



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Bureau of Air Quality

**Air Quality Title V Fee Amendment
25 Pa. Code Chapter 127
43 Pa.B. 677-681 (February 2, 2013)
Environmental Quality Board Regulation # 7-478
(Independent Regulatory Review Commission # 2980)**

Comment and Response Document

Air Quality Title V Fee Amendment Proposed Rulemaking

On February 2, 2013, the Environmental Quality Board (Board, EQB) published a notice of public hearings and comment period for a proposed rulemaking concerning revisions to 25 Pa. Code Chapter 127 (relating to construction, modification, reactivation and operation of sources).

The proposed rulemaking would amend § 127.705 (relating to emission fees) to establish a Title V annual emission fee of \$85 per ton for up to 4,000 tons of each regulated pollutant per Title V facility, beginning with the fees due by September 1, 2014, for emissions from Title V facilities in the 2013 calendar year. The initial Title V annual emission fee, established at 24 Pa.B. 5899, November 26, 1994, was \$37 per ton of regulated pollutant up to 4,000 tons of each regulated pollutant per Title V facility. As provided in § 127.705(e), the emission fee imposed under § 127.705(a) has been increased in each year after November 26, 1994, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year. Under the existing regulatory framework, the Title V annual emission fee has not been revised since 1994. The Title V annual emission fee due September 1, 2012, for emissions occurring in calendar year 2011 was \$56 per ton of regulated pollutant for up to 4,000 tons of each regulated pollutant per Title V facility.

If the revised Title V annual emission fee for the Air Program is adopted by the Board and published as final rulemaking in the *Pennsylvania Bulletin*, the final-form regulation will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to the Commonwealth's State Implementation Plan (SIP) or as an amendment to the Title V Program Approval codified in 40 CFR Part 70, Appendix A (relating to approval status of state and local operating permits programs), as appropriate.

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comment Period and Public Hearings

The public comment period opened on February 2, 2013, and closed on April 8, 2013, for a 66-day public comment period.

Three public hearings were held on the proposed rulemaking as follows:

March 5, 2013
1 p.m. Department of Environmental Protection
Southwest Regional Office
Waterfront A Conference Room
400 Waterfront Drive
Pittsburgh, PA 15222-4745

March 6, 2013
1 p.m. Department of Environmental Protection
Southeast Regional Office
Delaware River Conference Room
2 East Main Street
Norristown, PA 19401

March 7, 2013
1 p.m. Department of Environmental Protection
Rachel Carson State Office Building
Conference Room 105
400 Market Street
Harrisburg, PA 17105

This document summarizes the comments received during the public comment period. Each public comment is listed with the identifying commentator number for each commentator that made the comment. A list of the commentators, including name and affiliation (if any) can be found on page 4 of this document. The Board invited each commentator to prepare a one-page summary of the commentator's comments. One one-page summary was submitted to the Board for this rulemaking. No testimony was presented at the hearings. The House and Senate Environmental Resources and Energy Committees did not submit comments.

Copies of all comments received are posted on the web site of the Independent Regulatory Review Commission (IRRC) at <http://www.irc.state.pa.us>. Search by Regulation #7-478 or IRRC # 2980.

Table of Commentators for the Environmental Quality Board
Air Quality Title V Emission Fee Amendment Proposed Rulemaking # 7-478
(IRRC # 2980)

ID	Name/Address	One Page Summary Submitted for Distribution to EQB	Provided Testimony	Requested Copy of Final Rulemaking after EQB Action
1.	Emily E. Krafjack President Connection for Oil, Gas & Environment in the Northern Tier, Inc.			
2.	Keith E. Williams Manager Environmental Hercules Cement Co., L.P. dba Buzzi Unicem USA			
3.	David W. Hacker General Attorney US Steel Corporation Law Department	X		
4.	Hon. Greg Vitali Representative PA House of Representatives			
5.	David Sumner Executive Director Independent Regulatory Review Commission			

General Comments

1. Comment: The commentators support the proposed fee increase. (1, 4)

Response: The Department of Environmental Protection (Department, DEP) thanks the commentators for their support.

2. Comment: The commentator believes there is inadequate DEP staffing to ensure compliance and to conduct sampling and ambient air monitoring in the Marcellus Shale area. (1)

Response: This comment is beyond the scope of the rulemaking. Nevertheless, the Department believes that there is sufficient staffing to implement the Title V permitting program. Because the vast majority of the Marcellus Shale activities are conducted at facilities that are not Title V facilities and which pay no Title V emission fees, the Department cannot use Title V funds for the purposes recommended by the commentator.

3. Comment: The proposed increase in the Title V fee shows that the Department has been operating at a level of insufficient funding. There is a concern about the Bureau of Air Quality's ability to purchase air sampling and monitoring equipment, perform modeling analysis and add monitors in the Marcellus Shale counties. There are no permanent air quality monitoring sites in the Marcellus Shale and Northern Tier counties. These areas should be protected. (1)

Response: The significant drop in Title V revenue that has occurred recently is due to the installation of air pollution control equipment at Title V facilities, reductions in emissions from Title V facilities, the closure or deactivation of certain large facilities including electric generating units and significantly lower emissions from new facilities which are being built. The Department is able to purchase and operate air monitoring and other equipment using other funds in the Clean Air Fund and federal grant funds. The Department has recently installed a permanent air monitoring site in Bradford County.

