

PROPOSED RULEMAKINGS

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 127]

Air Quality Title V Fee Amendment

The Environmental Quality Board (Board) proposes to amend Chapter 127, Subchapter I (relating to plan approval and operating permit fees) to read as set forth in Annex A. This proposed rulemaking satisfies Federal and State obligations to establish a Title V annual emission fee sufficient to cover the reasonable direct and indirect costs of administering the operating permit program and other related requirements mandated under Title V of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7661—7661f).

This proposed rulemaking was adopted by the Board at its meeting of November 20, 2012.

A. *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

The proposed rulemaking will be submitted to the United States Environmental Protection Agency (EPA) upon final-form publication for approval as a revision to the Commonwealth's State Implementation Plan or as an amendment to the Title V Program Approval codified in 40 CFR Part 70, Appendix A (relating to approval status of state and local operating permits programs), as appropriate.

B. *Contact Persons*

For further information, contact Dean Van Orden, Assistant Director, Bureau of Air Quality, P. O. Box 8468, Rachel Carson State Office Building, Harrisburg, PA 17105-8468, (717) 787-9702; or Robert "Bo" Reiley, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available electronically on the Department of Environmental Protection's (Department) web site at www.dep.state.pa.us (DEP Search/Keyword: Public Participation).

C. *Statutory Authority*

This proposed rulemaking is authorized under section 6.3 of the Air Pollution Control Act (act) (35 P.S. § 4006.3), which grants to the Board the authority to adopt regulations to establish fees to cover the indirect and direct costs of administering the air pollution control program, operating permit program required under Title V of the CAA, other requirements of the CAA (42 U.S.C.A. §§ 7401—7671q) 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.

D. *Background and Purpose*

Title V annual emission fees are payable by the owners and operators of facilities in this Commonwealth that are classified as major sources of air pollution under section

501 of the CAA (42 U.S.C.A. § 7661) and are subject to the permitting provisions of Title V of the CAA. Section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)) required the EPA to adopt rules establishing the minimum elements of Title V operating permit programs including a requirement that the owner or operator of all sources subject to the requirements obtain a permit under Title V of the CAA and pay an annual emission fee to state and local agencies sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V of the CAA.

On July 30, 1996, the EPA granted full approval of the Commonwealth's Title V Operating Permits Program in accordance with Title V of the CAA and implementing regulations in 40 CFR Part 70 (relating to state operating permit programs). See 61 FR 39597 (July 30, 1996). Under 40 CFR 70.9(a) and (b) (relating to fee determination and certification), the state program must "require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs." The fee schedule must result in the collection and retention of revenues sufficient to cover the permit program costs.

In addition to authorizing the establishment of fees sufficient to cover the permitting program required under Title V of the CAA, section 6.3(a) of the act also authorizes the Board to adopt regulations to establish fees to support the air pollution control program authorized by the act and not covered by fees required under section 502(b) of the CAA. The emission fees currently apply to emissions of up to 4,000 tons of any regulated pollutant. 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 National Ambient Air Quality Standard (NAAQS) has been promulgated, except that carbon monoxide shall be excluded from this reference.

The proposed rulemaking would amend the base Title V annual emission fee requirements in § 127.705. An adequate fee must result in the collection and retention of revenue sufficient to cover the costs of administering the air permit program as required under section 6.3 of the act. The Department has established a uniform Title V annual emission fee across this Commonwealth. The local air pollution control agencies in Allegheny and Philadelphia Counties collect the Title V annual emission fee revenue for sources under their jurisdictions. Minor clarifying amendments are proposed for § 127.701 (relating to general provisions).

The proposed amendment to the existing base Title V annual emission fee is designed to cover all reasonable costs required to develop and administer the Title V permit requirements. These reasonable costs include the cost for certain activities related to major facility operations, including the review and processing of plan approvals and operating permits; emissions and ambient air monitoring; preparing applicable regulations and guidance; modeling, analyses and demonstrations; and preparing emission inventories and tracking emissions. Direct and indirect program costs include personnel costs, oper-

ating expenses such as telecommunications, electricity, travel, auto supplies and fuel, and the purchase of fixed assets such as air samplers and monitoring equipment, vehicles and trailers.

To meet these obligations, the proposed rulemaking would increase the base Title V annual emission fee paid by the owner or operator of a Title V facility to \$85 per ton of "regulated pollutant" for up to 4,000 tons of each regulated pollutant beginning with emission fees payable by September 1, 2014, for emissions occurring in calendar year 2013. The initial base Title V annual emission fee, established at 24 Pa.B. 5899 (November 26, 1994), was \$37 per ton of regulated pollutant up to 4,000 tons of each regulated pollutant per Title V facility. As provided in § 127.705(e), the emission fee imposed under § 127.705(a) has been increased in each year after November 26, 1994, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year. Under the existing regulatory framework, the base Title V annual emission fee has not been revised since 1994. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is \$57.50 per ton of regulated pollutant for up to 4,000 tons of each regulated pollutant. To collect fees sufficient to cover Title V program costs, the proposed increase to the base Title V annual emission fee would be an increase of \$27.50 per ton of each regulated pollutant from 2013 levels.

