

Executive Summary

Amendments to 25 Pa. Code Chapter 127, Subchapter I

Purpose of the Proposed Rulemaking

On July 30, 1996, the U.S. Environmental Protection Agency (EPA) granted full approval of Pennsylvania's Title V Operating Permits Program in accordance with Title V of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7661—7661f) and 40 CFR Part 70 (relating to state operating permit programs). See 61 FR 39597. Pennsylvania's Title V 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 also result in the collection and retention of revenues sufficient to cover the permit program costs (40 CFR§ 70.9(a) and (b)) (relating to fee determination and certification).

Section 6.3(a) (35 P.S. § 4006.3(a)) of the Air Pollution Control Act (APCA) authorizes the establishment of 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, Compliance Advisory Committee and Office of Small Business Ombudsman. The emission fees can not apply to emissions of more than 4,000 tons of any regulated pollutant.

The Department of Environmental Protection (Department) recommends proposed amendments to Chapter 127, Subchapter I (relating to plan approval and operating permit fees) for consideration by the Environmental Quality Board (Board). The proposed rulemaking would amend the base Title V annual emission fee codified in 25 Pa. Code § 127.705 (relating to emission fees).

An adequate fee must result in the collection and retention of revenue sufficient to cover the costs of administering the Commonwealth's Title V air quality permit program as required under section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3). To meet these obligations, the proposed rulemaking would increase the base Title V annual emissions 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 emissions occurring in calendar year 2013. The \$85 per ton emission fee would be payable by September 1, 2014 to ensure the "collection and retention of revenues sufficient to cover the permit program costs," as required by Federal and state law. Minor clarifying amendments are proposed for 25 Pa. Code § 127.701 (relating to general provisions).

The Commonwealth has established a uniform Title V annual emission fee, which is imposed statewide. The local air pollution control agencies in Allegheny and Philadelphia Counties collect the Title V annual emission fee revenue for affected sources under their jurisdictions. The increased Title V annual emission fee revenue would be used to support the Commonwealth's air quality program as authorized by the CAA and APCA. Without an increase in the Title V annual emission fee, deficits of \$6.15 million, \$17.295 million and

\$28.840 million are projected for fiscal years 2015-2016, 2016-2017, and 2017-2018, respectively. Revenue from the Title V annual emission fee increase would be used solely to cover Title V permit program expenditures.

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 increased revenue to the Department of approximately \$5.3 million in the Title V Account for fiscal years 2014-2015 and 2015-2016, and \$4.6 million for fiscal years 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 increased emission fee revenue of approximately \$581,000 and \$176,000 for the Title V programs in Allegheny County and Philadelphia County, respectively. The Title V annual emission fee paid in 2012 was \$56 per ton for up to 4,000 tons of each regulated pollutant occurring in 2011. The proposed revised base Title V annual emission fee would result in an increase of \$29 per ton of regulated pollutant from 2012 levels.

If published in the *Pennsylvania Bulletin* as final rulemaking, the final-form regulation would be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP) or as an amendment to the Title V Program Approval codified in 40 CFR Part 70, Appendix A (relating to approval status of state and local operating permits programs), as appropriate.

Summary of Proposed Rulemaking

The proposed rulemaking would revise § 127.701 to clarify that annual emission fees are deposited into the Pennsylvania Clean Air Fund.

The proposed rulemaking would revise § 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 released in calendar year 2013. The proposed rulemaking does not establish an emission fee requirement for carbon dioxide and other greenhouse gases (GHG) including hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons and sulfur hexafluoride.

Affected Parties

The proposed rulemaking would affect the owners and operators of major air pollution sources that meet the definition of a Title V facility codified in 25 Pa. Code § 121.1 (relating to definitions) and pay the Title V annual emission fee for up to 4,000 tons of each regulated pollutant. The owners or operators of approximately 560 Title V facilities (including affected facilities in Allegheny and Philadelphia Counties) would be subject to the revised base Title V annual emission fee. These owners and operators have been paying permanent Title V annual emission fees since the Board promulgated the emission fee schedule in November 1994 (24 Pa.B. 5899, November 26, 1994). Interim annual air emission fees were established in the July 1992 amendments to the APCA (Act of July 9, 1992, P.L. 460, No. 95).

Advisory Groups

The Air Quality Technical Advisory Committee (AQTAC) reviewed this proposed rulemaking at its meeting of September 12, 2012. In addition, the proposed revisions were reviewed with the Citizens Advisory Council (CAC) Air Committee on October 3, 2012. The AQTAC and CAC concurred with the Department's recommendation to move the proposed rulemaking forward to the Board. The proposed rulemaking was discussed with the Small Business Compliance Advisory Committee on October 24, 2012.

Public Comments and Board Hearings

The Department recommends that three public hearings with a 60-day public comment period be held for this proposed rulemaking.