4. Comment: The commentators oppose the proposed increase in the Title V fee. (2, 3)

Response: The Department is obligated to revise the Title V emission fee to maintain the federally mandated Title V permitting program. For instance, section 502(b) of the Clean Air Act (CAA), 42 U.S.C.A. § 7661a(b), requires the Department to adopt rules to require the owners and operators of sources subject to the requirement to obtain a Title V permit to pay an annual fee sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Title V permit program requirements. Similarly, section 6.3 of the Air Pollution Control Act (APCA), 35 P.S. §4006.3(a), authorizes the establishment of fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process and operating permit program required by Title V of the CAA.

As part of its evaluation of EPA Region 3's oversight of Pennsylvania's Title V Program, the EPA Office of Inspector General is currently collecting data regarding the adequacy of Pennsylvania's Title V fee revenue.

The EPA could withdraw the Title V program approval granted in July 1996 if funds are not sufficient to cover program costs. Withdrawal of the Title V program approval would require the EPA to administer and enforce a Federal Title V Program in Pennsylvania; all Title V emission fees would be paid to the EPA instead of DEP. A program deficiency would need to be corrected within 18 months to avoid mandatory Clean Air Act (CAA) sanctions including 2-to-1 emission offsets for the construction of major sources and loss of federal highway funds (\$1.06 billion in 2012 if the funds are not obligated for projects by the Federal Highway Administration).

5. Comment: An increase of approximately 50% is unjustified and unreasonable. The manufacturing sector continues to slowly recover. An increase in fees could adversely impact employment and capital projects. (3)

Response: The proposed \$85 per ton Title V emission fee is 48% higher than the fee assessed in 2013 for emissions during the 2012 calendar year. This higher fee is necessary to ensure that the fees are sufficient to cover the direct and indirect costs of administering the program. The number of permitting actions for major facilities is expected to increase due to the implementation of additional federal requirements. The Department anticipates an increased work load due to the implementation of new or revised federal regulations including, but not limited to, the following:

- Maximum Achievable Control Technology (MACT) standards for boilers
- MACT for electric generating units
- MACT for Commercial and Industrial Solid Waste Incinerators
- MACT for Reciprocating Industrial Combustion Engines
- Area source MACT standards
- New Source Performance Standards (NSPS) including for the natural gas industry
- NSPS for Sewage Sludge Incinerators
- NSPS for Kraft Pulp and Paper Mills
- NSPS for Hospital Medical Infectious Waste Incinerators
- National Ambient Air Quality Standards (NAAQS) for Lead (revised November 12, 2008, 73 FR 66964)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised October 17, 2006, 71 FR 61144)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised January 15, 2013, 78 FR 3086)
- NAAQS for Nitrogen Dioxide (revised February 9, 2010, 75 FR 6474)
- NAAQS for Ozone (revised March 27, 2008, 73 FR 16436)
- Title V Permit Renewal
- Incorporation of new applicable requirements in Title V permits
- Reasonably Available Control Technology

The implementation of certain federal rules may require state regulatory action to attain and maintain the NAAQS. Implementation of the NAAQS requires development of revisions to the SIP, emission inventories, ambient air modeling, inspections of sources, demonstrations to the EPA of adequate Department resources to implement the standards and programs, demonstrations to the EPA that emissions in Pennsylvania will not contribute significantly or interfere with maintenance to downwind nonattainment areas, and revisions to operating permits.

The Department has provided the justification needed to support the fee increase. Adequate funding will assure the regulated industry that their plan approval applications and permits are reviewed in a timely manner, sustaining their profitable business and maintaining jobs. Attaining and maintaining public health and welfare goals will attract and retain residents needed to fill the jobs created by the regulated industries and small businesses. Maintaining a healthy environment will benefit the agricultural and tourism industries, both of which provide many jobs.

The proposed increase to the Title V annual emission fee will assure the residents of this Commonwealth that the Commonwealth's air pollution control program is adequately funded for the next few years. The anticipated increased revenues will allow the Department and approved local air pollution control agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to reduce emissions to achieve healthful air quality and ensure continued protection of the environment and the public health and welfare of the residents of this Commonwealth.

6. Comment: Imposing a spike or jolt in the Title V emissions fee without phasing the increase in is inappropriate. (3)

Response: The Department did investigate the potential for increasing the Title V emission fee in phases. However, a phased-in emission fee increase would not address the projected deficit in the Clean Air Fund Title V Major Emission Facilities Account. A deficit of \$7,235,000 is projected for the Title V Major Emission Facilities Account by the end of fiscal year 2015-2016 if the \$85 per ton emission fee is not adopted by the Board and published as final rulemaking in the *Pennsylvania Bulletin*. (The deficit may be greater should natural gas displace additional coal-fired electric generation in the next few years.) Funds sufficient to support the program need to be collected before the fund is in deficit. As a result, the Board proposed the Title V fee amendment of \$85 at 43 Pa.B. 677 (February 2, 2013). The Department is also committed to reviewing the entire air quality fee structure including application fees for plan approvals and operating permits (including Title V operating permits), risk assessments, base fees, etc., to assure the adequacy of the fees collected to administer the air program.

