



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Clean Air Fund Fiscal Analysis and Fee Report

December 2019
Bureau of Air Quality
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PREFACE

The Department of Environmental Protection (Department or DEP) is recommending to the Environmental Quality Board (Board) a comprehensive revision of fees paid by the regulated community to support the Air Quality Program. This rulemaking amends existing requirements and fee schedules codified in 25 Pa. Code Chapter 127, Subchapter I (relating to plan approval and operating permit fees) and establishes new fees to ensure that fees are sufficient to cover the costs of administering the Air Quality Program, which includes the Title V Operating Permit Program and the Non-Title V (State-Only) Operating Permit Program, as required by section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3) and section 502(b) of the Clean Air Act (CAA) (42 U.S.C.A. § 7661a(b)).

Fee revenue, including plan approval and operating permit application fees and Title V emission fees, has not been sufficient to cover the direct and indirect costs of administering the Commonwealth's Air Quality Program for several years. This revenue is deposited into the Department's Clean Air Fund, which contains separate accounts for the Title V and Non-Title V programs. In the early years of the Title V 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 balance to cover Air Quality Program costs and expenditures that exceeded annual revenue, the Clean Air Fund balance is now approaching zero. The comprehensive revision of the fee schedule is designed to halt this decline in the Clean Air Fund balance and bring annual program revenue in line with annual program expenditures.

DEP's Bureau of Fiscal Management projects that without the amendments, Title V revenue will be less than \$15 million and expenditures will be approximately \$19 million and climbing to approximately \$20 million, creating a Title V revenue versus expenditure shortfall of approximately \$4 million and climbing to \$5 million in each fiscal year (FY) from 2020-2021 to 2024-2025.

The Bureau of Fiscal Management also projects a Non-Title V revenue versus expenditures shortfall of approximately \$6.0 million and climbing to approximately \$6.5 million in each FY from 2020-2021 to 2024-2025 if the fees are not amended. This is a combined revenue versus expenditures shortfall of approximately \$10 to \$11 million in each fiscal year for the Clean Air Fund.

The Clean Air Fund is projected to have a deficit of \$2.4 million in FY 2021-2022, increasing to \$38.1 million in FY 2024-2025, based on the existing fee schedules. The final-form amendments are projected to annually generate additional Title V revenue of approximately \$5 million and Non-Title V revenue of approximately \$7 million beginning in FY 2020-2021, once the amendments are promulgated as final-form regulation in late 2020. This additional revenue is expected to restore solvency to the Clean Air Fund, bringing total program revenue in line with program expenditures. The total combined anticipated revenues are expected to be sufficient to cover the costs of administering the Air Quality Program for the next several years.

If the Clean Air Fund deficit is not remedied, the Department will no longer meet its plan approval application and operating permit program obligations under the CAA and the APCA and will no longer be able to perform its mission of controlling the emissions of harmful air pollutants to protect the public health and welfare and the environment. The final-form amendments to the Title V and Non-Title V plan approval application and operating permit fee schedules and the establishment of fee schedules for risk assessment review, asbestos notifications, and requests for determination are designed to recover the Department's costs for these activities and provide the needed financial support to sustain the Department's Air Quality Program as well as ensure continued protection of public health and welfare and the environment.

STATUTORY AUTHORITY

This rulemaking is authorized under section 5(a)(1) of the APCA (35 P.S. § 4005(a)(1)), which grants the 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 (42 U.S.C.A. §§ 7401—7671q).

Section 6.3(a) of the APCA (35 P.S. § 4006.3(a)) grants the Board the authority to adopt regulations to establish fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process; the 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, Compliance Advisory Committee and 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 Title V fees required by section 502(b) of the CAA, that is, the Non-Title V Operating Permit Program and supporting activities.

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 of Pennsylvania will have adequate personnel, funding, and authority to carry out the State Implementation Plan (SIP), which must provide for the attainment and maintenance of the health-based and welfare-based National Ambient Air Quality Standards (NAAQS) established by the U.S. Environmental Protection Agency (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.

BACKGROUND

The final-form fee amendments are needed to cover the Department's costs related to performing the air pollution control plan approval and operating permit 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, as well as other requirements of the CAA, APCA, and regulations promulgated thereunder. These pollutants harm public health and the environment and cause property damage.

The Department established an integrated Air Quality Program in 1994 and issues plan approvals and operating permits for two types of sources – major and non-major. See 48 Pa.B. 5899 (November 26, 1994). This program was subsequently reviewed and approved by the EPA. See 61 FR 39597 (July 30, 1996). 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 (State-Only or Area) sources.

The Department currently regulates approximately 500 Title V and 2,100 Non-Title V facilities in Pennsylvania not including facilities in Allegheny and Philadelphia Counties. Establishing this revised fee schedule will provide financial support to sustain the Department's air quality plan approval application and operating permit programs and ensure continued protection of the public health and welfare of the approximately 12.8 million residents and the environment of this Commonwealth. This financial support is also necessary to ensure the timely review of air quality permits for the regulated community, which will provide the certainty businesses need to expand and locate in Pennsylvania.

The Department is projecting a zero balance for the Clean Air Fund during FY 2022-2023 because program expenses have exceeded program revenue for several years. Increases in costs to maintain existing personnel, fixed assets, and operating expenses have been accompanied by decreases in revenue from fees, fines, and penalties paid by the regulated community.

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 application and operating permit fee increases occurred in January 2005.

The Board revised the Title V emission fee in 2013. See 43 Pa.B. 7268 (December 14, 2013). At that time, 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 or new permitting fees would be needed within 3 years. This is due, in part, because emissions subject to the Title V emission fee have decreased by 39% since 2000 and continue to decrease as more emissions reductions are achieved to attain and maintain the lowered applicable NAAQS established by the EPA. This has resulted in reduced revenue for the program, even with the revised emission fee adopted in 2013. While reduced levels of emissions benefit the environment, decreasing emissions do not reduce the Department's workload. Air Quality Program staff must continue to implement the air pollution control laws and regulations and

administer the program, including developing regulations and policy, reviewing plan approval applications and issuing operating permits, conducting facility inspections, responding to complaints, assessing the risks of hazardous air pollutant emissions, maintaining the source testing program, tracking emissions and maintaining emission inventories, reviewing continuous emission monitoring data, and monitoring the ambient air in this Commonwealth.

In the early years of the Title V 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 balance to cover Air Quality Program costs and expenditures that exceeded annual revenue, the Clean Air Fund balance is now approaching zero. As fee revenue for the Air Quality Program has decreased over the past several years, one area of cost cutting has been reducing the staffing complement. Failure to adjust the air quality permitting fee schedule to generate revenue to adequately cover program costs will cause additional staff reductions. Reduced staff will cause delays in reviewing plan approval and operating permit applications and issuing approved plan approvals and operating permits. This may result in delays for industry to implement expanded, new, or improved processes, with associated loss of revenue to industry, loss of jobs for the community, and loss of tax revenue for the Commonwealth. Further, fewer Department staff to conduct inspections, respond to complaints, and pursue enforcement actions will result in less oversight of regulated industry compliance or noncompliance. This will result in reduced protection of the environment and public health and welfare of the citizens of this Commonwealth.

Decreased program revenues will also impact the operation and maintenance of the Commonwealth's ambient air monitoring network, which provides the data to substantiate the Commonwealth's progress in attaining and maintaining the NAAQS established by the EPA. Decreased program revenues could also impact the Small Business Stationary Source Technical and Environmental Compliance Assistance Program by reducing the amounts of grants and number of services available to small businesses. This could potentially lead to fewer viable small businesses and reduce the economic vitality of this Commonwealth by reducing the number of available jobs and tax revenue generated by these small businesses.

By addressing the Clean Air Fund deficits through these fee schedule amendments, the Department will be able to continue to serve the regulated community and protect the Commonwealth's quality of air. Furthermore, a failure to attain and maintain the NAAQS and to satisfy the Commonwealth's obligations under the CAA could precipitate punitive actions by the EPA.

The revisions to the plan approval application and operating permit fee schedules and establishment of certain fees will affect the owners and operators of approximately 500 Title V facilities and approximately 2,100 permitted Non-Title V facilities under the Department's jurisdiction. This rulemaking will also impact approximately 2,000 environmental remediation contractors who submit approximately 7,000 asbestos abatement project notifications to the Department per year. Facilities and environmental remediation contractors located in Philadelphia and Allegheny Counties, which have their own approved air pollution control programs, are not included in this fee analysis.

AIR QUALITY PROGRAM FUNDING

The APCA provides for the establishment of the Clean Air Fund, and separate accounts, if necessary, to comply with the requirements of the CAA. See 35 P.S. § 4009.2(a). The CAA and its implementing regulations specifically provide that any fees collected under the Title V Operating Permit Program must be used solely for the costs of that program. See 42 U.S.C.A. § 7661a(b)(3)(C)(iii) and 40 CFR 70.9(a). As a result, in Pennsylvania, the Clean Air Fund consists of two “special fund” appropriations: the Title V Account and the Non-Title V Account. The Title V Account collects the revenue received from the Title V air quality permitting and emission fees. The Non-Title V Account collects the revenue received from the Non-Title air quality permitting fees as well as the fines and penalties from both Title V and Non-Title V facilities.

The Department’s Air Quality Program is also funded by: (1) a grant under section 105 of the CAA (42 U.S.C.A. § 7405) for the prevention and control of air pollution or implementation of National primary and secondary ambient air quality standards, including any activity related to planning, developing, establishing, implementing, improving, or maintaining such programs; (2) a grant under section 103 of the CAA (42 U.S.C.A. § 7403) to support the PM_{2.5} ambient air monitoring network; (3) a BioWatch Grant from the Department of Homeland Security to support specialized monitoring; and (4) funding from the Department’s General Fund allocation appropriated by the Legislature on an annual basis. This General Fund allocation amount can vary from year to year. In FY 2014-2015 through FY 2018-2019, the Department’s Air Quality Program received approximately \$8 million per fiscal year from the General Fund.

