allegheny Counties and that the proposed language did not differentiate between an initial notification and a subsequent revised notification. These commenters suggest that the fee should apply only to the initial notification and not to a subsequent revised notification. (1, 1427)

Response: Proposed § 127.709 is renumbered to § 127.708 in this final-form rulemaking. The final-form fee applies only to the initial notification by an owner or operator of an asbestos abatement or regulated demolition or renovation project that is subject to 40 CFR Part 61, Subpart M (relating to National emission standards for hazardous air pollutants) or the Asbestos Occupations Accreditation and Certification Act (Act 1990-194) (63 P.S. §§ 2101—2112) and

which is not located in Philadelphia County or Allegheny County. Final-form § 127.708 is amended with subsection (b) as follows:

> (b) The Department will waive the fee for a subsequent notification form submitted for the asbestos abatement or regulated demolition or renovation project.

Claims of confidentiality

107. Comment: The commenters support the introduction of a fee for requests to the Department to treat permitting materials confidentially. Besides the obvious benefit of pricing a request which imposes costs on the agency, there is the added benefit of giving the permit applicant "skin in the game" in making the request. Based on commenters' experience reviewing permit applications and litigating some of the resulting permits, claims of confidentiality are often made overzealously, including materials that are not truly confidential. This needlessly puts more application material out of reach of public access and scrutiny, hampering the public's ability to comment on and watchdog permit applications. Excessive withholding due to claims of confidentiality is a problem with little remedy at the moment. It should be deterred.

First and foremost, the Department should more closely scrutinize claims of confidentiality. Fixing the Department's understaffing—see above—is needed for that. Meanwhile, though, building in a fee for claims of confidentiality may help deter frivolous claims. (46, 47, 48, 49)

Response: The Department appreciates the commenters' support of this fee. Section 13.2 of the APCA and § 127.12(d) outline the conditions under which companies can request and the Department can keep material confidential. The Department sometimes receives requests for confidentiality with no accompanying explanation or justification upon which to grant confidentiality. Occasionally, the Department receives entire applications with each page stamped "confidential." In either case the Department must request and review a justification from the applicant. All this takes Department time and resources. However, while the Department has broad authority under the APCA to establish fees, the Department determined that the proposed fee for claims of confidentiality is unneeded at this time and removed it from the final-form rulemaking. Please also see the response to Comment 8.

Reallocating expenses between Title V and Non-Title V accounts

108. Comment: The commenters express concern with this statement in Box 10 of the RAF: "*The Department acknowledges that the Non-Title V Account is projected to be in deficit by the end of FY 2020-2021 even with the fee revision. The Department will continue to review its expenditure priorities and may re-allocate expenses between the two Clean Air Fund special fund accounts.*" It is questionable whether reallocating expenses between the two accounts is permitted under 40 CFR 70.9 (a) and (b). Section (a) declares that "*the state program… shall ensure that any fee required by this section will be used solely for permit program costs*." (52—98)

Response: After reviewing indirect costs currently billed to the Non-Title V Account, the Department has decided not to transfer any of these costs to the Title V Account. However, as explained in the response to Comment 24, the proposed schedule of Title V and Non-Title V

facility annual operating permit maintenance fees has been revised in this final-form rulemaking and the Non-Title V Account is no longer projected to be in deficit.

109. Comment: The commenters state that according to the EPA's 1993 Operating Permits Program fee schedule guidance "*only funds collected from Part 70 sources may be used to fund a state's Title V permits program*." The Department's proposal to potentially re-allocate expenses between these accounts is without legislative authority. (52—98)

Response: Please see the responses to Comments 34 and 37.

Volkswagen diesel emissions cheating settlement

110. Comment: The commenters note that Pennsylvania was recently allocated over $118.5 million in the State Trust Agreement as a result of the Volkswagen Diesel cheating settlement. While this is a separate program focused more on vehicle sourced air pollution, it underscores the multi-pronged approach to reduce air pollution, and though the air quality program's revenue may be declining (because of better technology and a reduction in polluting facilities), total overall financial resources to combat air pollution have not. (52—98)

Response: Under the terms of the State Trust Agreement that resulted from the Volkswagen (VW) diesel emissions cheating settlement, the Pennsylvania allocation of $118.5 million may only be used for the purposes specified in the State Trust Agreement. These funds also should not be considered as furthering air pollution reduction; to the contrary, these funds are intended to *mitigate* the excess air pollution caused by the unlawful vehicles at issue in the settlement.

The State Trust Agreement funds belong to the citizens of Pennsylvania. They were allocated to Pennsylvania and are held in trust specifically to offset the excess vehicle emissions caused by the VW diesel emissions cheating scandal and the negative impact of those emissions on the citizens of the Commonwealth. The funds were not awarded, and may not be used, to bolster the activities of the Air Quality Program or the Department more broadly.

In particular, the State Trust Agreement limits eligible expenditures to a very small list of potential projects. Reimbursement for operational costs (administrative expenditures) is also closely prescribed under the State Trust Agreement, which only allows reimbursement of those costs directly related to the eligible actions identified in the State Trust Agreement. These funds cannot be used to fund staff costs or program obligations for any of the many other responsibilities of the Department. For these reasons, the State Trust Agreement funds must not be considered in the broader Air Quality Program funding discussion. While every ton of air pollution reduced is a win for the citizens of Pennsylvania, even expending all of the available State Trust Agreement funds will only result in replacing or repowering a small percentage of the eligible diesel vehicles, engines, and equipment.