7. Comment: The current and proposed fee structure assumes that the amount of emissions correlate directly with the amount of resources needed to administer the Title V program. This is not true, as a smaller but more complex source may be more demanding of the Department's resources. (3)

Response: The Department agrees that the Title V annual emission fee is not directly related to the total quantity of emissions released from a facility and that a lower emitting facility may not be paying a fee representative of the administrative resources dedicated to that lower emitting facility. The Department has stated that it intends to conduct a comprehensive review of all air quality fees in order to develop an equitable and sustainable fee program. However, at this time, the most equitable and feasible approach to this issue is to ensure that the Title V fee revenues adequately cover the expense of the program.

8. Comment: The fees are substantially out of line with fees collected in other states with a strong manufacturing base. (3)

Response: The Department disagrees. The proposed fee is similar to those in other states and will not place the Commonwealth at a competitive disadvantage. In some cases, the Commonwealth will be very competitive and may be able to draw new industry on the basis of having a lower Title V annual emission fee than nearby states. This could serve to increase total Title V fee revenue if there are more sources subject to the annual emission fee.

All states are required by the CAA to collect Title V annual emission fees and to adjust the fees annually based on the Consumer Price Index. Several nearby states have already taken action to address the issue of declining revenues due to declining emissions of regulated pollutants. Connecticut, Maryland, New York, and New Jersey no longer limit emission fee applicability to 4,000 tons per regulated pollutant. In 2013, Connecticut's Title V emission fee is \$301.09 per ton of emissions of regulated pollutant based on an "Inventory Stabilization Factor," upwards from a fee of \$283.46 per ton imposed in 2012 and with no cap on the amount of emissions of regulated pollutants subject to this fee. The Connecticut fee is adjusted periodically to ensure that collected Title V annual emission fee revenue is adequate for at least 2 years of permit program operating costs. In 2012, New York assessed a Title V annual emission fee ranging from \$45 per ton of regulated pollutant for emissions of less than 1,000 tons per year to \$65 per ton of regulated pollutant for emissions of more than 5,000 tons per year; the fee is applied to emissions up to 7,000 tons of any regulated pollutant. The New York Title V emission fee for 2013 has not changed from the 2012 level. For 2013, the state of New Jersey imposes a Title V annual emission fee of \$112.07 per ton of regulated pollutant with no cap on emissions. Maryland's 2013 Title V fee is \$55.70 plus a \$200 base fee; Maryland has no cap on the amount of emissions of regulated pollutants subject to the fee. West Virginia's 2013 Title V annual emission fee is \$31.87 per ton of regulated pollutant with a 4,000 ton cap. Virginia's 2013 Title V annual emission fee is \$58.88 per ton of regulated pollutant (4,000 ton cap); further, in 2012 Virginia established additional Title V facility fees including yearly maintenance fees ranging from \$1,500 to \$10,000 and Title V Permit application and Title V Permit renewal fees of \$20,000 and \$10,000, respectively.

9. Comment: The commentator recommends that the EQB consider a facility cap as opposed to a fee per pollutant cap. (3)

Response: The fee per pollutant cap of 4,000 tons of any regulated pollutant is established in section 502(b) of the CAA and section 6.3 of the APCA. While certain states including Connecticut, Maryland, New York, New Jersey, and North Carolina have increased or eliminated the fee per pollutant cap for Title V emissions, any revision to the cap in Pennsylvania would require legislative action and is beyond the scope of the proposed rulemaking. The Department acknowledges that there are alternatives that will be examined as part of the comprehensive fee review, but those alternatives must be within the boundaries of the APCA.

10. Comment: Imposing an increase for the current calendar year is essentially a "retroactive tax." The regulated community did not have prior knowledge of the proposal. (3)

Response: The Department disagrees with the assertion that the Title V annual emission fee is a tax. The Department of Environmental Protection does not have the authority to establish taxes. The General Assembly retains the authority to propose and pass bills which establish taxes. Moreover, the Department is statutorily mandated under both the APCA and CAA to establish fees to ensure the continued viability of the air quality program.

The Board first proposed a Title V fee amendment in 2009 at 39 Pa.B. 6049 (October 17, 2009) and adopted the fee in November 2010. However, the final-form regulation was withdrawn by the Board in December 2011 from consideration by the IRRC. While the 2009 proposal was not finalized, the regulated community has been on notice of the need for additional fees. The current proposed fee amendment was available following consideration by the Board in November 2012 and subsequent publication in the *Pennsylvania Bulletin* in February 2013. In accordance with applicable law and regulations, the Board provided sufficient notice of the proposed fee increase, which allows companies to adequately plan for the increase based on 2013 emissions. Furthermore, the emission fees required by this amendment are due on or before September 1 of each year for emissions from the previous calendar year. Consequently, the Title V fee for emissions of regulated pollutants occurring during the 2013 calendar year does not need to be paid until September 1, 2014. This is not retroactive.

