

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>
<p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		
<p>(1) Agency Environmental Protection</p>		
<p>(2) Agency Number: 7 Identification Number: 536</p>		<p>IRRC Number: 3231</p>
<p>(3) PA Code Cite: 25 Pa. Code Chapter 121 and 127</p>		
<p>(4) Short Title: Air Quality Fee Schedule Amendments</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Laura Edinger, 783-8727, ledinger@pa.gov Secondary Contact: Jessica Shirley, 783-8727, jessshirley@pa.gov</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input checked="" type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This final-form rulemaking amends Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees). This final-form rulemaking amends existing requirements in Subchapter F and existing air quality plan approval and operating permit fee schedules in Subchapter I. It also establishes fees in Subchapter I to address the disparity between revenue and expenses for the Department of Environmental Protection's (Department) Air Quality Program. These amendments ensure that fees are sufficient to cover the costs of administering the plan approval application and operating permit process as required by section 502(b) of the Clean Air Act (CAA) (42 U.S.C.A. § 7661a(b)) and section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3).</p> <p>The Department is establishing new fees for applications for the following: plantwide applicability limits (PAL); ambient air impact modeling of certain plan approval applications; risk assessments; asbestos abatement or demolition or renovation project notifications (asbestos notifications); and requests for determination (RFD). This final-form rulemaking also amends Subchapter I to add § 127.710 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H), which states that the Department may establish fees for the use of general plan approvals (GPA) and general operating permits (GP) for stationary or portable sources. The Department also adjusted the name of the annual operating permit "administration" fee to an annual operating permit "maintenance" fee that will be due on or before December 31 of each year for the following calendar year.</p> <p>The Department determined the amount for each fee by identifying the number of staff required and the approximate time necessary to complete each review or action, including the cost of salaries and benefits. The Department also compared the fees to those of the Commonwealth's approved local air pollution</p>		

control agencies (Philadelphia and Allegheny Counties) and to those of surrounding states. See attached Fee Analysis Report.

This final-form rulemaking will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to the Commonwealth's State Implementation Plan (SIP) following promulgation of the final-form regulation.

(8) State the statutory authority for the regulation. Include specific statutory citation.

This final-form rulemaking is authorized under section 5(a)(1) of the APCA (35 P.S. § 4005(a)(1)), which grants the Environmental Quality Board (Board) the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth, and section 5(a)(8) of the APCA (35 P.S. § 4005(a)(8)), which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the CAA, which, in this case, relate to fees under Title V of the CAA.

The amendments to the fee schedules are authorized under section 6.3 of the APCA. Section 6.3(a) authorizes the Board to establish 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 (42 U.S.C.A. § 7661-7661f), other requirements of the CAA and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, the Small Business Compliance Advisory Committee, and the Office of Small Business Ombudsman. This section also authorizes the Board by regulation to establish fees to support the air pollution control program authorized by the APCA and not covered by fees required by section 502(b) of the CAA.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as any deadlines for action.

Yes. 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 SIP, which must provide for the attainment and maintenance of the health-based and welfare-based National Ambient Air Quality Standards (NAAQS) established by the EPA for air contaminants including ozone, fine particulate matter, lead, carbon monoxide, nitrogen dioxide and sulfur dioxide. In accordance with 40 CFR 51.280 (relating to resources), the SIP must also include a description of the resources available to state and local agencies needed to carry out the plan.

Section 502(b) of the CAA requires the Commonwealth to adopt regulations that the owner or operator of all sources subject to the requirement to obtain a permit under Title V of the CAA pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V.

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 this instance, 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 (\$1.73 billion in 2018 if not obligated for projects approved by the Federal Highway Administration). The increase in the 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).

There are no relevant court decisions.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Department's Air Quality Program is responsible for safeguarding the health and welfare of the citizens of this Commonwealth by achieving the goals of the CAA and the APCA. To achieve this, the Air Quality Program develops regulations, conducts meteorological tracking and air quality modeling studies and develops transportation control measures and other mobile source programs. The Air Quality Program also helps to improve the economic climate for firms to locate and expand in this Commonwealth through programs such as the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

The new and increased fees are needed to cover the Department's costs to implement the air pollution control plan approval program and operating permit program activities required under the CAA and APCA to attain and maintain the NAAQS for air pollutants, including ozone, particulate matter, lead, carbon monoxide, nitrogen dioxide and sulfur dioxide. The fees are essential to satisfying other requirements of the CAA, APCA and regulations promulgated thereunder. Attaining and maintaining air quality standards is in the public interest, because the standards improve public health and the environment.

In 1994, the Department established an integrated Air Quality Program that issues plan approval and operating permits for two types of sources – major and non-major. See 24 Pa.B. 5899 (November 26, 1994). Major sources are those that emit air pollution above designated thresholds under the CAA and non-major sources emit air pollution below those thresholds. See 42 U.S.C.A. § 7661. Major sources are subject to the statutory requirements under Title V of the CAA and are called Title V sources. *Id.* Conversely, non-major sources which are subject to the APCA, but not Title V, are called Non-Title V sources. The Department currently regulates approximately 500 Title V and 2,100 Non-Title V facilities. The plan approval application and operating permit fees are codified in §§ 127.702—127.704 (relating to plan approval fees; operating permit fees under Subchapter F; and Title V operating permit fees under Subchapter G). Regulations related to the fee schedules for plan approval application and operating permit activities were last revised in November 1994, with staged increases occurring for the next 10 years. See 24 Pa.B. 5899. The last of the staged plan approval and operating permit fee increases occurred in January 2005. See 25 Pa. Code Chapter 127, Subchapter I.

Since the last fee increase in 2005, the Department has tried to maintain parity between its revenue and expenditures by reducing costs associated with administering the Air Quality Program. In addition to streamlining the air permitting program through the Permit Decision Guarantee policy, creating the online RFD form, developing general plan approvals and general operating permits for 19 source categories, and

establishing electronic emissions reporting, the Department has reduced the number of air quality staff since 2005 by 84 positions from 349 to 265, or by 24%.

The CAA and its implementing regulations specifically provide that any fees collected under the Title V Operating Permit Program shall be used solely to fund the costs of that program. See 42 U.S.C.A. § 7661a(b)(3)(C)(iii) and 40 CFR 70.9(a) (relating to fee determination and certification). The APCA provides for the establishment of the Clean Air Fund and separate accounts, if necessary, to comply with the requirements of the CAA. The Clean Air Fund consists of two “special fund” appropriations: the Title V Account and the Non-Title V Account. Revenue received from the Title V air quality permitting and emission fees along with associated interest is deposited into the Title V Account. Revenue from the Non-Title V air quality permitting fees, the imposed fines and penalties for both Title V and Non-Title V facilities, and associated interest is deposited into the Non-Title V Account. In the early years of the Title V permitting program when there were more facilities and emissions of regulated pollutants were significantly greater than today, the Clean Air Fund balance was large. After many years of drawing down this accumulated balance to cover Air Quality Program costs and expenditures that exceeded annual revenue, the Clean Air Fund balance is now approaching zero. The final-form fee amendments halt this decline in the Clean Air Fund balance and bring annual program revenue in line with annual program expenditures. To maintain solvency in the Clean Air Fund and match revenue to expenditures, the Department needs to generate additional revenue of approximately \$5.0 million for the Title V Account and \$7.7 million for the Non-Title V Account beginning by fiscal year (FY) 2020-2021 to balance the projected expenditures of \$19.2 million for the Title V Account and \$9.4 million for the Non-Title V Account (a combined total expenditure of approximately \$28.6 million).