Tables 1 and 2 illustrate the revenue and expenditures for the Air Quality Program for fiscal years 2013-14 through 2018-2019. The total revenue to support the Air Quality Program is shown in Table 1. This table shows that revenue to the Clean Air Fund increased beginning in FY 2014-2015 due primarily to the increase in the Title V emission fee promulgated in 2013. The revenue from the increased emission fee was due by September 1, 2014, for emissions occurring in calendar year 2013, and is due by September 1 of each year for emissions from the previous calendar year. However, revenue significantly decreased from FY 2015-2016 to FY 2018-2019 as the emissions upon which fees are paid decreased. The table shows that the revenue from the combined Title V and Non-Title V fines and penalties decreased in FY 2014-2015 and FY 2015-2016, but then rose in the subsequent fiscal years. Revenue from Non-Title V permitting activities, the combined Title V and Non-Title V treasury income (interest on savings accounts), and Federal grants has not changed significantly over the years.

Expenditures for the Air Quality Program are shown in Table 2. Expenditures in the Title V Account have remained relatively level. Expenditures in the Non-Title V Account have fluctuated, rising over FY 2014-2015 and FY 2015-2016 and then leveling back off in the \$9 million range. Federal Grant expenditures match the grant amounts while expenditures covered by the Department’s General Fund Appropriation rose from FY 2013-2014 to FY 2014-2015 and have generally leveled off at approximately \$8.5 million per year.

TABLE 1

Air Quality Program Revenue
(in thousands of dollars)

	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Clean Air Fund Revenue:						
Title V	13,422	17,523	17,443	16,103	14,275	12,967
Non-Title V	1,775	2,142	2,019	1,879	1,768	1,853
Fines and Penalties	2,201	1,690	1,653	2,828	2,693	3,518
Miscellaneous	4	5	15	31	17	2
Treasury Gain/Loss	0	423	880	475	1,212	1,537
Treasury Investment Income	1,294	1,170	985	1,158	1,296	1,307
Total Clean Air Fund Revenue	18,696	22,953	22,995	22,474	21,261	21,184
Federal Grants:						
Section 103*	830	830	830	830	830	830
Section 105**	5,046	4,951	4,986	4,856	4,924	4,924
Biowatch**	359	390	372	372	372	397
Total Federal Grants	\$6,235	\$6,171	\$6,188	\$6,058	\$6,126	\$6,151
TOTAL FUNDING TOTAL	\$24,931	\$29,124	\$29,183	\$28,532	\$27,387	\$27,335

*Actual grant period is April through March

**Actual grant period is October through September

TABLE 2
Air Quality Program Expenditures
(In thousands of dollars)

	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Clean Air Fund Expenditures						
Title V	18,413	16,870	17,373	16,976	17,480	17,878
Non-Title V	8,036	9,811	10,142	8,116	8,727	9,369
Total Clean Air Fund Expenditures	26,449	26,681	27,515	25,092	26,207	27,247
Federal Grant Expenditures						
Section 103*	830	830	830	830	830	830
Section 105**	5,046	4,951	4,986	4,856	4,924	4,924
Biowatch**	359	390	372	372	372	397
Total Federal Grant Expenditures	6,235	6,171	6,188	6,058	6,126	6,151
General Fund Expenditures	5,231	7,991	8,894	8,239	8,484	8,650
TOTAL EXPENDITURES	\$37,915	\$40,843	\$42,597	\$39,389	\$40,817	\$42,048

*Actual grant period is April through March

**Actual grant period is October through September

CLEAN AIR FUND REVENUE, EXPENDITURES, AND STATUS

Tables 1 and 2 illustrate the past revenue and expenditures for the Air Quality Program for fiscal years 2013-2014 through 2018-2019. Tables 3 and 4 illustrate actual revenue and expenditures for FY 2018-2019 and projected revenue and expenditures for fiscal years 2019-2020 (current) through 2024-2025. As shown in Tables 3 and 4, expenditures in both Clean Air Fund accounts exceeded revenue and are projected to continue to exceed revenue if amendments to the existing fee schedules are not implemented. As shown in Table 5, DEP’s Bureau of Fiscal Management projects the Clean Air Fund to reach a zero balance sometime during FY 2023-2024 based on the existing fee schedules.

TITLE V ACCOUNT

A comparison of the revenue and expenditures (in thousands of dollars) for the Title V Account based on the existing fee schedule is provided in Table 3 for the past, current and projected fiscal years 2024-2025. Revenue includes Title V emission fees, major source plan approval application and operating permit fees, and interest on the Title V Account balance. The expenditures exceeded the revenue in the Title V account in FY 2018-2019 and are projected to exceed revenues in each fiscal year going forward by approximately \$4 million and rising to over \$5 million, depleting the remaining balance. The Title V Account is currently projected to have a decreasing ending balance, from \$20.744 million in FY 2018-2019 to zero sometime in FY 2023-2024, as shown in Table 3.

TABLE 3
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 fee schedule is provided in Table 4 for the past, current and projected fiscal years through 2024-2025. Revenue includes plan approval application and operating permit fees for Non-Title V sources, fines and penalties for both Title V and Non-Title V facilities, and interest on the Non-Title V Account balance. The expenditures exceeded the revenue in FY 2018-2019 and are projected to exceed the revenue in the Non-Title V Account in the current FY and each future fiscal year by approximately \$6.0 million and rising to over \$6.5 million, depleting the remaining balance. The Non-Title V Account balance is projected to reach zero sometime in FY 2020-2021, as shown in Table 4, as expenditures outpace revenue.

TABLE 4**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)

CLEAN AIR FUND ENDING BALANCES

Table 5 shows the projected negative balance in the Clean Air Fund during FY 2022-2023 and later based on the existing fee schedules.

TABLE 5**Clean Air Fund Ending Balances without Fee Amendments**
(in thousands of dollars)

	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
	ACTUAL	BUDGET	PLAN YR 1	PLAN YR 2	PLAN YR 3	PLAN YR 4	PLAN YR 5
Title V Ending Balance	\$ 20,744	\$ 15,117	\$ 11,322	\$ 6,435	\$ 1,113	\$ (4,355)	\$ (9,977)
Non-Title V Ending Balance	\$ 8,746	\$ 2,855	\$ (2,817)	\$ (8,842)	\$ (15,057)	\$ (21,468)	\$ (28,079)
Clean Air Fund Ending Balance	\$ 29,490	\$ 17,972	\$ 8,505	\$ (2,407)	\$ (13,944)	\$ (25,823)	\$ (38,056)

CLEAN AIR FUND SPENDING PLANS

Spending Plans for the Clean Air Fund are developed by the Bureau of Air Quality and approved by the Secretary each fiscal year. Total expenditures for the Title V Account were \$17,878,000 for FY 2018-2019. Salaries and benefits for the Title V Account were estimated at \$14,626,000 for FY 2018-2019 and represented approximately 82% of all expenditures in the account. As of December 2019, there are 194 positions on the authorized Title V complement: 182 positions statewide in the Air Quality Program and 12 positions in the following areas of the Department: Office of Chief Counsel; Special Investigations; Small Business; and the Waste, Air, Radiation and Remediation Deputate.

Other expenditures included in the Title V Spending Plan support the Title V program. These expenditures include vehicles, training, travel, ambient air monitoring equipment, acid rain monitoring, support for advisory committees, contracts with universities assisting with air quality monitoring and forecasting, contracts for the small business compliance assistance program, contracts for information technology support, and a grant to The Philadelphia County Health Department, Division of Air Management Services (AMS).

Total expenditures for the Non-Title V Account were \$9,369,000 for FY 2018-2019. The Non-Title V Account budget for FY 2018-2019 included \$1,633,000 for Air Quality Program personnel costs, which represented approximately 17% of the expenditures from the account. In addition, in FY 2018-2019 the Non-Title V Account paid \$329,000 in information technology costs and \$3,860,000 to cover other costs such as utilities and office space leases. Other expenditures under the Non-Title V Account cover the costs of ambient air monitoring equipment, vehicles, training, travel, data processing equipment, certain regional office expenses, a portion of the matching funds required for the Federal section 105 grant, contracts with universities assisting with air quality monitoring and forecasting, and grants to local air quality partnerships.

The Department has sought to maintain parity between its revenue and expenditures over the last several years by reducing costs associated with administering the Air Quality Program. These cost reductions include not filling open staff positions, reducing or eliminating contracts by bringing specialized work inside the program, reducing or eliminating grants, optimizing the ambient air quality monitoring network, streamlining the air permitting program through implementing the Permit Decision Guarantee program, creating the online Request for Determination (RFD) form, and developing general plan approvals and general operating permits for 19 source categories. The remaining reasonable costs that cannot be readily reduced include the cost to perform certain activities related to major facility operations, including the review and processing of plan approvals and operating permits; emissions and ambient air monitoring; compliance inspections; developing regulations and guidance; modeling, analyses, and demonstrations; and preparing emission inventories and tracking emissions. Direct and indirect program costs include personnel costs; office space leases; operating expenses such as telecommunications, electricity, travel, auto supplies, and fuel; and the purchase of fixed assets such as air samplers and monitoring equipment, vehicles, and trailers.

The Department has taken steps to improve the quality, efficiency, and responsiveness of the Air Quality Program by increasing its efforts to communicate with applicants for plan approvals and operating permits. These efforts include making greater use of pre-application conferences to help applicants with questions or concerns regarding plan approval and operating permit applications; corresponding with applicants at critical points in the plan approval and operating permit application review process; and creating a series of guides about plan approvals and operating permits to provide information to applicants and the public.

IMPLICATIONS ASSOCIATED WITH AN UNSUSTAINABLE CLEAN AIR FUND

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 final-form amendments to the Title V plan approval application and operating permit fees would avoid 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).

GENERAL OVERVIEW OF THE AIR QUALITY PROGRAM

The Department's Air Quality Program consists of a central office and six regional offices. The Bureau of Air Quality (central office) is primarily responsible for program development and planning, ambient air monitoring, source test protocol and continuous emissions monitoring report review, administration, and training. DEP's Office of Field Operations (regional offices) is primarily responsible for permitting, inspection, enforcement, and complaint investigation.

