

FEE REPORT FORM

Department of Environmental Protection
Bureau of Air Quality
 Agency

August 28, 2013
 Date

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	Prior Year <u>12/13</u>	Current Year <u>13/14</u>	1st Future Year <u>Projected</u>	2nd Future Year <u>Projected</u>
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FEE COLLECTIONS:

Current Title V Fee	\$14,708,000	\$13,000,000	\$10,300,000	\$10,000,000
Proposed Title V Fee			\$15,393,000	\$15,093,000

FEE TITLE AND RATE:

Current: The Title V emission fee to be paid in 2013 for emissions released in 2012 is \$57.50 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant.

Final: The amended Title V annual emission fee is \$85 per ton of regulated pollutant for emissions of up to 4,000 tons of regulated pollutant to be paid in 2014 for emissions released in 2013.

FEE OBJECTIVE:

The amendment to the existing Title V annual emission fee in 25 Pa. Code Chapter 127, Subchapter I (relating to plan approval and operating permit fees) is designed to ensure that fee revenues are sufficient to cover the Department's indirect and direct costs of administering the air pollution control permitting program required by Title V of the Clean Air Act as Amended in 1990.

Section 6.3(a) of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3(c)) 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 Clean Air Act, other requirements of the Clean Air Act 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. The Environmental Quality Board (Board) is also authorized to adopt regulations to establish fees to support the air pollution control program authorized by this act and not covered by fees required by section 502(b) of the Clean Air Act. Section 6.3(c) of the APCA authorizes the Board to establish by regulation a permanent annual air emission fee as required for regulated pollutants by section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)) to cover the reasonable direct and indirect costs of administering the operating permit program and other related requirements mandated required by Title V of the CAA. As specified in the APCA, the emission fees can not apply to emissions of more than 4,000 tons of any regulated pollutant.

A Title V annual emission fee of \$85 per ton of each regulated pollutant for emissions up to 4,000 tons will result in increased revenue to the Department of \$5.1 million in the Title V Account for the fees due no later than September 1, 2014, for FY 2014-2015.

The final rulemaking provides for an increased Title V annual emission fee that will be used to cover the indirect and direct costs of administering the air pollution control program. Failure to adjust the Title V annual emission fee will cause expenditures to exceed revenue and may cause reductions in staff or technical services. Reduced staffing will cause delays in processing plan approvals and issuing operating permits, resulting in delays and loss of revenue to industry and reduced protection of the environment and public health and welfare. New or modified sources of air pollution cannot be constructed without a plan approval. The installation of air pollution control equipment requires receipt of a plan approval. Failure to increase the Department's revenue may result in fewer inspections and increases in environmental and public health and welfare problems.

The final rulemaking assures the residents of this Commonwealth that the Department's air pollution control program is adequately funded. This will allow the Department to provide adequate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to reduce emissions to achieve healthful air quality.

The owners and operators of approximately 560 Title V facilities in the Commonwealth must pay annual emission fees by September 1 each year for regulated pollutants emitted the previous year; this emission fee is not payable by any State entity, instrumentality or political subdivision in relation to any publicly owned or operated facility.

The final-form rulemaking will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan and 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).

FEE RELATED ACTIVITIES AND COSTS:

The increased Title V annual emission fee in the final rulemaking will be used to support the Department's air quality program as authorized by the APCA. Activities supported include compliance and complaint inspections, enforcement actions, plan approval review and issuance, operating permit review and issuance, source testing, source test protocol reviews, technical assistance to the source owners and operators and the general public, and program development. The fee revision allows the Department to maintain staffing levels in the air quality program. This provides a sound basis for continued air quality assessments and planning that are fundamental to protecting public health and welfare and the environment.

Increased funding for the plan approval and operating permit program will continue to allow for timely and complete review of plan approval and operating permit applications. Delays in the issuance of the plan approvals and operating permits can cause economic disruptions since the owner or operator of a regulated facility may not operate without an operating permit. The owner or operator may not install a new source or modify an existing source without a plan approval. Delays in receiving plan approvals can have a major impact on an owner or operator's decision to construct in the Commonwealth. Implementation of new fees for risk assessment applications would allow for resources to address this important area of public health and social well-being by evaluating the risks associated with observed levels of contaminants.

