

Final-Form Rulemaking
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CHS. 121 AND 127]
Air Quality Fee Schedule Amendments

The Environmental Quality Board (Board) amends Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees) as set forth in Annex A. This final-form rulemaking amends existing requirements in Subchapter F and existing air quality plan approval and operating permit fee schedules in Subchapter I. It also establishes fees in Subchapter I to address the disparity between revenue and expenses for the Department of Environmental Protection's (Department) Air Quality Program. These increased fees and new fees will provide a sound fiscal basis for continued air quality assessments and planning that are fundamental to protecting the public health and welfare and the environment. Increased funding for the Air Quality Program will also continue to allow for timely and complete review of plan approval and operating permit applications that provides the certainty businesses need to expand or locate in this Commonwealth.

This final-form rulemaking 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, following promulgation of the final-form regulation.

This final-form rulemaking was adopted by the Board at its meeting of **DATE**, 2020.

A. Effective Date

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

B. Contact Persons

For further information, contact Viren Trivedi, Chief, Division of Permits, Bureau of Air Quality, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 783-9476; or Jennie Demjanick, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department's web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board").

C. Statutory Authority

This final-form rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P.S. § 4005(a)(1)), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth and section 5(a)(8) of the APCA (35 P.S. § 4005(a)(8)), which grants the Board

the authority to adopt rules and regulations designed to implement the provisions of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401—7671q).

This final-form rulemaking is further authorized under section 6.3 of the APCA (35 P.S. § 4006.3), which grants to the Board the authority to adopt regulations to establish fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process; operating permit program required by Title V of the CAA (42 U.S.C.A. §§ 7661—7661f); other requirements of the CAA; and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the Board by regulation to establish fees to support the air pollution control program authorized by the APCA and not covered by fees required by section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)).

D. Background and Purpose

This final-form rulemaking amends Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees). This final-form rulemaking amends existing requirements in Subchapter F and existing air quality plan approval and operating permit fee schedules in Subchapter I. It also establishes fees in Subchapter I to address the disparity between revenue and expenses for the Department of Environmental Protection's (Department) Air Quality Program. These amendments ensure that fees are sufficient to cover the costs of administering the plan approval application and operating permit process as required by section 502(b) of the Clean Air Act (CAA) (42 U.S.C.A. § 7661a(b)) and section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3).

The Department is also proposing new fees for applications for the following: plantwide applicability limits (PAL); ambient air impact modeling of certain plan approval applications; risk assessments; asbestos abatement or demolition or renovation project notifications (asbestos notifications); and requests for determination (RFD). This final-form rulemaking also includes a provision stating that the Department may establish fees for the use of general plan approvals (GPA) and general operating permits (GP) for stationary or portable sources and the fees will be established when the GPA or GP is issued or modified by the Department. The Department also adjusted the name of the annual operating permit "administration" fee to an annual operating permit "maintenance" fee that will be due on or before December 31 of each year.

The fee structure will ensure the continued protection of public health and welfare of the approximately 12.8 million Commonwealth residents and the environment and allow the Commonwealth to meet the obligations required by the CAA. This financial support is also necessary to ensure the timely issuance of air quality permits for the regulated community, which could help retain and attract businesses to this Commonwealth. As a result, Commonwealth residents and industries benefit from this final-form rulemaking.

The plan approval application and operating permit fee schedules in this final-form rulemaking are designed to bring the Department's Air Quality Program's permitting fee revenue in line with expenditures so that the Air Quality Program is self-sustaining as required under the

CAA. The new and increased fees in this final-form rulemaking are needed to cover the Department's costs related to implementing the air pollution control plan approval and operating permit process required under the CAA and APCA to attain and maintain the National Ambient Air Quality Standards (NAAQS) for air pollutants including ozone, particulate matter, lead, carbon monoxide, nitrogen dioxide and sulfur dioxide, as well as other requirements of the CAA, APCA and regulations promulgated thereunder. Controlling air pollutant emissions is essential to protecting public health and welfare and the environment.

The Department's Air Quality Program issues plan approval and operating permits for two types of sources—major and nonmajor. See 24 Pa.B. 5899 (November 26, 1994). This permitting program was subsequently reviewed and approved by the EPA. See 61 FR 39597 (July 30, 1996). Major sources are those that emit air pollution above designated thresholds under the CAA, and nonmajor sources are those that emit air pollution below the thresholds. See 42 U.S.C.A. § 7661. Major sources are subject to the statutory requirements under Title V of the CAA and are referred to as Title V sources. Conversely, nonmajor sources are subject to the APCA, but not Title V of the CAA, and are referred to as Non-Title V sources.

In recent years, the Department, like many State and local agencies, has experienced shortfalls in fee revenue due to emissions reductions at major facilities. This shortfall has led many agencies to re-evaluate their fee structures. A number of State and local agencies are currently in the process of adjusting their fee schedules to address the decline in program funding.

The Department currently regulates approximately 500 Title V and 2,100 Non-Title V facilities in this Commonwealth. Establishing the fee schedules in this final-form rulemaking will provide the necessary financial support to continue the Department's air quality plan approval application and operating permit process and initiatives to protect the public health and welfare of the approximately 12.8 million residents of this Commonwealth and the environment. This financial support will also help ensure the timely issuance of air quality permits for the regulated community, which will help retain and attract businesses to this Commonwealth.

In accordance with 40 CFR 70.10(b) and (c) (relating to Federal oversight and sanctions), the EPA may withdraw approval of a Title V Operating Permit Program, in whole or in part, if the EPA finds that a State or local agency has not taken “significant action to assure adequate administration and enforcement of the program” within 90 days after the issuance of a notice of deficiency (NOD). The EPA is authorized to, among other things, withdraw approval of the program and promulgate a Federal Title V Operating Permit Program in this Commonwealth that would be administered and enforced by the EPA. In this instance, all Title V emission fees would be paid to the EPA instead of the Department. Additionally, mandatory sanctions would be imposed under section 179 of the CAA (42 U.S.C.A. § 7509) if the program deficiency is not corrected within 18 months after the EPA issues the deficiency notice. These mandatory sanctions include 2-to-1 emission offsets for the construction of major sources and loss of Federal highway funds (\$1.73 billion in 2018) if not obligated for projects approved by the Federal Highway Administration. The EPA may also impose discretionary sanctions which would adversely impact Federal grants awarded under sections 103 and 105 of the CAA (42 U.S.C.A. §§ 7403 and 7405). Implementation of the increased fees and new fees in Subchapter I would avoid the issuance of a Federal Title V Operating Permit Program NOD and Federal oversight and mandatory CAA sanctions.

Section 9.2(a) of the APCA (35 P.S. § 4009.2(a)) provides for the establishment of the Clean Air Fund and separate accounts, if necessary, to comply with the requirements of the CAA. The CAA and its implementing regulations specifically provide that any fees collected under the Title V Operating Permit Program have to be used solely for the costs of that program. See 42 U.S.C.A. § 7661a(b)(3)(C)(iii) and 40 CFR 70.9(a) (relating to fee determination and certification). As a result, in this Commonwealth, the Clean Air Fund consists of two “special fund” appropriations: the Title V Account and the Non-Title V Account. The Title V Account collects the revenue received from the Title V air quality permitting and emission fees. The Non-Title V Account collects the revenue received from the Non-Title V air quality permitting fees and the fines and penalties from both Title V and Non-Title V facilities.

Projected Revenue and Expenditures

In the early years of the Title V operating permitting program when there were more facilities and emissions of regulated pollutants were significantly greater than today, the Clean Air Fund balance was large. After many years of drawing down this accumulated balance to cover Air Quality Program costs and expenditures that exceeded annual revenue, the Clean Air Fund balance is now approaching zero. The fee amendments in this final-form rulemaking halt this decline in the Clean Air Fund balance and bring annual program revenue in line with annual program expenditures.