AIR QUALITY COMPLEMENT

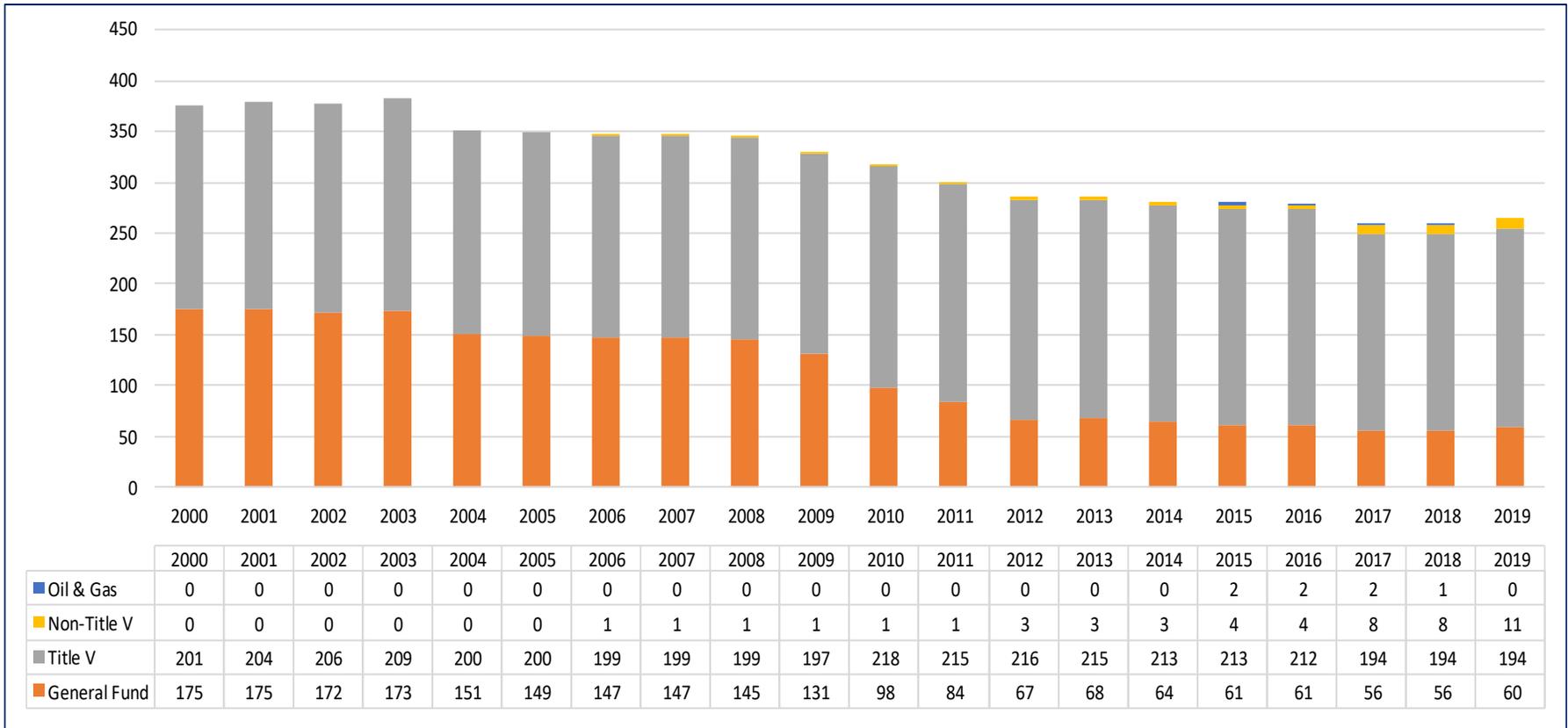
As of December 2019, there were 265 positions on the Air Quality complement, including Title V, Non-Title V, and General Fund positions. These positions consist of managers, engineers, air monitoring equipment specialists, inspectors, program specialists, compliance specialist, chemists and administrative support assigned to the Air Quality Program. The number of filled positions and vacant positions fluctuates throughout the year due to turnover. The Bureau of Air Quality (central office) includes 105 permanent positions, of which 96 were filled and 9 were vacant.

Field Operations includes six regional offices that have a combined total of 157 positions, of which 17 are vacant. The number of staff in each regional office as of December 2019, were as follows: Northwest Regional Office had a total of 24 positions, with 23 filled and 1 vacant; Southwest Regional Office had a total of 26 positions, with 23 filled and 3 vacant; Northcentral Regional Office had a total of 18 positions, with 17 filled and 1 vacant; Southcentral Regional Office had a total of 29 positions, with 27 filled and 2 vacant; Northeast Regional Office had a total of 24 positions, with 21 filled and 3 vacant; and Southeast Regional Office had a total of 36 positions, with 29 filled and 7 vacant.

In addition to the staff in the Bureau of Air Quality and Field Operations, there are also 3 positions on the Air Quality complement that either provide support to the Air Quality Program or are mandated by the APCA but are not directly part of the Air Quality Program: 2 staff in the Small Business Ombudsman Office and 1 person in DEP's Grants Center. It should be noted that other DEP staff provide support to the Air Quality Program but sit on the General Fund complement. Some are paid by the General Fund while others are paid from either the Title V or Non-Title V appropriation based upon the timesheets they complete.

Graph 1 shows the total number of Air Quality Program staffing positions and the complement upon which they sit since 2000. As of December 2019, there were 265 positions on the Air Quality complement. For comparison, in 2000, there were 376 positions on the Air Quality complement.

GRAPH 1
Air Quality Staffing
2000-2019



WORKLOAD ANALYSIS AND PERSONNEL COSTS

Tables 3 and 4 show projected shortfalls in Title V revenue versus expenditures of approximately \$4 million and Non-Title V revenue versus expenditures of approximately \$6.0 million, respectively, or a combined revenue versus expenditures shortfall of approximately more than \$10.5 million. To address this revenue shortfall and ensure adequate revenue to support the Air Quality Program, Title V Operating Permit Program, Non-Title V (State-Only) Operating Permit Program, and direct and indirect costs of administering the programs, the Department is revising existing fees for plan approval application and operating permit activities and establishing fees for certain activities for which the costs are currently absorbed by the existing fee revenue.

Prior to developing the revised plan approval application and operating permit fee schedule, the Department determined that personnel costs comprise a large portion of the expenditures for plan approval application and operating permit activities, including approximately 62% of the Title V expenditures and 13% of the Non-Title V expenditures for FY 2016-2017. The Department decided that an evaluation of personnel costs for performing plan approval applications and operating permit activities would form the basis for developing what would be reasonable increases for the fee schedules. The Department reviewed the work effort for each type of plan approval application and operating permit and calculated the direct personnel costs to perform the work effort. This analysis was conducted by a joint working committee of central office and regional office Air Quality personnel. The working committee identified the activities relating to the plan approval application and operating permit program and associated a time/labor cost for each type of plan approval application and operating permit activity.

However, this analysis does not identify the entire work effort that supports the review of a plan approval application or an operating permit. Activities not included in the analysis include compliance inspections, enforcement actions, regulation development and adoption, ambient air quality monitoring, administrative support, Department facilities costs, operating expenses, and the purchase of fixed assets. Therefore, the analysis of the staff time directly associated with the review and issuance of plan approvals and operating permits did not identify the total amount of Department resources needed to manage the plan approval application and operating permit process and the air pollution control program.

The Department calculated the personnel costs for each activity presented in Tables 6—14 using an average salary for an engineer at pay range 8, step 10 (as of October 1, 2016 = \$33.42/hour) and a benefit rate of 74.3%; section chief at pay range 9, step 10 (\$38.13); operations inspector at pay range 6, step 10 (\$25.64); clerical at pay range 3, step 10 (\$17.51); and program manager at pay range 10, step 10 (\$43.54).

PLAN APPROVAL APPLICATION

Table 6 provides the estimated review hours for a plan approval application which is not subject to New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) or Maximum Achievable Control Technology (MACT) Standard, New Source Review (NSR), or Prevention of Significant Deterioration (PSD). The plan approval application is required by Department regulations found in 25 Pa. Code Chapter 127, Subchapter B (relating to plan approval requirements). The Department issues approximately 175 plan approvals per year to the

owners or operators of major and nonmajor facilities which are not subject to NSPS, NESHAP, MACT, NSR, or PSD review.

TABLE 6
Plan Approval Application Review Hours

Plan Approval	Review Hours
Administrative Tasks	8
Section Chief Screening	1
Section Chief Review	2
Section Chief Final (Comment/Response, etc.)	1
Pre-Application Meeting	7
Application Manager Completeness Review	8
Application Manager Technical Review	79
Operations Review	2
Program Manager Final Review	2
Estimated Hours	110

Table 6 represents approximately \$6,250 in personnel costs per plan approval application review.

Table 7 provides the estimated additional review hours required for each applicable NSPS or NESHAP/ MACT regulation evaluated during the plan approval application review process. The Department issues approximately 80 plan approvals per year with NSPS and MACT standards.

TABLE 7
Additional Hours for NSPS or NESHAP/ MACT

NSPS or NESHAP (MACT)	Review Hours
Review of Preamble and Regulation	20
Determine Applicability	10
Incorporate Conditions into a Plan Approval	10
Estimated Hours	40

Table 7 represents approximately \$2,330 in personnel costs for the review of a plan approval application with applicable NSPS or NESHAP/MACT regulations.

Table 8 provides the estimated review hours for a plan approval application which is subject to PSD regulation.

TABLE 8
Plan Approval Application Review Hours for PSD

PSD	Review Hours
Administrative Tasks	8
Section Chief Screening	2
Section Chief Review	12
Section Chief Final (Comment/Response, etc.)	8
Pre-Application Meeting and Other Meetings	43
Public Hearing (AQ staff time)	18
Public Hearing (CR Coordinator time)	23
Application Manager Completeness Review	29
Application Manager Technical Review including PSD Applicability, Conditions, Federal Land Manager, EPA Reviews, Notices, etc.	1000
Program Manager Final Review	2
Estimated Hours	1145

Table 8 represents approximately \$66,700 in personnel costs for review of a plan approval application with PSD regulation.

Table 9 provides the estimated review hours for a plan approval application that is subject to NSR regulation. The Department issued 3 NSR plan approvals in 2018.