The Title V emission fee under § 127.705 (relating to emission fees) is payable by the owners and operators of Title V-permitted facilities by September 1 of each year for emissions from the previous year and is subject to the permitting provisions of Title V of the CAA. This fee is assessed per ton of regulated pollutant up to 4,000 tons of any regulated pollutant, excluding carbon monoxide and greenhouse gases. The 4,000-ton cap of any regulated pollutant is set by statute under section 6.3(c) of the APCA. The Title V emission fee schedule was last amended by the Board in 2013. See 43 Pa.B. 7268 (December 14, 2013).

The fee structure will ensure the continued protection of public health and welfare of the approximately 12.8 million Commonwealth residents and the environment, and allow the Commonwealth to meet the obligations required by the CAA. This financial support is also necessary to ensure the timely issuance of air quality permits for the regulated community, which could help retain and attract businesses to this Commonwealth. As a result, Commonwealth residents and industries benefit from this final-form rulemaking.

Because deficit spending is not allowed, the Air Quality Program expenditures will need to be decreased by approximately \$13 million per year if these final-form amendments to the fee schedules are not promulgated. To address ongoing shortfalls in Clean Air Fund revenue, the Air Quality Program has seen significant reductions in staff since 2000 (111 positions or 30%). If Clean Air Fund revenue is not restored to sustainable levels, additional reductions in air quality staff at all levels in both the Bureau of Air Quality and the Department's six regional offices will be required. Conservatively, a decrease of 80 staff members, an approximately 30% reduction from current staffing levels of 265 members, would be needed. This would severely impact the ability of the Air Quality Program to process and review permit applications; inspect facilities and respond to citizen complaints; initiate compliance and enforcement activities; and develop the required regulatory and nonregulatory SIP revisions in a timely manner. Failure to maintain an approved SIP could result in the EPA establishing a Federal Implementation Plan (FIP) for the

Commonwealth; under a FIP all fees, penalties and other revenue would be paid to the EPA. This would likely be unacceptable to the regulated industry, local government and the public.

Title V Account

A comparison of the revenue and expenditures (in thousands of dollars) for the Title V Account based on the existing fee structure is provided in Table 1 for the past year and projected through FY 2024-2025. Revenue includes Title V emission fees, major source plan approval application and operating permit fees, and associated interest. The expenditures exceeded the revenue in the Title V account in FY 2018-2019 and are projected to exceed revenues by \$4 million and rising to over \$5 million in each of the fiscal years going forward. The Title V Account is currently projected to have a decreasing ending balance, from \$20.744 million in FY 2018-2019 to negative \$9.977 million in FY 2024-2025, or a decrease of over \$30 million, as shown in Table 1.

Table 1
Title V Account without Fee Amendments
(in thousands of dollars)

	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25
	ACTUAL	BUDGET	PLAN YR 1	PLAN YR 2	PLAN YR 3	PLAN YR 4	PLAN YR 5
Beginning Balance	\$ 22,684	\$ 20,744	\$ 15,117	\$ 11,322	\$ 6,435	\$ 1,113	\$ (4,355)
Total Revenue	\$ 15,938	\$ 12,912	\$ 14,930	\$ 14,213	\$ 14,160	\$ 14,404	\$ 14,647
Total Expenditures	\$ 17,878	\$ 18,539	\$ 18,725	\$ 19,100	\$ 19,482	\$ 19,872	\$ 20,269
Ending Balance	\$ 20,744	\$ 15,117	\$ 11,322	\$ 6,435	\$ 1,113	\$ (4,355)	\$ (9,977)

Non-Title V Account

A comparison of the revenue and expenditures (in thousands) for the Non-Title V Account based on the existing fees structure is provided in Table 2 for the past year and projected through FY 2024-2025. Revenue includes plan approval application and operating permit fees for Non-Title V sources, penalties and associated interest. The expenditures exceeded the revenue in the Non-Title V Account in FY 2018-2019 and are projected to exceed revenue by approximately \$6 million and rising to over \$6.5 million in each fiscal year going forward. The Non-Title V Account balance is projected to reach zero in FY 2020-2021 with an ending deficit of about \$2.8 million and to have a deficit of around \$28 million by FY 2024-2025, as expenditures outpace revenue, as shown in Table 2.

Table 2
Non-Title V Account without Fee Amendments
(in thousands of dollars)

	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	FY 23-24	FY 24-25
	ACTUAL	BUDGET	PLAN YR 1	PLAN YR 2	PLAN YR 3	PLAN YR 4	PLAN YR 5
Beginning Balance	\$ 10,940	\$ 8,746	\$ 2,855	\$ (2,817)	\$ (8,842)	\$ (15,057)	\$ (21,468)
Total Revenue	\$ 7,175	\$ 3,644	\$ 3,740	\$ 3,575	\$ 3,577	\$ 3,577	\$ 3,577
Total Expenditures	\$ 9,369	\$ 9,535	\$ 9,412	\$ 9,600	\$ 9,792	\$ 9,988	\$ 10,188
Ending Balance	\$ 8,746	\$ 2,855	\$ (2,817)	\$ (8,842)	\$ (15,057)	\$ (21,468)	\$ (28,079)

In 2013, when the Board amended the Title V emission fee schedule, the Department projected that the increased emission fee would not be sufficient to maintain the Title V fund and noted that a revised emission fee or other revised permitting fees would be needed within 3 years. See 43 Pa.B. 7268 (December 14, 2013). This is due, in part, because emissions subject to the Title V emission fee have decreased by 47% since 2000 and continue to decrease as more emission reductions are required to attain and maintain the revised applicable NAAQS established by the EPA. This results in reduced revenue for the program, even with the revised emission fee adopted in 2013. The Title V emission fee is currently \$93.06 per ton of regulated pollutant up to 4,000 tons of any regulated pollutant, excluding carbon monoxide and greenhouse gases, for emissions reported for calendar year 2019. The Department has not made any changes to the Title V emission fee in this final-form rulemaking.

In considering the decreases in emissions subject to the Title V emission fee, the impact of fees on the regulated community, and the needs of the air quality and operating permit programs, the Department evaluated the adjustment of the annual operating permit administration fee to an annual operating permit maintenance fee, as well as increases to the other fees required under §§ 127.702—127.704. The Department adjusted the name of this fee to better describe its purpose since these annual operating permit fees are used to cover the Department’s costs for evaluating the facility to ensure that it is “maintaining” compliance, including the costs of inspections, reviewing records and reviewing permits.

The annual operating permit maintenance fee for the owner or operator of a Title V facility is \$8,000 for calendar years 2021-2025. This fee would apply to all Title V facility owners and operators and not just to those identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions). There are approximately 500 Title V facility owners and operators regulated by the Department. This annual operating permit maintenance fee is expected to generate revenue of approximately \$4 million from the approximately 500 Title V facility owners and operators for each of calendar years 2021-2025. Table 3 illustrates the revenue generated from existing fees compared to anticipated revenue that would be generated from the fees in this final-form rulemaking, including the annual operating permit maintenance fee.

