

Executive Summary

Amendments to 25 Pa. Code Chapters 121, 127 and 139

Purpose of the Final-form Rulemaking

The Department of Environmental Protection (Department) recommends amendments to 25 Pa. Code Chapters 121, 127 and 139 (relating to general provisions; construction, modification, reactivation and operation of sources; and sampling and testing) for consideration by the Environmental Quality Board as final-form rulemaking. The final-form rulemaking amends existing requirements and fee schedules codified in Chapter 127, Subchapter I (relating to plan approval and operating permit fees), to ensure that fees are sufficient to cover the costs of administering the air quality program, as required under section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3). In addition to increasing the existing fees, fees applicable to plan approval modifications and requests for determination (RFD) of whether a plan approval is required are established. The final-form rulemaking amends the annual emission fee paid by the owner or operator of a Title V facility for up to 4,000 tons of each “regulated pollutant” and adds a new section to address fees for risk assessment applications. The final-form rulemaking adds to Chapter 139 a Subchapter D (relating to testing, auditing and monitoring fees) to establish fees to address Department-performed stack emissions source testing, test report reviews and auditing and monitoring activities related to continuous emissions monitoring systems (CEMS). The final-form rulemaking:

- Revises the existing plan approval and operating permit fee schedule.
- Revises the existing annual emission fee for Title V facilities.
- Establishes new plan approval and operating permit fee categories.
- Establishes fees for risk assessment applications.
- Establishes a fee schedule for source testing, test report reviews and CEMS auditing and monitoring activities.

The final-form rulemaking adds 21 new terms and definitions to § 121.1 (relating to definitions) to explain certain activities and revises the definition for one term to provide clarity.

These increased fees and new fees would be used to support the Department’s air quality program as authorized by the APCA. The final-form rulemaking, if adopted by the Environmental Quality Board (Board), will be submitted to the United States Environmental Protection Agency as a revision to the State Implementation Plan.

Summary of Final-Form Rulemaking

The final-form rulemaking adds definitions to § 121.1 for 21 new terms to explain source testing, test report reviews and CEMS auditing and monitoring activities and revise the definition for one term to provide clarity. New terms and definitions to be added include “CEMS level 1 quarterly report,” “CEMS level 1 quarterly report audit,” “CEMS level 2 system inspection audit,” “CEMS level 3 analyzer audit,” “CEMS level 4 system audit,” “CEMS level 4 system audit report,” “CEMS level 4 test protocol,” “CEMS level 4 test protocol review,” “CEMS level 4 test report

(RATA),” “CEMS level 4 test report (RATA) review,” “CEMS levels,” “CEMS periodic self-audit,” “CEMS phase 1 monitoring plan,” “CEMS phase 1 monitoring plan review,” “CEMS phase 2 test protocol,” “CEMS phase 3 certification test report,” “CEMS phase 3 certification test report review,” “CEMS phases,” “RATA-relative accuracy test audit,” “risk assessment,” and “trial burn operating scenario.” The revised term is “CEMS – continuous emissions monitoring system.” The proposed term “observer” and its definition are deleted at final as the term is not needed in the final-form rulemaking.

The final-form amendments revise § 127.701 (relating to general provisions) to clarify that fees are deposited into the Pennsylvania Clean Air Fund and that at least every 5 years the Department will provide the Board with an evaluation of the fees and recommend regulatory changes to the Board to address any disparity between the program income generated by the fees and the Department’s cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

The final-form amendments revise § 127.702 (relating to plan approval fees) by deleting reference to fees for past years, imposing the amended fee schedule in 2011, and increasing existing fees to reflect the estimated average expenditure for reviewing and processing of plan approval applications. The final-form rulemaking establishes fees for maximum achievable control technology standards plan approval applications, the review of ambient air modeling associated with certain plan approval applications, the submission of requests for determinations and for general plan approval applications.

The final-form amendments revise § 127.703 (relating to operating permit fees under Subchapter F) to clarify when the fees are applicable and delete reference to fees for past years. The final-form amendments adjust the fees to reflect the actual average expenditure of time to review and take action on the applications. The final-form amendments authorize the establishment of fees for general operating permits.

The final-form amendments revise § 127.704 (relating to Title V operating permit fees under Subchapter G) by deleting reference to fees for past years, imposing the amended fee schedule in 2011, and increasing existing fees to reflect the estimated average expenditure for reviewing and processing plan approval applications. The final-form amendments authorize the establishment of fees for general operating permits.

The final-form amendments revise § 127.705 (relating to emission fees) to adjust the annual Title V emission fee beginning with the fee due in 2011 for emissions released in calendar year 2010 to reflect the Department’s actual expenditures on this program.

The final-form rulemaking adds § 127.708 (relating to risk assessment) to establish fees for the conduct of risk assessment and multi-pathway risk assessments beginning with calendar year 2011.

The final-form rulemaking adds Chapter 139, Subchapter D, to establish fees for certain testing, auditing and monitoring activities related to source testing and oversight. Final-form § 139.201 (relating to general provisions) establishes that the fees are deposited into the Pennsylvania

Clean Air Fund. Final-form § 139.202 (relating to schedule of testing, auditing and monitoring fees) establishes the source testing fee schedule. The fees relate to stack emissions source testing, test report reviews, and auditing and monitoring activities related to continuous emissions monitoring systems.

Affected Parties

The final-form rulemaking affects the owners and operators of air pollution sources that apply for or hold plan approvals and operating permits or that are major facilities as defined under the Title V program and pay the annual emission fee. The owners and operators of facilities that conduct or report source testing or risk assessments would be affected.

Advisory Groups

The Air Quality Technical Advisory Committee (AQTAC) reviewed this final-form rulemaking at its meeting of October 21, 2010. In addition, the final-form revisions were reviewed with the Citizens Advisory Council Air Committee on October 18, 2010. The AQTAC and CAC concurred with the Department's recommendation to move the final-form rulemaking forward to the Board. In addition, the comments to the proposed rulemaking were discussed with the Small Business Compliance Advisory Committee on July 28, 2010.

Public Comments and EOB Hearings

The Environmental Quality Board approved the proposed rulemaking for public comment at its July 21, 2009, meeting. The proposed rulemaking was published in the *Pennsylvania Bulletin* on October 17, 2009, with a 66-day public comment period (39 *Pa.B.* 6049). Three public hearings were held in Harrisburg, Norristown, and Pittsburgh on November 17, 19, and 20, 2009, respectively. The public comment period closed on December 21, 2009.