TABLE 9
Plan Approval Application Review Hours for NSR

NSR	Review Hours
Administrative Tasks	8
Section Chief Screening	4
Section Chief Review	14
Section Chief Final (Comment/Response, etc.)	13
Pre-Application Meeting and Other Meetings	31
Application Manager Completeness Review	11
Application Manager Technical Review including NSR Applicability, Conditions, EPA Reviews, Notices, etc.	221
Public Hearing (AQ staff time)	18
Public Hearing (CR Coordinator time)	19
Operations Review	2
Program Manager Final Review	2
Estimated Hours	343

Table 9 represents approximately \$20,050 in personnel costs for review of a plan approval application with NSR regulation.

Table 10 provides the number of estimated review hours for a plan approval application with a modification, extension, or transfer of ownership. The Department issued 25 modifications and 361 extensions in 2018.

TABLE 10
Other Plan Approval Application Action Review Hours

	Review Hours
Plan Approval - Modification	30
Plan Approval - Extension	10
Plan Approval - Transfer of Ownership	15

Table 10 represents the following: the plan approval modification time is approximately \$1,750 of personnel costs; the plan approval extension time is approximately \$580 of personnel costs; and the plan approval transfer of ownership time is approximately \$870 of personnel costs.

PLANTWIDE APPLICABILITY LIMIT

A plantwide applicability limit (PAL) is a limit on the facility that sets a plantwide emission limit based on the facility’s actual emissions. A PAL permit allows the owner or operator of the facility to avoid the major NSR permitting process when making changes to the facility or individual emissions units. Changes under the PAL are not exempt from state permitting requirements. In return for this flexibility, emissions must be monitored at all emissions units included in the PAL. The benefit is that the facility may be altered without first obtaining a Federal NSR permit or going through an emissions netting review; a PAL will allow quick changes at the facility. However, a PAL requires recordkeeping, monitoring, and reporting, and state permitting requirements still apply.

The Department has issued 14 PAL approvals but has not tracked work effort related to these applications as a separate work item. Because of the complex nature of setting the PAL, which includes reviewing actual emissions data, establishing monitoring and reporting requirements, and establishing recordkeeping requirements, the work effort is similar to the effort for an NSR application. The NSR application review process and personnel costs are detailed in Table 9.

NON-TITLE V (STATE-ONLY) OPERATING PERMIT

Table 11 provides the estimated review hours for a new or renewal of a Non-Title V operating permit. (Note: “permit issuance” includes section and division chiefs’ review including public notices and comment/response document.) The Department issued 52 new Non-Title V permits in 2018.

TABLE 11

Non-Title V Operating Permit Review Hours

	Review Hours
Completeness Review	4
Permit Application Review	34
Permit Issuance	12
Estimated Hours	50

Table 11 represents approximately \$2,900 in personnel costs for reviewing a new or the renewal of a Non-Title V operating permit.

Table 12 provides the estimated review hours for a Non-Title V operating permit amendment or minor modification. The Department renewed 395, amended 95, and modified 12 Non-Title V operating permits in 2018.

TABLE 12

Other Non-Title V Operating Permit Review Hours

	Review Hours
Non-Title V Operating Permit - Amendment	28
Non-Title V Operating Permit - Minor Modification	28

Table 12 represents that the Non-Title V permit amendment time is approximately \$1,630 of personnel costs and the Non-Title V minor modification time is also approximately \$1,630 of personnel costs.

TITLE V OPERATING PERMIT

Table 13 provides the estimated review hours for a Title V operating permit. (Note: “permit issuance” includes section and division chiefs’ review including public notices and comment/response document.) The Department issued 11 new Title V operating permits in 2018.

TABLE 13

Title V Operating Permit Review Hours

	Review Hours
Pre-application Meeting	10
Completeness Review	4
Permit Application Review	105
Permit Issuance	12
Estimated Hours	131

Table 13 represents approximately \$7,600 in personnel costs for the review of a Title V operating permit.

Table 14 provides the estimated review hours for a Title V operating permit administrative amendment, minor modification, major modification, or renewal. An administrative amendment includes a transfer of ownership. The Department renewed 73, amended 59, and modified 52 Title V operating permits in 2018.

TABLE 14
Other Title V Operating Permit Review Hours

	Review Hours
Title V Operating Permit – Administrative Amendment	30
Title V Operating Permit - Minor Modification	50
Title V Operating Permit - Major Modification	75
Title V Operating Permit - Renewal	75

Table 14 represents the following: the administrative amendment personnel costs are approximately \$1,750; the minor modification personnel costs are approximately \$2,900; the major modification personnel costs are approximately \$4,370; and the operating permit renewal personnel costs are approximately \$4,370.

RISK ASSESSMENT

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. The health risks associated with the emissions of air toxics are quantified using risk assessment analysis methods and procedures. These risk assessments are based upon ambient air toxics data obtained through sampling of actual emissions data obtained via stack testing or upon estimated emissions for proposed facilities.

These reviews require extensive staff time to research and to develop the report of potential adverse effects. The review process for risk assessments is lengthy because it requires a substantial amount of quality control review and includes an analysis of all the health impact data used for the chemicals evaluated in these assessments.

Department staff reported a total of 6,613 hours related to work on 15 risk assessments during FY 2015-2016. Total personnel expenditures were \$385,200, which equates to an average of 440 work hours or \$25,630 expended for each risk assessment. These costs are not currently recovered from the plan approval applicant. Rather, this cost to the Department is currently borne by the owners and operators of all permitted facilities through the plan approval application and operating permit fees that they pay.

ASBESTOS ABATEMENT, RENOVATION OR DEMOLITION NOTIFICATIONS

The Department is establishing a fee for notifications of asbestos abatement or regulated demolition/renovation projects (asbestos abatement projects or asbestos notifications). The Department expended 5,137.37 hours of work effort in FY 2015-2016 at a personnel cost of

\$264,945.80. These personnel costs do not include the cost of staff training to inspect asbestos removal projects or development of an online asbestos notification system, among other expenses.

Several states have established fees for notifications of asbestos abatement projects. Ohio collects a \$75 fee for each notification and a separate fee 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 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 fee of \$150 for asbestos abatement final clearance re-inspections.

The Department's fee will be \$300 for notifications filed during calendar years 2020—2025; \$400 for initial notifications filed during calendar years 2026—2030; and \$500 for notifications filed for the calendar years beginning with 2031. The fees for asbestos abatement or regulated demolition or renovation project notifications will provide revenue to maintain staffing to review these notifications and inspect these projects. These fees are comparable to, and in many instances less than, fees collected by neighboring states, Philadelphia AMS, and ACHD. For comparison purposes, Philadelphia County receives about 1,800 asbestos notifications per year and Allegheny County receives about 1,200 per year. Philadelphia County receives revenue of approximately \$300,000 annually from asbestos notification fees; Allegheny County received revenue of approximately \$520,000 in calendar year 2019 from asbestos notification fees.

REQUESTS FOR DETERMINATION

The Department is establishing a fee for reviewing an application for a Request for Determination (RFD) for changes of minor significance and exemption from a plan approval application, 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 owners and operators of Non-Title V facilities to determine whether a plan approval application is required for a specific air contamination source and, if so, if an operating permit is required in addition to the plan approval application. 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 owner or operator receives a written determination from the Department.

In 2007, the Department developed an online RFD application system. During the development of that system, the Department reviewed the amount of staff time and costs associated with processing and reviewing RFDs. The Department determined that clerical support, engineering review, and engineering supervisor review hours were needed to process and review an RFD application. Personnel costs, with benefits, were estimated in 2010 at \$331.64 per RFD application. Using the same hourly wage but updating the benefit rate, the personnel costs for 2016 would be estimated at \$405.25. Indirect costs, such as utilities and office space leases, have not been included in these estimates.

GENERAL PLAN APPROVAL AND GENERAL OPERATING PERMIT

The Department has developed and issued 19 General Plan Approvals and General Operating Permits (GP) since 1996. Issuance of a general plan approval or general operating permit and applications for authorization to use a general plan approval or general operating permit are regulated in 25 Pa. Code, Chapter 127, Subchapter H (relating to general plan approvals and operating permits). The Department establishes the application fee for each authorization to use at the time the General Plan Approval or General Permit is developed. The Department issued 370 authorizations to use GP in 2018. This rulemaking establishes a new section under Subchapter I to address fees for the application to use a general plan approval or general operating permit issued by the Department under Subchapter H for stationary or portable sources. These application fees will be established when the general plan approval or general operating permit is issued or modified by the Department. These application fees will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice and review period).

FACILITY INSPECTIONS

Each type of facility described above requires regular inspection to confirm compliance with the operating permit and/or applicable regulations. Ideally, each permitted facility should be inspected at least once a year with additional, partial inspections for very complex facilities or facilities with compliance issues. Because of staff shortages this has not been happening since the mid-2000s. Table 15 provides the estimated hours for the inspection of various types of facilities. Please note that “inspection” includes pre-inspection file review, travel, time on site, follow-up questions, and the writing and review of the inspection report.

TABLE 15
Facility Inspections

	Hours
Title V Facility	53
Synthetic Minor Facility	23
Natural Minor Facility	15
Asbestos Removal, Renovation, Demolition	7.5

Table 15 represents the following: Title V inspection personnel costs are approximately \$1,400; the Synthetic Minor inspection personnel costs are approximately \$625; the Natural Minor inspection personnel costs are approximately \$400; and the Asbestos inspection personnel costs are approximately \$200.

CURRENT AND FINAL-FORM PLAN APPROVAL APPLICATION AND OPERATING PERMIT FEES

CURRENT PLAN APPROVAL APPLICATION AND OPERATING PERMIT FEES

The current Air Quality Plan Approval Application and Operating Permit Fees are summarized in Table 16. These fees are current as of 2005, the year of the last staged increase of the fees promulgated at 24 Pa.B. 5899.

