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December 21, 2009

One-Page Summary of EPGA Comments

To: Environmental Quality Board

Subject: Proposed Rulemaking, Environmental Quality Board [25 PA. CODE CHS. 121, 127 and 139], Air Quality Fee Schedules, [39 Pa.B. 6049] [Saturday, October 17, 2009]

Following are the comments of the Electric Power Generation Association (EPGA) on the above captioned proposed rulemaking.

EPGA is a trade association of electric generating companies with headquarters in Harrisburg, Pennsylvania. Our 14 members own and operate a diverse mix of more than 145,000 megawatts of electric generating capacity in the U.S., approximately half of which is located in Pennsylvania and surrounding states.

EPGA recognizes the need for the Department to increase the fees which were previously established and have not been increased for almost 15 years. If these increases result in more Department resources to conduct and finalize necessary activities it will be money well spent.

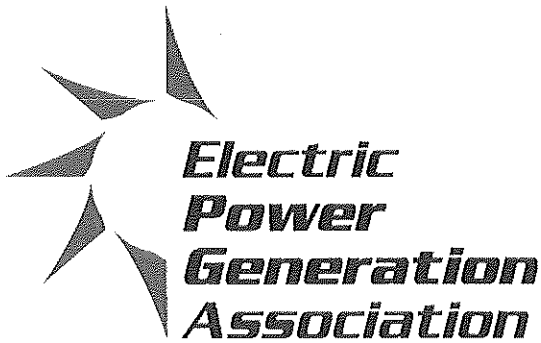
However, there are some new proposed fees for Title V facilities which should already be covered by the proposed operating permit fee increases in Chapter 127 rather than through the establishment of a new separate fee schedule in Chapter 139. These specifically relate to source testing, compliance monitoring, inspections, enforcement, and program development activities associated with the regulation of Title V facilities.

As identified on page 31 of the August, 1993, *RESOURCE NEEDS AND FINANCIAL PLAN, COMMONWEALTH OF PENNSYLVANIA AIR QUALITY PROGRAM* report prepared by Apogee Research, Inc.: "The CAAA (Clean Air Act Amendments of 1990) and the Operating Permit Rule (40 CFR Part 70) require that Title V operating permit fees recover 100 percent of the costs of certain program activities. This category includes all permit issuance, source testing, compliance monitoring, inspections, enforcement and program development activities associated with Title V sources."

Consequently, EPGA believes that some of the new proposed fees, while applicable and appropriate for applicants and non-Title V facilities, should not be applicable to Title V facilities as they have already been paid through the annual Title V emission fee and other operating permit fees included in Chapter 127.

Importantly, the emission fee has increased each year by the change in the percentage of the Consumer Price Index for the most recent year. In this proposal the fee is increased from the current projected 2010 fee of approximately \$56 per ton to \$70 per ton - a 25% increase.

EPGA respectfully submits that Title V facilities should either pay the proposed increased emission fee and other proposed operating permit fee increases in Chapter 127 or the emission fee should remain at the \$37 per ton amount adjusted by the Consumer Price Index with Title V facilities being subject to the new proposed testing, auditing and monitoring fees in Chapter 139. To require the proposed operating permit fee increases and the proposed testing, auditing and monitoring fees is extracting payment twice from the Title V facilities.



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Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Subject: Proposed Rulemaking, Environmental Quality Board [25 PA. CODE CHS. 121, 127 and 139], Air Quality Fee Schedules, [39 Pa.B. 6049] [Saturday, October 17, 2009]

Environmental Quality Board:

Following are the comments of the Electric Power Generation Association (EPGA) to the Proposed Rulemaking, Environmental Quality Board [25 PA. CODE CHS. 121, 127 and 139], Air Quality Fee Schedules, [39 Pa.B. 6049] [Saturday, October 17, 2009].

EPGA is a regional trade association of electric generating companies with headquarters in Harrisburg, Pennsylvania. Our generating members include the following companies:

AES Beaver Valley, LLC
Cogentrix Energy, Inc.
Dynergy Inc.
Exelon Generation
LS Power Associates, L.P.
RRI Energy, Inc.
Tenaska, Inc.

Allegheny Energy Supply
Constellation Energy
Edison Mission Group
FirstEnergy Generation Corp
PPL Generation
Sunbury Generation
UGI Development Company

These 14 members own and operate a diverse mix of more than 145,000 megawatts of electric generating capacity in the U.S., approximately half of which is located in Pennsylvania and surrounding states. These comments represent the views of EPGA as an association of electric generating companies, not necessarily the views of any individual member with respect to any specific issue.

