



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Air Quality

Draft Final Rulemaking Air Quality Fees 25 Pa. Code Chapters 121 and 127

Small Business Compliance Advisory Committee January 22, 2020

Tom Wolf, Governor

Patrick McDonnell, Secretary

Public Comment Period

- The public comment period opened on April 13, 2019 and the three public hearings were held:
 - May 13, DEP SWRO
 - May 15, DEP SERO
 - May 16, DEP SCRO
- The public comment period closed on June 17, 2019.
- The Independent Regulatory Review Commission (IRRC) comment period closed on July 17, 2019.

Commenters

1427 people or organizations commented:

- Forty letters from private citizens
- Eight letters from industry
- Four letters from environmental groups with 1,318 signatures, of which one form letter had 1,312 signatures.
- Two letters from the House of Representatives with 60 signatures.
- One letter from the Independent Regulatory Review Commission (IRRC)

General Supportive Comments

- Not enough funding, fee increases need to be larger.
- Not enough staff, not conducting enough inspections, more money needed.
- Permit approval delays, need more staff/more money needed.
- Air monitoring infrastructure, more money needed to maintain the components.
- Title V fees not adequate and sustainable. Title V fees should be based on net generation (MWh) from each facility.
- CO₂ is a regulated pollutant and a fee for it must be addressed.

General Adverse Comments

- General Assembly only authorized certain types of fees in the APCA. Adding new/different fees is beyond the Department's and the Environmental Quality Board's authority.
- Fee increases are too high and will price businesses and municipalities out of progress, improvement, and innovation.
- Title V emissions are declining so workload is declining and additional money is not needed.
- VW Settlement provides Department with alternative funding that is addressing air quality through a different sector (motor vehicles), so additional Title V fee revenue is not needed.
- Revenue increases of this size need be part of the Commonwealth's negotiated budget process.

Specific Section Comments

- Request clarification of the timeframe for and the use of the term “final action” for the significant operating permit modification.
- Request that the fee for plan approval extension not apply if delay is caused by the Department.
- Request clarification that fees only apply to initial asbestos notifications.
- Inquire why the risk assessment fee is in a stand alone section and not the plan approval application fee section.

Public Comments

All public comments can be found in their original form on the Department's [eComment webpage](#) as well as on the IRRC web site (search on IRRC #3231). The Department is preparing the Comment and Response document and final-form rulemaking documents that will be submitted to the Environmental Quality Board (EQB).

Changes from Proposed to Final-form Rulemaking

- The following sections were revised in response to public comments:
 - § 127.465(e) Significant operating permit modification procedures.
 - § 127.702(i)(3) Plan approval fees.
 - § 127.703(d)(1) Operating permit fees under Subchapter F.
 - § 127.704(d) Title V operating permit fees under Subchapter G.
 - § 127.708 Risk assessment
 - § 127.709(b) Asbestos abatement or regulated demolition or renovation project notification.
 - § 127.711 Fees for claims of confidential information.

Changes from Proposed to Final-form Rulemaking

- § 127.465(e) Significant operating permit modification procedures is revised as follows:
 - 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.
- § 127.702(i)(3) Plan approval fees.
 - The fee for an extension of a plan approval will not apply if, through no fault of the applicant, an extension is required.

Changes from Proposed to Final-form Rulemaking

- The annual operating permit maintenance fee for Synthetic Minor Facilities is increased to: Four thousand dollars (\$4000) for calendar years 2021—2025; Five thousand dollars (\$5,000) for calendar years 2026—2030; and Six thousand two hundred dollars (\$6,200) for the calendar years beginning with 2031.
- The annual operating permit maintenance fee for Title V Facilities is lowered to: Eight thousand dollars (\$8000) for calendar years 2021—2025; Ten thousand dollars (\$10,000) for calendar years 2026—2030; and Twelve thousand five hundred dollars (\$12,500) for the calendar years beginning with 2031.
- Made risk assessment fees a subsection of plan approval fees.

