

FEE REPORT FORM

Department of Environmental Protection
Bureau of Air Quality
 Agency

September 25, 2012
 Date

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	Prior Year <u>11/12</u>	Current Year <u>12/13</u>	1st Future Year <u>Projected</u>	2nd Future Year <u>Projected</u>
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FEE COLLECTIONS:

Current Title V Fee	\$16,847,000	\$13,500,000	\$12,000,000	\$10,300,000
Proposed Title V Fee			\$12,000,000	\$15,634,000

FEE TITLE AND RATE:

Current: The Title V annual emission fee paid in 2012 for emissions released in 2011 is \$56 per ton of regulated pollutant up to 4,000 tons of regulated pollutant.

Proposed: The proposed Title V annual emission fee is \$85 per ton of regulated pollutant up to 4,000 tons of regulated pollutant to be paid in 2014 for emissions released in 2013.

FEE OBJECTIVE:

The proposed amendment to the existing base Title V annual emission fee codified in 25 Pa. Code Chapter 127, Subchapter I (relating to plan approval and operating permit fees) is designed to ensure that fee revenue collected is sufficient to cover the Department's indirect and directs costs of administering the air pollution control permitting program required by Title V of the Clean Air Act (CAA) as Amended in 1990 (42 U.S.C.A. §§ 7661—7661f).

Section 6.3(a) of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3(a)) 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 Environmental Quality Board (Board) is also authorized to adopt regulations to establish fees to support the air pollution control program authorized by this act and not covered by fees required by section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)). Section 6.3(c) of the APCA authorizes the Board to 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 and other related requirements mandated by Title V of the CAA. As specified in the APCA, the emission fees cannot apply to emissions of more than 4,000 tons of any regulated pollutant.

A proposed base Title V annual emission fee of \$85 per ton of each regulated pollutant up to 4,000 tons 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 proposed fee were imposed for emissions occurring in calendar year 2013 and payable in FY 2014-2015.

Adoption of the proposed rulemaking provides for increased annual emission fee revenue that will be used to cover the indirect and direct costs of administering the air pollution control program. Failure to adjust the Title V annual emission fee will cause expenditures to exceed revenue and may cause reductions in staff or technical services. Reduced staffing will cause delays in processing plan approvals and issuing operating permits, resulting in delays and loss of revenue to industry and reduced protection of the environment and public health and welfare. New or modified sources of air pollution cannot be constructed without a plan approval. The installation of air pollution control equipment requires receipt of a plan approval. Failure to increase the Department's revenue may result in fewer inspections and increases in environmental and public health and welfare problems.

The rulemaking will assure the citizens of this Commonwealth that the Department's air pollution control program is adequately funded. This will allow the Department to provide adequate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to reduce emissions to achieve healthful air quality.

The owners and operators of approximately 560 Title V facilities in the Commonwealth must pay annual emission fees by September 1 each year for regulated pollutants emitted the previous year; this emission fee is not payable by any State entity, instrumentality or political subdivision in relation to any publicly owned or operated facility.

If adopted as a final-form rulemaking, the amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan.

FEE RELATED ACTIVITIES AND COSTS:

The increased Title V emission fee proposed in the rulemaking will be used to support the Department's air quality program as authorized by the APCA. Activities supported include compliance and complaint inspections, enforcement actions, plan approval review and issuance, operating permit review and issuance, source test observations, source test protocol reviews, technical assistance to the source owners and operators and the general public, and program development. The fee revision would allow the Department to maintain staffing levels in the air quality program. This would provide a sound basis for continued air quality assessments and planning that are fundamental to protecting public health and welfare and the environment.

Increased funding for the plan approval and operating permit program would continue to allow for timely and complete review of plan approval and operating permit applications. Delays in the issuance of the plan approvals and operating permits can cause economic disruptions since the owner or operator of a regulated facility may not operate without an operating permit. The owner or operator may not install a new source or modify an existing source without a plan approval. Delays in receiving plan approvals can have a major impact on an owner or operator's decision to construct in the Commonwealth. Implementation of new fees for risk assessment applications would allow for resources to address this important area of public health and social well-being by evaluating the risks associated with observed levels of contaminants.

ANALYSIS:

The CAA and implementing regulations restrict the use of Title V annual emission fee revenue to the costs of administering the Title V Permits Program and the Small Business Stationary Source Technical and Environmental Compliance Assistance Program. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for major stationary sources and small business stationary sources:

- i. Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
- ii. Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
- iii. General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;
- iv. Implementing and enforcing the terms of any Part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
- v. Emissions and ambient monitoring;
- vi. Modeling, analyses, or demonstrations;
- vii. Preparing inventories and tracking emissions; and

- viii. Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program authorized under Section 507 of the CAA.