Table 3
Estimated Projected Title V Facilities Fee Revenue for FY 2020-2021
 (Approximately 500 Affected Facilities under the Department’s Jurisdiction)

	Current Fees	Projected Revenue with Annual Operating Permit Maintenance Fee of \$8,000 due by December 31, 2020 for calendar year 2021
Title V Emission Fee per ton for 2019 due on September 1, 2020	\$93.06	\$93.06
Emission Fee Revenue	\$13,995,384	\$13,995,384
Operating Permit Administration Fee per year per facility	\$750	
Operating Permit Administration Fee Revenue (30 facilities)	\$22,500	
Operating Permit Maintenance Fee per year per facility	\$0	\$8,000
Operating Permit Maintenance Fee Revenue (all facilities) annually	\$0	\$4,000,000
Number of DEP regulated facilities that pay 90% of the combined Title V Emission Fee	102	289

and Annual Operating Permit Maintenance Fee Revenue		
Other Title V Operating Permit Fee Revenue	\$412,625	\$1,371,800
Total Title V Facility Revenue	\$14,430,509	\$19,367,184

The annual operating permit maintenance fee for the owner or operator of a Non-Title V facility that is a synthetic minor is \$4,000. The annual operating permit maintenance fee for the owner or operator of a Non-Title V facility that is not a synthetic minor is \$2,000. This fee is expected to generate revenue of approximately \$5.5 million from the 2,100 Non-Title V facility owners and operators for each of calendar years 2021-2025. Table 4 illustrates the revenue generated from existing fees compared to anticipated revenue generated from the final-form fees, including the annual operating permit maintenance fee.

Table 4
Estimated Projected Non-Title V Facilities Fee Revenue for FY 2020-2021
(2,100 Affected Facilities under the Department’s Jurisdiction)

	Current	Projected Revenue with Annual Operating Permit Maintenance Fee due by December 31, 2020 for calendar year 2021
Plan Approval Application	\$259,000	\$605,500
Operating Permit	\$203,250	\$1,091,300
Operating Permit Administration Fee (all facilities) annually	\$787,500	
Penalties	\$2,000,000	\$2,000,000
Operating Permit Maintenance Fee (all facilities) annually		5,500,000
Requests for Determination (RFD)	\$0	\$260,000
Asbestos Notifications	\$0	\$1,500,000
Risk Assessments	\$0	\$10,000
Total Non-Title V Facility Revenue	\$3,249,750	\$10,966,800

The revenue from the increases to existing plan approval application and operating permit fees and the establishment of new fees would support: current staffing levels and restoration of a portion of the lost staffing positions for Title V plan approval application and operating permit application reviews, compliance inspections, and complaint response activities; the ambient air monitoring network; ambient air impact modeling activities; major source SIP planning and regulatory development activities; emissions inventory and tracking; development and maintenance of an electronic permit application system for general plan approvals and general operating permits; development of an electronic fee payment system; and general administrative costs. The amount of each fee was determined by evaluating the estimated work effort and then calculating the approximate total cost for each service. In many cases, the fees were set below the total cost to take into account funding from the Commonwealth’s General Fund and from Federal grants.

These improvements to the Air Quality Program would benefit the approximately 2,100 Non-Title V permitted facility owners and operators through continued review and action on plan approval and operating permit applications. Increased revenue would also allow the ambient air monitoring network to

better assess and demonstrate that this Commonwealth is attaining and maintaining the NAAQS. The attainment and maintenance of the NAAQS will protect the public health and welfare of the approximately 12.8 million residents and reduce the negative impacts of air pollution on the environment.

The permit fee revisions for Title V and Non-Title V facilities, when promulgated as a final-form regulation, would support the existing operations and activities in the Air Quality Program and operating permit programs. Sustaining the staffing levels and resources for these program activities would benefit the approximately 2,600 permitted Title V and Non-Title V facility owners and operators by ensuring that permitting activities, inspections and SIP planning activities are completed within a reasonable time. This would allow the regulated owners and operators to quickly and fully use production capabilities or to expand their operations. Sustaining existing and future activities of the Air Quality Program would support the Commonwealth's efforts to attain and maintain the health-based and welfare-based NAAQS and to satisfy other requirements of the CAA, APCA and regulations promulgated thereunder. Adequate funding would allow the Department to provide appropriate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to reduce emissions of regulated pollutants to attain and maintain healthy air quality.

The addition to § 121.1 of the term "synthetic minor facility" is needed to clarify which sources are subject to a specific fee.

The amendments to § 127.424(b) and (e) are needed to correct an error in a cross reference.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There are no provisions more stringent than Federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Comparing air quality fees between states is challenging, because every state's air program is unique. Each state's air quality program regulates a different number and mix of facilities, has different permitting requirements, defines permitting procedures differently, implements unique permitting fee structures and maintains different staffing levels to perform the required activities. Further, each state has different infrastructure components required as part of its air quality program, which impose differing costs on each state; for example, the number and type of monitors required to meet the state's air pollutant monitoring obligations under the CAA. The size and geography of each state also affects the costs of a state's air quality program, such as the amount of time needed for staff to travel to and between facilities to conduct inspections or respond to complaints, or to service the ambient air monitoring network. The resulting costs vary among state programs.

Even one region of a state could regulate differently than the rest of the state. For example, the southeast region of this Commonwealth is in a severe nonattainment area and has different major source thresholds and applicability and permitting requirements compared to the remainder of this Commonwealth and to neighboring states.

Table 6 compares the fees assessed by the Commonwealth and neighboring states for similar types of plan approval applications (also referred to as construction permits in some states).

Table 6
Comparison of Fees Assessed by Pennsylvania and Neighboring States

Plan approval (construction) application fees	PA	NJ	OH	WV	DC	VA	MD	DE
Base fee: Source is not subject to NSPS, MACT, PSD or NSR requirements. Section 127.702(b).	\$2,500	\$820	\$400	\$1,000	None	None	\$800	\$165
Source is subject to NSPS and state requirements. Section 127.702(b) and (d).	\$5,000	\$5,054	\$1,000	\$2,000	None	\$524	\$2,000	\$165
Source is subject to NSPS, MACT, NSR and state requirements. Section 127.702(b), (c), and (d).	\$17,500	\$50,000	\$3,750	\$14,500	None	\$31,697	\$20,500	\$1,290
Source is subject to NSPS, MACT, PSD and state requirements. Section 127.702 (b), (d), and (f).	\$42,500	\$50,000	\$3,750	\$14,500	None	\$31,697	\$20,500	\$1,290
Source is subject to NSPS, MACT, PSD, NSR and state requirements. Section 127.702(b), (c), (d), and (f).	\$52,500	\$50,000	\$3,750	\$14,500	None	\$31,697	\$40,500	\$1,290

Table 6 illustrates that the increases to existing plan approval application fees in this Commonwealth would result in fees that are higher or lower than the fees assessed for similar plan approval applications in neighboring states, but overall would be comparable to the fees currently assessed in neighboring states.

The Department is establishing a fee for notifications of asbestos abatement or regulated demolition or renovation projects (asbestos abatement projects or asbestos notifications). Several states have established fees for notifications of asbestos abatement projects. Ohio collects a fee of \$75 for each notification and separate fees of \$3 to \$4 per unit of asbestos removed. New York requires the submission of a notification form and collects a fee ranging from \$0 to \$2,000 based on the amount of asbestos removed. New Jersey collects an administrative fee of \$118 for each construction permit issued for an asbestos hazard abatement project. Philadelphia County Health Department, Air Management Services (AMS) collects a project notification fee of \$25 plus a permit fee for major projects of 2.5% for the first \$50,000 and 1.25% of any amount over \$50,000. The Allegheny County Health Department (ACHD) collects fees for asbestos abatement permits ranging from \$150 for projects less than 360 square feet to \$650 for projects greater than 1,000 square feet. In addition, ACHD collects a \$150 fee for asbestos abatement final clearance re-inspections. The Department’s fee would be \$300 for notifications filed during calendar years 2021 through 2025; \$375 for notifications filed during calendar years 2026 through 2030; and \$475 for notifications filed during calendar year 2031 and after. This fee is comparable to, and in many instances less than, the fee collected by neighboring states, AMS and ACHD.

