



pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Bureau of Air Quality

Final Rulemaking – Air Quality Fee Schedule Amendments

25 Pa. Code Chapters 121 and 127

Environmental Quality Board
July 21, 2020

Tom Wolf, Governor

Patrick McDonnell, Secretary

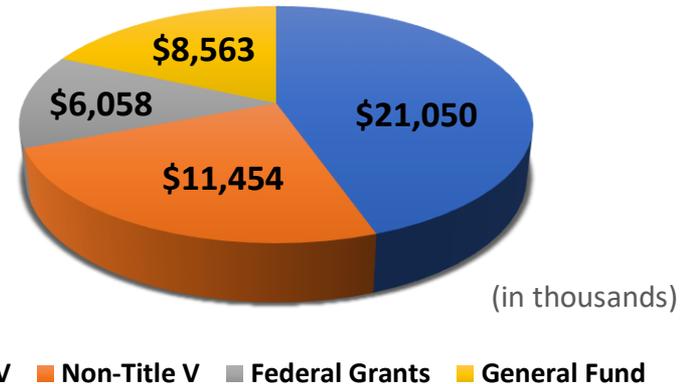
Background for Air Quality Fee Schedules

- Section 110 of the Clean Air Act (CAA) – adequate personnel, funding, and authority
- 40 CFR 70.9(a) – owners and operators of Title V sources pay annual fees
- Section 6.3(a) of the Air Pollution Control Act (APCA) – authorizes the Environmental Quality Board (EQB) to establish fees to support the authorized air pollution control program and Title V permit program
- December 14, 2013 PA Bulletin – revised base Title V annual emission fee would not be sufficient for long-term solvency of Clean Air Fund
- March 18, 2015 Federal Register – the United States Environmental Protection Agency (EPA) may take action if funds become insufficient to sustain the Title V permitting program

Pennsylvania Clean Air Fund

- The Clean Air Fund supports:

- Personnel
- Equipment
- Contracts
- Grants
- Indirect

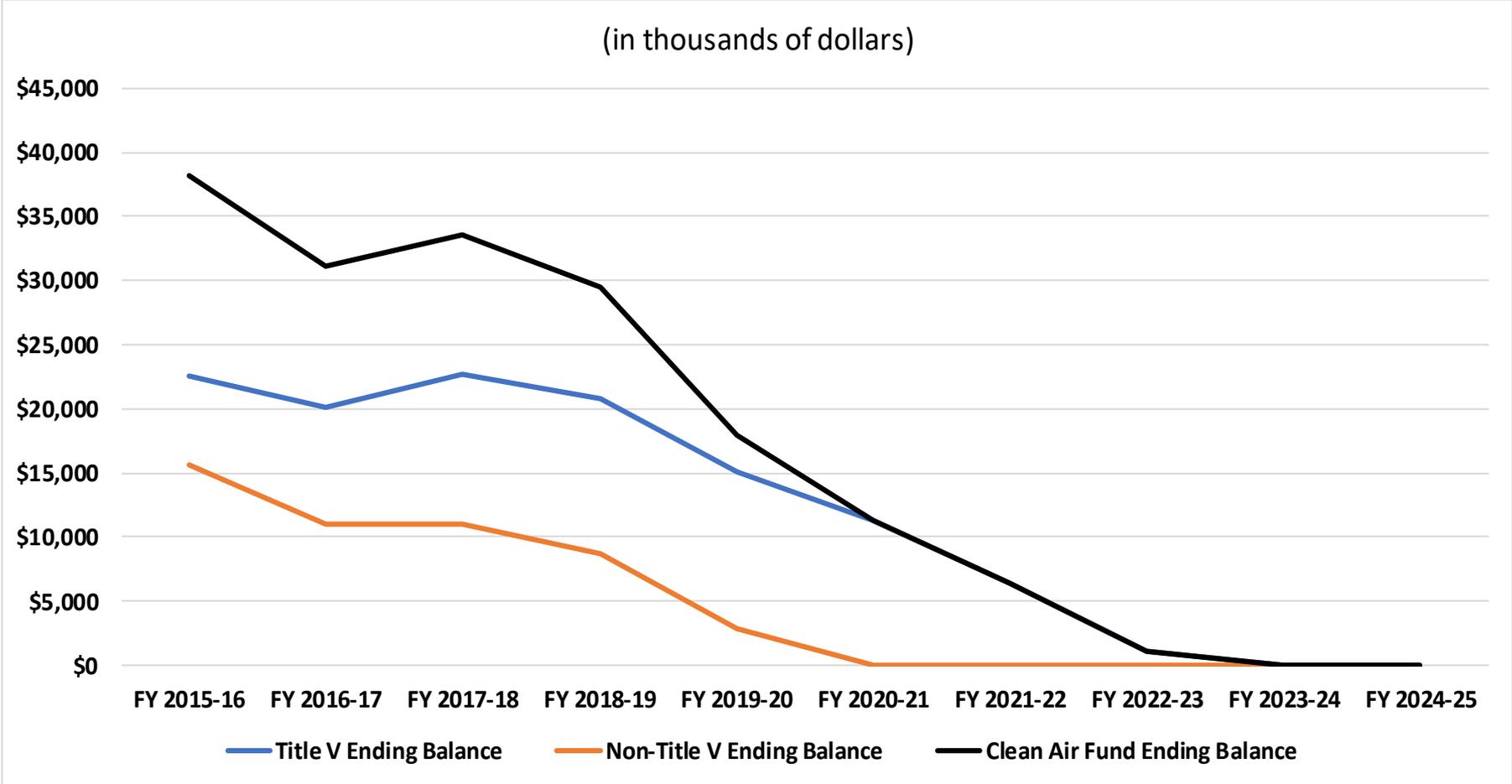


- The fee increases will:

- Primarily maintain staff
- Development of additional electronic permit and fee applications
- Deployment of a mobile inspection platform leading to more efficient compliance inspections and complaint response

- The rulemaking is based upon a comprehensive Clean Air Fund Fiscal Analysis and Fee Report prepared by the Department.

Clean Air Fund without Fee Increases



Public Comment Period

- The Board adopted the Proposed Rulemaking on December 18, 2018.
- The public comment period opened on April 13, 2019, and three public hearings were held:
 - May 13, 2019 - DEP SWRO
 - May 15, 2019 - DEP SERO
 - May 16, 2019 - DEP SCRO
- The public comment period closed on June 17, 2019.
- The Independent Regulatory Review Commission (IRRC) comment period closed on July 17, 2019.

Commenters

1427 people or organizations commented:

- 40 letters from private citizens
- Eight letters from industry
- Four letters from environmental groups with 1,318 signatures, of which one form letter had 1,312 signatures.
- Two letters from the House of Representatives with 60 signatures.
- One letter from the IRRC

Overview of Comments

Commenters stated concern regarding the following:

- Not enough funding, fee increases need to be larger.
- Not enough staff, not conducting enough inspections, more money needed.
- Permit approval delays, need more staff/more money needed.
- Air monitoring infrastructure, more money needed to maintain the components.
- Title V fees not adequate and sustainable. Title V fees should be based on net generation (MWh) from each facility.
- CO₂ is a regulated pollutant and a fee for it must be addressed.

Overview of Comments

Commenters stated concern regarding the following:

- General Assembly only authorized certain types of fees in the APCA. Adding new/different fees is beyond the Department's and the Environmental Quality Board's authority.
- Fee increases are too high and will price businesses and municipalities out of progress, improvement, and innovation.
- Title V emissions are declining so workload is declining and additional money is not needed.
- VW Settlement provides Department with alternative funding that is addressing air quality through a different sector (motor vehicles), so additional Title V fee revenue is not needed.
- Revenue increases of this size need be part of the Commonwealth's negotiated budget process.

Specific Section Comments

Commenters:

- Requested clarification of the timeframe and the use of the term “final action” for the significant operating permit modification.
- Requested that the fee for plan approval extension not apply if delay is caused by the Department.
- Requested clarification that fees only apply to initial asbestos notifications.
- Inquired why the risk assessment fee is in a stand alone section and not the plan approval application fee section.

Public Comments

All public comments can be found in their original form on the Department's [eComment webpage](#), as well as on the IRRC web site (search on IRRC #3231).

The Department addressed each comment provided during the public comment period in the Comment and Response document that accompanies this final-form rulemaking.

Changes from Proposed to Final-form Rulemaking

- The following sections were revised in response to public comments:
 - § 127.465(e) Significant operating permit modification procedures.
 - § 127.702(i)(3) Plan approval fees.
 - § 127.703(d)(1) Operating permit fees under Subchapter F.
 - § 127.704(d) Title V operating permit fees under Subchapter G.
 - § 127.708 Risk assessment
 - § 127.709(b) Asbestos abatement or regulated demolition or renovation project notification.
 - § 127.711 Fees for claims of confidential information.

Changes from Proposed to Final-form Rulemaking

- § 127.465(e) Significant operating permit modification procedures is revised as follows:
 - The Department will take final action on the proposed change **WITHIN 180 DAYS OF RECEIPT OF THE COMPLETE APPLICATION** for the significant **OPERATING PERMIT** modification and, after taking final action, will publish notice of the action in the Pennsylvania Bulletin.
- § 127.702(i)(3) Plan approval fees.
 - The fee for an extension of a plan approval will not apply if, through no fault of the applicant, an extension is required.