To maintain solvency in the Clean Air Fund and match revenue to expenditures, the Department needs to generate additional revenue of approximately \$5.0 million for the Title V Account and \$7.7 million for the Non-Title V Account beginning by fiscal year (FY) 2020-2021 to balance the projected expenditures of \$19.2 million for the Title V Account and \$9.4 million for the Non-Title V Account (a combined total expenditure of approximately \$28.6 million).

The Title V Account expenditures exceeded revenue in FY 2018-2019 and are projected to exceed revenues by \$4 million and rising to over \$5.0 million in each fiscal year going forward. The Title V Account is currently projected to have a decreasing ending balance, from \$20.744 million in FY 2018-2019 to negative \$9.977 million in FY 2024-2025, or a decrease of over \$30 million, as shown in Table 1.

Table 1
Title V Account without Fee Amendments
(in thousands of dollars)

| | FY 18-19 | FY 19-20 | FY 20-21 | FY 21-22 | FY 22-23 | FY 23-24 | FY 24-25 |
|---------------------------|------------------|------------------|------------------|-----------------|-----------------|-------------------|-------------------|
| | ACTUAL | BUDGET | PLAN YR 1 | PLAN YR 2 | PLAN YR 3 | PLAN YR 4 | PLAN YR 5 |
| Beginning Balance | \$ 22,684 | \$ 20,744 | \$ 15,117 | \$ 11,322 | \$ 6,435 | \$ 1,113 | \$ (4,355) |
| Total Revenue | \$ 15,938 | \$ 12,912 | \$ 14,930 | \$ 14,213 | \$ 14,160 | \$ 14,404 | \$ 14,647 |
| Total Expenditures | \$ 17,878 | \$ 18,539 | \$ 18,725 | \$ 19,100 | \$ 19,482 | \$ 19,872 | \$ 20,269 |
| Ending Balance | \$ 20,744 | \$ 15,117 | \$ 11,322 | \$ 6,435 | \$ 1,113 | \$ (4,355) | \$ (9,977) |

The Non-Title V Account expenditures exceeded revenue in FY 2018-2019 and are projected to exceed revenue by approximately \$6 million and rising to over \$6.5 million in each fiscal year going forward. The Non-Title V Account balance is projected to reach zero in FY 2020-2021

and to have a deficit of around \$28 million by FY 2024-2025, as expenditures outpace revenue, as shown in Table 2.

Table 2
Non-Title V Account without Fee Amendments
(in thousands of dollars)

| | FY 18-19 | FY 19-20 | FY 20-21 | FY 21-22 | FY 22-23 | FY 23-24 | FY 24-25 |
|---------------------------|-----------|----------|------------|------------|-------------|-------------|-------------|
| | ACTUAL | BUDGET | PLAN YR 1 | PLAN YR 2 | PLAN YR 3 | PLAN YR 4 | PLAN YR 5 |
| Beginning Balance | \$ 10,940 | \$ 8,746 | \$ 2,855 | \$ (2,817) | \$ (8,842) | \$ (15,057) | \$ (21,468) |
| Total Revenue | \$ 7,175 | \$ 3,644 | \$ 3,740 | \$ 3,575 | \$ 3,577 | \$ 3,577 | \$ 3,577 |
| Total Expenditures | \$ 9,369 | \$ 9,535 | \$ 9,412 | \$ 9,600 | \$ 9,792 | \$ 9,988 | \$ 10,188 |
| Ending Balance | \$ 8,746 | \$ 2,855 | \$ (2,817) | \$ (8,842) | \$ (15,057) | \$ (21,468) | \$ (28,079) |

Clean Air Fund Ending Balances

Table 3 shows the Title V and Non-Title V Accounts combined projected negative balance in the Clean Air Fund during FY 2022-2023 and later based on the existing fee schedules.

TABLE 3
Clean Air Fund Ending Balances without Fee Amendments
(in thousands of dollars)

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

If this rulemaking is promulgated as final-form regulation in 2020, the anticipated increased revenue is projected to keep the Clean Air Fund solvent (see Table 6). For instance, the Clean Air Fund ending balances without the fee amendments are projected to be \$8.5 million in FY 2020-2021; a deficit of \$2.4 million in FY 2021-2022; and a deficit of \$13.9 million in FY 2022-2023. Conversely, the Clean Air Fund ending balances with the fee amendments are projected to be \$18.6 million in FY 2020-2021; \$19.5 million in FY 2021-2022; and \$19.4 million in FY 2022-2023. The increased revenue will come in time for the Non-Title V Account to avoid a deficit. Tables 4 and 5 show the overall projected balances for the Title V and Non-Title V Accounts.

TABLE 4**Title V Account with Fee Amendments
(in thousands of dollars)**

| | FY 18-19 | FY 19-20 | FY 20-21 | FY 21-22 | FY 22-23 | FY 23-24 | FY 24-25 |
|--------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| | ACTUAL | BUDGET | PLAN YR 1 | PLAN YR 2 | PLAN YR 3 | PLAN YR 4 | PLAN YR 5 |
| Beginning Balance | \$ 22,684 | \$ 20,744 | \$ 15,117 | \$ 13,122 | \$ 12,166 | \$ 10,382 | \$ 8,419 |
| Total Revenue | \$ 15,938 | \$ 12,912 | \$ 17,229 | \$ 19,149 | \$ 19,102 | \$ 19,340 | \$ 19,583 |
| Total Expenditures | \$ 17,878 | \$ 18,539 | \$ 19,224 | \$ 20,105 | \$ 20,886 | \$ 21,303 | \$ 21,729 |
| Ending Balance | \$ 20,744 | \$ 15,117 | \$ 13,122 | \$ 12,166 | \$ 10,382 | \$ 8,419 | \$ 6,273 |

TABLE 1**Non-Title V Account with Fee Amendments
(in thousands of dollars)**

| | FY 18-19 | FY 19-20 | FY 20-21 | FY 21-22 | FY 22-23 | FY 23-24 | FY 24-25 |
|--------------------|-----------|----------|-----------|-----------|-----------|-----------|-----------|
| | ACTUAL | BUDGET | PLAN YR 1 | PLAN YR 2 | PLAN YR 3 | PLAN YR 4 | PLAN YR 5 |
| Beginning Balance | \$ 10,940 | \$ 8,746 | \$ 6,955 | \$ 5,494 | \$ 7,390 | \$ 9,096 | \$ 10,606 |
| Total Revenue | \$ 7,175 | \$ 7,744 | \$ 7,951 | \$ 11,496 | \$ 11,498 | \$ 11,498 | \$ 11,498 |
| Total Expenditures | \$ 9,369 | \$ 9,535 | \$ 9,412 | \$ 9,600 | \$ 9,792 | \$ 9,988 | \$ 10,188 |
| Ending Balance | \$ 8,746 | \$ 6,955 | \$ 5,494 | \$ 7,390 | \$ 9,096 | \$ 10,606 | \$ 11,916 |

TABLE 2**Clean Air Fund Ending Balances with Fee Amendments
(in thousands of dollars)**

| | FY 18-19 | FY 19-20 | FY 20-21 | FY 21-22 | FY 22-23 | FY 23-24 | FY 24-25 |
|-------------------------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| | ACTUAL | BUDGET | PLAN YR 1 | PLAN YR 2 | PLAN YR 3 | PLAN YR 4 | PLAN YR 5 |
| Title V Ending Balance | \$ 20,744 | \$ 15,117 | \$ 13,122 | \$ 12,166 | \$ 10,382 | \$ 8,419 | \$ 6,273 |
| Non-Title V Ending Balance | \$ 8,746 | \$ 6,955 | \$ 5,494 | \$ 7,390 | \$ 9,096 | \$ 10,606 | \$ 11,916 |
| Clean Air Fund Ending Balance | \$ 29,490 | \$ 22,072 | \$ 18,616 | \$ 19,556 | \$ 19,478 | \$ 19,025 | \$ 18,189 |