The Department is establishing fees for reviewing risk assessment applications. A risk assessment report prepared by the Department describes the potential adverse effects under both current and planned future conditions caused by the presence of hazardous air pollutants in the absence of any further control, remediation, or mitigation measures. These reviews require extensive staff time to research and to develop the report of potential adverse effects. This cost to the Department is currently borne by the owners and operators of all permitted facilities through the plan approval application and permitting fees that they pay.

New Jersey has established a fee of \$2,527 to review a risk assessment protocol and a fee of \$2,527 to review a risk assessment. The Department has not identified other states that have risk assessment

application fees. The Department's final-form rulemaking includes a fee for risk assessment applications for projects that only involve inhalation of air emissions beginning with \$10,000 for applications filed during calendar years 2021 through 2025; \$12,500 for applications filed during calendar years 2026 through 2030; and \$15,625 for applications filed for the calendar years beginning with 2031 and thereafter. This final-form rulemaking also includes the following fee for the application for a multi-pathway risk assessment (air, water, soil) beginning with \$25,000 for applications filed during calendar years 2021 through 2025; \$31,250 for applications filed during the calendar years 2026 through 2030; and \$39,100 for the calendar years beginning with 2031 and thereafter. The Department receives approximately three inhalation only and one multi-pathway risk assessment applications per year. This final-form rulemaking would impose the Department's costs of researching and developing the report of potential adverse effects on the owner or operator requesting the risk assessment rather than assessing and spreading this cost across all permitted owners and operators. This approach enables the Department to have lower fee increases overall for plan approval application and operating permits and not increase the Title V emission fee as a result.

This final-form rulemaking establishes a fee for reviewing an application for a RFD for changes of minor significance and exemption from a plan approval or exemption from both a plan approval application and an operating permit submitted by the owner or operator of a source which is not a Title V facility. RFDs are used by the owners and operators of facilities to determine whether a plan approval application is required for a specific air contamination source and, if so, is an operating permit required in addition to the plan approval application, as these owners or operators may not be familiar with applicable permitting requirements. The Department reviews the data supplied by the owner or operator to determine if the air contamination source is of minor significance or if a plan approval application or both a plan approval application and an operating permit is required. The RFD process allows any owner or operator to avoid the full cost associated with submitting a comprehensive plan approval application to receive a written determination from the Department. The Department is not aware of any formal procedure similar to the RFD being conducted in other states. The Department receives approximately 1,000 RFD applications per year. This fee would impose the Department's costs of reviewing the RFD application and issuing a determination upon the owner or operator requesting the RFD rather than assessing and spreading this cost across all permitted owners and operators. This approach enables the Department to assess lower fee increases overall for plan approval application and operating permit fees and for the Title V annual emission fee as a result.

Commensurate with the Department's cost to review RFDs, the fee is \$600 for RFDs filed during calendar years 2021 through 2025; \$750 for RFDs filed during calendar years 2026 through 2030; and \$940 for RFDs filed during calendar year 2031 and thereafter. Taking into account the ability to pay for some small businesses, the Department is proposing to charge \$400 for RFDs filed during calendar years 2021 through 2025; \$500 for RFDs filed during calendar years 2026 through 2030; and \$650 for RFDs filed during calendar year 2031 and thereafter for the owner or operator of a source that meets the definition of small business stationary source in section 3 of the APCA (35 P.S. § 4003).

The increases to the plan approval application and operating permit fees and establishment of new fees would not put the Commonwealth at a disadvantage with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This final-form rulemaking amends Chapters 121 and 127; no other Department regulations are affected. Regulations of other Commonwealth agencies are not impacted.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) in the development of this rulemaking. A fiscal analysis of the Clean Air Fund, the Air Quality Program budget, and the proposed fee concepts, including the three Title V fee options, were discussed with AQTAC on December 14, 2017. On June 14, 2018, the draft proposed Annex A containing the recommended fee schedule (Option 1) was presented. At that meeting, AQTAC concurred with the Department's recommendation to move the draft proposed rulemaking forward to the Board for consideration.

The Department presented and discussed the draft final-form Annex A with AQTAC on December 12, 2019. AQTAC concurred with the Department's recommendation to advance the final-form rulemaking to the Board for consideration. AQTAC also recommended that the Department begin, at the earliest legal opportunity, a rulemaking process so that the air quality fees explicitly address emissions of carbon dioxide as stated in its letter of concurrence, dated December 12, 2019, which accompanies this final-form rulemaking.

The Department also conferred with the Citizens Advisory Council’s (CAC) Policy and Regulatory Oversight (PRO) Committee concerning the draft proposed rulemaking on June 15 and 25, 2018. The full CAC discussed the draft proposed rulemaking on July 17, 2018, and concurred with the Department's recommendation to move the draft proposed rulemaking forward to the Board for consideration. The CAC also stated in its letter of concurrence, dated July 17, 2018, a few comments and questions for the Department to consider. The Department has addressed CAC’s comments and questions in this final-form rulemaking.

The Department conferred again with the CAC PRO Committee on January 6, 2020, this time presenting the draft final-form rulemaking. The full CAC discussed the draft final-form rulemaking on January 21, 2020, and concurred with the Department's recommendation to advance the final-form rulemaking to the Board for consideration.

An overview of the draft proposed rulemaking was presented to the Small Business Compliance Advisory Committee (SBCAC) on July 25, 2018, and SBCAC concurred with the Department's recommendation to move the draft proposed rulemaking forward to the Board for consideration.

Finally, the Department presented and discussed the draft final-form Annex A with SBCAC on January 22, 2020. SBCAC concurred with the Department's recommendation to move the final-form rulemaking forward to the Board for consideration.

The AQTAC, SBCAC, and CAC meetings are publicized in the *Pennsylvania Bulletin* and on the Department’s website and are open to the public.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This final-form rulemaking would affect the owners and operators of air contamination sources in this Commonwealth, including all Title V and Non-Title V facilities, subject to the plan approval and permitting requirements of the CAA and APCA and implementing regulations, as well as asbestos demolition and renovation contractors. The universe of permitted sources regulated by the Department include approximately 500 Title V permitted facilities and 2,100 permitted Non-Title V facilities. Approximately 2,000 environmental remediation contractors submit a total of about 7,000 asbestos abatement notifications each year, of which about 5,000 are new notifications. State and local government agencies would also be affected if they have a permitted air contamination source.

The Department reviewed its list of Title V permitted facilities to determine the number of those that potentially meet the definition of small business specified in Section 3 of the Regulatory Review Act, as “in accordance with the size standards described by the United States Small Business Administration’s (SBA) Small Business Size Regulations under 13 CFR Chapter 1 Part 121 (relating to Small Business Size Regulations) or its successor regulation.” Given the large number of facilities from differing industry sectors affected by this regulation, no precise method exists to determine how many businesses meet the SBA definition of “small business.” The SBA small-business-size standards vary between industry sectors; for some sectors it is number of employees, for other sectors it is throughput and for others it is amount of sales or profits. However, the SBA has a method by which the Department can determine with a reasonable degree of certainty whether a source is a small business – the SBA Dynamic Small Business Search database.

The SBA Dynamic Small Business Search database contains information about small businesses that have registered with the SBA. It is the Department’s understanding that this self-certifying database incorporates the small business criteria contained in 13 CFR Chapter 1, Part 121, such as Standard Industrial Classification Code and number of employees, when the owners or operators of the companies register. Registration in this database benefits small business owners and operators because the database assists government contracting officers in determining whether a company is eligible to apply for government contracts as a small business. Therefore, there is a high likelihood that a business that qualifies as a small business will be registered in the database. The SBA does not, however, maintain a definitive listing of small businesses.