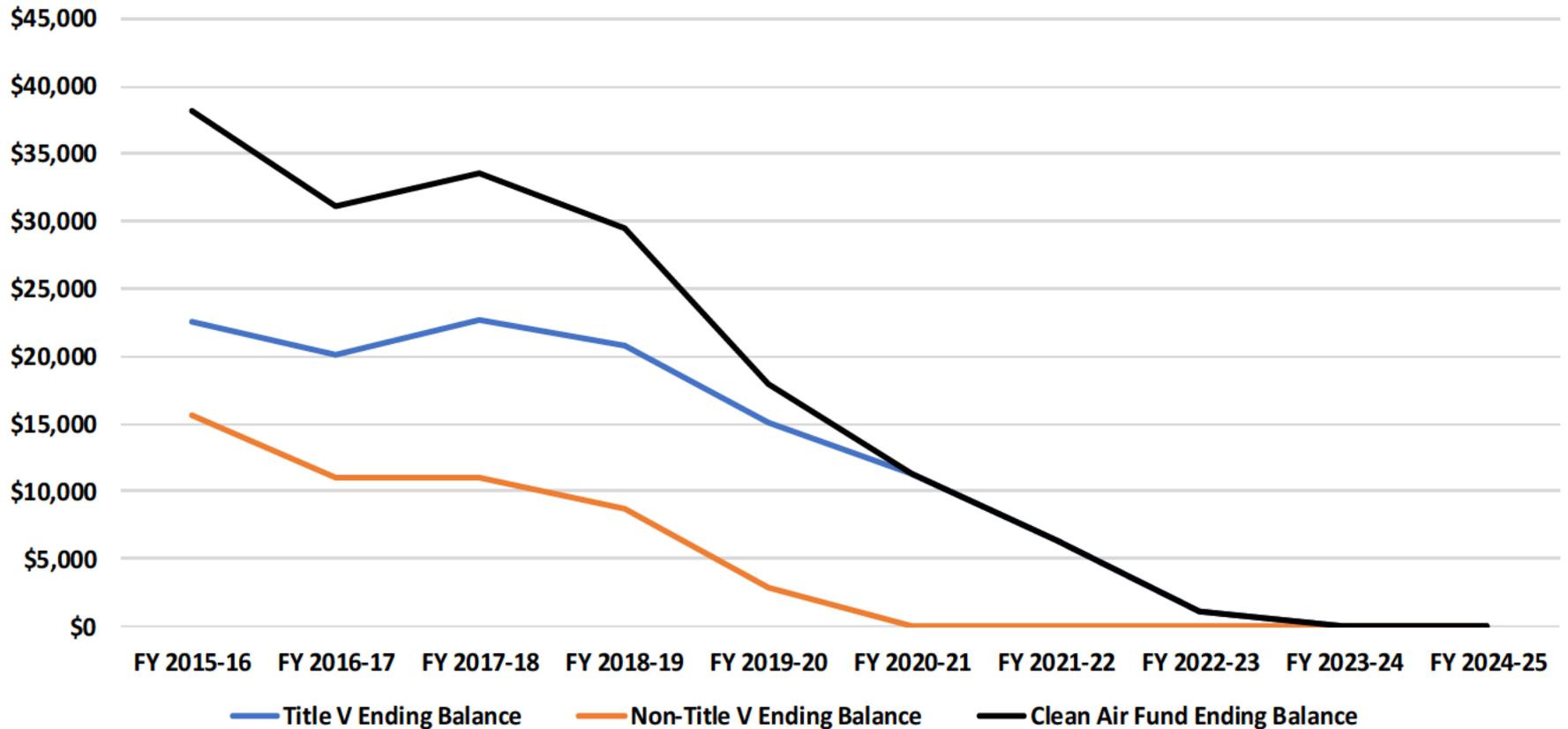
Changes from Proposed to Final-form Rulemaking

- The Department has revised § 127.709 regarding Asbestos abatement or regulated demolition or renovation project notification to add subsection (b) to clarify that the fee only applies to the initial notification. The language in subsection (b) is as follows:

“The Department will waive the fee for a subsequent notification form submitted for the asbestos abatement or regulated demolition or renovation project.”
- Although the Department has broad authority under the APCA to establish fees, the Department determined that the proposed fee for claims of confidentiality is unneeded and removed it from the final-form rulemaking.