Essential Program Functions and Cost-Saving Measures

The Department has sought to maintain parity between its revenue and expenditures over the last several years by reducing costs associated with administering the Air Quality Program. These cost reductions include streamlining the air permitting program through implementing the Permit Decision Guarantee policy, creating the online Request for Determination (RFD) form, issuing general plan approvals and general operating permits for 19 source categories, and not filling open staff positions. The remaining reasonable costs that cannot be readily reduced include the cost to perform certain activities related to major facility operations, including the review and processing of plan approvals and operating permits; emissions and ambient air

monitoring; compliance inspections; developing regulations and guidance; modeling, analyses and demonstrations; and preparing emission inventories and tracking emissions. Direct and indirect program costs include personnel costs; office space leases; operating expenses such as telecommunications, electricity, travel, auto supplies and fuel; and the purchase of fixed assets such as air samplers and monitoring equipment, vehicles and trailers.

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

A key provision of Title V is the requirement to establish a financially adequate permit fee schedule. Both section 6.3 of the APCA (35 P.S. § 4006.3) and the EPA's 40 CFR Part 70 regulations require permitting authorities to charge Title V sources annual fees under a fee schedule that results in the collection and retention of revenues sufficient to cover the entirety of Title V operating permit program costs. See 40 CFR 70.9. Title V permit fees are used to implement and enforce the permitting program, including review of new permit applications and revisions or renewals of existing permits; monitoring facility compliance; taking enforcement actions for noncompliance; performing monitoring, modeling and analysis; tracking facility emissions; and preparing emission inventories.

Prior Fee Rulemakings

Regulations related to the fee schedules for plan approval and operating permit activities were last revised in November 1994, with staged increases occurring over the ensuing 10 years. See 24 Pa.B. 5899 (November 26, 1994). The last of the staged plan approval and operating permit fee increases occurred in January 2005. As a result, these fees have not increased in 15 years, while expenses have continued to increase.

The Board revised the Title V annual emission fee under § 127.705 (relating to emission fees) in 2013. At that time, the Department projected that the increased annual emission fee would not be sufficient to maintain the Title V fund and noted that a revised annual emission fee or other revised permitting fees would be needed within 3 years. See 43 Pa.B. 7268 (December 14, 2013). This is due, in part, because emissions subject to the Title V annual emission fee have decreased by 47% since 2000 and continue to decrease as more emissions reductions are required to attain and maintain the revised applicable NAAQS established by the EPA. Installation of air pollution control technology over the past 2 decades on major stationary sources, the retirement or curtailment of operations by major sources including certain refineries and coal-fired power plants and the conversion at many major facilities from burning coal or oil to burning natural gas has resulted in the decreased emission of regulated pollutants that are subject to the Title V annual emission fee, and revenues collected have been decreasing as a consequence. This is resulting in reduced fee revenue for the Air Quality Program, even with the revised Title V annual emission fee adopted in 2013.

As revenue for the program has decreased over the past several years, one area of cost cutting has been reducing the staffing complement. Failure to adjust the Air Quality Program fee schedules to adequately cover program costs will cause additional staff reductions. Reduced staff will cause delays in processing plan approval and operating permit applications and issuing approved plan approvals and operating permits. Delays in the issuance of the plan approvals and operating permits can cause economic disruptions because 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. This may result in delays for industry to implement expanded, new or improved processes, with associated loss of revenue to industry, loss of jobs for the community and loss of tax revenue for the Commonwealth. Delays in receiving plan approvals can have a major impact on an owner or operator's decision to operate or expand operations in this Commonwealth.

Further, fewer Department staff to conduct inspections, respond to complaints and pursue enforcement actions will result in less oversight of regulated industry compliance or noncompliance. This, in turn, will result in reduced protection of the environment and public health and welfare of the citizens of this Commonwealth.

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

By addressing the Clean Air Fund deficits, the Department will be able to continue to serve the regulated community and protect the quality of air in this Commonwealth. Furthermore, a failure to attain and maintain the NAAQS and to satisfy the Commonwealth's obligations under the CAA could precipitate punitive actions by the EPA, including implementation of a Federal Implementation Plan (FIP) and collection of all fees and revenue by the EPA.

Annual Operating Permit Administration Fee

The revenue generated from the annual operating permit administration fees does not adequately cover the costs of Department services provided to facility owners and operators for this fee. In particular, the current annual operating permit administration fee of \$750 for the owners and operators of Title V facilities is limited to those that are identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions), which is a total of 30 Title V facilities. The current annual operating permit administration fee for the 30 affected Title V owners and operators generates revenue of only \$22,500. To remedy this, the current annual operating permit administration fee under §§ 127.703(c) and 127.704(c) is amended with the annual operating permit maintenance fee under §§ 127.703(d) and 127.704(d). The annual operating permit maintenance fees are designed to recover costs to the Department for providing services to facility owners and operators that are otherwise absorbed in the revenue generated from the emission fees paid by the owners and operators of Title V facilities, permitting fee

revenue from the owners and operators of both Title V and Non-Title V facilities, and General Fund money. These services include facility inspections and review of facility records and operating permit conditions to ensure that the facility is in compliance with its operating permit. The annual operating permit maintenance fees in this final-form rulemaking apply to the owners and operators of affected Non-Title V and Title V facilities.

Amended, New and Deleted Fees

In addition, in this final-form rulemaking, the Board is addressing the potential Clean Air Fund deficits by amending existing fees in Subchapter I related to plan approval and operating permit applications for the owners and operators of both Non-Title V and Title V facilities. The Board is also establishing fees related to applications for plantwide applicability limits (PAL), modifications of existing plan approvals and analyses of ambient impacts of a source. Fees for RFDs and for submission of notifications for asbestos abatement or regulated demolition or renovation projects are also established. The fee for claims of confidential information in proposed § 127.711 (relating to fees for claims of confidential information) is deleted in this final-form rulemaking because the Department determined that it is unneeded at this time.

In this final-form rulemaking, the Board moved the fees for risk assessment analyses from its own section under proposed § 127.708 (relating to risk assessment) to the newly established subsection (k) under § 127.702 (relating to plan approval fees). The Board made this revision to clarify that the fee for a risk assessment is part of the fees for a plan approval application, in response to comments received. A risk assessment analysis report is prepared by the Department in response to a plan approval application that identifies the presence of hazardous air pollutants, which include carcinogenic and teratogenic compounds. The Department conducts a risk assessment analysis to assess the potential adverse public health and welfare effects under both current and planned future conditions caused by the presence of hazardous air pollutants after the source is controlled. Implementation of plan approval application fees for risk assessment analyses will support program resources to address this important area of public health and social well-being. The cost of this analysis is currently borne by the owners and operators of all permitted facilities through the plan approval application and permitting fees that they pay. Since risk assessment analyses are not required for all plan approval applications, the Board established the plan approval application fee for a risk assessment to allocate these costs to owners and operators that are required to have the analysis rather than burdening all owners and operators of permitted sources with costs for services that they do not use or need.