The Department reviewed the SBA Dynamic Small Business Search database to determine which of the approximately 500 Title V companies, if any, are registered as a small business with the SBA. In addition, the Department reviewed other data sources including the U. S. Department of Energy, Energy Information Agency database on electric generating to determine whether electric generating units in this Commonwealth meet the definition of small business. The Department also reviewed information available on individual company websites for information that could identify a company as a small business. Based on these reviews, the Department estimates that 76 of the approximately 500 Title V facility owners and operators potentially meet the definition of small business as defined by the SBA.

The Department estimates that the owners and operators of approximately 1,050 of the 2,100 Non-Title V permitted facilities are small businesses as defined by the SBA. The owner and operator of a facility may be classified as a small business while still emitting sufficient quantities of regulated pollutants (nitrogen oxides, sulfur oxides, particulate matter, volatile organic compounds or hazardous air pollutants) to be subject to air quality permitting and inspection requirements. This is particularly true as computerization and mechanization enable facilities to produce more product with fewer employees.

The Department expects that most of the 2,000 contractors who submit asbestos notifications meet the small business size threshold for environmental remediation services (less than 500 employees).

The financial impact on the owners and operators of all Title V facilities regulated by the Department is expected to be an additional cost of approximately \$5 million per year, collectively.

The financial impact on the owners and operators of all Non-Title V facilities regulated by the Department is expected to be an additional cost of approximately \$7 million per year, collectively.

The financial impact on the environmental remediation contractors subject to the asbestos notification fee would be approximately \$1.5 million per year, collectively.

The higher fees, however, will maintain current Air Quality Program staffing levels to ensure that permitting activities, inspections, and planning activities are completed in a timely fashion. This will benefit the regulated community by allowing affected owners and operators to more quickly and fully use production capabilities or to expand their operations, thereby increasing profits through the sale of more products and services. The fee structure would also ensure the continued protection of public health and welfare of the approximately 12.8 million Commonwealth residents and the environment and would allow the Commonwealth to meet the obligations required by the CAA. As a result, both the residents and industries of this Commonwealth will benefit from this final-form rulemaking.

Please see Question 17 for additional detail.

(16) List the persons, groups or entities, including small businesses, which will be required to comply with the regulation. Approximate the number that will be required to comply.

The owners and operators of approximately 500 Title V facilities in this Commonwealth would be subject to the increases to the plan approval application and operating permit fees. (Please see the response to Question 15 for a description of the types of companies.) Approximately 76 of these facilities may meet the definition of small business under the SBA size regulations.

The Department estimates that the owners and operators of the 2,100 Non-Title V permitted facilities would be subject to the increases to the plan approval application and operating permit fees. The Department estimates that the owners and operators of approximately 1,050 Non-Title V facilities meet the definition of small business as defined by the SBA.

The Department estimates that most of the 2,000 contractors who submit asbestos notifications would meet the SBA small business size threshold for environmental remediation services (less than 500 employees).

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The financial impact on the owners and operators of all Title V facilities regulated by the Department, collectively, will be additional plan approval and operating permitting costs of approximately \$900,000 per year as well as approximately \$4 million in annual operating permit maintenance fee costs. The Department estimates that Title V small businesses, in total, will pay an additional \$820,000 annually.

The financial impact on the owners and operators of Non-Title V facilities regulated by the Department, collectively, would be additional plan approval and operating permitting costs of approximately \$1.5 million per year as well as approximately \$5.5 million in annual operating permit maintenance fee costs.

The Department estimates that Non-Title V small businesses, in total, will pay an estimated additional \$3.1 million annually.

Approximately \$1.5 million in asbestos notification fees will be collected from 2,000 environmental remediation contractors, most of which will likely be small businesses.

The revenue from these new and increased fees would contribute to the public health and social well-being of the approximately 12.8 million Commonwealth residents by maintaining or increasing Air Quality Program staffing levels for the timely and complete processing of plan approval applications, operating permit reviews, source testing protocol reviews, air quality monitoring, planning activities and facility inspection programs. For example, operation and maintenance of the ambient air monitoring network is fundamental to documenting and demonstrating that the Commonwealth is attaining and maintaining the air quality standards set to protect the public health and welfare and is meeting its obligations under the Federally approved SIP.

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. The fees for asbestos abatement or regulated demolition or renovation project notifications would provide revenue to maintain staffing to review these notifications and inspect these projects. The new fees for processing RFD applications of whether a plan approval application or permit application, or both, are needed for a proposed modification or change at a facility would provide the revenue to maintain staffing to review and issue determinations.

Sustaining the activities and resources of the Department's Air Quality Program provides the tools to attain and maintain the NAAQS, satisfy the Commonwealth's obligations under the CAA, APCA and regulations promulgated thereunder, and avoid punitive actions by the EPA, including the imposition of 2-to-1 emission offset sanctions for the construction of major new and modified stationary sources as well as the loss of Federal highway funds (\$1.73 billion in 2018 if not obligated for projects approved by the Federal Highway Administration). Sustaining the Air Quality Program benefits the citizens and environment of this Commonwealth by maintaining the gains in healthy air quality that have been made since the mid-90s through reductions of emissions of regulated air pollutants from major and non-major permitted sources.

According to the PA Department of Health *2015 Asthma Prevalence in Pennsylvania Fact Sheet*, 9.6% or 955,374 adults and 10.2% or 269,423 children currently suffer from asthma. This is significantly higher than the National average of 8.3% for both children and adults. A 2018 report from the Asthma and Allergy Foundation of America lists Philadelphia as the 4th most challenging U.S. metropolitan city for people with asthma to live in based on air quality, the portion of residents with asthma and the number of asthma-related medical incidents. Scranton ranked 21st and Allentown ranked 27th. Without sufficient funding of the Department's Air Quality Program, the air pollution and the prevalence of asthma in this Commonwealth is likely to increase.

Sustaining the Clean Air Fund maintains the Department's plan approval application and operating permit program as well as the associated activities. Loss of Department staff could result in delays in expanding permitted facility operations or ramping up production, industry employee layoffs, and loss of revenue to the regulated industry through the inability to increase sales of products or services, and loss of tax revenue to the Commonwealth.

There are no costs associated with the revisions to §§ 121.1 and 127.424.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The anticipated additional revenue to be generated from implementation of these new and increased fees is estimated to be approximately \$13 million per year beginning in FY 2020-2021. This revenue for the Commonwealth's Air Quality Program would be a cost to the regulated industry; however, this revenue would provide the resources for the Department to continue to carry out its obligations under the CAA and APCA to assure healthy air quality for the citizens and environment of this Commonwealth, and attract potential employees to work in this Commonwealth. This revenue to the Department would benefit the regulated community by allowing affected owners and operators to more quickly and fully use production capabilities or to expand their operations, thereby increasing profits through the sale of more products and services.

In comparison to the annual costs of \$13 million to the regulated industry, the EPA has estimated that the monetized health benefits of attaining the 2008 8-hour ozone NAAQS of 0.075 ppm range from \$8.3 billion to \$18 billion annually on a National basis by 2020.¹ Prorating that benefit to Commonwealth residents, based on United States Census Bureau 2015 population estimates, results in an annual public health benefit of \$332 million to \$720 million.

Similarly, the EPA has estimated that the monetized health benefits of attaining the 2015 8-hour ozone NAAQS of 0.070 ppm range from \$1.5 billion to \$4.5 billion annually on a National basis by 2025.² Prorating that benefit to Commonwealth residents, based on United States Census Bureau 2015 population estimates, results in an annual public health benefit of \$60 million to \$180 million. These EPA estimates are indicative of the health benefits to Commonwealth residents of attaining the 2008 and 2015 8-hour ozone NAAQS and maintaining healthy air quality throughout this Commonwealth.