The proposed rulemaking does not establish a fee structure for carbon dioxide and other greenhouse gases (GHG) including hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons and sulfur hexafluoride. On June 3, 2010, the EPA finalized the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). See 75 FR 31514 (June 3, 2010). As the Tailoring Rule relates to the applicability of Title V annual emission fees for a "regulated pollutant" as defined in section 502 of the CAA, the EPA did not mandate revisions to state and local Title V programs to account for these emissions. See 75 FR 31514, 31585. The EPA reasoned that it would be difficult to apply this fee to GHGs, based on the large amount of GHG emissions relative to other pollutants and the need for better data to establish a GHG-specific fee amount. See 75 FR 31514, 31585. However, the EPA did commit to addressing this issue in a future rulemaking and to work with states to develop a workable fee approach. See 75 FR 31514, 31586. The EPA has not yet proposed a fee schedule under the CAA for GHG emissions. Consequently, the Board is not proposing, at this time, to impose Title V emission fees for GHG emissions from stationary sources in this Commonwealth.

Title V annual emission fee revenues collected are no longer sufficient to cover program costs. Installation of control technology over the past two decades on major stationary sources, the retirement or curtailment of operations by major sources including certain refineries and coal-fired power plants and the conversion at many major facilities from burning coal or oil to burning natural gas has resulted in the decreased emission of regulated pollutants that are subject to the annual emission fee, and revenues collected have been decreasing as a result. The proposed increase to the base Title V annual emission fee considers the impact on collected Title V annual emission fee revenues from the retirement of certain sources and the announced retirement of sources, including certain electric generating units. The decline in interest rates paid on savings account balances has also

affected the funds as the investments earn less interest in the current economy compared to the early years of the program.

Failure to adjust the emission fee structure to adequately cover program costs may cause significant reductions in the Title V staffing complement and technical services. Reduced staffing would cause delays in processing and issuing plan approvals for Title V facilities and Title V operating permits, potentially resulting in delays for industry to implement new or improved processes and loss of revenue to industry, loss of jobs for the community and loss of tax revenue for the Commonwealth. New or modified sources of air pollution at Title V facilities cannot be constructed without a plan approval. The installation of air pollution control equipment requires Department approval of a plan approval application prior to the installation. In addition, fewer staff to conduct inspections, respond to complaints and pursue enforcement actions would result in less oversight of industry compliance or noncompliance and in reduced protection of the environment and public health and welfare of the citizens of this Commonwealth.

Decreased revenues would also impact the Commonwealth's air monitoring network, which provides the data to substantiate the Commonwealth's progress in attaining and maintaining the NAAQS instituted by the EPA under the CAA. Decreased revenues could also impact the Small Business Stationary Source Technical and Environmental Compliance Assistance Program by reducing the amounts of grants and number of services available to small businesses. This could potentially lead to fewer viable small businesses and slow the economic recovery of this Commonwealth by reducing the numbers of available jobs. Further, a failure to attain and maintain the NAAQS and to satisfy the Commonwealth's obligations under the CAA could precipitate punitive actions by the EPA.

In accordance with 40 CFR 70.10(b) and (c) (relating to Federal oversight and sanctions), the EPA may withdraw approval of a 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 these instances, 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 (\$1.06 billion in 2012 if not obligated for projects approved by the Federal Highway Administration). The increase in the base Title V annual emission fee avoids the issuance of a Federal Title V Permit Program NOD; Federal oversight and mandatory CAA sanctions would also be avoided. The EPA may also impose discretionary sanctions which would adversely impact Federal grants awarded under sections 103 and 105 of the CAA (42 U.S.C.A. §§ 7403 and 7405).

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) in the development of this proposed rulemaking. At its September 12, 2012, meeting, the AQTAC concurred with the Department's

recommendation to advance the proposal to the Board for consideration as proposed rulemaking.

The Department also conferred with the Citizens Advisory Council Air Committee concerning the proposed rulemaking on October 3, 2012, and with the Small Business Compliance Advisory Committee on October 24, 2012.

E. *Summary of Regulatory Requirements*

The proposed rulemaking would amend § 127.701 to clarify that fees paid to the Department are deposited into the Pennsylvania Clean Air Fund. The proposed rulemaking would also make additional editorial changes to this section.