Asbestos Abatement Fee

The Board renumbered the proposed § 127.709 to final-form § 127.708 (relating to asbestos abatement or regulated demolition or renovation project notification). The Board also revised this section to clarify that this final-form rulemaking fee applies only to the initial notification by an owner or operator of an asbestos abatement or regulated demolition or renovation project that is subject to 40 CFR Part 61, Subpart M (relating to National emission standards for hazardous air pollutants) or the Asbestos Occupations Accreditation and Certification Act (Act 1990-194) (63 P.S. §§ 2101—2112) and which is not located in Philadelphia County or Allegheny County. Final-form § 127.708(b) specifies that the Department will waive the fee for a subsequent notification form submitted for the asbestos abatement or regulated demolition or renovation

project. The Department receives upwards of 5,000 initial asbestos abatement notifications and a total of about 7,000 asbestos abatement notifications each year, which require staff review and site inspections.

The Department's costs for performing these asbestos abatement notification-related services are currently absorbed by the owners and operators of all permitted facilities through the plan approval application and permitting fees that they pay. The Department currently inspects around 200 asbestos abatement projects per year due to staffing constraints. The fee for asbestos abatement notifications is designed to recover the Department's costs for these services and will provide the support to maintain and increase the number of staff assigned to inspect asbestos abatement projects and the number of asbestos abatement project inspections performed. The Philadelphia Department of Health, Air Management Services (AMS) and the Allegheny County Health Department (ACHD) have established fee schedules for notifications of asbestos abatement projects. For comparison, Philadelphia AMS receives about 1,800 asbestos abatement notifications per year and revenue of approximately \$300,000 annually from asbestos abatement notification fees. ACHD receives about 1,200 notifications per year and received revenue of approximately \$520,000 in calendar year 2019 from asbestos abatement notification fees.

Requests for Determination

The Board renumbered proposed § 127.710 to final-form § 127.709 (relating to fees for requests for determination). Final-form § 127.709 establishes fees for the owner or operator of a source that submits an RFD under § 127.14 (relating to exemptions) for a plan approval, an operating permit or for both a plan approval and an operating permit. The RFD process allows an owner or operator to obtain a written case-by-case exemption from the requirement to apply for a plan approval or operating permit, if the Department determines the requestor meets the exemption criteria. The RFDs are reviewed by Department staff in much the same way as other applications and this final-form rulemaking establishes a fee to recover the costs to the Department.

General Plan Approval and General Operating Permit Fees

The Board also renumbered proposed § 127.712 to final-form § 127.710 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H). Final-form § 127.710 is established to address fees for the use of general plan approvals or general operating permits issued by the Department for stationary or portable sources. The Department develops a proposed general plan approval or general operating permit along with the proposed application fees and provides notice in the *Pennsylvania Bulletin* and the opportunity to comment as provided in §§ 127.612 and 127.632 (relating to public notice and review period). The Department may also revise the application fee for an existing general plan approval or general operating permit and provide notice in the *Pennsylvania Bulletin* and an opportunity to comment on the revised application fee as provided in §§ 127.612 and 127.632. The Department has developed and issued general plan approvals and general operating permits for 19 source categories since 1996.

Annual Operating Permit Maintenance Fee

The Board is changing the name of the annual operating permit administration fee under § 127.703(c) to the annual operating permit maintenance fee under § 127.703(d) for the owners or operators of affected Non-Title V facilities. The annual operating permit maintenance fee for the owners or operators of all affected synthetic minor facilities for calendar years 2021—2025 is \$4,000. This is increased from the proposed amount of \$2,500 in response to comments from members of AQTAC that the proposed fees were too low for these facilities. The annual operating permit maintenance fee for the owners or operators of all affected facilities that are not synthetic minors for calendar years 2021—2025 is \$2,000. The annual operating permit maintenance fees collected under § 127.703(d) are projected to generate revenue of approximately \$5.5 million for the Non-Title V Account.

The Board is also changing the name of the annual operating permit administration fee under § 127.704(c) to the annual operating permit maintenance fee under § 127.704(d) for the owners or operators of affected Title V facilities. The annual operating permit maintenance fee for the owners or operators of all affected Title V facilities for calendar years 2021—2025 is \$8,000. This is decreased from the proposed amount of \$10,000 in response to comments from members of AQTAC that the proposed fee was too high for these facilities relative to the proposed annual operating permit maintenance fee for synthetic minor facilities under § 127.703(d)(1). This reduction in the Title V annual operating permit maintenance fee offsets the increase in the annual operating permit maintenance fee for synthetic minor facilities. These revisions result in no net change in the revenue collected by the Department in this final-form rulemaking. The annual operating permit maintenance fees collected under § 127.704(d) are projected to generate revenue of approximately \$4 million for the Title V Account.

No Increase to the Title V Emission Fee

The Board considered three options for revising the Title V emission fee under § 127.705 (relating to emissions fees) and implementing an annual operating permit maintenance fee for the owners and operators of affected Title V facilities. The first option would not increase the current emission fee under § 127.705 and would collect an annual operating permit maintenance fee of \$8,000 from the owners or operators of affected Title V facilities. The second option would have increased the Title V emission fee to \$110 per ton up to the 4,000-ton cap per regulated air pollutant and collected an annual operating permit maintenance fee of \$5,000 from the owners or operators of all affected Title V facilities. The third option would have increased the Title V emission fee to \$118 per ton up to the 4,000-ton cap, established an emission fee floor of \$5,000 per facility and not collected an annual operating permit maintenance fee from the owners or operators of affected Title V facilities. The Department anticipated that the amount of revenue to be generated was approximately equal between the three options. Each of the options would have generated annual revenue of approximately \$19-20 million or an increase of approximately \$6 million over current Title V facility revenue. The three options varied in the number of owners and operators of Title V facilities that would pay 90% of the combined Title V emission fee and annual operating permit maintenance fee revenue.

This final-form rulemaking implements the first option, leaving the Title V emission fee established in § 127.705 unchanged and collecting an annual operating permit maintenance fee

of \$8,000 from the owners and operators of all affected Title V facilities. The Board chose this approach based on the equities involved among the number of impacted Title V facility owners and operators. This option spreads the cost obligation for supporting the Title V Operating Permit Program across 289 Title V facility owners and operators versus 206 Title V facility owners and operators for the second option and 129 Title V facility owners and operators for the third option. For additional comparison, the current fee schedule spreads the cost obligations of supporting the Title V Operating Permit Program across 102 Title V facility owners and operators. Thus, the option in this final-form rulemaking spreads the financial burden of supporting the Title V Operating Permit Program across almost three times as many Title V facility owners and operators as the current fee schedule.

The revenue generated by these final-form fees will be used to support the Department's Air Quality Program as authorized by the APCA. The fee schedule amendments will allow the Department to maintain staffing levels in the Air Quality Program as well as cover operating expenses such as telecommunications, electricity, travel, auto supplies and fuel along with the purchase of fixed assets such as air samplers and monitoring equipment, vehicles and trailers. The Department established the final-form fees by identifying the number of staff required and the approximate time necessary to complete each review or action, including the amount of salaries and benefits. The Department also compared the final-form fees to those of this Commonwealth's approved local air pollution control agencies (Philadelphia and Allegheny Counties) and to those of surrounding states.

Public Outreach

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) and the Small Business Compliance Advisory Committee (SBCAC) in the development of this final-form rulemaking. On December 12, 2019, AQTAC concurred with the Department's recommendation to move this final-form rulemaking forward to the Board for consideration. On January 22, 2020, SBCAC concurred with the Department's recommendation to move this final-form rulemaking forward to the Board for consideration.

The Department also conferred with the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight Committee concerning this final-form rulemaking on January 6, 2020. On January 21, 2020, the CAC concurred with the Department's recommendation to advance this final-form rulemaking to the Board for consideration.

E. Summary of Final-Form Rulemaking and Changes from Proposed to Final-Form Rulemaking

§ 121.1. Definitions

This section contains definitions relating to the air quality regulations. This final-form rulemaking adds the definition of "synthetic minor facility" to clarify that it is an air contamination source subject to Federally enforceable conditions that limit the facility's potential to emit to less than the major facility thresholds specified in the definition of "Title V facility."