TABLE 16
Current Air Quality Plan Approval Application and Operating Permit Fees
 (All fees current as of 2005)

Plan Approval Application Fees	Section	Current Fee
Plan Approval Base Fee, Subchapter B	127.702(b)	\$1,000
Plan Approval for NSR (fee not including NSPS & MACT), Subchapter E	127.702(c)	\$5,300
Plan Approval with NSPS, NESHAP, MACT	127.702(d)	\$1,700
Plan Approval Application for case-by-case MACT	127.702(e)	\$8,000
Plan Approval for PSD (fee not including NSPS, MACT), Subchapter D	127.702(f)	\$22,700
Plan Approval – Minor Modification, Extension, or Transfer of Ownership	127.702(g)	\$300
Operating Permit Fees Under Subchapter E (Non-Title V Facilities)		
Non-Title V Operating Permit: Modification (minor and significant), Revision (amendment)	127.703(b)	\$375
Non-Title V Operating Permit: New, Renewal (fee not including NSPS & MACT)	127.703(b)	\$375
Annual Operating Permit Administration Fee for Non-Title V Facility	127.703(c)	\$375
Title V Operating Permit Fees Under Subchapter G		
Title V Operating Permit: Modification, Revision	127.704(b)	\$750
Title V Operating Permit: New, Renewal	127.704(b)	\$750
Annual Operating Permit Administration Fee for Title V Facility	127.704(c)	\$750

FINAL-FORM PLAN APPROVAL APPLICATION AND OPERATING PERMIT FEES

Fee schedules are established for the review of:

- Ambient Air Impact Modeling associated with certain plan approval applications
- Plantwide Applicability Limits (PAL)

- Risk Assessment Applications
- Notifications of Asbestos Abatement and Demolition/Renovation
- Requests for Determination (RFD)

This rulemaking amends the existing air quality fee schedules for the following:

- Application fees for plan approval applications including NSR, PSD, NSPS, and NESHAP/MACT.
- Application fees for authorization to use general plan approvals and general operating permits.
- Application fees for operating permits.
- Annual operating permit administration fee.

The annual operating permit administration fees in §§ 127.703(c) and 127.704(c) are amended to become annual operating permit maintenance fees as follows:

- Annual Operating Permit Maintenance Fee for Synthetic Minor Facility
- Annual Operating Permit Maintenance Fee for Non-Title V Facility that is not a Synthetic Minor
- Annual Operating Permit Maintenance Fee for Title V Facility

The annual operating permit maintenance fee will be due on or before December 31 of each year for the succeeding calendar year.

Assessed plan approval application fees will consist of a base fee plus additional fees for the review of up to three additional applicable NSPS, NESHAP, or MACT standards. For example, an owner or operator that submits a plan approval application during calendar years 2021-2025 with one applicable NSPS and one applicable NESHAP will pay the base fee of \$2,500 plus \$2,500 for one NSPS and \$2,500 for one NESHAP for a total of \$7,500. An owner or operator that submits a plan approval application that has three or more additional applicable NSPS, NESHAP, or MACT standards will pay the base fee plus the fees for a maximum of three additional applicable standards. The Department's permitting review will include all applicable standards even though the applicant only pays for a maximum of three.

The Air Quality Plan Approval Application and Operating Permit Fees are summarized in Table 17 (Title V Facilities), Table 18 (Non-Title V Facilities), and Table 19 (Fee Schedule for Risk Assessments, Asbestos Notifications, and Requests for Determination).

TABLE 17
Final-Form Air Quality Fee Schedule for Title V Facilities
(Major Facilities Account)

Title V Facilities Account			2021 - 2025	2026 - 2030	2031+
Description of Activity	Section	Current Fee	New Fee	New Fee	New Fee
Plan Approval Application Fee, Subchapter B	127.702(b)	\$1,000	\$2,500	\$3,100	\$3,900
Plan Approval – New Source Review, Subchapter E	127.702(c)	\$5,300	\$7,500	\$9,400	\$11,800
Plan Approval – Review of NSPS/NESHAPs/MACT (cumulative; 3 standards max)	127.702(d)	\$1,700	\$2,500	\$3,100	\$3,900
Plan Approval – Review of Case-by-Case MACT	127.702(e)	\$8,000	\$9,500	\$11,900	\$14,900
Plan Approval – Prevention of Significant Deterioration, Subchapter D	127.702(f)	\$22,700	\$32,500	\$40,600	\$50,800
Plan Approval – Plantwide Applicability Limit (PAL), § 127.218	127.702(g)	\$5,300	\$7,500	\$9,400	\$11,800
Plan Approval – PAL, Subchapter D	127.702(h)	\$5,300	\$7,500	\$9,400	\$11,800
Plan Approval – Minor Modification	127.702(i)(1)	\$300	\$1,500	\$1,900	\$2,400
Plan Approval – Extension	127.702(i)(2)	\$300	\$750	\$900	\$1,100
Plan Approval – Transfer of Ownership	127.702(i)(2)	\$300	\$750	\$900	\$1,100
Plan Approval – Significant Modification, Ambient Impact Analysis	127.702(j)(1)	\$0	\$9,000	\$11,300	\$14,100
Plan Approval – Significant Modification, Reassessment of control technology	127.702(j)(2)	\$0	\$2,500	\$3,100	\$3,900
Title V Operating Permit Application, New, Subchapter G	127.704(b)(1)	\$750	\$5,000	\$6,300	\$7,900
Title V Operating Permit – Renewal and Reissuance	127.704(b)(2)	\$750	\$4,000	\$5,000	\$6,300
Title V Operating Permit – Minor Modification	127.704(b)(3)	\$750	\$1,500	\$1,900	\$2,400
Title V Operating Permit – Significant Modification	127.704(b)(4)	\$750	\$4,000	\$5,000	\$6,300
Title V Operating Permit – Administrative Amendment	127.704(b)(5)	\$375	\$1,500	\$1,900	\$2,400
Title V Operating Permit – Transfer of Ownership	127.704(b)(5)	\$375	\$1,500	\$1,900	\$2,400
Title V Operating Permit – Annual Administration Fee	127.704(c)	\$750	\$0	\$0	\$0
Title V Operating Permit – Annual Maintenance Fee	127.704(d)	\$0	\$8,000	\$10,000	\$12,500
Title V Operating Permit – Plantwide Applicability Limit (PAL), § 127.218	127.704(e)	\$0	\$10,000	\$12,500	\$15,600
Title V Operating Permit – PAL, Subchapter D	127.704(f)	\$0	\$10,000	\$12,500	\$15,600

TABLE 18

Final-Form Air Quality Fee Schedule for Non-Title V Facilities
(Non-Major Facilities Account)

Non-Title V Facilities Account			2021 - 2025	2026 - 2030	2031+
Description of Activity	Section	Current Fee	New Fee	New Fee	New Fee
Plan Approval Application Fee, Subchapter B	127.702(b)	\$1,000	\$2,500	\$3,100	\$3,900
Plan Approval – Review of NSPS/NESHAPs/MACT (cumulative; 3 standards max)	127.702(d)	\$1,700	\$2,500	\$3,100	\$3,900
Plan Approval – Minor Modification	127.702(i)(1)	\$300	\$1,500	\$1,900	\$2,400
Plan Approval – Extension	127.702(i)(2)	\$300	\$750	\$900	\$1,100
Plan Approval – Transfer of Ownership	127.702(i)(2)	\$300	\$750	\$900	\$1,100
Plan Approval – Significant Modification, Ambient Impact Analysis	127.702(j)(1)	\$0	\$9,000	\$11,300	\$14,100
Plan Approval – Significant Modification, Reassessment of control technology	127.702(j)(2)	\$0	\$2,500	\$3,100	\$3,900
Non-Title V Operating Permit Application, New, Subchapter F	127.703(b)(1)	\$375	\$2,500	\$3,100	\$3,900
Non-Title V Operating Permit – Renewal and Reissuance	127.703(b)(2)	\$375	\$2,100	\$2,600	\$3,300
Non-Title V Operating Permit – Minor Modification	127.703(b)(3)	\$375	\$1,500	\$1,900	\$2,400
Non-Title V Operating Permit – Significant Modification	127.703(b)(4)	\$375	\$2,000	\$2,500	\$3,100
Non-Title V Operating Permit – Administrative Amendment	127.703(b)(5)	\$375	\$1,500	\$1,900	\$2,400
Non-Title V Operating Permit – Transfer of Ownership	127.703(b)(5)	\$375	\$1,500	\$1,900	\$2,400
Non-Title V Operating Permit – Annual Administration Fee	127.703(c)	\$375	\$0	\$0	\$0
Non-Title V Operating Permit – Annual Maintenance Fee for Synthetic Minor Facility	127.703(d)(1)	\$0	\$4,000	\$5,000	\$6,300
Non-Title V Operating Permit – Annual Maintenance Fee for Facility that is not a Synthetic Minor	127.703(d)(2)	\$0	\$2,000	\$2,500	\$3,100

TABLE 19

Final-Form Air Quality Fee Schedule for Risk Assessments, Asbestos Notifications and Requests for Determination.

Fees at §§ 127.702, 127.708 and 708			2021 - 2025	2026 - 2030	2031+
Description of Activity	Section	Current Fee	New Fee	New Fee	New Fee
Risk Assessment Analysis – Inhalation only	127.702(k)(1)	\$0	\$10,000	\$12,500	\$15,600
Risk Assessment Analysis – Multi-pathway	127.702(k)(2)	\$0	\$25,000	\$31,300	\$39,100
Asbestos Notification	127.708	\$0	\$300	\$400	\$500
Request for Determination (RFD) Form – At small business stationary source (Section 3 of the APCA)	127.709(1)	\$0	\$400	\$500	\$600
RFD – Not a small business stationary source under § 127.709	127.709(2)	\$0	\$600	\$800	\$1,000

SUMMARY OF PERSONNEL COSTS, CURRENT FEES, AND FINAL-FORM FEES

Table 20 compares the personnel costs to perform each plan approval application or operating permit activity with the current fees and the final-form fees. The table shows the average time in personnel hours that each activity requires as detailed in Tables 6—14; the Department’s direct personnel costs for each activity based on average salary and benefits as calculated in Tables 6—14; the current fees as shown in Table 16; and the final-form fees for 2021-2025, as shown in Tables 17—19. Table 20 shows that, for many of the activities, the current fee is less than the Department’s personnel costs to perform the activity and the final-form fees for certain activities are still somewhat less than the Department’s direct personnel costs of completing the activity. General Fund money and Federal Grants supplement the remaining cost. In determining what would be a reasonable fee to propose, the Department assumed that revenue from the General Fund allocation and Federal Grants would remain stable for the next several years. If this assumption holds, the increased revenue from the final-form fees plus the anticipated revenue from the General Fund allocation and Federal Grants should cover the program expenditures. However, if either or both of the General Fund Appropriation money allocated to the Air Quality Program or Federal Grant funding decrease significantly, this will create additional pressure to implement increases to the plan approval application and operating permit fees and consider additional new fees to maintain the solvency of the Clean Air Fund.