Changes from Proposed to Final-form Rulemaking

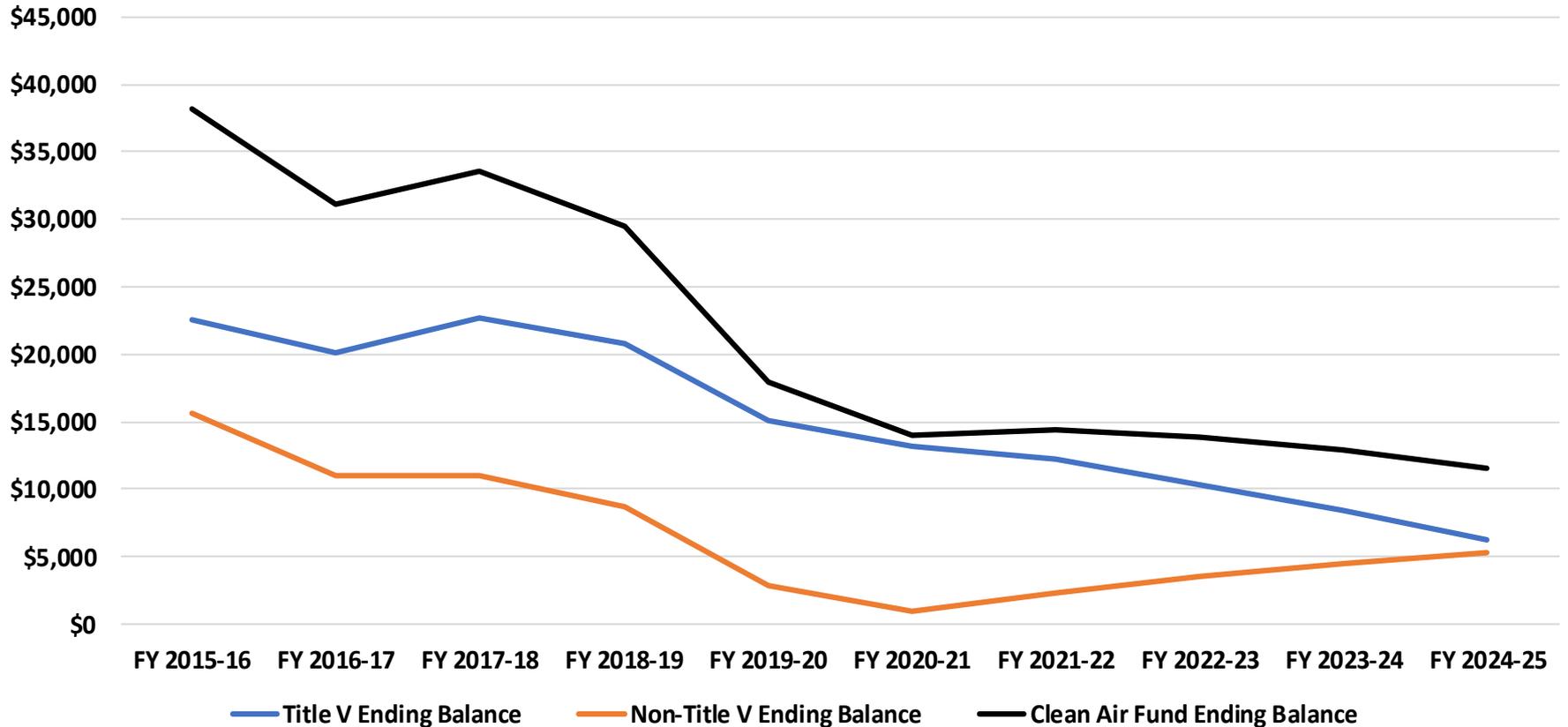
- The annual operating permit maintenance fee for Synthetic Minor Facilities is increased to: \$4000 for calendar years 2021—2025; \$5,000 for calendar years 2026—2030; and \$6,200 for the calendar years beginning with 2031.
- The annual operating permit maintenance fee for Title V Facilities is lowered to: \$8000 for calendar years 2021—2025; \$10,000 for calendar years 2026—2030; and \$12,500 for the calendar years beginning with 2031.
- Made risk assessment fees a subsection of plan approval fees.

Changes from Proposed to Final-form Rulemaking

- The Department has revised § 127.709 regarding Asbestos abatement or regulated demolition or renovation project notification to add subsection (b) to clarify that the fee only applies to the initial notification. The language in subsection (b) is as follows:
 - “The Department will waive the fee for a subsequent notification form submitted for the asbestos abatement or regulated demolition or renovation project.”
- Although the Department has broad authority under the APCA to establish fees, the Department determined that the proposed fee for claims of confidentiality is unneeded and removed it from the final-form rulemaking.

Clean Air Fund with Final-form Fee Increases

(in thousands of dollars)



Advisory Committee Review

- On December 12, 2019, the Air Quality Technical Advisory Committee (AQTAC) voted 10-3-0 to present the final-form rulemaking to EQB. AQTAC also voted 11-0-2 to “recommend that the Department begin, at the earliest legal opportunity, a rulemaking process so that the air quality fees explicitly address emissions of carbon dioxide (CO₂) and air quality program sustainability.”
- On January 21, 2020, the Citizens Advisory Council voted 9-0-0, and on January 22, 2020, the Small Business Compliance Advisory Committee voted 3-2-0 to also present the final-form rulemaking to the EQB.

Recommendation

The current fees are inadequate to cover the costs of the Air Quality Program at current staff levels and operating costs. The Department recommends the EQB adopt this final-form rulemaking.

The Department will submit this final-form rulemaking to EPA for approval as a revision to the State Implementation Plan upon publication in the Pennsylvania Bulletin.



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