The Title V annual emission fee has been adjusted on an annual basis based on the consumer price index as required by the CAA and APCA. However, the Title V annual emission fee revenue collected to administer the Commonwealth's air pollution control program is no longer sufficient to cover program costs.

Based on the August 7, 2012, Comparative Financial Statement for the Clean Air Fund, an ending balance of \$12.057 million is projected for the Major Emission Facilities Account by June 30, 2014. This projection assumes no increase in the Title V annual emission fee, which is currently \$56/ton for up to 4,000 tons of each regulated pollutant. Note: Greenhouse Gases are not regulated pollutants for Title V fee purposes; the Department is not proposing to collect Title V annual emission fees for these pollutants.

The following table shows the ending balances for the Title V Major Facilities account without a fee increase:

Major Facilities Account: Title V Ending Balance w/o Fee Increase (in thousands)

FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016	FY 2016-2017	FY 2017-2018
\$25,458	\$22,802	\$18,438	\$12,057	\$3,596	(\$6,152)	(\$17,295)	(\$28,840)

If a new fee schedule is not adopted, Title V annual emission fee revenue deficits of \$6.15 million, \$17.3 million and \$28.8 million are projected under this scenario for fiscal years 2015-2016, 2016-2017, and 2017-2018, respectively.

Revenue for the Major Facilities Account is from the Title V annual emission fees, interest on fees, and lapse of unspent monies. The revenue projections for the Major Facilities Account without a fee increase are forecasted as follows:

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
	ACTUAL	AVAILABLE	PLAN YR.1	PLAN YR.2	PLAN YR.3	PLAN YR.4	PLAN YR.5
Permanent Emission Fees	\$15,542	\$15,762	\$13,500	\$12,000	\$10,300	\$10,000	\$9,000
Prior Year Lapses - Actual:	\$2,399	\$1,085	\$0	\$0	\$0	\$0	\$0
Interest - Title V	\$3,330	\$552	\$600	\$600	\$600	\$0	\$0
Total Revenue	\$21,271	\$17,399	\$14,100	\$12,600	\$10,900	\$10,000	\$9,000

FY 2011-2012 revenue collected is approximately \$2.7 million less than the fee revenue collected in FY 2008-2009 as shown below:

FY 2008-2009	\$18,476,000
FY 2009-2010	\$18,127,000
FY 2010-2011	\$15,542,000
FY 2011-2012	\$15,762,000

Title V annual emission fee revenue is expected to continue to decline due to the implementation of federal programs that will require significant reductions in air contaminants including sulfur dioxide, the impact of the curtailment of operations or permanent shutdown of major emission sources including refineries and electric generating units, compliance with the Mercury and Air Toxic Standards for electric generating units, and the reduced operations of the remaining coal-fired power plants because of the low price of natural gas. The loss of Title V annual emission fee revenue from these sources is projected to be approximately \$4 million by September 2015. A list of sources which have announced shutdowns, permanently shut down, or curtailed operations is provided as follows:

Facility	FY 2011 Fees Paid	Announced / Anticipated Shutdown Date
Allegheny Energy Supply Co./Armstrong Power Station	\$443,266	September 2012
ConocoPhillips Co./Trainer Refinery	\$92,941	December 2011
Exelon Generation Co./Cromby Generation Station* *Unit 1 ceased operation in May 2011	\$202,861	May 2012
Exelon Generation Co./Eddystone** **Unit 1 ceased operation in May 2011	\$466,602	December 2013
GenOn Power Midwest LP/New Castle Power Plant	\$328,285	April 2015
GenOn Power Midwest LP/EIrama Power Station	\$186,602	June 2012
GenOn REMA LLC/Portland Generating Station	\$437,394	January 2015
GenOn REMA LLC/Shawville Generation Station	\$524,668	April 2015
GenOn REMA LLC/Titus Generation Station	\$328,122	April 2015
Horsehead Corporation/Monaca Smelter	\$229,096	September 2013
Sunbury Generation LP/Sunbury Steam Electric Station	\$425,130	February 2012
Sunoco Inc. (R&M)/Marcus Hook Refinery	\$222,290	June 2012
UGI Development Co./Hunlock Creek	\$134,075	May 2010
Viking Energy Northumberland LLC/Cogen Plant	\$15,007	January 2012
Total	\$4,036,340	