TABLE 20

Summary of Average Cost, Current Fee, and Final-Form Fee Per Activity

Description of Activity	Section	Average Time (hrs), Tables 6—14	Cost based on average salary including benefits, Tables 6—14	Current Fee, Table 16	Final Fee, Tables 17—19
Plan Approval Application Fee, Subchapter B	127.702(b)	110	\$6,250	\$1,000	\$2,500
Plan Approval – New Source Review, Subchapter E	127.702(c)	343	\$20,050	\$5,300	\$7,500
Plan Approval – Review of NSPS/NESHAPs/MACT (cumulative; 3 standards max)	127.702(d)	40	\$2,330	\$1,700	\$2,500
Plan Approval – Review of Case-by-Case MACT	127.702(e)	160	\$9,320	\$8,000	\$9,500
Plan Approval – Prevention of Significant Deterioration, Subchapter D	127.702(f)	1145	\$66,700	\$22,700	\$32,500
Plan Approval – Plantwide Applicability Limit (PAL), § 127.218	127.702(g)	345	\$20,050	\$5,300	\$7,500
Plan Approval – PAL, Subchapter D	127.702(h)	345	\$20,050	\$5,300	\$7,500
Plan Approval – Minor Modification	127.702(i)(1)	30	\$1,750	\$300	\$1,500
Plan Approval – Extension	127.702(i)(2)	10	\$580	\$300	\$750
Plan Approval – Transfer of Ownership	127.702(i)(2)	15	\$870	\$300	\$750
Plan Approval – Significant Modification, Ambient Impact Analysis	127.702(j)(1)	-	-	\$0	\$9,000
Plan Approval – Significant Modification, Reassessment of control technology	127.702(j)(2)	-	-	\$0	\$2,500
Non-Title V Operating Permit Application, New, Subchapter F	127.703(b)(1)	50	\$2,900	\$375	\$2,500
Non-Title V Operating Permit – Renewal and Reissuance	127.703(b)(2)	50	\$2,900	\$375	\$2,100
Non-Title V Operating Permit – Minor Modification	127.703(b)(3)	28	\$1,630	\$375	\$1,500
Non-Title V Operating Permit – Significant Modification	127.703(b)(4)	50	\$2,910	\$375	\$2,000
Non-Title V Operating Permit – Administrative Amendment	127.703(b)(5)	28	\$1,630	\$375	\$1,500
Non-Title V Operating Permit – Transfer of Ownership	127.703(b)(5)	28	\$1,630	\$375	\$1,500
Non-Title V Operating Permit – Annual Administration Fee	127.703(c)	-	-	\$375	\$0
Non-Title V Operating Permit – Annual Maintenance Fee for Synthetic Minor Facility	127.703(d)(1)	-	-	\$0	\$4,000
Non-Title V Operating Permit – Annual Maintenance Fee for Facility that is not a Synthetic Minor	127.703(d)(2)	-	-	\$0	\$2,000
Title V Operating Permit Application, New, Subchapter G	127.704(b)(1)	131	\$7,600	\$750	\$5,000
Title V Operating Permit – Renewal and Reissuance	127.704(b)(2)	75	\$4,370	\$750	\$4,000
Title V Operating Permit – Minor Modification	127.704(b)(3)	50	\$2,910	\$750	\$1,500
Title V Operating Permit – Significant Modification	127.704(b)(4)	75	\$4,370	\$750	\$4,000
Title V Operating Permit – Administrative Amendment	127.704(b)(5)	30	\$1,750	\$375	\$1,500

Title V Operating Permit – Transfer of Ownership	127.704(b)(5)	30	\$1,750	\$375	\$1,500
Title V Operating Permit – Annual Administration Fee	127.704(c)	-	-	\$750	\$0
Title V Operating Permit – Annual Maintenance Fee	127.704(d)	-	-	\$0	\$8,000
Title V Operating Permit – Plantwide Applicability Limit (PAL), § 127.218	127.704(e)	300	\$17,538	\$0	\$10,000
Title V Operating Permit – PAL, Subchapter D	127.704(f)	300	\$17,538	\$0	\$10,000
Risk Assessment Analysis – Inhalation only	127.702(k)(1)	-	-	\$0	\$10,000
Risk Assessment Analysis – Multi-pathway	127.702(k)(2)	-	-	\$0	\$25,000
Asbestos Notification	127.708	-	-	\$0	\$300
Request for Determination (RFD) Form – At small business stationary source (Section 3 of the APCA)	127.709(1)	-	-	\$0	\$400
RFD – Not a small business stationary source under § 127.709	127.709(2)	-	-	\$0	\$600

TITLE V EMISSION FEE

The owners and operators of approximately 580 Title V facilities in this Commonwealth (including approximately 80 facilities in Allegheny and Philadelphia Counties) are subject to the Title V emission fee for emissions of up to 4,000 tons of each regulated pollutant. As required under Title V of the CAA and 40 CFR Part 70, these Title V facilities are defined as major sources due to the amount of emissions of regulated pollutants reported on an annual basis. Of the 580 facilities, 55 do not pay the Title V emission fees as provided under section 6.3 of the APCA (owned or operated by State or local governments or are non-major facilities that are required by Federal regulation to have a Title V permit).

The Title V emission fee under 25 Pa. Code § 127.705 is payable by the owners and operators of major 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. Section 502(b) of the CAA required the EPA to adopt rules establishing the minimum elements of a State's Title V operating permit program, including a requirement that the owner or operator of all sources subject to the requirements obtain a permit under Title V of the CAA and pay an annual fee, or the equivalent over some other period, to State and local agencies sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V of the CAA.

The Department established a uniform Title V emission fee across this Commonwealth in § 127.705 on November 26, 1994, at 24 Pa.B. 5899. The local air pollution control agencies in Allegheny and Philadelphia Counties collect the Title V emission fee revenue for sources under their respective jurisdictions. In 1994, the Title V emission fee was established at \$37 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant per Title V facility. As provided in § 127.705(d), the emission fee imposed under § 127.705(a) has been increased in each calendar year after 1994 by the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year.

The Title V emission fee established in 1994 was designed to cover all reasonable costs required to develop and administer the Title V operating permit program. These reasonable costs include the cost for certain activities related to major facility operations, including the review and processing of applications for plan approvals and operating permits; emissions and ambient air monitoring; developing regulations and guidance; program planning; modeling, analyses, and demonstrations;

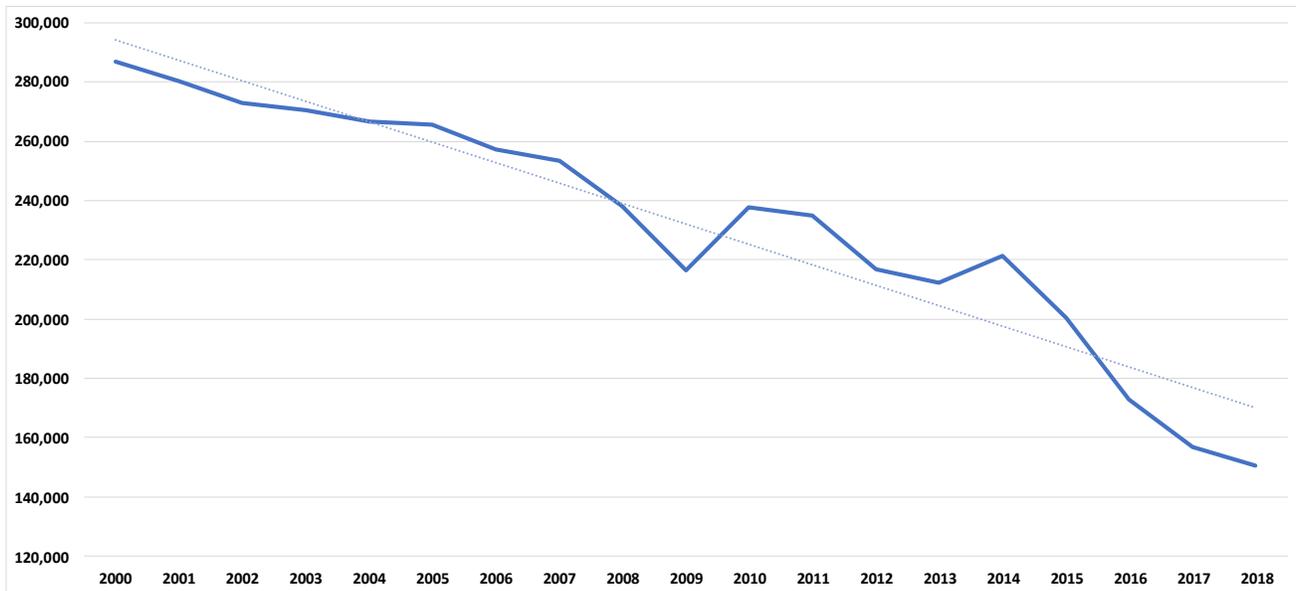
inspections and complaint investigations; and preparing emission inventories and tracking emissions. Direct and indirect program costs include personnel costs; operating expenses such as electricity, telecommunications, travel, auto supplies, and fuel; and the purchase of fixed assets such as air samplers and monitoring equipment, vehicles, and trailers.

However, Title V emission fee revenues have been decreasing annually due to decreasing emissions of regulated pollutants. These decreased emissions are due to several factors including the installation of air pollution control technology over the past 2 decades on major stationary sources, the retirement or curtailment of operations by major sources including certain refineries and coal-fired power plants, and the conversion of many major facilities from burning coal or oil to burning natural gas. Decreasing emissions and facility shutdowns do not reduce the Department's workload. Air Quality Program staff must continue to implement the air pollution control laws and regulations, issue plan approvals and operating permits including renewals and amendments, conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, maintain the source testing program, track emissions and maintain emission inventories, review continuous emission monitoring data, and monitor the ambient air in this Commonwealth. Significant staff resources have also been and will continue to be devoted to permitting and inspection of unconventional natural gas development activities.

On December 14, 2013, the Board amended Chapter 127, Subchapter I to increase the Title V emission fee paid by the owner or operator of a Title V facility to \$85 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant beginning with emission fees payable by September 1, 2014, for emissions occurring in calendar year 2013. At that time, 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 fees would be needed within 3 years.