11. Comment: The reduction in emissions and the shutdown of sources will reduce the Department's workload and should reduce the need for additional fees. (3)

Response: The announced facility shutdowns will not reduce the Department's workload. Proposed shutdowns in coal-fired power plants are being offset by the proposed construction of additional natural gas-fired power plants. To date there are nine plan approval applications in various stages of approval with the Department related to the construction of new natural gas-fired power plants. The DEP air program staff must continue to implement the air pollution 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, and monitor the ambient air in the Commonwealth. Air program staff operate and maintain a source testing program to ensure compliance with applicable requirements. Significant staff resources have been devoted to permitting and inspection of unconventional natural gas development activities. Further, the Department projects an increased workload due to the implementation of new or revised federal regulations including, but not limited to, the following:

- Maximum Achievable Control Technology (MACT) standards for boilers
- MACT for electric generating units
- MACT for Commercial and Industrial Solid Waste Incinerators
- MACT for Reciprocating Industrial Combustion Engines
- Area source MACT standards
- New Source Performance Standards (NSPS) including for the natural gas industry
- NSPS for Sewage Sludge Incinerators
- NSPS for Kraft Pulp and Paper Mills
- NSPS for Hospital Medical Infectious Waste Incinerators

- National Ambient Air Quality Standards (NAAQS) for Lead (revised November 12, 2008, 73 FR 66964)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised October 17, 2006, 71 FR 61144)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised January 15, 2013, 78 FR 3086)
- NAAQS for Nitrogen Dioxide (revised February 9, 2010, 75 FR 6474)
- NAAQS for Ozone (revised March 27, 2008, 73 FR 16436)
- Title V Permit Renewal
- Incorporation of new applicable requirements in Title V permits
- Reasonably Available Control Technology

Implementation of the new and revised federal permitting rules (MACT and NSPS) will require increased numbers of inspections and permitting actions and outreach to and education of the impacted industry. These federal rules may require promulgation of new or revision to existing state regulations. Implementation of the revised NAAQS requires development of revised attainment and maintenance SIPs, emission inventories, ambient air modeling, inspections of affected facilities and sources, demonstrations to the EPA of adequate Department resources to implement the standards and programs, demonstrations to the EPA that emissions in Pennsylvania will not contribute significantly to or interfere with maintenance to downwind nonattainment areas, and may require adoption of new or amendments to existing state regulations and revisions to operating permits. The revisions to the various NAAQS also, in some cases, require the installation of additional ambient air monitors to the existing monitoring network. Implementation of these new federal regulations and revised NAAQS and the necessary infrastructure will require significant education of and outreach to the impacted industries and the public.

12. Comment: The EQB and Department fail to recognize the inordinate regulatory costs borne by the manufacturing industry. The number of significant federal and state rulemakings has resulted in significant costs to the regulated community. The analysis done to support the Title V emission fee increase does not include the impact of these other regulations on industry. (3)

Response: The Department acknowledges the number of new or revised regulations that impact manufacturing facilities. However, the CAA and APCA require the Department to establish a Title V fee structure that is sufficient to cover the cost of the Title V permitting program.

13. Comment: The resources needed to issue renewed Title V permits and to administer the program are less than the resources needed to issue new Title V permits. The EQB analysis does not address the reduction of resources needed to implement the program. (3)

Response: The issuance of a renewed Title V permit is not a simple matter. As stated in the commentator's letter, there have been a significant number of regulatory changes on the federal and state levels that must be reviewed and analyzed for applicability to and compliance for each Title V permit application. See Response to Comment 11.

14. Comment: The majority of the proposed increase of fees would inequitably be absorbed by a few manufacturing facilities and is not commensurate with DEP's resources needed to administer the program. The commentator notes that 40% of the Title V fees paid in Allegheny

County would be paid by one company. This is not commensurate with the resources needed to administer the Title V program. (3)

Response: The commentator is correct that the owners/operators of a few major emitting facilities will pay a large portion of the Title V emission fees assessed by the air program. However, the commentator's facilities are also among the highest emitting facilities in Allegheny County. One of the facilities is located in an area that does not attain the 1-hour PM_{2.5} health-based NAAQS. The monitor in this nonattainment area measures ambient levels of fine particulates that are the second highest in the nation. Consequently, the regulatory agencies do focus significant resources to these facilities. The Department agrees that the fee structure established by the APCA needs to be reviewed as part of the analysis of all air quality fees that will be conducted over the next 2 years. However, at this time, the most equitable and feasible approach to this issue is to ensure that the Title V annual emission fee revenues adequately cover the expense of the program until a revised fees structure can be finalized.

