

**PROPOSED RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA CODE CH. 127]**

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 proposal would satisfy 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 _____, 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 (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.

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) 783-8949; 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.depweb.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 by 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, Small Business Compliance Advisory Committee and 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 Pennsylvania'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). Pursuant to 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 this act and not covered by fees required by 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, the term "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 codified 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 the 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 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, operating 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, 2012, for emissions occurring in calendar year 2011 is \$56 per ton of regulated pollutant for up to 4,000 tons of each regulated pollutant. In order 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 \$29 per ton of each regulated pollutant from 2012 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 at 75 FR 31514 the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). 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 the 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 such 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 (CAC) 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 revise § 127.701 to clarify that fees paid to the Department are deposited into the Pennsylvania Clean Air Fund. The proposal would also make additional editorial changes to this section.

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 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 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 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 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 their plan approval applications and permits would be reviewed in a timely manner, sustaining their business 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 fiscal years 2014-2015 and 2015-2016; costs in fiscal years 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 fiscal year 2014-2015 in Allegheny County and Philadelphia County, respectively.

No new legal accounting or consulting procedures would be required.

Compliance Assistance Plan

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

Paperwork Requirements

There are no additional paperwork requirements associated with this proposed rulemaking with which the industry would need to comply.

G. Pollution Prevention

The Federal 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

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on (blank), the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the

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 Environmental Quality 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 KRANCER
Chairperson