The monetized health benefits to Commonwealth residents achieved in part through reduced emissions of regulated pollutants are considerable in comparison to the costs of paying new and increased fees incurred by the owners and operators of permitted facilities and environmental remediation contractors.

(19) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The current Title V annual emission fee, due September 1, 2020, for emissions that occurred in calendar year 2019, is \$93.06 per ton for emissions of up to 4,000 tons of each regulated pollutant, except for greenhouse gases and carbon monoxide. This final-form rulemaking retains the existing Title V annual emission fee, as adjusted by the Consumer Price Index.

The additional costs starting in FY 2020-2021 for the owners and operators of Title V facilities are expected to be approximately \$5.0 million per fiscal year. These costs include increased and new fees for permit applications, permit renewals, permit revisions, and the annual operating permit maintenance fee.

The Department is also amending the Non-Title V plan approval application and operating permit fees, as well as establishing fees for processing RFD forms and asbestos project notification fees. This revenue would be deposited in the Non-Title V Account of the Clean Air Fund. Total revenue in FY 2020-2021

¹ *Regulatory Impact Analysis, Final National Ambient Air Quality Standard for Ozone*, July 2011.

² *Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone*, September 2015.

from these new and amended plan approval application, operating permit and RFD fees is estimated to be around \$7 million per year. Revenue was estimated based on the average number of plan approval applications, operating permit applications, and RFD applications received from Non-Title V permitted owners and operators.

Approximately \$1.5 million in asbestos notification fees will be collected from 2,000 environmental remediation contractors, most of which will likely be small businesses.

The additional costs were estimated by calculating the anticipated future fee revenue from the new and amended fees.

No new legal, accounting or consulting procedures would be required.

(20) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Of the total regulated community, approximately 160 facilities that would be subject to this final-form rulemaking are owned or operated by government agencies. Of these, there are approximately 11 Federally-owned or operated installations, 52 state-owned or operated facilities, and 97 local government-owned or operated facilities.

Thirteen of the 97 facilities owned and operated by local government agencies are permitted Title V facilities. The local government owners and operators of these facilities are exempt from paying Title V emission fees as provided under section 6.3(f) of the APCA. However, the owners and operators are required to pay the plan approval application and operating permit fees. The Department estimates that the owners and operators of these facilities would pay Title V annual operating permit maintenance fees totaling \$104,000 (\$8,000 x 13 facilities = \$104,000). In addition, every 5 years these owners and operators would pay a permit renewal application fee of \$4,000 per application for an estimated total of \$52,000 (\$4,000 x 13 facilities), with an average of 2 to 3 renewals each year for a range of \$8,000 to \$12,000 per year. Other fees may apply to the owners and operators of these facilities depending on the facility-specific permit application.

The Department estimates that there are approximately 84 local government facilities that are classified as Non-Title V (natural minor or synthetic minor) that would be subject to the fee schedule. The fees include an annual operating permit maintenance fee of \$2,000 or \$4,000 per facility (\$168,000--\$336,000 for all facilities). In addition, every 5 years these owners and operators would pay a permit renewal application fee of \$2,100 per application or estimated total of \$176,400, with an average of 16 to 17 renewals each year for a range of \$33,600 to \$35,700 per year. Other fees may apply to these facilities depending on the specific application.

The Department estimates the total annual cost for all the local government owned and operated facilities would be approximately \$400,000 depending on the number and type of permit renewals.

(21) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Of the total regulated community there are approximately 52 state-owned facilities subject to this regulatory change.

Twenty-one of the 57 facilities owned and operated by state government agencies are permitted Title V facilities. The owners and operators of these facilities are exempt from paying Title V emission fees as provided under section 6.3(f) of the APCA. The owners and operators are required to pay the plan approval application and operating permit fees. The Department estimates that the owners and operators of these facilities would pay Title V annual operating permit maintenance fees totaling \$168,000 (\$8,000 x 21 facilities = \$168,000). In addition, every 5 years these owners and operators would pay a permit renewal application fee of \$4,000 per application for an estimated total of \$84,000, with an average of 4 to 5 renewals each year for a range of \$16,000 to \$20,000. Other fees may apply to these facilities depending on the specific application.

The Department estimates that there are approximately 36 state-owned or operated Non-Title V permitted facilities (natural minor or synthetic minor) that would be subject to the fee schedules. The fees include an annual operating permit maintenance fee of \$2,000 or \$4,000, per facility (\$72,000--\$144,000 total for 36 facilities, per year). In addition, every 5 years these owners and operators would pay a permit renewal application fee of \$2,100 per application or an estimated total \$75,600 (\$2,100 x 36 facilities), with an average of 7 to 8 renewals each year for a range of \$14,700 to \$16,800 per year. Other fees may apply to these facilities depending on the specific application.

The Department estimates the total annual cost for all state government owned and operated facilities to be \$310,000 depending on the number and type of permit renewals.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The amendments do not add to or change the existing reporting, recordkeeping or other paperwork requirements for the regulated community.

(22a) Are forms required for implementation of the regulation?

Yes. The Department’s application forms and instructions must be updated with the new fee amounts.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

See attached forms.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year 19/20	FY+1 Year 20/21	FY+2 Year 21/22	FY+3 Year 22/23	FY+4 Year 23/24	FY+5 Year 24/25
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SAVINGS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	\$15,739,098	\$27,711,323	\$27,711,323	\$27,711,323	\$27,711,323	\$27,711,323
Local Government	\$12,000	\$400,000	\$400,000	\$400,000	\$400,000	\$400,000
State Government	\$16,500	\$310,000	\$310,000	\$310,000	\$310,000	\$310,000
Total Costs	\$15,767,598	\$28,421,323	\$28,421,323	\$28,421,323	\$28,421,323	\$28,421,323
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY-3 (16/17)	FY-2 (17/18)	FY-1 (18/19)	FY (19/20) Budget
Title V (215-20077)	\$16,931,000	\$17,480,000	\$17,878,000	\$18,539,000
Non-Title V (233-20084)	\$8,228,000	\$8,727,000	\$9,369,000	\$9,535,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

The Department estimates that 76 of the approximately 500 Title V facilities that will be subject to this final-form rulemaking may meet the definition of small business as defined by the Small Business Administration.

The Department estimates that the owners or operators of approximately 1,050 facilities that are not Title V facilities may meet the definition of small business. In addition, the Department estimates that most of the owners and operators of businesses that submit asbestos notifications meet the definition of small

business for environmental remediation contractors (approximately 2,000 businesses). These businesses submit approximately 7,000 initial and revised asbestos notifications per year. However, some of these notifications are not required or are submitted multiple times with changes. The Department estimates that the number of initial notifications will drop to approximately 5,000 when the fee is in place. Imposing the fee on initial notifications is anticipated to curtail over-reporting, not the number of remediation projects.

(b) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

No changes to reporting, recordkeeping, or other administrative procedures are included as part of this final-form rulemaking. The owners and operators of subject facilities are familiar with the existing requirements for reporting and recordkeeping and have the professional and technical skills needed for continued compliance with these requirements.

(c) A statement of probable effect on impacted small businesses.

The owners and operators of approximately 500 Title V facilities, which include the estimated 76 small businesses in this Commonwealth, are affected by the amendments to existing plan approval application and operating permits fees and new fees. The number of affected facilities was determined by a review of the Department's database of Title V permitted facilities.

While approximately 76 Title V and 1,050 Non-Title V facilities may meet the definition of small business under the SBA size regulations cited by the Regulatory Review Act (71 P.S. §§ 745.1–745.15), the owners and operators of these facilities have historically been subject to the plan approval application and operating permit fees; further, the Title V facilities are classified as major sources of air pollution under section 501 of the CAA and are subject to the permitting provisions of Title V of the CAA.