15. Comment: The proposed Title V emission fee increase would be a disincentive to build or expand a significant manufacturing facility in Pennsylvania. (3)

Response: The Department disagrees that the proposed increase to the Title V annual emission fee would be, by itself, a disincentive to build or expand significant manufacturing facilities in Pennsylvania. Owners or operators of major manufacturing facilities are considering locating in Pennsylvania. The decision by a business owner/operator to locate in this Commonwealth considers many factors, including available labor, taxes, access to resources and transportation, and location of the target market, when making the decision about whether to locate in the Commonwealth. Moreover, the fee increase is in line with or less than recent increases implemented by certain states. See Response to Comment 8.

16. Comment: The commentator supports the Department's decision to not establish a fee structure for carbon dioxide and greenhouse gases. (2)

Response: The Department thanks the commentator for their support of the decision. As stated in the *Pennsylvania Bulletin* proposed rulemaking notice, the proposed rulemaking does not establish a fee structure for carbon dioxide and other greenhouse gases (GHG) including hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride. On June 3, 2010, the EPA finalized the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). See 75 FR 31514 (June 3, 2010). As the Tailoring Rule relates to the applicability of Title V annual emission fees for a "regulated pollutant" as defined in section 502 of the CAA, the EPA did not mandate revisions to state and local Title V programs to account for these emissions. The EPA reasoned that it would be difficult to apply the Title V fee to GHG gases, based on the large amount of GHG emissions relative to other pollutants and the need for better data to establish a GHG-specific fee amount. However, the EPA did commit to addressing this issue in a future rulemaking and to work with states to develop a workable fee approach. The EPA has not yet proposed a fee schedule under the CAA for GHG emissions. Consequently, the Board did not propose to impose Title V emission fees for GHG emissions from stationary sources in this Commonwealth.

17. Comment: The commentator urges the EQB to make any Title V emission fee increase temporary. The commentator notes that the economy fluctuates and the ongoing recession is expected to be temporary in nature. The Title V fee revenue will return once the economy improves. (2)

Response: The Department agrees that the economy fluctuates and that the recession is expected to be temporary in nature. However, the reduction in Title V emission fee revenue is expected to continue to decline due mainly to the closure of certain large coal-fired electric generating units and the replacement of these facilities with lower emitting natural gas-fired power plants. As a result, Title V fee revenue is not expected to return to previous levels once the economy improves. Therefore, the proposed Title V fee revision must be promulgated to cover the cost of administering the Title V program. The Department did state at the November 20, 2012, EQB meeting that a Title V program supported solely by emission fees may not be the most appropriate approach to ensure the future viability of the program. The fundamental issues associated with the rulemaking are that the Department is required to assess fees to cover the costs associated with the Title V program and that the Department is facing imminent Title V program budget deficits. The rulemaking provides a “bridge” for the Department to address its imminent budget needs while allowing the Department and interested stakeholders sufficient time to examine the most appropriate means to support the Title V program in the future as new air pollution control technologies, the abundance of natural gas, and the retirement of coal-fired power plants continue to reduce emissions of regulated pollutants.

18. Comment: The commentator questions why the same numbers of Department staff are needed for inspections when the number of Title V facilities is decreasing. The commentator disagrees with the assumption that fewer inspectors equates to less environmental protection. (2)

Response: The Department agrees that there has been a reduction in the number of Title V facilities. However, this reduction in the number of Title V facilities does not have a direct impact on the number of inspectors needed. This is because the inspections have become more complex, taking longer to conduct and to document than inspections that occurred at the start of the program in the early 1990s. As stated in the response to comment 13, the number and complexity of regulations have increased, thereby increasing the staff time needed to inspect Title V facilities and assist owners/operators with compliance questions.

19. Comment: The commentator states that the increase in Title V emission fees would slow the economic recovery and would have an impact on small businesses that provide services to the major Title V facilities. The payment of the increased Title V emission fees may result in less employment of citizens of the Commonwealth. The commentator requests that the EQB consider delaying implementation of the fee by 1 year or implementing the increase over several years. (2)

Response: The Department has analyzed the solvency of the Clean Air Fund Title V Major Emission Facilities Account and determined that there will not be sufficient funds to sustain the Title V permitting program beginning in fiscal year 2015-2016. Failure to address the Title V revenue shortfall now will result in a program without sufficient funds to operate. This in turn will have significant impacts on regulated industry, including the delay in revising and

addressing plan approvals and operating permits including renewals and amendments. There will not be sufficient staff to conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, monitor the ambient air in the Commonwealth, and operate and maintain a source testing program to ensure compliance with applicable requirements. All of these factors could contribute to a loss of employment opportunities and slow the economic recovery in this Commonwealth. The Board first proposed a Title V annual emission fee increase in 2009, thereby providing notice to the affected owners/operators of Title V facilities of the need to address the revenue shortfall. Further, payment of the emission fees for emissions occurring in calendar year 2013 will not be due until September 1, 2014, 19 months after publication of the rulemaking notice on February 2, 2013, proposing the increase in the Title V annual emission fee to \$85 per ton of emissions of any regulated pollutant up to 4,000 tons of emissions of regulated pollutant.

