



July 17, 2018

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Secretary Patrick
McDonnell, Ex-officio

Honorable Patrick McDonnell
Secretary
Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Re: Draft Air Quality Fees (25 Pa. Code Chapters 121 and 127)

Dear Secretary McDonnell:

On July 17, 2018, the Citizens Advisory Council (“CAC” or “Council”) discussed the draft proposed rulemaking to amend 25 Pa. Code Chapters 121 and 127 (relating to general provisions and review of applications, respectively). The draft proposed rulemaking proposes to increase permitting and other fees that accrue to the Clean Air Fund and are utilized to fund elements of the Department’s air pollution control program.

CAC has heard from Department staff that the Clean Air Fund is projected to experience multi-million-dollar deficits in the coming fiscal years, particularly the non-Title V account. Application fees are intended to support the Department’s administrative and technical responsibilities, but they have not been updated since 2005. At the same time, emission fees collected from Title V major sources, which are based on annual emissions, are declining because actual emissions of regulated pollutants have trended steadily downward for several years. Reduced emissions are an undeniable benefit to Pennsylvania’s environment, but they do not directly correspond to reduced program costs because the number of facilities that must be inspected, as well as expenses for equipment, contracts, and grants, have not followed the same downward trend. The Department believes the increased fees are necessary to ensure that the operations of the Air Quality program can continue at the appropriate level.

While Council members appreciate the need for adjustments to permit application and annual operating fees in order to provide a more sustainable funding base for the Department’s clean air program, Council members share a concern with respect to the large increase in fees reflected in

this proposal and its impacts on regulated facilities. In reviewing this proposal, the Council identified a series of questions that warrant further examination as this proposed rulemaking is considered, and before fee increases are finalized:

(1) The Department and EQB need to carefully consider whether all activities funded by the proposed fee schedule are necessary to adequately fulfill the Department's core roles and responsibilities in air quality protection. As seen in other programs, efforts need to be pursued to examine the entire permit review process to assure maximum efficiency in focusing reviews on the really important aspects that are core to DEP's mission. For example, concern has been expressed that some Department staff completely replicate (not just review) air quality modeling efforts, consuming time to run the same models that others have already run. In other cases, requests have been made for risk impact analyses not mandated by federal or state regulations – analyses which then engender extensive, and expensive, staff reviews.

(2) The Council suggests that the proposed rulemaking package be clarified as to whether fees will be charged for permit extensions that become necessary due to a delay in the Department's review (e.g., extension of temporary operating authority under plan approvals pending agency review of performance stack test protocols, which are predicate to approval of an operating permit).

(3) The Council suggests that language be included in §127.465(c) to allow the submission of permit applications and other documents via "reputable express services," such as Federal Express and UPS, which are commonplace and effective for this purpose. The currently proposed language only allows for submission "by hand delivery," certified mail or electronic submission. In fact, express services are frequently used by applicants, and the rules should allow for use of such services.

Subject to the foregoing comments and suggested amendments, at the meeting on July 17, 2018, the Council voted to concur with the Department's proposal to present the proposed Air Quality Fees rulemaking package to the Environmental Quality Board for publication as proposed rules, with provision for an adequate period for public comment. The Council will be most interested in seeing and reviewing those public comments before providing a recommendation on the ultimate final rulemaking proposal.

Sincerely,



Donald S. Welsh, Chair
Citizens Advisory Council

cc: Krishnan Ramamurthy, Director, PA DEP BAQ
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