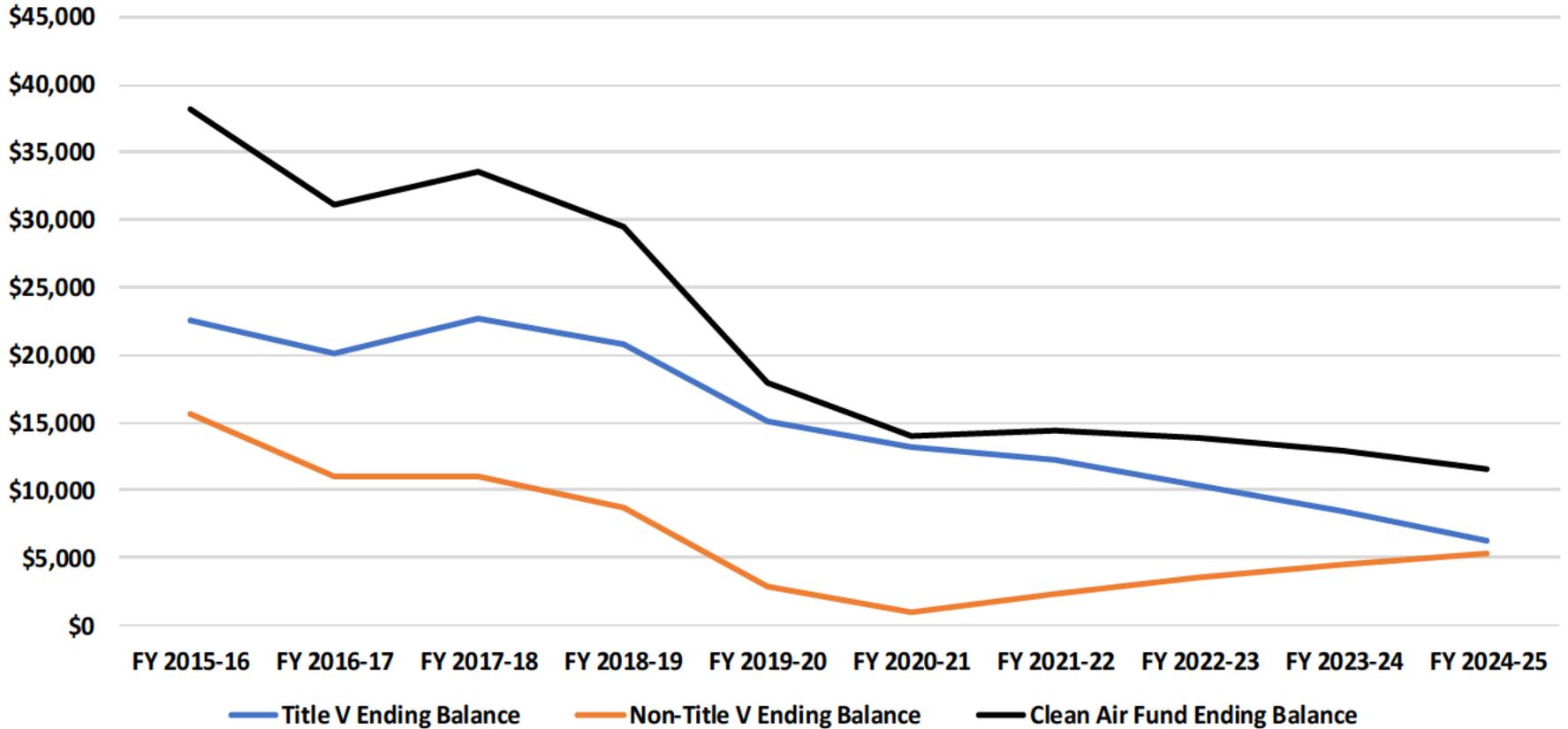
Clean Air Fund without Final-form Fee Increases

(in thousands of dollars)



Clean Air Fund with Final-form Fee Increases

(in thousands of dollars)



Rulemaking Schedule

- On December 12, 2019 AQTAC voted 10-3-0 to present the final-form rulemaking to the EQB. AQTAC also voted 11-0-2 to “recommend that the Department begin, at the earliest legal opportunity, a rulemaking process so that the air quality fees explicitly address emissions of carbon dioxide (CO₂) and air quality program sustainability.”
- Citizens Advisory Council – January 21, 2020
- Environmental Quality Board – Second Quarter 2020
- Final-Form Rulemaking Promulgated – Third Quarter 2020

CAC Action

The Department is requesting SBCAC's concurrence with the Department's recommendation to move the Air Quality Fees final-form rulemaking forward to the EQB for consideration.



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