20. Comment: Failure to cover the Title V program costs will have several negative consequences, the most notable being significant staffing reductions, which would cause delays in processing and issuing plan approvals, fewer inspections and enforcement actions, and slower complaint response. Inadequate funding will impact the air monitoring network and could impact the Small Business Compliance program. (4)

Response: The Department agrees with the comment. Failure to adequately fund the Title V program will result in loss of program staff and cause the impacts stated by the commentator. These potential consequences are the primary reason for this rulemaking.

21. Comment: The EQB should impose an emission fee that will adequately cover costs associated with administering the air program. The EQB could impose a fee higher than \$85 per ton and still remain below the level charged by several other states. (4)

Response: The Department agrees that a higher fee could have been proposed. The Department has stated that the proposed revision to the Title V annual emission fee will provide a “bridge” to allow additional time for the Department to develop a comprehensive fee structure for the air quality program. To only rely upon a higher emission fee in the future will result in a relatively small number of sources paying the majority of the fees which, from a practical standpoint, is forcing those facilities to subsidize the other facilities.

22. Comment: Another option for increasing revenue to the Title V program is to either raise or eliminate the 4,000 ton cap. (4)

Response: The Department agrees. The recommendation to raise or eliminate the 4,000 ton cap would increase Title V revenue. This approach has been enacted in a number of states including Connecticut, Maryland, New York, New Jersey, and North Carolina. However, the cap is established in section 6.3 of the APCA. A revision to the cap would require legislative action and is beyond the scope of the proposed rulemaking.

23. Comment: An option to cover Title V program costs would be to increase permit and administration fees in addition to the proposed increase in the Title V annual emission fee. (4)

Response: The Department will conduct a comprehensive evaluation of the air quality funding to determine the best long-term option for supporting the program. The evaluation will look at all options including increasing permit and administration fees.

24. Comment: IRRC requests the EQB explain whether the proposed increase is only a temporary solution. Will the regulation result in the air quality program operating at a loss again in just 2 years? (5)

Response: The Department affirms that the proposed increase to the Title V annual emission fee is not a permanent solution to funding the air quality program. The current Comparative Financial Statement for the Clean Air Fund shows that the Title V Major Emission Facilities Account will have a negative balance at the end of fiscal year 2015-2016. As noted in the minutes of the November 20, 2012, EQB meeting, the rulemaking provides a “bridge” for the Department to address its imminent budget needs while allowing the Department and interested stakeholders sufficient time to examine the most appropriate means to support the Title V program in the future as new air pollution control technologies, the abundance of natural gas, and the retirement of coal-fired power plants continue to reduce emissions of regulated pollutants.

25. Comment: IRRC questions whether the 4,000 ton cap should be maintained in its current form. (5)

Response: As stated in the response to comment 22, the cap is established in section 6.3 of the APCA and section 502 of the CAA. A revision to the cap would require legislative action. The Department agrees that a revision to the cap is an option that should be reviewed in the program reanalysis. However, the Board cannot revise the cap through a regulatory revision. A revision to the cap can only be accomplished through legislative action by the General Assembly.

26. Comment: IRRC questions why the reduction in air emissions has not resulted in a commensurate reduction in the cost of enforcement. (5)

Response: The Department acknowledges that the number of Title V facilities has decreased since the beginning of the program in the early 1990s. As described in the response to comment 11, the number and complexity of regulations have increased, increasing the staff time needed to inspect Title V facilities and assist owners/operators with compliance questions. The DEP air program staff must continue to implement the air pollution 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, and monitor the ambient air in the Commonwealth. Air program staff operate and maintain a source testing program to ensure compliance with applicable requirements. Further, the Department projects an increased workload due to the implementation of new or revised federal regulations including, but not limited to, the following:

- Maximum Achievable Control Technology (MACT) standards for boilers
- MACT for electric generating units
- MACT for Commercial and Industrial Solid Waste Incinerators
- MACT for Reciprocating Industrial Combustion Engines

- Area source MACT standards
- New Source Performance Standards (NSPS) including for the natural gas industry
- NSPS for Sewage Sludge Incinerators
- NSPS for Kraft Pulp and Paper Mills
- NSPS for Hospital Medical Infectious Waste Incinerators
- National Ambient Air Quality Standards (NAAQS) for Lead (revised November 12, 2008, 73 FR 66964)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised October 17, 2006, 71 FR 61144)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised January 15, 2013, 78 FR 3086)
- NAAQS for Nitrogen Dioxide (revised February 9, 2010, 75 FR 6474)
- NAAQS for Ozone (revised March 27, 2008, 73 FR 16436)
- Title V Permit Renewal
- Incorporation of new applicable requirements in Title V permits
- Reasonably Available Control Technology

Implementation of the new and revised federal permitting rules (MACT and NSPS) will require increased numbers of inspections and permitting actions and outreach to and education of the impacted industry. These federal rules may require promulgation of new or revision to existing state regulations. Implementation of the revised NAAQS requires development of revised attainment and maintenance SIPs, emission inventories, ambient air modeling, inspections of affected facilities and sources, demonstrations to the EPA of adequate Department resources to implement the standards and programs, demonstrations to the EPA that emissions in Pennsylvania will not contribute significantly to or interfere with maintenance to downwind nonattainment areas, and may require adoption of new or amendments to state regulations and revisions to operating permits. The revisions to the various NAAQS also, in some cases, require the installation of additional ambient air monitors to the existing monitoring network. Implementation of these new federal regulations and revised NAAQS and the necessary infrastructure will require significant education of and outreach to the impacted industries and the public.