EPGA appreciates the opportunity to provide comments to The Environmental Quality Board on the proposed changes to the air quality fee schedules. EPGA recognizes the need for the Department to increase the fees which were previously established and have not been increased for almost 15 years. If these increases result in more Department

resources to conduct and finalize necessary activities it will be money well spent. However, there are some new proposed fees for Title V facilities which should already be covered by the proposed operating permit fee increases in Chapter 127 rather than through the establishment of a new separate fee schedule in Chapter 139. These specifically relate to source testing, compliance monitoring, inspections, enforcement and program development activities associated with the regulation of Title V facilities. As identified on page 31 of the August, 1993, *RESOURCE NEEDS AND FINANCIAL PLAN, COMMONWEALTH OF PENNSYLVANIA AIR QUALITY PROGRAM* report prepared by Apogee Research, Inc.:

"The CAAA (Clean Air Act Amendments of 1990) and the Operating Permit Rule (40 CFR Part 70) require that Title V operating permit fees recover 100 percent of the costs of certain program activities. This category includes all permit issuance, source testing, compliance monitoring, inspections, enforcement and program development activities associated with Title V sources."

Consequently, EPGA believes that some of the new proposed fees, while applicable and appropriate for applicants and non-Title V facilities, should not be applicable to Title V facilities as they have already been paid through the annual Title V emission fee and other operating permit fees. Importantly, the emission fee has increased each year by the change to the percentage of the Consumer Price Index for the most recent year. In this proposal the fee is increased from the current projected 2010 fee of approximately \$56 per ton to \$70 per ton, a 25% increase.

EPGA respectfully submits that Title V facilities should either pay the proposed increased emission fee and other proposed operating permit fee increases in Chapter 127 or the emission fee should remain at the \$37 per ton amount adjusted by the Consumer Price Index with Title V facilities being subject to the new proposed testing, auditing and monitoring fees in Chapter 139. To require the proposed operating permit fee increases and the proposed testing, auditing and monitoring fees is extracting payment twice from the Title V facilities.

Following are EPGA comments to the specific proposals:

§ 127.702. Plan Approval Fees – EPGA recognizes the need to increase these fees and, as previously stated, believes that if it results in more Department resources to conduct and finalize necessary activities the additional fees will be money well spent.

At § 127.702(h) (1) and (2), it identifies the fee being triggered by a proposal from the applicant. This is an important clarification and EPGA supports these fees only being charged if the amendments are proposed by the applicant.

At § 127.702(j) (1), new fees are established for the submission of a request for determination. EPGA recognizes the need for these fees if a request is made and as previously stated believes that if it results in more Department resources to conduct and finalize necessary activities the additional fees will be money well spent. However, at the

proposed § 127.702(j) (2) it appears there is a requirement to pay a request for determination fee with the submission of a Plan Approval or under § 127.703(e) (2) relating to operating permit fee as a routine action. If this is the intent of the language EPGA does not support that additional fee. The Plan Approval application or the operating permit fee should cover the analysis necessary to determine that permitting is required. If there is a different intent in these proposals the language in the proposed regulation should be clarified.

These fees only increase until 2020 and only increase at a fixed rate; consequently, an alternative scheme for an annual routine increase, as occurs under the emission fees, rather than the proposed fixed increase should be considered. The emission fee increases annually at the annual percentage change of the Consumer Price Index.

§ 127.703. Operating permit fees under Subchapter F – EPGA recognizes the need to increase these fees and, as previously stated, believes that if it results in more Department resources to conduct and finalize necessary activities the additional fees will be money well spent.

Concerns with §127.703(e) (2) are identified above consistent with the comments to § 127.702(j) (2).

These fees only increase until 2020 and only increase at a fixed rate; consequently, an alternative scheme for an annual routine increase, as occurs under the emission fees, rather than the proposed fixed increase should be considered. The emission fee increases annually at the annual percentage change of the Consumer Price Index.

§ 127.704. Title V operating permit fees under Subchapter G – EPGA recognizes the need to increase these fees and, as previously stated, believes that if it results in more Department resources to conduct and finalize necessary activities the additional fees will be money well spent.

These fees only increase until 2020 and only increase at a fixed rate; consequently, an alternative scheme for an annual routine increase, as occurs under the emission fees, rather than the proposed fixed increase should be considered. The emission fee increases annually at the annual percentage change of the Consumer Price Index.