No change is made to this definition from proposed to final-form rulemaking.

§ 127.424. *Public notice*

This section contains procedures the Department follows to prepare a notice of action to be taken on an application for an operating permit. An incorrect cross reference is amended in subsections (b) and (e)(3). The current cross references are to § 127.44(a)(1)—(4) (relating to public notice) and to § 127.44(a). The final-form cross references are to § 127.44(b)(1)—(5) and to § 127.44(b).

No change is made to this section from proposed to final-form rulemaking.

§ 127.465. *Significant operating permit modification procedures*

This section establishes the procedures the owner or operator of a stationary air contamination source or facility shall follow to make a significant modification to an applicable operating permit.

Subsection (a) establishes that the owner or operator of a stationary air contamination source or facility may make a significant modification to an applicable operating permit under this section.

Subsection (b) establishes that the significant operating permit modifications must meet the requirements of Chapter 127, including §§ 127.424 and 127.425 (relating to public notice; and contents of notice).

Subsection (c) establishes that the owner or operator of the facility shall submit to the Department, on a form provided by or approved by the Department, a brief description of the change, the date on which the change is to occur and the proposed language for revising the operating permit conditions proposed to be changed.

Subsection (d) establishes that unless precluded by the CAA or regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) shall extend to an operational flexibility change authorized by this section.

No changes are made to subsections (a)—(d) from proposed to final-form rulemaking.

Subsection (e) establishes that the Department will take final action on the proposed change for the significant modification of the applicable operating permit and, after taking final action, will publish notice of the action in the *Pennsylvania Bulletin*. Subsection (e) is amended at final-form rulemaking in response to comments received to specify that the Department will take final action on the proposed change within 180 days of receipt of the complete application for the significant operating permit modification of the applicable operating permit.

§ 127.702. *Plan approval fees*

Section 127.702 (relating to plan approval fees) establishes, among other things, the following fee provisions:

Subsection (a) establishes that the applicable fees required under subsections (b)—(h) are cumulative.

Under subsection (b), the owner or operator of a source requiring approval under Chapter 127, Subchapter B (relating to plan approval requirements) shall pay a fee equal to \$1,000 for applications filed during calendar years 2005—2020; \$2,500 for applications filed during calendar years 2021—2025; \$3,100 for applications filed during calendar years 2026—2030; and \$3,900 for applications filed for the calendar years beginning with 2031.

Under subsection (c), the owner or operator of a source requiring approval under Chapter 127, Subchapter E (relating to new source review) shall pay a fee equal to \$5,300 for applications filed during calendar years 2005—2020; \$7,500 for applications filed during calendar years 2021—2025; \$9,400 for applications filed during calendar years 2026—2030; and \$11,800 for applications filed for the calendar years beginning with 2031.

Under subsection (d), the owner or operator of a source subject to and requiring approval under Chapter 122, Chapter 124 or § 127.35(b) (relating to national standards of performance for new stationary sources; national emission standards for hazardous air pollutants; and maximum achievable control technology standards for hazardous air pollutants) shall pay the specified fee for each applicable standard up to and including three applicable standards, which is equal to \$1,700 for applications filed beginning _____ (*Editor's Note:* The blank refers to the effective date of this rulemaking, when published as a final-form rulemaking.) through calendar year 2020; \$2,500 for applications filed during calendar years 2021—2025; \$3,100 for applications filed during calendar years 2026—2030; and \$3,900 for applications filed for the calendar years beginning with 2031. An owner or operator that has more than three applicable standards will pay the fee for a maximum of three standards, but the Department's permitting review will include all applicable standards.

Under subsection (e), the owner or operator of a source subject to and requiring approval under § 127.35(c), (d) or (h) shall pay a fee equal to \$8,000 for applications filed during calendar years 2005—2020; \$9,500 for applications filed during calendar years 2021—2025; \$11,900 for applications filed during calendar years 2026—2030; and \$14,900 for applications filed for the calendar years beginning with 2031.

Under subsection (f), the owner or operator of a source requiring approval under Chapter 127, Subchapter D (relating to prevention of significant deterioration of air quality) shall pay a fee equal to \$22,700 for applications filed during calendar years 2005—2020; \$32,500 for applications filed during calendar years 2021—2025; \$40,600 for applications filed during calendar years 2026—2030; and \$50,800 for applications filed for the calendar years beginning with 2031.

No changes are made to subsections (a)—(f) from proposed to final-form rulemaking.

Subsection (g) addresses the fees payable by the owner or operator of a source that is proposing a minor modification of a plan approval, an extension of a plan approval or a transfer of a plan approval due to a change of ownership. Subsection (g) was amended at proposed rulemaking to delete the requirements for the minor modifications and add requirements to

establish that the owner or operator of a source that submits a plan approval application for a PAL permit under § 127.218(b) (relating to PALs), to cease a PAL permit under § 127.218(j) or to increase a PAL under § 127.218(l) shall pay a fee equal to \$7,500 for applications filed during calendar years 2020—2025; \$9,400 for applications filed during calendar years 2026—2030; and \$11,800 for applications filed for the calendar years beginning with 2031. At final-form rulemaking, calendar years 2020—2025 were updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Subsection (h) specifies that the modification of a plan approval that includes the reassessment of a control technology determination or of the ambient impacts of the source will not be considered a minor modification of the plan approval. Subsection (h) was amended at proposed rulemaking to delete the requirement that the modification of the plan approval is not a minor modification and add requirements to establish that the owner or operator of a source proposing a PAL under Subchapter D that is not included in an application submitted under subsection (f) or subsection (g) shall pay a fee equal to \$7,500 for applications filed during calendar years 2020—2025; \$9,400 for applications filed during calendar years 2026—2030; and \$11,800 for applications filed for the calendar years beginning with 2031. At final-form rulemaking, calendar years 2020—2025 were updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Subsection (i) was deleted at proposed rulemaking where it specifies that the Department may establish application fees for general plan approvals and plan approvals for sources operating at multiple temporary locations which will not be greater than the fees established by subsection (b). These fees shall be established at the time the plan approval is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice and review period). Subsection (i) was amended at proposed rulemaking to add requirements to establish that the owner or operator of a source proposing a minor modification of a plan approval, an extension of a plan approval or a transfer of a plan approval due to a change of ownership shall pay the fee in paragraph (1) or paragraph (2) as applicable. At final-form rulemaking, subsection (i) was revised to delete the words “due to a change of ownership” to not limit the transfer of the plan approval to a change of ownership.

Subsection (i)(1) was added at proposed rulemaking to establish that an applicant for a minor modification of a plan approval may not include an increase in emissions, an analysis of the ambient impacts of the source or a reassessment of a control technology determination. The applicant shall meet the applicable requirements of § 127.44 and pay a fee equal to \$300 for applications filed during calendar years 2005—2020; \$1,500 for applications filed during calendar years 2021—2025; \$1,900 for applications filed during calendar years 2026—2030; and \$2,400 for applications filed for the calendar years beginning with 2031. Subsection (i)(1) was not revised from proposed to final-form rulemaking.

Subsection (i)(2) was added at proposed rulemaking to establish that an applicant for an extension of a plan approval or a transfer of a plan approval due to a change of ownership shall pay a fee equal to \$300 for applications filed during calendar years 2005—2020; \$750 for applications filed during calendar years 2021—2025; \$900 for applications filed during calendar

years 2026—2030; and \$1,100 for applications filed for the calendar years beginning with 2031. At final-form rulemaking, subsection (i)(2) was revised to delete the words “due to a change of ownership” to not limit the transfer of the plan approval to a change of ownership.