From a broader Air Quality Program funding perspective, total financial resources to combat air pollution have declined while obligations have increased. Funding from the Federal government can fluctuate year to year, resulting in state level fees being the only source of revenue that is entirely predictable. Additionally, the use of Federal grant funds is usually constrained, and the

Department does not have the authority to assign those funds to support other projects or obligations.

Since the Clean Air Fund balance has been drawn down and can no longer meet ongoing obligations, the Department needs to adjust the plan approval application and permitting fees to match expenditures.

Air monitoring in the shale gas areas

111. Comment: The *Pennsylvania Bulletin* proposed rulemaking notice said in Section F that the proposed fees will allow the Department to expand its air monitoring network in shale gas areas. No further discussion regarding this subject was found in the proposal. The commenters would like the Department to clarify the previous statement and provide justification for additional air monitoring activity in the shale area. (32, 33)

Response: The CAA mandates that every state establish an ambient air monitoring network for criteria pollutants including carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The monitoring stations are located, constructed, and operated in accordance with Federal criteria promulgated by the EPA, including the size of the local population. The ambient air data collected at the monitoring stations are submitted to the EPA's Air Quality System database on an hourly or daily basis, as appropriate. The Department currently operates and maintains 68 air monitoring sites in 38 counties in this Commonwealth. Additionally, the Allegheny and Philadelphia County agencies operate air monitoring networks in their jurisdictions consisting of 13 and 9 monitoring sites, respectively. The majority of the ambient air monitoring sites is primarily designed for demonstrating compliance with the NAAQS for criteria air pollutants. A portion of these sites also collect air samples for a comprehensive suite of volatile organic compounds, toxic carbonyls, and toxic metals. Each monitoring site is configured with a unique suite of equipment designed to characterize atmospheric conditions at the sampling location.

In response to shale gas development in this Commonwealth, the Department has installed air quality monitors at several locations in both Northern and Southwestern Pennsylvania to better characterize air quality in those areas impacted by oil and gas operations. It is incumbent on the Department to operate air monitors in both rural and urban areas to characterize the quality of the air that our citizens breathe daily and to ensure that all areas of the state are meeting Federal ambient air quality standards.

As the EPA has tightened the various NAAQS standards, the Department has had to invest significant sums of money in equipment to either sample more accurately at lower levels of pollution or to expand the air monitoring network into areas of the state where monitoring was not previously conducted. The Department has invested millions of dollars in upgrading its air monitoring equipment, quality assurance software and protocols, and support equipment over the past several years. These expenditures have been drawn from the balance of the Clean Air Fund. As the Clean Air Fund balance goes to zero, the costs of the air monitoring system need to be addressed in the permitting fee structure.

Net generation in megawatt hours

112. Comment: The commenters suggest that the Title V fees be assessed based upon the calendar year annual amount of net generation in megawatt hours (MWh) from each facility with no "cap" placed upon the number of net MWh generated used for the assessment of the fees. (34, 45)

Response: The basis by which Title V emission fees are charged must be consistent among all source types, including sources that do not produce electricity. The Department believes that establishing Title V fees on the basis of annual amounts of net generation in MWh from each facility would not work well across the different types of Title V-permitted facilities located in this Commonwealth.

Carbon dioxide is a regulated pollutant

113. Comment: The commenters state that the proposed fee package does not address the fact that carbon dioxide (CO_2) became a "regulated pollutant" on December 22, 2015, and therefore should be assessed in some way regarding the Title V Emission Fee dollar per ton calculation. (34, 45)

Response: In the EPA's July 21, 1992, final rule addressing the Part 70 operating permit program, the EPA stated that "…[*t*]he EPA interprets title V to offer permitting authorities flexibility in setting *variable fee amounts for different pollutants* or different source categories, as long as the sum of all fees collected is sufficient to meet the reasonable direct and indirect costs required to develop and administer the provisions of title V of the Act, including section 507 as it applies to part 70 sources [emphasis added]." See 57 FR 32258 (July 21, 1992). Additionally, the EPA stated that "…[t]he State is not required to assess fees on any particular basis and can use application fees, service-based fees, emissions fees based on either actual or allowable emissions, other types of fees, or any combination thereof." See 57 FR 32292. The Department is therefore exercising enforcement discretion to not assess a permanent annual air emission fee for CO_2 emissions or in other words is assessing a fee of $0 per ton in this final-form rulemaking. If the Department were to assess the current annual air emission fee for CO_2 emissions, which is $93.06 per ton of regulated pollutants emitted in 2019, the amount would be more than that which is necessary to comply with section 502(b) of the CAA, as prohibited under subsection 6.3(c) of the APCA.

However, the Department is exploring appropriate ways to address CO_2 emissions. On October 3, 2019, Governor Wolf signed Executive Order 2019-07, directing the Department to develop a proposed rulemaking to abate, control, or limit CO_2 emissions from fossil fuel-fired electric generating units as authorized by the APCA. The proposed rulemaking is expected to establish a CO_2 budget consistent with the participating states in the Regional Greenhouse Gas Initiative, as well as a fee per ton of CO_2 emitted from a fossil fuel-fired electric generating unit.