27. Comment: Did the EQB explore offsetting all or a portion of the proposed increase through cost reductions? (5)

Response: The Department has made significant cost reductions in the Title V program. The Department has eliminated or postponed the purchase of fixed assets. The Department has reallocated program costs to the Mobile and Area Facilities Account of the Clean Air Fund where permissible to prolong the solvency of the Title V Major Emission Facilities Account. For example, the Department transferred \$485,000 of expenditures from the Title V Major Emission Facilities Account to the Mobile and Area Facilities Account of the Clean Air Fund in fiscal year 2012-2013. These expenditures included staff training, certain travel expenses, computer and computer software purchases, health certifications, and certain utility charges. For fiscal year 2013-2014, the Department will transfer \$240,000 in operating expenses to the Mobile and Area Facilities Account of the Clean Air Fund and reduce computer systems support spending by \$150,000. The Department will continue to look for cost reductions that can be implemented without negatively impacting the Title V permitting program. In prior years, costs including staff training, certain travel expenses, computer and computer software purchases, health

certifications, and certain utility charges were "split coded" appropriately between Title V and Non-Title V accounts of the Clean Air Fund. In order to assure the solvency of the Title V account for an extended period, the total cost of certain expenditures was transferred to the Non-Title V account in the Clean Air Fund.

28. Comment: If the reduction of air emissions does not result in a reduction of enforcement costs, how is the fee method put in place in 1994 viable today and into the future? (5)

Response: As stated in the response to comment 24, the Department recognizes that the proposed increase to the Title V annual emission fee is not a permanent solution to funding the Title V program. The current Comparative Financial Statement for the Clean Air Fund shows that the Title V Major Emission Facilities Account will have a negative balance at the end of fiscal year 2015-2016. As noted in the minutes of the November 20, 2012, EQB meeting, the rulemaking provides a "bridge" for the Department to address its imminent budget needs while allowing the Department and interested stakeholders sufficient time to examine the most appropriate means to support the Title V program in the future as new air pollution control technologies, the abundance of natural gas, and the retirement of coal-fired power plants continue to reduce emissions of regulated pollutants.

29. Comment: How did the EQB consider the financial impact for businesses? Could the fee increase be a disincentive to build or expand in Pennsylvania? How will the fee increase affect employment? Could these factors result in a net loss of revenues if a business closes in Pennsylvania? (5)

Response: In answering these questions, the Board will consider whether an increase to the Title V annual emission fee would put Pennsylvania businesses at a competitive disadvantage with comparable businesses in the surrounding states or draw business and employment opportunities away from the Commonwealth. The Department finds that in some cases, the Commonwealth would be very competitive and may be able to draw new industry on the basis of having a lower Title V annual emission fee than nearby states.

For instance, several nearby states have already taken action to address the issue of declining revenues due to declining emissions of regulated pollutants. Connecticut, Maryland, New York, and New Jersey no longer limit emission fee applicability to 4,000 tons per regulated pollutant. In 2013, Connecticut's Title V emission fee is \$301.09 per ton of emissions of regulated pollutant based on an "Inventory Stabilization Factor," upwards from a fee of \$283.46 per ton imposed in 2012 and with no cap on the amount of emissions of regulated pollutants subject to this fee. The Connecticut fee is adjusted periodically to ensure that collected Title V annual emission fee revenue is adequate for at least 2 years of permit program operating costs. In 2012, New York assessed a Title V annual emission fee ranging from \$45.00 per ton of regulated pollutant for emissions of less than 1,000 tons per year to \$65 per ton of regulated pollutant for emissions of more than 5,000 tons per year; the fee is applied to emissions up to 7,000 tons of any regulated pollutant. The New York Title V emission fee for 2013 has not changed from 2012 levels. For 2013, the state of New Jersey imposes a Title V annual emission fee of \$112.07 per ton of regulated pollutant with no cap on emissions. In 2013, Maryland's Title V annual emission fee is \$55.70 plus a \$200 base fee; Maryland has no cap on the amount of emissions of

regulated pollutants subject to the fee. West Virginia's 2013 Title V annual emission fee is \$31.87 per ton of regulated pollutant, with a 4,000 ton cap. Virginia's 2013 Title V annual emission fee is \$58.88 per ton of regulated pollutant (4,000 ton cap); further, in 2012 Virginia established additional Title V facility fees including yearly maintenance fees ranging from \$1,500 to \$10,000 and Title V Permit application and Title V Permit renewal fees of \$20,000 and \$10,000, respectively.