Subsection (i) is amended at final-form rulemaking to add paragraph (3) to specify that the fee for an extension of a plan approval will not apply if, through no fault of the applicant, an extension is required.

Under subsection (j), the owner or operator of a source proposing a revision to a plan approval application submitted by the applicant that includes one or more of the changes identified in paragraph (1) or paragraph (2) after the Department has completed its technical review shall pay the fee in paragraph (1) or paragraph (2) as applicable.

Subsection (j)(1) establishes that for an analysis of the ambient impacts of the source, the owner or operator shall pay a fee equal to \$9,000 for applications filed during calendar years 2020—2025; \$11,300 for applications filed during calendar years 2026—2030; and \$14,100 for applications filed for the calendar years beginning with 2031. At final-form rulemaking, calendar years 2020—2025 were updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Subsection (j)(2) establishes that for a reassessment of a control technology determination, the owner or operator shall pay the applicable fee under subsection (b).

Subsection (k) is added in this final-form rulemaking to specify that the owner or operator of a source applying for a risk assessment shall, as part of the plan approval application, pay the fee in paragraph (1) or paragraph (2), as applicable.

Subsection (k)(1) establishes that the owner or operator of a source applying for a risk assessment that is inhalation only for all modeling shall pay a fee equal to \$10,000 for applications filed during calendar years 2020—2025; \$12,500 for applications filed during calendar years 2026—2030; and \$15,600 for applications filed for the calendar years beginning with 2031. At final-form rulemaking, calendar years 2020—2025 were updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Subsection (k)(2) establishes that the owner or operator of a source applying for a multi-pathway risk assessment shall pay a fee equal to \$25,000 for applications filed during calendar years 2020—2025; \$31,300 for applications filed during calendar years 2026—2030; and \$39,100 for applications filed for the calendar years beginning with 2031. At final-form rulemaking, calendar years 2020—2025 were updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Subsection (k) was proposed as § 127.708. The reason for this change in the final-form rulemaking is discussed in Section D, Background and Purpose, under the subheading Amended, New and Deleted Fees.

§ 127.703. *Operating permit fees under Subchapter F*

Section 127.703 (relating to operating permit fees under Subchapter F) establishes, among other things, the following fee provisions:

Subsection (a) specifies that each applicant for an operating permit, which is not for a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required by this section to the Department. These fees apply to the extension, modification, revision, renewal and reissuance of each operating permit or part thereof. Subsection (a) was amended at proposed rulemaking to delete the statement that these fees apply to the extension, modification, revision, renewal and reissuance of each operating permit or part thereof. The discussion in Section E of the preamble to the proposed rulemaking incorrectly included the words “or to a transfer of an operating permit due to a change of ownership” as part of the proposed deletion.

Subsection (b) specifies the fees for processing an application for an operating permit. Subsection (b) was amended at proposed rulemaking to delete the statement regarding the fee for processing an application for an operating permit and add the requirement that each applicant subject to subsection (a) shall pay a fee equal to the fee specified in paragraphs (1)—(5), as applicable. These fees apply to the application for a new operating permit and for the renewal and reissuance, modification or administrative amendment of an operating permit or part thereof or to a transfer of an operating permit due to a change of ownership. At final-form rulemaking, subsection (b) was revised to delete the words “due to a change of ownership” to not limit the transfer of the plan approval to a change of ownership.

Under subsection (b)(1), the fee for a new operating permit is \$375 for applications filed during calendar years 2005—2020; \$2,500 for applications filed during calendar years 2021—2025; \$3,100 for applications filed during calendar years 2026—2030; and \$3,900 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(2), the fee for a renewal and reissuance of an operating permit or part thereof is \$375 for applications filed during calendar years 2005—2020; \$2,100 for applications filed during calendar years 2021—2025; \$2,600 for applications filed during calendar years 2026—2030; and \$3,300 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(3), the fee for a minor modification of an operating permit or part thereof is \$375 for applications filed during calendar years 2005—2020; \$1,500 for applications filed during calendar years 2021—2025; \$1,900 for applications filed during calendar years 2026—2030; and \$2,400 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(4), the fee for a significant modification of an operating permit or part thereof is \$375 for applications filed during calendar years 2005—2020; \$2,000 for applications filed during calendar years 2021—2025; \$2,500 for applications filed during calendar years 2026—2030; and \$3,100 for applications filed for the calendar years beginning with 2031.

No changes were made to subsection (b)(1)—(4) from proposed to final-form rulemaking.

Under subsection (b)(5), the fee for an administrative amendment of an operating permit or part thereof or a transfer of an operating permit is \$375 for applications filed during calendar years 2005—2020; \$1,500 for applications filed during calendar years 2021—2025; \$1,900 for applications filed during calendar years 2026—2030; and \$2,400 for applications filed for the calendar years beginning with 2031. At final-form rulemaking, subsection (b)(5) was revised to delete the words “due to a change of ownership” to not limit the transfer of the plan approval to a change of ownership.

Subsection (c) specifies the annual operating permit administration fee is \$375 for applications filed during the years beginning in 2005. Subsection (c) was amended at proposed rulemaking to specify that for applications filed through the effective date of the final-form rulemaking, each applicant subject to subsection (a) shall pay the annual operating permit administration fee of \$375. Subsection (c) is revised from proposed to final-form rulemaking to specify that each applicant subject to subsection (a) shall pay the annual operating permit administration fee of \$375 through December 31, 2020 instead of the effective date of the final-form rulemaking. The Board originally anticipated that the proposed rulemaking would be promulgated as a final-form regulation prior to calendar year 2020. The Board now anticipates that this final-form rulemaking will be promulgated prior to the end of calendar year 2020; hence the revision to the date certain of December 31, 2020.

Subsection (d) was amended at proposed rulemaking to delete the language that the Department may establish application fees for general operating permits and operating permits for sources operating at multiple temporary locations which will not be greater than the fees established by this section, and that these fees shall be established at the time the operating permit is issued and published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632. Subsection (d) was amended at proposed rulemaking with an *Editor's Note* to specify that beginning on the effective date of the rulemaking, each applicant subject to subsection (a) shall pay the annual operating permit maintenance fee in paragraph (1) or paragraph (2) on or before December 31 of each year for the next calendar year. The *Editor's Note* in subsection (d) is revised from proposed to final-form rulemaking to reflect that the publication date of the final-form rulemaking is the effective date. Subsection (d) was also revised from proposed to final-form rulemaking to note that an exception was added in the newly revised subsection (d)(1).

The final-form subsection (d)(1) provides that the annual operating permit maintenance fee for calendar year 2021 is due on or before 60 days after the effective date of the final-form rulemaking. The Board made this revision from proposed to final-form rulemaking because the Board now anticipates the final-form rulemaking to be promulgated relatively close to the original payment due date of December 31, 2020. This revision will alleviate the concern that applicants will not have sufficient notice to submit the annual operating permit maintenance fee by December 31, 2020. Under this final-form rulemaking, applicants will have 60 days' notice to submit the annual operating permit maintenance fee for calendar year 2021.

The proposed subsection (d)(1) was moved to subsection (d)(2) on final-form rulemaking. The final-form subsection (d)(2) establishes that for a synthetic minor facility, the applicant shall pay a fee equal to \$4,000 for calendar years 2021—2025; \$5,000 for calendar years 2026—2030; and \$6,300 for the calendar years beginning with 2031. The final-form fees of \$4,000, \$5,000

and \$6,300 are revised upward from the proposed fees of \$2,500, \$3,100 and \$3,900 in response to comments from members of AQTAC that the proposed fees were too low for these sources. Synthetic minor facilities are facilities which would otherwise be Title V facilities, if not for the owners and operators accepting Federally enforceable permit conditions to limit the potential emissions below major facility thresholds. These facilities require significant and time-consuming Departmental permitting review and inspection activities to monitor compliance with the permit limits.