The proposed rulemaking would amend § 127.705 to establish a base Title V annual emission fee of \$85 per ton for up to 4,000 tons of regulated pollutant beginning with the fees due by September 1, 2014, for emissions from Title V facilities in the 2013 calendar year.

F. *Benefits, Costs and Compliance*

Benefits

The increased Title V annual emission fee revenue would be used to adequately fund the Commonwealth's air quality Title V permit programs as authorized by the act. Without an increase in the annual emission fee, Title V annual emission fee deficits of \$6.15 million, \$17.295 million and \$28.840 million are projected for the Department's Title V program for Fiscal Years (FY) 2015-2016, 2016-2017 and 2017-2018, respectively. Revenue to the Department from the fee increase would be used solely to address the projected deficits in the Title V Major Facilities Account in the Clean Air Fund.

The proposed base Title V annual emission fee of \$85 per ton for up to 4,000 tons of each regulated pollutant would result in projected increased revenue to the Department of \$5.3 million in the Title V Account for FYs 2014-2015 and 2015-2016, and \$4.6 million for FYs 2016-2017 and 2017-2018, if the fee is imposed beginning with emissions occurring in calendar year 2013 and payable by September 1, 2014. An increase in the base Title V annual emission fee would provide projected increased emission fee revenue of approximately \$581,000 and \$176,000 for the Title V programs in Allegheny County and Philadelphia County, respectively.

The proposed increase to the base Title V annual emission fee would assure the regulated industry that its plan approval applications and permits would be reviewed in a timely manner, sustaining its businesses and maintaining jobs. Adoption of the proposed base Title V emission fee would ensure that the Commonwealth's Title V air pollution control permit programs are adequately funded for several years. The anticipated increased revenue would allow the Department and county agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to further reduce emissions of regulated pollutants to achieve healthful air quality and ensure continued protection of the environment and the public health and welfare of the citizens of this Commonwealth.

Compliance Costs

The owners and operators of approximately 560 Title V facilities in this Commonwealth, including facilities in Allegheny and Philadelphia Counties, would be required to comply with the proposed revised base Title V annual emission fee on emissions of up to 4,000 tons of each regulated pollutant. The financial impact on the owners

and operators of Title V facilities regulated by the Department, collectively, would be additional annual emission fee costs of approximately \$5.3 million per year for FYs 2014-2015 and 2015-2016; costs in FYs 2016-2017 and 2017-2018 for these owners and operators are expected to be about \$4.6 million per year due to decreasing amounts of emissions of regulated pollutants as major sources install additional controls, convert to burning natural gas (a cleaner energy source) instead of coal or oil, or shut down certain facilities. Costs to the owners and operators of Title V facilities regulated by the county agencies are expected to be about \$581,000 and \$176,000 in FY 2014-2015 in Allegheny County and Philadelphia County, respectively.

New legal, accounting or consulting procedures would not be required.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding the proposed revised requirements and how to comply with them. This outreach initiative will be accomplished through the Department's ongoing compliance assistance program.

Paperwork Requirements

Additional paperwork requirements are not associated with this proposed rulemaking.

G. *Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. The anticipated increased revenues would allow the Department and county agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth, sustain the gains made in healthful air quality and ensure continued protection of the environment and the public health and welfare of the citizens of this Commonwealth.

H. *Sunset Review*

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. *Regulatory Review*

In accordance with section 5(a) and (f) of the Regulatory Review Act (71 P.S. §§ 745.5(a) and (f)), on January 22, 2013, the Department submitted a copy of this proposed rulemaking to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* and to the Independent Regulatory Review Commission (IRRC). In accordance with section 5(f) of the Regulatory Review Act, the Department will submit the proposed regulations and the required material to the Chairpersons of the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee no later than the second Monday after the date by which both Committee designations have been published in the *Pennsylvania Bulletin*. In addition to submitting the

proposed rulemaking, the Department has provided IRRC and will provide the House and Senate Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

J. Public Comments

Written comments—Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 8, 2013. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by April 8, 2013. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic comments—Comments may be submitted electronically to the Board at RegComments@pa.gov and must also be received by the Board by April 8, 2013. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within 2 working days, the comments should be retransmitted to ensure receipt.

K. Public Hearings

The Board will hold three public hearings for the purpose of accepting comments on this proposed rulemaking. The hearings will be held at 1 p.m. on the following dates:

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| March 5, 2013
1 p.m. | Department of Environmental Protection
Southwest Regional Office
Waterfront A Conference Room
400 Waterfront Drive
Pittsburgh, PA 15222-4745 |
| March 6, 2013
1 p.m. | Department of Environmental Protection
Southeast Regional Office
Delaware River Conference Room
2 East Main Street
Norristown, PA 19401 |
| March 7, 2013
1 p.m. | Department of Environmental Protection
Rachel Carson State Office Building
Conference Room 105
400 Market Street
Harrisburg, PA 17105 |

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526 at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are

limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact the Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

MICHAEL L. KRANCER,
Chairperson

Fiscal Note: 7-478. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 127. CONSTRUCTION, MODIFICATION, REACTIVATION AND OPERATION OF SOURCES

Subchapter I. PLAN APPROVAL AND OPERATING PERMIT FEES

§ 127.701. General provisions.