ANALYSIS:

The Clean Air Act and implementing regulations restrict the use of Title V emission fee revenues to the costs of administering the Title V Permits Program and the Small Business Stationary Source Technical and Environmental Compliance Assistance Program. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for major stationary sources and small business stationary sources:

- i. Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
- ii. Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
- iii. General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;
- iv. Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
- v. Emissions and ambient monitoring;
- vi. Modeling, analyses, or demonstrations;

- vii. Preparing inventories and tracking emissions; and
- viii. Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program authorized under Section 507 of the CAA.

The Title V annual emission fee has been adjusted on an annual basis based on the Consumer Price Index (CPI) as required by the CAA and APCA. However, the Title V annual emission fee revenues collected to administer the Commonwealth's air pollution control program are no longer sufficient to cover program costs.

Based on an August 27, 2013, Comparative Financial Statement for the Clean Air Fund, an ending balance of \$12.674 Million is projected for the Major Emission Facilities Account by June 30, 2014. This projection assumes no increase in the Title V annual emission fee, which is currently a CPI-adjusted \$57.50/ton for emissions of up to 4,000 tons of each regulated pollutant (for the fee due no later than September 1, 2013). Note: Greenhouse Gases are not regulated pollutants for Title V fee purposes; the Department did not propose to collect Title V annual emission fees for these pollutants.

The following table shows the ending balances for the Title V Major Emission Facilities Account without a fee increase:

Major Emission Facilities Account: Title V Ending Balance w/o Fee Increase (in thousands)

FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016	FY 2016-2017	FY 2017-2018
\$22,804	\$20,404	\$12,674	\$3,073	(\$7,235)	(\$19,406)	(\$32,001)

If a new fee schedule is not adopted, Title V Major Emission Facilities Account deficits of \$7.235 Million, \$19.406 Million and \$32.001 Million are projected under this scenario for FY 2015-2016, FY 2016-2017 and FY 2017-2018, respectively.

Revenue for the Title V Major Emission Facilities Account is from the Title V annual emission fee, interest and lapse of unspent monies. The revenue projections for the Major Emission Facilities Account without a fee increase are forecasted as follows:

Major Emission Facilities Account: Title V Revenue Projections w/o Fee Increase (in thousands)

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
	ACTUAL	ACTUAL	ACTUAL	REBUDGET	PLAN YR.1	PLAN YR.2	PLAN YR.3
Permanent Emission Fees	\$15,542	\$15,762	\$14,708	\$13,000	\$10,300	\$10,000	\$9,000
Prior Year Lapses - Actual:	\$2,399	\$1,085	\$901	\$0	\$0	\$0	\$0
Interest - Title V	\$3,330	\$552	\$452	\$600	\$448	\$448	\$0
Total Revenue	\$21,271	\$17,399	\$16,061	\$13,600	\$10,748	\$10,448	\$9,000

FY 2012-2013 Title V annual emission fee revenue collected is approximately \$3.768 million less than the fee revenue collected in FY 2008-2009 as shown below:

FY 2008-2009	\$18,476,000
FY 2009-2010	\$18,127,000
FY 2010-2011	\$15,542,000
FY 2011-2012	\$15,762,000
FY 2012-2013	\$14,708,000

Title V annual emission fee revenue is expected to continue to decline due to the implementation of federal programs that will require significant reductions in air contaminants including sulfur dioxide and the impact of the curtailment of operations or permanent shutdown of major emission sources including refineries and electric generating units, compliance with the Mercury and Air Toxic Standards for electric generating units and the reduced operations of the remaining coal-fired power plants because of the low price of natural gas. The loss of Title V annual emission fee revenue from these sources is projected to be approximately \$4.5 million by September 2015 compared to fees paid by September 2011. A list of sources which have announced shutdowns, permanently shut down or curtailed operations is provided as follows:

Facility	Fees paid in FY 2011 for 2010 emissions	Fees paid in FY 2012 for 2011 emissions	Projected Fees paid in FY 2013 for 2012 emissions	Projected Fees paid in FY 2014 for 2013 emissions	Announced / Anticipated Shutdown Date
ARMSTRONG	\$443,266	\$460,321	\$269,332	\$0	September 2012
HATFIELDS FERRY	\$461,951	\$505,742	\$566,218	\$627,763	October 2013
MITCHELL	\$152,515	\$134,133	\$216,605	\$240,149	October 2013
CROMBY	\$202,861	\$81,602	\$586	\$0	May 2012
EDDYSTONE	\$466,602	\$110,874	\$22,018	\$0	December 2013
NEW CASTLE	\$328,285	\$312,940	\$282,944	\$418,265	April 2015
ELRAMA POWER	\$186,602	\$63,267	\$35,766	\$0	June 2012
PORTLAND	\$437,394	\$383,499	\$158,511	\$234,321	June 2014
SHAWVILLE	\$524,668	\$479,215	\$405,755	\$599,811	April 2015
TITUS	\$328,122	\$280,171	\$72,810	\$107,632	September 2013
HORSEHEAD MONACA SMELTER	\$229,096	\$187,305	\$80,035	\$88,734	September 2013
SUNBURY	\$425,130	\$341,400	\$189,718	\$0	February 2012
PINEY CREEK	\$95,322	\$103,794	\$80,233	\$29,651	April 2013
KOPPERS	\$12,858	\$12,426	\$11,218	\$12,437	September 2013
HUNLOCK CREEK	\$134,075	\$0	\$0	\$0	May 2010
VIKING ENERGY	\$15,007	\$12,423	\$3,663	\$0	January 2012
SCRUBGRASS GENERATING	\$150,970	\$175,033	\$151,347	\$223,731	Bankruptcy
Total	\$4,594,725	\$3,644,145	\$2,395,410	\$2,358,764	

The announced facility shutdowns will not reduce the Department's workload. 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. The Department projects 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 Sulfur Dioxide (revised June 22, 2010, 75 FR 35520)
- NAAQS for fine Particulate Matter (PM2.5) (revised October 17, 2006, 71 FR 61144)
- NAAQS for fine Particulate Matter (PM2.5) (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 outreach and education of the impacted industry, inspections, and permitting. These federal rules may require state regulatory action. Implementation of the NAAQS requires development of revised State Implementation Plans, 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 may require adoption of state regulations and revisions to operating permits. The revisions to the NAAQS also, in some cases, require the installation of additional ambient air monitors to the existing monitoring network. Implementation of these programs will also require significant public education and outreach.

The Department has been judicious in expenditures under the Title V Major Emission Facilities Account. The following table shows the three recent fiscal years' expenditures:

	FY 2010-11 (in thousands)	FY 2011-12 (in thousands)	FY 2012-13 (in thousands)
Personnel	\$14,965	\$15,684	\$15,263
Operating	\$3,909	\$2,459	\$2,057
Fixed Assets	\$104	\$297	\$288
Grants	\$981	\$1,009	\$856
Non-Expense/Interagency Transfers	\$606	\$606	\$0
Total Expenditures	\$20,565	\$20,055	\$18,464
Revenue	\$15,542	\$15,762	\$14,708

The table shows that expenditures have exceeded revenue for these three recent fiscal years. The majority of the expenditures are for personnel costs. There are 214 authorized positions supported by the Title V Major Emission Facilities Account. Of

these, there are 190 in the Air Quality program with the remainder in support positions throughout the Department.

Projected Title V annual emission fee revenue includes a \$5.1 Million increase in revenue in FY 2014/2015, assuming a revised Title V annual emission fee of \$85 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant is implemented.

FY 2014/2015 DEP Emission Fee Revenue w/o Fee Increases	\$10.3 Million
FY 2014/2015 DEP Emission Revenue w/\$85 per ton Fee	\$15.4 Million
FY 2014/2015 Increased DEP Emission Fee Revenue w/\$85 per ton Fee	\$5.1 Million
FY 2014/2015 Increased Emission Fee Revenue for Philadelphia AMS w/\$85 per ton Fee	\$0.167 Million
FY 2014/2015 Increased Emission Fee Revenue for Allegheny County w/\$85 per ton Fee	\$0.570 Million
Total Fee Increase (DEP, AMS, ACHD) in FY2014/2015 w/\$85 per ton Fee	\$5.837 Million

The final rulemaking is expected to increase revenue to the Department by approximately \$5.1 Million per year for fiscal years 2014-2015 and 2015-2016. The Department is authorized to provide payment of a portion of the Title V annual emission fee revenues collected by the Department to the approved local air pollution control agencies in Philadelphia and Allegheny Counties (25 Pa. Code § 127.706 (relating to Philadelphia County and Allegheny County financial assistance)). While the Allegheny County Health Department (ACHD) has never requested financial assistance, the Department has provided financial assistance to the Philadelphia County Air Management Services (AMS), most recently \$700,000 in 2012 and \$700,000 in 2013. Philadelphia County AMS projects an increasing need for assistance under § 127.706 and may request an increase in financial assistance to implement the City Of Philadelphia's Title V Program.