Graph 2 shows the downward trend of Title V Facility emissions upon which Title V emission fees are paid. The emissions data was retrieved from the Department's air emissions Point Source Inventory in September 2019.

GRAPH 2
Title V Facility Total Emissions, 2000 through 2018
(Tons)



ANNUAL OPERATING PERMIT ADMINISTRATION FEE AND ANNUAL OPERATING PERMIT MAINTENANCE FEE

As anticipated, the increased Title V emission fee adopted in 2013 has not been sufficient to maintain solvency of the Clean Air Fund. In considering the downward trend of emissions, as illustrated in Graph 2, the impact of emission fees and other fees on the regulated community, and the needs of the Air Quality Program, the Department evaluated the establishment of an annual operating permit maintenance fee to amend the annual operating permit administration fee that is currently required under §§ 127.703(c) and 127.704(c) (relating to operating permit fees under Subchapter F; and Title V operating permit fees under Subchapter G). These annual operating permit administration fee amounts were set in 2005 and have not increased since then.

The revenue generated from the annual operating permit administration fees does not adequately cover the costs of Department services provided to facility owners and operators for this fee. These fees are used to cover some of 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. To remedy this, the Department will stop collecting the annual operating permit administration fee and instead collect an annual operating permit maintenance fee. This annual operating permit maintenance fee for Title V, synthetic minor and natural minor facilities is designed to cover costs to the Department for providing services to facility owners and operators that are otherwise absorbed in the revenue generated from emission fees paid by the owners and operators of Title V facilities, permitting fee revenue from the owners and operators of both Title V and Non-Title V facilities, and General Fund money.

REVENUE FROM TITLE V ANNUAL OPERATING PERMIT ADMINISTRATION FEE VERSUS ANNUAL OPERATING PERMIT MAINTENANCE FEE

The annual operating permit administration fee of \$750 for the owners and operators of Title V facilities is limited to those that are identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions), which is a total of 30 Title V facilities. The current annual operating permit administration fee for the 30 affected Title V owners and operators generates revenue of only \$22,500.

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 applies 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. There are approximately 500 Title V facility owners and operators under the Department’s jurisdiction. This fee is expected to generate revenue of approximately \$4 million from the 500 Title V facility owners and operators for calendar years 2021-2025. Table 21 illustrates the revenue generated from existing emission fees compared to anticipated revenue generated from the emission fees and the annual operating permit maintenance fee.

TABLE 21

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 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
Administration Fee per year per facility	\$750	
Administration Fee Revenue (30 facilities)	\$22,500	
Maintenance Fee per year per facility	\$0	\$8,000
Maintenance Fee Revenue (all facilities)	\$0	\$4,000,000
Number of DEP regulated facilities that pay 90% of the combined Title V Emission Fee and Maintenance Fee Revenue	102	289
Other Title V Operating Permit Fee Revenue	\$412,625	\$1,371,800
Total Title V Facility Revenue	\$14,430,509	\$19,367,184

REVENUE FROM NON-TITLE V ANNUAL OPERATING PERMIT ADMINISTRATION FEE VERSUS ANNUAL OPERATING PERMIT MAINTENANCE FEE

The annual operating permit administration fee is \$375 for the owners and operators of Non-Title V facilities. This fee is paid by the owners and operators of all 2,100 Non-Title V facilities under the Department’s jurisdiction. The current annual administration fee for Non-Title V facility owners and operators generates revenue of \$787,500.

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. These fees are expected to generate combined revenue of approximately \$5.50 million from the 2,100 Non-Title V facility owners and operators for calendar years 2021-2025. Table 22 illustrates the revenue generated from existing fees compared to anticipated revenue generated from the annual operating permit maintenance fee.

TABLE 22

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

	Current	Projected Revenue with Annual 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
Annual Administration	\$787,500	
Penalties	\$2,000,000	\$2,000,000
Annual Maintenance		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

OPTIONS FOR REVISING THE TITLE V EMISSION FEE

FEE OPTIONS CONSIDERED FOR PERMITTED FACILITY OWNERS AND OPERATORS

The current Title V emission fee, due September 1, 2020, for emissions that occurred in calendar year 2019, is \$93.06 per ton of emissions up to 4,000 tons of each regulated pollutant, except greenhouse gases (GHG). Approximately 90% of the current Title V emission fee revenue of approximately \$14.083 million is generated from emissions at 102 Title V facilities as illustrated in Table 23.

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, which was included in the proposed rulemaking Annex A, was to leave the Title V emission fee at § 127.705 unchanged and collect an annual operating permit maintenance fee of \$10,000 from the owners or operators of all affected Title V facilities for calendar years 2021—2025, \$12,500 for calendar years 2026—2030, and \$15,600 for the calendar years beginning with 2031. After evaluating the comments received on this proposal, the annual Title V operating permit maintenance fee was reduced to \$8,000 for calendar years 2021—2025, \$10,000 for calendar years 2026—2030, and \$12,500 for the calendar years beginning with 2031. This reduction in the Title V operating permit maintenance fee has been offset by an increase in the Synthetic Minor operating permit maintenance fee resulting in no net change in the revenue collected overall. In addition, the projected future emissions upon which Title V emission fees will be due has been updated in the tables and charts to reflect recently announced closures and recently started construction of EGUs.

Table 23 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 23) will 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 nearly three times as many Title V facility owners and operators as the current fee schedule (289 versus 102).

TABLE 23

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; Revised Annual Maintenance Fee of \$8,000	Option 2 Increased Emission Fee; Annual Maintenance Fee of \$5,000	Option 3 Increased Emission Fee; Emission Fee Floor; No Annual 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 Maintenance Fee per year	\$0	\$8,000	\$5,000	\$0
Annual 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 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 the proposed 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 23 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 23 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 23, 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 recommended option (Option 1) in the proposed rulemaking Annex A and Option 2 spread the generation of the Clean Air Fund revenues among more Title V facility owners and operators due to collecting an annual maintenance fee from all Title V facility owners and operators. The revised \$8,000 annual operating permit maintenance fee for the recommended option 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.

Option 3 would affect 129 Title V facility owners and operators who would bear the brunt of generating the total emission fee revenue collected, rather than 102 Title V facility owners and operators under the current fee schedule, 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 revised annual operating permit maintenance fee for the recommended 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 and 129 for Option 3.

After considering these options based on the number of affected facilities, the amount of revenue generation expected, and the public comments received, the Department selected Option 1 as the recommended option with the following two revisions:

1. The annual operating permit maintenance fee for Synthetic Minor Facilities is increased to four thousand dollars (\$4000) for calendar years 2021—2025; five thousand dollars (\$5,000) for calendar years 2026—2030; and six thousand two hundred dollars (\$6,200) for the calendar years beginning with 2031.
2. The annual operating permit maintenance fee for Title V Facilities is lowered to eight thousand dollars (\$8000) for calendar years 2021—2025; ten thousand dollars (\$10,000) for calendar years 2026—2030; and twelve thousand five hundred dollars (\$12,500) for the calendar years beginning with 2031.

The Synthetic Minor Operating Permit Maintenance fee was raised in response to comments from the Air Quality Technical Advisory Committee (AQTAC) about the level of effort needed to regulated synthetic minor facilities. Synthetic Minor facilities are facilities which would be Title V facilities except that they accept enforceable permit conditions to limit their potential emissions below major facility thresholds. Because of these limiting permit conditions these facilities require more regulatory oversight than facilities whose potential to emit are naturally below major facility thresholds (Natural Minor). Therefore, the Synthetic Minor maintenance fee has been raised from \$2,500 to \$4,000. However, because of the number of Synthetic Minor and Title V facilities in the state this change is revenue neutral overall.

CONCLUSION

Table 3 projects that Title V revenue will be less than \$15 million and expenditures will rise from approximately \$19 million to approximately \$20 million, creating a Title V revenue versus expenditure shortfall of approximately \$4 million rising to \$5 million in each fiscal year going forward. Table 4 projects a Non-Title V revenue versus expenditures shortfall of approximately \$6.0 million rising to \$6.5 million in each fiscal year going forward. This is a combined revenue versus expenditures

shortfall of approximately over \$11 million in the out years. Table 5 illustrates that the Clean Air Fund is projected to have a deficit of \$2.4 million in FY 2022-2023, increasing to over \$38 million by FY 2024-2025.

Table 21 illustrates that if no amendments are made to the air quality fee schedules, the anticipated Title V revenue to the Department in FY 2020-2021 and thereafter is approximately \$14.5 million, which will not be sufficient to maintain the Air Quality Program and Title V Operating Permit Program in future years, as required by section 502(b) of the CAA and section 6.3(a) of the APCA. The anticipated Non-Title V revenue to the Department in FY 2020-2021 of \$3.2 million based on current fees and estimated penalties, illustrated in Table 22, will likewise not be sufficient to maintain Non-Title V activities, including the Non-Title V (State-Only) Operating Permit Program, as required by section 6.3(a) of the APCA.

If this rulemaking is promulgated as final-form regulation in 2020, the anticipated increased revenue is projected to keep the Clean Air Fund solvent (see Table 26 and Graph 3). For instance, the Clean Air Fund ending balances without the fee amendments are projected to be \$ 8.5 million in FY 2020-2021; a deficit of \$2.4 million in FY 2021-2022; and a deficit of \$13.9 million in FY 2022-2023. Conversely, the Clean Air Fund ending balances with the fee amendments are projected to be \$18.6 million in FY 2020-2021; \$19.5 million in FY 2021-2022; and \$19.4 million in FY 2022-2023. The increased revenue will come in time for the Non-Title V Account to avoid a deficit. Tables 24 and 25 show the overall projected balances for the Title V and Non-Title V Accounts.