The Department assumes that the majority of the owners or operators responsible for the submission of asbestos notifications are small businesses as defined by the Regulatory Review Act. The Department currently does not collect a fee for the processing of the asbestos notifications that are required by 40 CFR Part 61, Subpart M (related to national emission standards for hazardous air pollutants; Asbestos) or the Pennsylvania Asbestos Occupations Accreditation and Certification Act (Act 1990-194, 63 P.S. § 2101). With a fee of \$300 per notification, the Department is estimating an annual cost to these small businesses of approximately \$1.5 million. However, many of the asbestos abatement contractors have worked in Philadelphia, Allegheny County, and surrounding states and are familiar with paying fees for this type of activity.

The potential impact on the owners and operators of small businesses collectively may be approximately \$5.8 million in increased plan approval application, operating permit and asbestos notification costs.

This final-form rulemaking includes a reduced fee for small businesses when submitting RFD forms. SBCAC members specifically requested this reduced fee when the Department originally proposed such a fee in 2010. The fee was not adopted at that time.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The least burdensome acceptable alternative has been selected. The Department reviewed the plan approval application and operating permit fees and has determined that the final-form fees are reasonable to cover the Department's indirect and direct costs of the application review, permit issuance and inspection services provided to the regulated entities.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

The Department has established a reduced fee for small business owners and operators that submit RFD applications as provided in §§ 127.702(i), 127.703(d) and 127.704(d). The RFD is used by the small businesses to assist them in determining if a proposed project is subject to plan approval application or operating permit application submission requirements. The small businesses, through SBCAC, requested that the Department provide a reduced fee for this procedure for small businesses. A reduced fee is authorized under section 7.7(h) of the APCA.

Section 4.1 of the APCA exempts the production of agricultural commodities from regulation, except as may be required by the CAA or the regulations promulgated thereunder.

All owners or operators of permitted facilities will be impacted by the amendments. However, the Department does not track minority ownership or operation of facilities. These owners and operators are treated the same as other owners and operators.

Minorities, elderly, small businesses and farmers who are not owners or operators of a facility that requires an air quality permit based on the equipment used or the type or amount of pollution emitted are not affected by this final-form rulemaking.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The least burdensome acceptable alternative has been selected.

Section 6.3(c) of the APCA provides that the Board shall 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 required by Title V of the CAA, other related requirements of the CAA, and the reasonable indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, the Small Business Compliance Advisory Committee, and the Office of Small Business Ombudsman. The annual emission fee shall not apply to emissions of more than 4,000 tons of any regulated pollutant.

Section 6.3(d) of the APCA further provides that, unless precluded by the CAA, the Board shall establish a permanent air emission fee which considers the size of the air contamination source, the resources necessary to process the application for a plan approval or an operating permit, the complexity of the plan approval or operating permit, the quantity and type of emissions from the sources, the amount of fees charged in neighboring states, the importance of not placing existing or prospective sources in this Commonwealth at a competitive disadvantage, and other relevant factors.

The Department considered these factors when it established the existing plan approval application and operating permit program in 1994. For this final-form rulemaking, the Department reconsidered the

section 6.3(d) factors along with analyzing actual spending data in amending the fee schedules. Federal regulations do not impose fees. Federal regulations under 40 CFR Part 70 (relating to state operating permit programs) require that states demonstrate that the fees established by the state or local permitting agency are sufficient to support the plan approval application and operating permit program. The EPA established a “presumptive minimum” approach for fees to be collected for each ton of a regulated pollutant as one approach for consideration by the permitting agencies. Use of the presumptive minimum approach allows the EPA to quickly determine if the fees are sufficient to support the Title V permitting program. In the alternative method known as the “detailed accounting” approach, the EPA allows the state or local permitting agency to establish appropriate fees and demonstrate through detailed accounting that the revenue is sufficient to support the Title V permitting program.

The Title V emission fee, due on September 1, 2019, for emissions that occurred in calendar year 2018, was \$91.32 per ton of emissions up to 4,000 tons of each regulated pollutant. The fee for emissions that occurred in calendar year 2019 and due on September 1, 2020, increased to \$93.06 per ton of regulated pollutant due to the required consumer price index adjustment. Approximately 90% of the current Title V emission fee revenue of approximately \$15.230 million is generated from emissions at 102 Title V facilities as illustrated in Table 7.

The Department sought public comment on its recommendation to amend the fees payable by the owners and operators of Title V facilities. The recommended option included in this final-form rulemaking Annex A is to leave the Title V emission fee at § 127.705 unchanged and collect an annual operating permit maintenance fee of \$8,000 from the owners or operators of all affected Title V facilities. Table 7 illustrates that approximately 90% of the combined Title V emission fee revenue and annual operating permit maintenance fee revenue for this recommendation (Option 1 for purposes of this report and Table 7) would be paid by the owners and operators of 289 Title V facilities. The recommended option spreads the burden for supporting the Title V Operating Permit Program across almost three times as many Title V facility owners and operators as the current fee structure (289 versus 102).

**Table 7
Fee Options Considered for Title V Facility Owners and Operators**

	Projected Revenue			
	No Amendments to Current Emission Fee or Fee Structure	Option 1 No Increase to Current Emission Fee; Annual Operating Permit Maintenance Fee of \$8,000	Option 2 Increased Emission Fee; Annual Operating Permit Maintenance Fee of \$5,000	Option 3 Increased Emission Fee; Emission Fee Floor; No Annual Operating Permit Maintenance Fee
Title V Emission Fee per ton in 2019 due on September 1, 2020	\$93.06	\$93.06	\$110.00	\$118.00
Emission Fee Floor	\$0	\$0	\$0	\$5,000
Emission Fee Revenue	\$13,995,384	\$13,995,384	\$16,388,000	\$17,687,000
Annual Operating Permit Maintenance Fee per year	\$0	\$8,000	\$5,000	\$0
Annual Operating Permit Maintenance Fee Revenue	\$0	\$4,000,000	\$2,500,000	\$0

Number of DEP regulated facilities that pay 90% of the combined Title V Emission Fee and Annual Operating Permit Maintenance Fee Revenue	102	289	206	129
Other Title V Operating Permit Fee Revenue	\$435,125	\$1,371,800	\$1,371,800	\$1,371,800
Total Title V Facility Revenue, FY 2020-2021	\$14,430,509	\$19,367,184	\$20,260,000	\$19,059,000

Two other options were considered by the Department in developing this final-form rulemaking. The second option would increase the Title V emission fee to \$110 per ton up to the 4,000-ton cap per regulated air pollutant and collect an annual operating permit maintenance fee of \$5,000 from the owners or operators of all affected Title V facilities. Table 7 illustrates that approximately 90% of the combined Title V emission fee revenue and annual operating permit maintenance fee revenue for Option 2 would be paid by the owners and operators of 206 Title V facilities.

The third option would increase the Title V emission fee to \$118 per ton up to the 4,000-ton cap and not collect an annual operating permit maintenance fee from the owners or operators of affected Title V facilities. However, this option would establish a minimum emission fee floor of \$5,000 payable by the owners or operators of all affected Title V facilities. Those that emitted more than \$5,000 in emissions in a calendar year would pay on the actual tonnage emitted up to the 4,000-ton cap per regulated air pollutant. In this instance, Table 7 illustrates that approximately 90% of the Title V emission fee revenue for Option 3 would be generated from emissions at 129 Title V facilities.