The proposed subsection (d)(2) was moved to subsection (d)(3) on final-form rulemaking. The final-form subsection (d)(3) establishes that for a facility that is not a synthetic minor, the applicant shall pay a fee equal to \$2,000 for calendar years 2021—2025; \$2,500 for calendar years 2026—2030; and \$3,100 for the calendar years beginning with 2031. A facility that is neither a major source nor a synthetic minor is a natural minor. No changes were made to this subsection from proposed to final-form rulemaking.

§ 127.704. Title V operating permit fees under Subchapter G

Section 127.704 establishes, among other things, the following fee provisions:

Subsection (a) specifies that each applicant for an operating permit, which is for a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required by this section to the Department. Subsection (a) was amended at proposed rulemaking to delete the statement that these fees apply to the extension, modification, revision, renewal and reissuance of each operating permit or part thereof. A slightly revised version of the deleted language in subsection (a) was moved to subsection (b) at proposed rulemaking. No changes were made to subsection (a) from proposed to final-form rulemaking.

Subsection (b) specifies the fee for processing an application for an operating permit. Subsection (b) was amended at proposed rulemaking to delete the statement regarding the fee for processing an application for an operating permit and add the requirement that each applicant subject to subsection (a) shall pay a fee equal to the fee specified in paragraphs (1)—(5), as applicable. The proposed amendment to subsection (b) further specified that these fees apply to the application for a new operating permit and for the renewal and reissuance, modification or administrative amendment of an operating permit or part thereof or a transfer of an operating permit due to a change of ownership. At final-form rulemaking, subsection (b) was revised to delete the words “due to a change of ownership” to not limit the transfer of the plan approval to a change of ownership. The discussion in Section E of the preamble to the proposed rulemaking did not include the words “or to a transfer of an operating permit due to a change of ownership” as part of the proposed amendment.

Under subsection (b)(1), the fee for a new operating permit is \$750 for applications filed during calendar years 2005—2020; \$5,000 for applications filed during calendar years 2021—2025; \$6,300 for applications filed during calendar years 2026—2030; and \$7,900 for applications filed for the calendar years beginning with 2031. The fee of \$750 for applications filed beginning with 2005 was established at 24 Pa.B. 5938. No change was made to this subsection from proposed to final-form rulemaking.

Under subsection (b)(2), the fee for a renewal and reissuance of an operating permit or part thereof is \$750 for applications filed during calendar years 2005—2020; \$4,000 for applications filed during calendar years 2021—2025; \$5,000 for applications filed during calendar years 2026—2030; and \$6,300 for applications filed for the calendar years beginning with 2031. Proposed paragraph (2)(i) incorrectly specified that the fee for a renewal and reissuance of an operating permit would be \$375 due to a drafting error in the proposed rulemaking. Paragraph (2)(i) is amended in this final-form rulemaking to specify that the fee since 2005 is \$750, as established at 24 Pa.B. 5938, and will be \$750 through the end of calendar year 2020. Prior to this final-form rulemaking, the fees specified in this section for processing an application for the extension, modification, revision, renewal and reissuance of each operating permit or part thereof were the same for all of these actions; that is, \$750 for applications filed beginning in 2005. This final-form rulemaking establishes different amounts of fees for each of these permitting actions commensurate with the Department’s costs for performing the required reviews.

Under subsection (b)(3), the fee for a minor modification of an operating permit or part thereof is \$750 for applications filed during calendar years 2005—2020; \$1,500 for applications filed during calendar years 2021—2025; \$1,900 for applications filed during calendar years 2026—2030; and \$2,400 for applications filed for the calendar years beginning with 2031. Proposed paragraph (3)(i) incorrectly specified that the fee for a minor modification of an operating permit or part thereof would be \$375 due to a drafting error in the proposed rulemaking. Paragraph (3)(i) is amended in this final-form rulemaking to specify that the fee is \$750, for the reasons described in the previous paragraph regarding subsection (b)(2).

Under subsection (b)(4), the fee for a significant modification of an operating permit or part thereof is \$750 for applications filed during calendar years 2005—2020; \$4,000 for applications filed during calendar years 2021—2025; \$5,000 for applications filed during calendar years 2026—2030; and \$6,300 for applications filed for the calendar years beginning with 2031. Proposed paragraph (4)(i) incorrectly specified that the fee for a significant modification of an operating permit or part thereof would be \$375 due to a drafting error in the proposed rulemaking. Paragraph (4)(i) is amended in this final-form rulemaking to specify that the fee is \$750, for the reasons described regarding subsection (b)(2).

Under subsection (b)(5), the fee for an administrative amendment of an operating permit or part thereof or a transfer of an operating permit is \$750 for applications filed during calendar years 2005—2020; \$1,500 for applications filed during calendar years 2021—2025; \$1,900 for applications filed during calendar years 2026—2030; and \$2,400 for applications filed for the calendar years beginning with 2031. Proposed paragraph (5)(i) incorrectly specified that the fee for an administrative amendment of an operating permit or part thereof would be \$375 due to a drafting error in the proposed rulemaking. Paragraph (5)(i) is amended in this final-form rulemaking to specify that the fee is \$750 for the reasons described regarding subsection (b)(2). Subsection (b)(5) is also revised from proposed to final-form rulemaking to delete the words “due to a change of ownership” to not limit the transfer of an operating permit to a change of ownership. The discussion in Section E of the preamble to the proposed rulemaking did not include the words “or to a transfer of an operating permit due to a change of ownership” as part of the proposed amendment.

Prior to this final-form rulemaking, subsection (c) specified that the annual operating permit administration fee that is payable each year by a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 is \$750 for applications filed during the years beginning in 2005. Subsection (c) was amended at proposed rulemaking to delete the phrase “The annual operating permit administration fee to be paid by a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions) is:” and added the requirement for each applicant subject to subsection (a) that is the owner or operator of a facility identified in subparagraph (iv) of the definition of Title V facility in § 121.1 to pay the annual operating permit administration fee of \$750 through the effective date of this final-form rulemaking. The effective date of this final-form rulemaking was replaced with the date December 31, 2020, at final-form rulemaking.

Subsection (d) was amended at proposed rulemaking to delete the language stating that the Department may establish application fees for general operating permits and operating permits for sources operating at multiple temporary locations which will not be greater than the fees established by this section. Subsection (d) is also amended at final-form rulemaking to clarify the editor’s note. At proposed rulemaking, subsection (d) was amended to require each applicant subject to subsection (a) to pay the annual operating permit maintenance fee on or before December 31 of each year for the next calendar year. This fee is equal to \$8,000 for calendar years 2021—2025; \$10,000 for calendar years 2026—2030; and \$12,500 for the calendar years beginning with 2031. The final-form fees of \$8,000, \$10,000 and \$12,500 are revised downward from the proposed fees of \$10,000, \$12,500 and \$15,600 in response to comments from members of AQTAC that the proposed fees were too high for these facilities relative to the proposed maintenance fee for the facilities subject to § 127.703(a), that is, synthetic minor facilities. This reduction in the Title V annual operating permit maintenance fee offsets the increase in the annual operating permit maintenance fee for synthetic minor facilities. Thus, these revisions result in no net change in the revenue collected by the Department. Subsection (d) was also revised from proposed to final-form rulemaking to note that an exception was added in the newly revised subsection (d)(1).