TABLE 24
Title V Account with 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	\$ 13,122	\$ 12,166	\$ 10,382	\$ 8,419
Total Revenue	\$ 15,938	\$ 12,912	\$ 17,229	\$ 19,149	\$ 19,102	\$ 19,340	\$ 19,583
Total Expenditures	\$ 17,878	\$ 18,539	\$ 19,224	\$ 20,105	\$ 20,886	\$ 21,303	\$ 21,729
Ending Balance	\$ 20,744	\$ 15,117	\$ 13,122	\$ 12,166	\$ 10,382	\$ 8,419	\$ 6,273

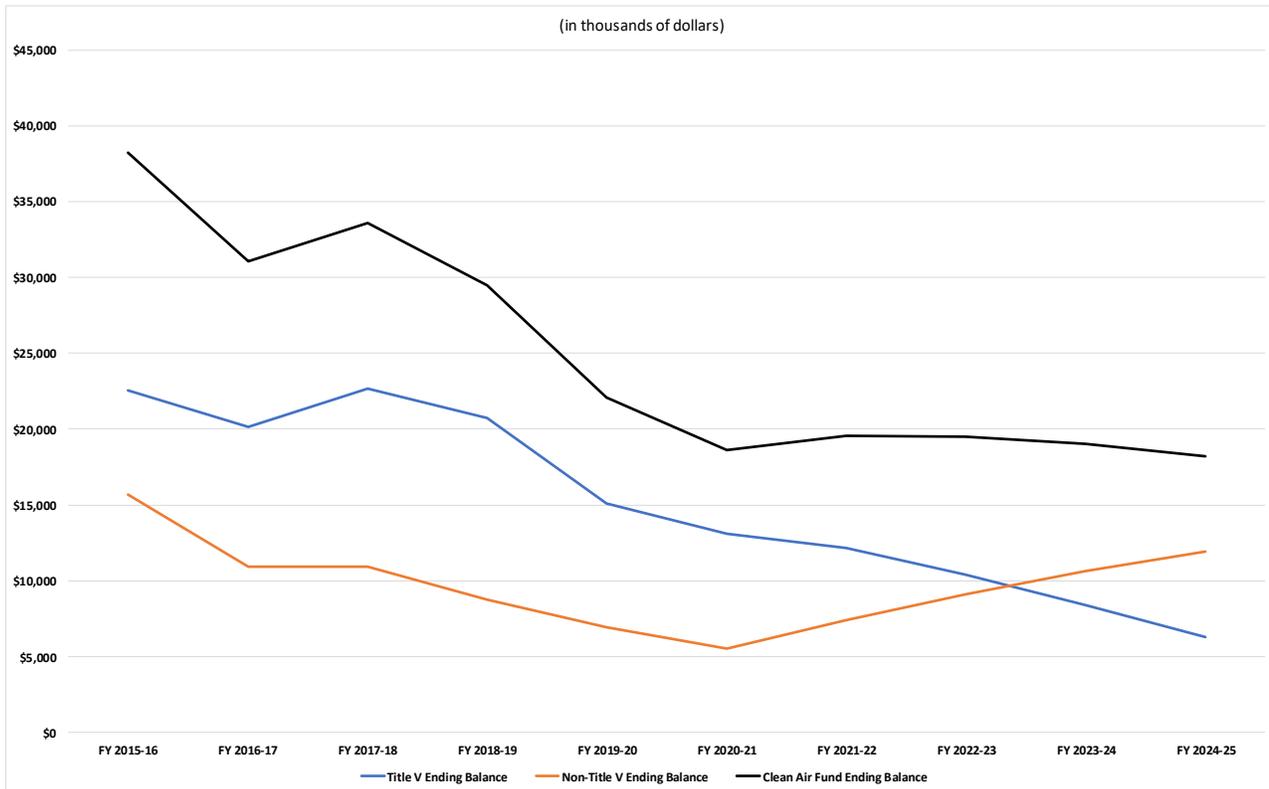
TABLE 25
Non-Title V Account with Fee Amendments
(in thousands of dollars)

	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	\$ 6,955	\$ 5,494	\$ 7,390	\$ 9,096	\$ 10,606
Total Revenue	\$ 7,175	\$ 7,744	\$ 7,951	\$ 11,496	\$ 11,498	\$ 11,498	\$ 11,498
Total Expenditures	\$ 9,369	\$ 9,535	\$ 9,412	\$ 9,600	\$ 9,792	\$ 9,988	\$ 10,188
Ending Balance	\$ 8,746	\$ 6,955	\$ 5,494	\$ 7,390	\$ 9,096	\$ 10,606	\$ 11,916

TABLE 26
Clean Air Fund Ending Balances with 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
Title V Ending Balance	\$ 20,744	\$ 15,117	\$ 13,122	\$ 12,166	\$ 10,382	\$ 8,419	\$ 6,273
Non-Title V Ending Balance	\$ 8,746	\$ 6,955	\$ 5,494	\$ 7,390	\$ 9,096	\$ 10,606	\$ 11,916
Clean Air Fund Ending Balance	\$ 29,490	\$ 22,072	\$ 18,616	\$ 19,556	\$ 19,478	\$ 19,025	\$ 18,189

GRAPH 3
Clean Air Fund Balances



ADVISORY COMMITTEE COMMENT

The Department consulted with the 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 the 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, the AQTAC concurred with the Department's recommendation to advance the proposal to the Board for consideration as proposed rulemaking with publication for a minimum 60-day public comment period and three public hearings.

The Department presented and discussed the final-form Annex A with AQTAC on December 12, 2019. AQTAC again concurred with the with the Department's recommendation to advance the proposal to the Board with the recommendation 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) as stated in its letter of concurrence, dated July 12, 2019, which accompanies the rulemaking.

The Department also conferred with the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight Committee concerning the proposed rulemaking on June 15 and 25, 2018. The CAC discussed this proposed rulemaking on July 17, 2018 and concurred with the Department's recommendation to advance the proposal to the Board for consideration as proposed rulemaking, with consideration of the concerns by the CAC in its letter of concurrence, dated July 17, 2018, which accompanies the proposed rulemaking.

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

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

Finally, the Department presented and discussed the final-form Annex A with SBCAC on January 22, 2020. AQTAC again concurred with the with the Department's recommendation to advance the proposal to the Board for consideration.

SUMMARY AND RECOMMENDATION TO THE ENVIRONMENTAL QUALITY BOARD (BOARD)

The Department recommends that the Board approve these air quality fee schedule amendments for promulgation as a final-form regulation. The amended fee schedules will support continued operation of the Air Quality Program in this Commonwealth.

This rulemaking amends existing requirements and fee schedules codified in Chapter 127, Subchapter I to ensure that fees are sufficient to cover the costs of administering the Air Quality Program, the Title V Operating Permit Program, and the Non-Title V Operating Permit Program as required by section 502(b) of the CAA and section 6.3 of the APCA. The existing plan approval application and operating

permit application fee schedules are amended to increase the applicable fees. Fees are established for ambient air impact modeling of certain plan approval applications, annual operating permit maintenance for the owners or operators of both Title V and Non-Title V facilities, PAL applications, risk assessment applications, asbestos abatement or demolition or renovation project notifications (asbestos notifications), and requests for determination (RFD) applications.

Section 502(b) of the CAA requires the Commonwealth to adopt rules that the owners or operators of all sources subject to the requirement to obtain an operating permit under Title V of the CAA pay an annual fee sufficient to cover all reasonable (direct and indirect) costs incurred by the Commonwealth to develop and administer the operating permit program requirements of Title V.

Section 6.3(a) of the APCA 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; 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 to establish fees by regulation to support the air pollution control program authorized by the APCA and not covered by fees required by section 502(b) of the CAA.

Table 5 illustrates that the Clean Air Fund is projected to have a deficit of \$2.4 million in FY 2021-2022 and \$13.9 million in FY 2022-2023. Table 21 illustrates that if no amendments are made to the air quality fee schedules, the anticipated Title V revenue to the Department in FY 2020-2021 and thereafter of approximately \$14.5 million will not be sufficient to maintain the Air Quality Program and Title V Operating Permit Program in future years, as required by section 502(b) of the CAA and section 6.3(a) of the APCA. Likewise, Table 22 illustrates that the anticipated Non-Title V revenue to the Department in FY 2020-2021 of \$3.2 million based on current fees and projected penalties will not be sufficient to maintain Non-Title V activities, including the Non-Title V (State-Only) Operating Permit Program, as required by section 6.3(a) of the APCA.

The Department considered three options for increasing revenue from the regulated community. After evaluating the comments received, the annual Title V operating permit maintenance fee was reduced to \$8,000 for calendar years 2021—2025, \$10,000 for calendar years 2026—2030, and \$12,500 for the calendar years beginning with 2031. The reduction in the Title V operating permit maintenance fee has been offset by an increase in the Synthetic Minor operating permit maintenance fee to \$4000 for calendar years 2021—2025; \$5,000 for calendar years 2026—2030; and \$6,200 for the calendar years beginning with 2031. These changes result in no net change in overall revenue collected from the original proposal.

Table 23 illustrates the three options. The anticipated Title V revenue to the Department that would be generated from implementation of any one of these options for new fees and increases of existing fees is estimated to be between \$19 and \$20 million depending upon the selected Title V emission fee option based on public comment, or an increase of approximately \$6 million in revenue over current levels. The Department's recommended option spreads the burden for supporting the Title V Operating Permit Program across approximately three times as many Title V facility owners and operators as the current fee schedule (289 versus 102 facility owners). In developing these final-form amendments, the Department has assumed that other sources of revenue for the Air Quality Program, including General Fund money and Federal Grants, will remain stable.

The changes to the Non-Title V revenue are shown in Table 22. This includes both Synthetic Minor and Natural Minor facilities plus all penalties collected. Based on recent years, the projected amount of penalties collected in the future years has been increased to \$2.0 million per year. The increased revenue from the Synthetic Minor annual operating maintenance fee as explained above has also been included. Synthetic Minor facilities are facilities which would be Title V facilities except that they accept enforceable permit conditions to limit their potential emissions below major facility thresholds. Because of these emission-limiting permit conditions these facilities require significant regulatory oversight.

If this rulemaking is promulgated as final-form regulation in 2020, the anticipated increased revenue will provide sufficient income for the next several years to offset the projected deficits for the Clean Air Fund shown in Table 5 beginning with FY 2021-2022. This increased revenue will balance the Clean Air Fund budget and allow the Department to sustain the Air Quality Program, the Title V Operating Permit Program, and the Non-Title V Operating Permit Program as required under section 502(b) of the CAA and section 6.3(a) of the APCA and ensure continued protection of public health and welfare and the environment.