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(b) The fees collected **under this subchapter** shall be **made payable to the Pennsylvania Clean Air Fund** and deposited into the Clean Air Fund established under section 9.2 of the act (35 P. S. § 4009.2).

(c) Fees collected **under this subchapter** to implement the requirements of Title V of the Clean Air Act and the Small Business Stationary Source Technical and Environmental Compliance Assistance, Compliance Advisory Committee and the Office of Small Business Ombudsman shall be **made payable to the Pennsylvania Clean Air Fund** and deposited into a restricted revenue account within the Clean Air Fund.

§ 127.705. Emission fees.

(a) The owner or operator of a Title V facility including a Title V [**facilities**] **facility** located in [**Allegheny County and**] Philadelphia County or **Allegheny County**, except a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions), shall pay an annual Title V emission fee of [**\$37**] **\$85** per ton for each ton of a regulated pollutant actually emitted from the facility. The owner or operator will not be required to pay an emission fee for emissions of more than 4,000 tons of each regulated pollutant from the facility. [**Sources**] **The owner or operator of a Title V facility** located in Philadelphia County [**and**] or Allegheny County shall pay the emission fee to the county Title V program [**if the county Title V program has received approval**] **approved by the Department** under section 12 of the act (35 P. S. § 4012) and § 127.706 (relating to Philadelphia County and Allegheny County financial assistance).

(b) [**From November 26, 1994, through 1999, the owner or operator of a phase I affected unit or an active substitution unit as defined by Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642) shall**

pay an annual emission fee of \$14 per ton for each ton of a regulated pollutant actually emitted from the unit. The owner or operator will not be required to pay an emission fee for emissions of more than 4,000 tons of each regulated pollutant from the facility. Sources located in Philadelphia County and Allegheny County shall pay the emission fee to the county program if the county Title V program has received approval under section 12 of the act (35 P. S. § 4012), and § 127.706. Beginning in the year 2000, sources covered by this subsection shall pay the fees established in subsection (a). The other provisions of this subsection notwithstanding, the owner or operator of a phase I affected unit or an active substitution unit as defined by Title IV of the Clean Air Act will not be required to pay more than \$148,000 plus the increase established by subsection (e) for each regulated pollutant emitted from a Title V facility. Substitution units identified as conditional substitution units by the owner or operator shall pay the emission fee established by subsection (a).

(c) The emissions fees required by this section shall be due on or before September 1 of each year for emissions from the previous calendar year. The fees required by this section shall be paid for emissions occurring in calendar year [1994] 2013 and for each calendar year thereafter.

(d) (c) As used in this section, the term "regulated pollutant" means a VOC, each pollutant regulated under sections 111 and 112 of the Clean Air Act (42 U.S.C.A. §§ 7411 and 7412) and each pollutant for which a National ambient air quality standard has been promulgated, except that carbon monoxide shall be excluded from this reference.

(e) (d) The emission fee imposed under subsection (a) shall be increased in each calendar year after [November 26, 1994] _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.), by the percentage, if any, by

which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year. For purposes of this subsection:

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[Pa.B. Doc. No. 13-179. Filed for public inspection February 1, 2013, 9:00 a.m.]

SUSQUEHANNA RIVER BASIN COMMISSION

Proposed Rulemaking Action; Public Hearing

The Susquehanna River Basin Commission (SRBC) will hold a public hearing on a proposed rulemaking action on February 14, 2013, at the Pennsylvania State Capitol, Room 8E-B, East Wing, Commonwealth Avenue, Harrisburg, PA 17101, at 3 p.m. The proposed rules would amend the project review regulations of the SRBC (18 CFR Part 806 (relating to review and approval of projects)) to include special requirements for withdrawals from surface water and groundwater sources which, from the point of taking or point of impact respectively, have a drainage area of equal to or less than 10 square miles (headwater area); and to modify provisions relating to the issuance of emergency certificates by the Executive Director.

More details on the hearing and the proposed rules will appear in the February 9, 2013, issue of the *Pennsylvania Bulletin*. Meanwhile, for more information, contact Richard A. Cairo, General Counsel, (717) 238-0423, Ext. 306, fax (717) 238-2436, rcairo@srbc.net, or visit the SRBC web site at www.srbc.net.

PAUL O. SWARTZ,
Executive Director

[Pa.B. Doc. No. 13-180. Filed for public inspection February 1, 2013, 9:00 a.m.]