§ 127.705. Emission Fees – The increase identified in this section represents a 25% increase over the likely Consumer Price Index adjusted fee that would be in effect in 2010, (\$54 dollars in 2009 increased by estimated \$2.00 for 2010 = \$56 per ton), a substantial increase for the Title V affected sources. Based on the contents of the draft report “Adequacy of Funding for the Air Quality Program 2002-2007, Table 3. Revenue History,” in fiscal year 2006-2007, emission fees provided \$18,335,445 in revenue. Consequently, the proposed 25% increase in the emission fee would provide an annual revenue increase in excess of \$4.5 million annually. That is a substantial increase for a program that operated with a surplus in revenue for fiscal years 2001-2002 through 2006-

2007. In 2006-2007 that surplus was in excess of \$2 million. Importantly, the emission fee increases annually based upon the change in the Consumer Price Index.

While EPGA recognizes that the cost of the permitting program has increased, it also recognizes that the proposed emission fee increase, and other proposed operating fee increases, should provide adequate revenue from the Title V facilities. EPGA is concerned that the new proposed fees in § 127.708 and Chapter 139, Sampling and Testing, which are in addition to the proposed amended operating permit fees, are in essence a duplication in payment from Title V facilities. These activities were previously paid for with the revenue from the operating permit fees and those fees are proposed to be increased considerably.

§ 127.708. Risk Assessment – This is a new proposed fee. This proposed fee is appropriately identified as being part of a Plan Approval application. In the case of Plan Approval applications, the imposition of these fees is appropriate and EPGA supports these fees for those applications. However, if the risk assessment is linked to an existing Title V permit absent a plan approval application EPGA cannot support the fee.

§ 139.201. General Provisions – The fees proposed under Chapter 139 are new proposed fees for both Title V affected facilities and non-Title V affected facilities. In the case of non-Title V facilities, the imposition of these fees is appropriate and EPGA supports these fees for those facilities. However, in the case of Title V affected facilities, EPGA objects to the proposed new Chapter 139 fees and believes increases to the existing operating permit fees, including the emission fee, should provide adequate revenue to perform these assessments. This is especially the case when the Bureau of Air Quality has a history of surplus revenue, see “Table 3. Revenue History” of the draft report “Adequacy of Funding for the Air Quality Program 2002-2007.” The operating permit fees have historically been used to account for these activities. Consequently, imposition of these fees in addition to the operating permit fees increases for Title V facilities will require the Title V facilities to pay twice for the same Department actions.

§ 139.202. Schedule of Testing, Auditing and Monitoring Fees – These new proposed fees are required of the applicants or permittee. In the case of Plan Approval applications, new permit applicants or non-Title V permitted facilities, the imposition of these fees is appropriate and EPGA supports the proposed fees for those facilities. However, in the case of Title V affected facilities the proposed increases to the existing operating permit fees, including the emission fee, should provide adequate revenue to perform these assessments as Title V regulations, “... *require that Title V operating permit fees recover 100 percent of the costs of certain program activities. This category includes all permit issuance, source testing, compliance monitoring, inspections, enforcement and program development activities associated with Title V sources.*” Consequently, these additional, new fees should not be applicable as they are not operating permit fees under Chapter 127.

§ 139.302 Table 1 (4)(vi) Department conducted source test - The fees proposed for a Department conducted source test are quite expensive compared to the cost for a private

testing firm. For example, a private firm conducting instrumental reference test methods to assess sulfur dioxide and nitrogen oxides would also have to analyze for either oxygen or carbon dioxide, a total of three parameters. Currently, this effort would cost approximately \$6,000. Under the proposed Chapter 139 fee schedule for the period 2010-2014, that testing would result in a \$9,000 fee assessment, 50% higher than the private firm cost. Companies should have the opportunity to contract with a private firm to control the cost of testing efforts. The state could then send either an observer qualified under ASTM D7036 or one of their personnel which they believe is capable of test observation.

If a fee for test observation is going to be charged by the Department, that test observation fee should only be charged for personnel that are demonstrated as qualified under the current specifications of ASTM D7036 "Standard Practice for Competence of Air Emission Testing Bodies." Consequently under § 121.1 Definitions, the definition should be changed to:

"Observer – For purposes of Chapter 139, Subchapter D (relating to testing, auditing and monitoring fees), Department staff qualified *under ASTM D 7036* to observe testing."

This comment is not intended to prevent the observation of test programs by Department personnel that are not qualified in accordance with ASTM D7036. This comment only relates to the assessment of the fee proposed under Chapter 139.

If the Department decides to conduct a test as part of an enforcement action, that testing effort should be included under the Title V operating permit fees as specified by the Clean Air Act Amendments of 1990 and 40 CFR, Part 70.

Again, EPGA appreciates the opportunity to provide comments on the proposed "Air Quality Fee Schedules." If you have any questions or comments, please don't hesitate to contact me at 717-909-3742 or by email at doug@epga.org. Thank you for your consideration.

Sincerely,



Douglas L Biden
President, EPGA

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