The announced facility shutdowns will not reduce the Department's workload. The DEP air program staff must continue to implement the air pollution laws and regulations, issue plan approvals and operating permits including renewals and amendments, conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, and monitor the ambient air in the commonwealth. Air program staff operates and maintains a source testing program to ensure compliance with applicable requirements. Significant staff resources have been devoted to permitting and inspection of unconventional natural gas development activities. The Department

projects increased work load due to the implementation of new or revised federal regulations including, but not limited to, the following:

- Maximum Achievable Control Technology (MACT) standards for boilers
- MACT for electric generating units
- Area source MACT (17 regulations)
- New Source Performance Standards (NSPS) including for the natural gas industry
- Transport Rule
- National Ambient Air Quality Standards (NAAQS) for Lead (revised November 12, 2008, 73 FR 66964)
- NAAQS for Sulfur Dioxide (revised June 22, 2010, 75 FR 35520)
- NAAQS for fine Particulate Matter (PM2.5) (revised October 17, 2006, 71 FR 61144)
- NAAQS for Nitrogen Dioxide (revised February 9, 2010, 75 FR 6474)
- NAAQS for Ozone (revised March 27, 2008, 73 FR 16436)
- Greenhouse gas permitting

Implementation of the new and revised federal permitting rules (MACT, NSPS, transport rule, greenhouse gas) will require increased outreach and education of the impacted industry, inspections, and permitting. These federal rules may require state regulatory action. Implementation of the NAAQS requires development of revised State Implementation Plans, emission inventories, ambient air modeling, inspections of sources, demonstrations of adequate resources to implement the standards and programs, demonstrations that emissions in Pennsylvania will not contribute significantly or interfere with maintenance to downwind nonattainment areas, and may require adoption of state regulations and revisions to operating permits. The revisions to the NAAQS also, in some cases, require the installation of additional ambient air monitors to the existing monitoring network. Implementation of these programs will also require significant public education and outreach.

The Department has been judicious in expenditures under the Major Facilities Account. The following table shows the expenditures of the two recent fiscal years:

	FY 2010-11 (in thousands)	FY 2011-12 (in thousands)
Personnel	\$14,965	\$15,684
Operating	\$3,909	\$2,459
Fixed Assets	\$104	\$297
Grants	\$981	\$1,009
Non-Expense/Interagency Transfers	\$606	\$606
Total Expenditures	\$20,565	\$20,055
Revenue	\$15,542	\$15,762

The table shows that expenditures have exceeded revenue. The majority of the expenditures are for personnel costs.

Projected Title V annual emission fee revenue includes a \$5.33 million increase in revenue in FY 2014-2015, assuming an annual emission fee of \$85 per ton of each regulated pollutant, up to 4,000 tons.

FY 2014/2015 DEP Emission Fee Revenue w/o Fee Increases	\$10.30 Million
FY 2014/2015 DEP Emission Revenue w/\$85 per ton Base Fee Amendment	\$15.63 Million
FY 2014/2015 Increased DEP Emission Fee Revenue w/\$85 per ton Base Fee	\$5.33 Million
FY 2014/2015 Increased Emission Fee Revenue for Philadelphia AMS w/\$85 per ton Base Fee	\$0.176 Million
FY 2014/2015 Increased Emission Fee Revenue for Allegheny County w/\$85 per ton Base Fee	\$0.581 Million
Total Fee Increase (DEP, AMS, ACHD) in FY2014/2015 w/\$85 per ton Base Fee	\$6.09 Million

The proposed rulemaking is expected to increase revenue to the Department by approximately \$5.33 million per year for fiscal years 2014-2015 and 2015-2016, and approximately \$4.6 million per year for fiscal years 2016-2017 and 2017-2018. The Department is authorized to provide payment of a portion of the Title V annual emission fee revenue collected by the Department to the local air pollution control agencies in Philadelphia and Allegheny Counties (25 Pa. Code § 127.706 (relating to Philadelphia County and Allegheny County financial assistance)). While the Allegheny County Health Department has never requested financial assistance, the Department has provided requested financial assistance to the Philadelphia County Air Management Services (AMS), most recently \$750,000 in 2011 and \$700,000 in 2012. Philadelphia County AMS projects an increasing need for assistance under § 127.706 and may request an increase in financial assistance to implement the City Of Philadelphia's Title V Program.