The revised Title V annual emission fee of \$85 per ton of emissions of regulated pollutant will not be sufficient for the long-term solvency of the Clean Air Fund Title V Major Emission Facilities Account. An ending balance of \$2,951,000 is projected for the Title V Major Emission Facilities Account by the end of FY 2015-2016 after implementation of the fee amendment. (The ending balance may be lower or a deficit may occur should natural gas displace additional coal-fired electric generation.) However, the amended fee will increase revenue during the interim years and allow the Department to complete an evaluation of the air quality plan approval and operating permit fee structure and determine if additional fees, revised fees, or other options should be advanced. If a decision is made to address the shortfall through another increase in the Title V annual emission fee, the EQB would need to propose another

increase in the Title V annual emission fee above the \$85 per-ton fee no later than January 2015. The subsequent rulemaking schedule would require a final revised Title V annual emission fee increase greater than \$85 per ton no later than December 2015 for the Title V fees due by September 1, 2016. This rulemaking schedule for the second proposal is recommended so that there will be sufficient funds to support the program beginning in FY 2016-2017.

Revenue and expenditure projections show negative spending by FY 2015-2016 without the revised Title V annual emission fee.

Implications Associated with Unsustainable Clean Air Fund: Section 110(a)(2)(E)(i) of the Clean Air Act (42 USCA 7410 (a)(2)(E)(i)), requires necessary assurances that the Commonwealth “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 and welfare-based national ambient air quality standards including ozone, particulate matter, lead, carbon monoxide, nitrogen dioxide and sulfur dioxide. In accordance with 40 CFR Part 51, Subpart O, Section 51.280, the SIP must also include a description of the resources available to State and local agencies needed to carry out the plan. If the fee amendments are not adopted to ensure that fees are adequate to support the program, the EPA could find that a “requirement of the approved plan is not being implemented.” If the deficiency is not corrected within 18 months after the finding, mandatory sanctions would be triggered under Section 179 of the CAA. These sanctions include loss of federal highway funds and 2-to-1 offsets for the construction of major new or modified stationary sources. If the Commonwealth fails to correct the identified deficiency, the Clean Air Act states that the Administrator of the EPA shall promulgate a Federal Implementation Plan under Section 110(c) at any time within 2 years after the Administrator:

- 1) finds that a state failed to make a required submission or finds that the plan or plan revision submitted by the state does not satisfy the minimum criteria established under Section 110(k)(1)(A), or
- 2) disapproves a state implementation plan submission in whole or in part, unless the state corrects the deficiency and the Administrator approves the plan or plan revision, before the Administrator promulgates such federal implementation plan.

The EPA may also impose discretionary sanctions under Section 179 of the CAA which would adversely impact federal grants (i.e., \$5.8 million for FY 2012-2013) awarded to DEP under Sections 103 and 105 of the CAA.

DEP has implemented the EPA-approved Title V Operating Permit Program since July 1996. Should the EPA determine that the DEP has failed to properly implement the program or failed to require the owners and operators of Title V facilities to pay Title V emission fees sufficient to cover the costs of Pennsylvania’s Title V Program, a “Notice of Deficiency” would be issued to DEP and published in the *Federal Register*. Under 40 CFR 70.10(b) and (c), the EPA is authorized to withdraw the Title V program approval if the DEP fails to take corrective action. 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. If the program deficiency is not corrected within 18 months, mandatory sanctions including 2-to-1 emission offsets for the construction of major sources and loss of federal highway funds would be imposed under Section 179 of the Clean Air Act.

Lastly, further reductions in revenue would require significant reductions in the Title V staff complement—in FY 2012-2013, personnel costs alone are projected to be approximately \$15.263 Million. Significant reductions in staff and technical services will cause delays in the processing and issuance of plan approvals for the construction of new sources, operating permits, conducting inspections, responding to complaints and pursuing enforcement actions. The EPA could also withdraw approval of the Commonwealth's Title V Program which would require the owners and operators of Title V facilities to pay the fees directly to the EPA.

RECOMMENDATION AND COMMENT:

The Air Quality Title V Fee Schedule amendment should be approved as a final rulemaking. The revised Title V annual emission fee will support continued operation of the Air Quality Program in the Commonwealth.

The final-form revisions were discussed with the Air Quality Technical Advisory Committee (AQTAC) at its meeting of June 13, 2013. AQTAC concurred with the Department's recommendation to present the final rulemaking to the Board. The Department consulted with the Citizens Advisory Council (CAC) on July 16, 2013. The CAC concurred with proceeding to the Board with the final rulemaking. The Department discussed the comments to the proposed rulemaking with the Small Business Compliance Advisory Committee on July 24, 2013.