Moreover the Department does not believe that the revision to the Title V annual emission fee, by itself, will be a disincentive for businesses to build or expand in Pennsylvania. The decision by a business owner or operator to locate in the Commonwealth considers many factors, including available labor, taxes, access to resources and transportation, and location of the target market, when making the decision about whether to locate in the Commonwealth. The Commonwealth has been able to and continues to attract businesses and major manufacturing facilities. The Department believes that providing funding for a sustainable Title V program will eliminate doubts and concerns of the owners or operators of Title V facilities as to the ability to obtain a permit and the viability of the services provided by the Department.

30. Comment: Did the EQB consider a delay or phase-in of the increase to allow businesses time to accommodate the full impact? Why is it reasonable to impose the fee increase on emissions that already occurred in 2013? (5)

Response: The Department did consider a delay and different years for the implementation of the increase to the Title V annual emission fee. However, assessing the revised fee on emissions of regulated pollutants occurring in calendar year 2013, due and payable by September 1, 2014, was chosen due to the projected budget deficit and anticipated retirement or deactivation of electric generating units that will have a significant negative impact on the Title V permitting program. Because of declining Title V emission fee revenue due to the installation of air pollution control technology on stationary sources and the retirement or curtailment of operations by major sources including coal-fired power plants, deficits of \$7.235 million and \$19.406 million in fiscal years 2015-2016 and 2016-2017, respectively, are projected for the Title V Major Emission Facilities Account.

The Department has analyzed the solvency of the Clean Air Fund Title V Major Emission Facilities Account and determined that there will not be sufficient funds to sustain the Title V permitting program beginning in fiscal year 2015-2016. Failure to address the Title V revenue shortfall now will result in a program without sufficient funds to operate. This will have significant impacts on industry, including the delay in revising and addressing plan approvals and operating permits including renewals and amendments since the Department will necessarily be forced to reduce staff in order to balance the budget. There will not be sufficient staff to conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, monitor the ambient air in the Commonwealth, and operate and maintain a source testing program to ensure compliance with applicable requirements. All of these factors could contribute to a loss of employment opportunities and slow the economic recovery in this Commonwealth. The Board first proposed a Title V annual emission fee increase in 2009, thereby providing notice to the affected owners and operators of Title V facilities of the need to address the revenue shortfall. Further, payment of the emission fees for emissions occurring in

calendar year 2013 will not be due until September 1, 2014, 19 months after publication on February 2, 2013, of the rulemaking notice proposing the increase in the Title V annual emission fee to \$85 per ton of emissions of any regulated pollutant up to 4,000 tons of emissions of regulated pollutant.

31. Comment: The EQB should explain how the costs imposed by the fee increase are justifiable compared to the benefits the fees produce. (5)

Response: Retaining sufficient staff (including permitting, monitoring, enforcement, source testing and legal personnel) to support the Title V permitting program is a critical component of improving air quality within this Commonwealth and assuring compliance with the health- and welfare-based NAAQS. The benefits to Commonwealth residents of attaining and maintaining the NAAQS are significant. The EPA has estimated the monetized health benefits of attaining ambient air quality standards. For example, the EPA estimated that the monetized health benefits of attaining the 8-hour ozone standard of 0.075 ppm range from \$8.3 billion to \$18 billion on a national basis. See Regulatory Impact Analysis, Final National Ambient Air Quality Standard for Ozone, July 2011, http://www.epa.gov/glo/pdfs/201107_OMBdraft-OzoneRIA.pdf. Prorating that benefit to the Commonwealth, based on population, results in a public health benefit of \$337 million to \$732 million. The projected costs of increased Title V annual emission fees ranging from \$5,830,000 in fiscal year 2014-2015 to \$4,237,000 in fiscal year 2018-2019 to regulated industry Commonwealth-wide pale by comparison. The Department is not stating that these estimated monetized health benefits would all be the result of increasing the Title V annual emission fee, but the EPA estimates are indicative of the benefits to Commonwealth residents of attaining the NAAQS. Ensuring that there are sufficient staff and resources to implement the Title V permitting program is one part of the overall air quality program to attain and maintain the NAAQS in this Commonwealth.

Adequate funding will assure the regulated industry that their plan approval applications and permits will be reviewed in a timely manner, sustaining their profitable business and maintaining jobs. Attaining and maintaining public health and welfare goals will attract and retain residents needed to fill the jobs created by the regulated industries and small businesses. Maintaining a healthy environment will benefit the agricultural and tourism industries, both of which provide many jobs. All of these situations will increase tax revenues to the Commonwealth.

Implementing the proposed increase to the Title V annual emission fee will assure the residents of this Commonwealth that the Commonwealth's air pollution control program is adequately funded for the next few years. The anticipated increased revenues will allow the Department and approved local air pollution control agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to reduce emissions to achieve healthful air quality and ensure continued protection of the environment and the public health and welfare of the residents of this Commonwealth.