The proposed Title V annual emission fee of \$85 per ton of regulated pollutant will not be sufficient for the long-term solvency of the Clean Air Fund Major Facilities Account (Title V). A deficit of \$2,182,000 is projected for the Title V Major Facilities Account by the end of FY 2016-2017. (The deficit may be greater should natural gas displace additional coal-fired electric generation.) However, the proposed fee, if adopted, would increase revenue during the interim years and allow the Department to complete an evaluation of the air quality plan approval and operating permitting fee structure and determine if additional fees, revised fees, or other options should be advanced. If a decision is made to address the shortfall through another increase to the base Title V annual emission fee, the Board would need to propose another increase in the base Title V annual emission fee above the \$85 per-ton fee no later than June 2014—this

proposal would need to occur within 1 year after the 2013 fee increase is promulgated. The subsequent rulemaking schedule would require a final fee increase greater than \$85 per ton no later than May 2015 for the Title V fees due by September 1, 2015. This rulemaking schedule for the second proposal is recommended so that there will be sufficient funds to support the program beginning in FY 2016-2017.

Revenue and expenditure projections show negative spending by FY 2015-2016 without the revised fee schedule.

Implications Associated with Unsustainable Clean Air Fund: Section 110(a)(2)(E)(i) of the CAA (42 U.S.C.A. § 7410(a)(2)(E)(i)), requires necessary assurances that the Commonwealth “will have adequate personnel, funding and authority to carry out the State Implementation Plan (SIP),” which must provide for the attainment and maintenance of the health and welfare-based national ambient air quality standards including ozone, particulate matter, lead, carbon monoxide, nitrogen dioxide and sulfur dioxide. In accordance with 40 CFR Part 51, Subpart O, Section 51.280, the SIP must also include a description of the resources available to State and local agencies needed to carry out the plan. If the fee amendments are not adopted to ensure that fees are adequate to support the program, the EPA could find that a “requirement of the approved plan is not being implemented.” If the deficiency is not corrected within 18 months after the finding, mandatory sanctions would be triggered under section 179 of the CAA (42 U.S.C.A. § 7509). These sanctions include loss of federal highway funds and 2-to-1 offsets for the construction of major new or modified stationary sources. If the Commonwealth fails to correct the identified deficiency, the CAA states that the Administrator of the EPA shall promulgate a Federal Implementation Plan under section 110(c) at any time within 2 years after the Administrator:

- 1) finds that a state failed to make a required submission or finds that the plan or plan revision submitted by the state does not satisfy the minimum criteria established under section 110(k)(1)(A), or
- 2) disapproves a state implementation plan submission in whole or in part, unless the state corrects the deficiency and the Administrator approves the plan or plan revision, before the Administrator promulgates such federal implementation plan.

The EPA may also impose discretionary sanctions under section 179 of the CAA which would adversely impact federal grants (i.e., \$5,827,000 for FY 2011-2012) awarded to DEP under sections 103 and 105 of the CAA.

The DEP has implemented the EPA-approved Title V Operating Permit Program since July 1996. Should the EPA determine that the DEP has failed to properly implement the program or failed to require the owners and operators of Title V facilities to pay Title V annual emission fees sufficient to cover the costs of Pennsylvania’s Title V Program, a “Notice of Deficiency” would be issued to the DEP and published in the *Federal Register*. Under 40 CFR 70.10(b) and (c), the EPA is authorized to withdraw the Title V program approval if the DEP fails to take corrective action. Withdrawal of the Title V program approval would require the EPA to administer and enforce a Federal Title V

Program in Pennsylvania; all Title V emission fees would be paid to the EPA instead of the DEP. If the program deficiency is not corrected within 18 months, mandatory sanctions including 2-to-1 emission offsets for the construction of major sources and loss of federal highway funds would be imposed under section 179 of the CAA.

Lastly, further reductions in revenue would require significant reductions in the Title V staff complement—in FY 2011-2012, personnel costs alone are projected to be approximately \$15.88 million. Significant reductions in staff and technical services would cause delays in the processing and issuance of plan approvals for the construction of new sources and operating permits, conducting inspections, responding to complaints and pursuing enforcement actions. The EPA could also withdraw approval of the Commonwealth's Title V Program which would require the owners and operators of Title V facilities to pay the fees directly to the EPA.

RECOMMENDATION AND COMMENT:

The proposed Air Quality Title V Annual Emission Fee amendment should be approved for public comment. The revised fee will support continued operation of the Air Quality program in the Commonwealth.

The proposed amendment was discussed with the Air Quality Technical Advisory Committee (AQTAC) at its meeting of September 12, 2012. AQTAC concurred with the Department's recommendation to present the proposed rulemaking to the Board. The Department consulted with the Citizens Advisory Council (CAC) Air Committee on October 3, 2012. The CAC concurred with proceeding to the Board with the proposed rulemaking. The Department discussed the proposed rulemaking with the Small Business Compliance Advisory Committee on October 24, 2012.