As illustrated in Table 7, each of the three options considered by the Department in developing this final-form rulemaking would generate revenue of roughly \$19-20 million, or an increase of approximately \$6 million over current Title V facility revenue. The fee schedules (Option 1) in this final-form rulemaking Annex A and Option 2 spread the generation of Clean Air Fund revenue across a greater number of Title V facility owners and operators due to collecting an annual operating permit maintenance fee from all Title V facility owners and operators. This option spreads the burden for supporting the Title V Operating Permit Program across 289 Title V facility owners and operators versus 206 Title V facility owners and operators for Option 2.

Option 3 would affect 129 Title V facility owners and operators who would bear the brunt of generating the total emission fee revenue collected, due to the emission fee floor. Under Option 3, the owner or operator would pay either the calculated emission fees or the minimum of \$5,000, whichever is greater. Again, the fee schedules in this final-form rulemaking spreads the burden for supporting the Title V Operating Permit Program across 289 Title V facility owners and operators versus 206 Title V facility owners and operators for Option 2 and 129 for Option 3.

After considering these options, the amount of revenue generation expected, and the number of affected Title V owners and operators, the Department selected Option 1 as the recommended option. It is the least burdensome alternative, while producing adequate revenue for the program as required by the CAA. One option that the Department could not consider was exempting Title V facilities that qualify as small businesses from paying an emissions fee on annual emissions. That is due to the fact that section 502 of the CAA and 40 CFR Part 70 require that the owners and operators of all affected Title V sources pay an emissions fee based on the tonnage of regulated pollutant emitted annually. The Department also could

not consider increasing the cap of 4,000 tons of regulated pollutants to increase emission fee revenue. This statutory cap is set in section 6.3(c) of the APCA.

Several states now collect fees for source testing or monitoring. New Jersey collects fees to evaluate source testing (\$450 to \$500 per test protocol), test observation (\$200 to \$500), and to review the test report. Idaho charges a fee for services not to exceed \$7,500 per facility per year. Wisconsin collects a fee for emission testing and environmental assessment. Delaware collects a user fee that ranges from \$3,000 to \$200,000 per year based on the hours expended at the facility. The Department considered adding fees for these services but decided that the administrative burden of tracking and billing for these fees would be excessive at this time.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

(a) The establishment of less stringent compliance or reporting requirements for small businesses.

While some facilities may be considered a small business as defined in Section 3 of the Regulatory Review Act, no changes to reporting, recordkeeping or other administrative procedures are included in this final-form rulemaking. The owners and operators of the affected permitted facilities are familiar with the existing requirements for reporting and recordkeeping and have the professional and technical skills needed for continued compliance with these requirements. The Department has established a small business assistance program that is available to provide confidential assistance to small businesses.

(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

This final-form rulemaking does not include any schedules or deadlines for compliance or reporting requirements. This final-form rulemaking does however include a reduced RFD fee for small businesses that will allow small businesses to receive a written determination from the Department concerning their proposed action without paying the costs associated with a plan approval application.

(c) The consolidation or simplification of compliance or reporting requirements for small businesses.

This final-form rulemaking does not include any compliance or reporting requirements.

(d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation.

This final-form rulemaking does not include any design or operational standards.

(e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

While certain Title V facilities may meet the definition of small business under the SBA size definition cited by the Regulatory Review Act, Act 76 of 2012, the owners and operators of these facilities are subject to the Title V emission fee imposed by § 129.705(a) due to the amount of emissions of regulated pollutants reported on an annual basis. This is because section 502 of the CAA and 40 CFR Part 70

require that the owners and operators of all affected Title V sources pay an emissions fee based on the tonnage of regulated pollutants emitted annually.

These owners and operators have been paying permanent annual Title V emission fees since the Board promulgated the emission fee schedule on November 24, 1994 (24 Pa.B. 5899) and have experience with the emissions fee as a cost of doing business. The emission fee is due by September 1 of each year for subject emissions from the previous calendar year. Interim annual air emission fees were established by the General Assembly in the July 1992 amendments to the APCA (Act of July 9, 1992, P.L. 460, No. 95), which were paid prior to the establishment of the permanent annual emissions fee in 1994.

This final-form rulemaking includes a reduced fee for the owners and operators of small businesses that submit RFDs.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The Department captures employee time data via the Cross-Application Time Sheet reporting system that identifies staff activities which support the fee analysis. Costs associated with other program operational needs are posted into the Commonwealth's SAP Accounting System, which data also supports the fee analysis (see attached Clean Air Fund Fiscal Analysis and Fee Report). This information is included in the Department's Basic Financial Statements that are prepared in conformity with generally accepted accounting principles (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB). The Commonwealth's Basic Financial Statements are jointly audited by the Department of the Auditor General and an independent public accounting firm.

The number and type of permitted facilities were extracted from the Department's eFACTS system. The eFACTS system is the repository for all Department permitting, inspection, compliance, and emission data. It is maintained and updated daily by staff in the Department's regional offices and central office. The number of asbestos notifications and who submits them was extracted from the Pennsylvania Asbestos Notification System, which is a database that has been maintained by both the Department and the Department of Labor and Industry since 1996.

Regulatory Impact Analysis, Final National Ambient Air Quality Standard for Ozone, July 2011, U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Research Triangle Park, NC, 27711. A copy is available from the Department upon request. A copy was available on the web site of the Nuclear Regulatory Commission on April 25, 2020, at this link: <http://www.nrc.gov/docs/ML1224/ML12240A237.pdf>

Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone, EPA-452/R-15-007, September 2015, U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. A copy is available from the Department upon request. A copy was available on the EPA web site on April 25, 2020, at this link: <https://www3.epa.gov/ttn/naaqs/standards/ozone/data/20151001ria.pdf>

United States Census Bureau, 2015 Population Estimate (as of July 1, 2015), <http://factfinder.census.gov>: Pennsylvania, 12,802,503, researched 6-30-2016.

United States Census Bureau, 2015 Population Estimate, <http://www.census.gov>: United States total, 321,418,820, researched 6-30-2016.

Funding Of Major Air Facility Title V Programs: Summary of NACAA 2014 Survey Data, Final Report, December 2015, National Association of Clean Air Agencies (NACAA). A copy is available from the Department upon request. A copy was available on the NACAA web site on April 25, 2020, at this link: http://www.4cleanair.org/sites/default/files/Documents/SummaryofData_2014NACAASurvey_Dec2015.pdf

2015–2020 Strategic Asthma Plan for Pennsylvania, February 2016, the American Lung Association in Pennsylvania, the Pennsylvania Asthma Partnership and the Pennsylvania Department of Health. A copy is available from the Department upon request. A copy was available on the Pennsylvania Asthma Partnership web site on April 25, 2020, at this link: <http://www.paasthma.org/wp-content/uploads/2013/10/Strategic-Asthma-Plan-For-PA-2015-2020.pdf>

2018 Asthma Capitals Report, The Asthma and Allergy Foundation of America (AAFA), accessed April 25, 2020, at this link: <http://www.aafa.org/media/AAFA-2018-Asthma-Capitals-Report.pdf>

(29) Include a schedule for review of the regulation including:

- | | |
|---|---|
| A. The length of the public comment period: | <u>66 days</u> |
| B. The date or dates on which public meetings or hearings were held: | <u>May 13, 15 and 16, 2019</u> |
| C. The expected date of delivery of the final-form regulation: | <u>Quarter 3, 2020</u> |
| D. The expected effective date of the final-form regulation: | <u>Date of publication in the Pennsylvania Bulletin</u> |
| E. The expected date by which compliance with the final-form regulation will be required: | <u>Date of publication in the Pennsylvania Bulletin</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>NA</u> |

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulation after its implementation.

The Board is not establishing a sunset date for this final-form regulation, since it is needed for the Department to carry out its statutory authority. The Department will closely monitor this final-form rulemaking after promulgation as a final-form regulation for its effectiveness and recommend updates to the Board as necessary.