The final-form subsection (d)(1) provides that the annual operating permit maintenance fee for calendar year 2021 is due on or before 60 days after the effective date of the final-form rulemaking. The Board made this revision from proposed to final-form rulemaking because the Board now anticipates the final-form rulemaking to be promulgated relatively close to the original payment due date of December 31, 2020. This revision will alleviate the concern that applicants will not have sufficient notice to submit the annual operating permit maintenance fee by December 31, 2020. Under this final-form rulemaking, applicants will have 60 days’ notice to submit the annual operating permit maintenance fee for calendar year 2021.

Subsection (e) establishes that the owner or operator of a source that submits an application for a PAL permit under § 127.218(b), to cease a PAL permit under § 127.218(j) or to increase a PAL under § 127.218(l) shall pay a fee equal to \$10,000 for applications filed during calendar years 2020—2025; \$12,500 for applications filed during calendar years 2026—2030; and \$15,600 for applications filed for the calendar years beginning with 2031. This was a new subsection added in the proposed rulemaking. At final-form rulemaking, calendar years 2020—2025 were updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Subsection (f) establishes that the owner or operator of a source proposing a PAL under Subchapter D that is not included in an application submitted under subsection (e) shall pay a fee equal to \$10,000 for applications filed during calendar years 2020—2025; \$12,500 for applications filed during calendar years 2026—2030; and \$15,600 for applications filed for the calendar years beginning with 2031. This was a new subsection added in the proposed rulemaking. At final-form rulemaking, calendar years 2020—2025 were updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking. The proposed rulemaking Annex A incorrectly referenced subsection (d), as did the discussion in Section E of the preamble to the proposed rulemaking. The Annex A to this final-form rulemaking is amended to correct the reference from subsection (d) to subsection (e).

§ 127.705. Emission fees

This section is existing regulatory language that specifies the requirement for the owner or operator of a Title V facility including a Title V facility located in Philadelphia County or Allegheny County, except a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1, to pay an annual Title V emission fee.

Subsection (d) specifies that the emission fee imposed under subsection (a) shall be increased in each calendar year after December 14, 2013, 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. For purposes of this subsection, paragraph (1) specifies that the Consumer Price Index for All-Urban Consumers shall be used for the adjustment required by this subsection and paragraph (2) specifies which revision of the Consumer Price Index for All-Urban Consumers shall be used. For clarity, subsection (d) was amended at proposed rulemaking to move the requirements of paragraphs (1) and (2) for the Consumer Price Index for All-Urban Consumers to new subsection (e). No changes to this provision were made from proposed to final-form rulemaking.

§ 127.708. Asbestos abatement or regulated demolition or renovation project notification

The proposed language in § 127.708 has been moved at final-form to the newly established subsection (k) under § 127.702. The Board made this revision to clarify that the fee for a risk assessment is part of the fees for a plan approval application, in response to comments received. The proposed § 127.709 regarding the requirements for the owner or operator of an asbestos abatement or regulated demolition or renovation project has been renumbered at final-form rulemaking as § 127.708.

Final-form § 127.708(a) establishes that an owner or operator of an asbestos abatement or regulated demolition or renovation project that is subject to 40 CFR Part 61, Subpart M (relating to National emission standard for asbestos) or the Asbestos Occupations Accreditation and Certification Act (Act 1990-194) (63 P.S. §§ 2101—2112) and which is not located in Philadelphia County or Allegheny County shall submit to the Department with the required notification form a fee equal to \$300 for forms filed during calendar years 2020—2025; \$400 for forms filed during calendar years 2026—2030; and \$500 for forms filed for the calendar years beginning with 2031. At final-form rulemaking, calendar years 2020—2025 were updated to calendar years 2021—2025, due to the change in the effective date for this final-form

rulemaking. This provision was labeled subsection (a) to accommodate a new subsection (b) that was added at the final-form stage. In this final-form rulemaking, subsection (b) was added to establish that the Department will waive the fee for a subsequent notification form submitted for the same asbestos abatement or regulated demolition or renovation project. This final-form amendment is made in response to comments received on the proposed rulemaking requesting that this fee apply only to the initial notification for the project.

§ 127.709. Fees for requests for determination

Proposed § 127.710 (relating to fees for requests for determination) is renumbered to final-form § 127.709 (relating to fees for requests for determination). Final-form § 127.709 establishes fees for RFDs for whether a plan approval, an operating permit, or both, are needed for the change to the facility. The RFD process allows an owner or operator to avoid the full cost associated with submitting a comprehensive plan approval application by receiving a written determination from the Department. Under this section, the owner or operator of a source subject to Chapter 127 that submits an RFD under § 127.14 for a plan approval, an operating permit, or for both a plan approval and an operating permit shall pay the applicable fee specified in paragraph (1) or paragraph (2). Paragraph (1) establishes that the owner or operator of a source that meets the definition of small business stationary source set forth in section 3 of the APCA (35 P.S. § 4003) shall pay a fee equal to \$400 for RFDs filed during calendar years 2020—2025; \$500 for RFDs filed during calendar years 2026—2030; and \$600 for RFDs filed for the calendar years beginning with 2031. At final-form rulemaking, calendar years 2020—2025 were updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

Paragraph (2) establishes that the owner or operator of a source that does not meet the criterion in paragraph (1) shall pay a fee equal to \$600 for RFDs filed during calendar years 2020—2025; \$800 for RFDs filed during calendar years 2026—2030; and \$1,000 for RFDs filed for the calendar years beginning with 2031. At final-form rulemaking, calendar years 2020—2025 were updated to calendar years 2021—2025, due to the change in the effective date for this final-form rulemaking.

§ 127.710. Fees for the use of general plan approvals and general operating permits under Subchapter H

Proposed § 127.712 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H) is renumbered to final-form § 127.710 (relating to fees for the use of general plan approvals and general operating permits under Subchapter H). Under final-form § 127.710, the Department may establish application fees for the use of general plan approvals and general operating permits under Subchapter H (relating to general plan approvals and operating permits) for stationary or portable sources. These application fees will be established when the general plan approval or general operating permit is issued or modified by the Department. These application fees will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632. Apart from renumbering the section number, no changes were made to this section from proposed to final-form rulemaking.

§ 127.711. Fees for claims of confidential information

The Department determined that the fee for claims of confidentiality in proposed § 127.711 is unneeded at this time and removed it from this final-form rulemaking.

F. Summary of Comments and Responses on the Proposed Rulemaking

The Board adopted the proposed rulemaking at its meeting on December 18, 2018. On April 13, 2019, the proposed rulemaking was published for a 66-day comment period at 49 Pa.B. 1777 (April 13, 2019). Three public hearings were held on May 13, 15 and 16, 2019, in Pittsburgh, Norristown and Harrisburg, respectively. The comment period closed on June 17, 2019. The Board received comments from 1,427 commenters including the House of Representatives Environmental Resources and Energy Committee (Committee), the House of Representatives, and the Independent Regulatory Review Commission (IRRC). The majority of the commenters expressed their support of the amended and new fee schedules and stated the necessity for the Air Quality Program to have a sustainable source of funding. The comments received on the proposed rulemaking are summarized in this section and are addressed in a comment and response document which is available on the Department's website.

IRRC commented to ask the Board to work with all interested parties, particularly the Committee and members of the Legislature to address the issues raised in their comment letters with the goal of devising a funding structure that is authorized by statute, meets the intent of the General Assembly and ensures adequate revenue to fund the Air Quality Program. As discussed below, in response to other comments, this final-form rulemaking is authorized by the Board's statutory authority provided by the General Assembly, the APCA, and ensures adequate funding of the Air Quality Program. In particular, the Committee approved the current fee structure in 1994. Additionally, the Committee and members of the Legislature have extensive involvement in the development of the Department's rulemakings, including appointed members on the Department's advisory committees and 4 seats on this Board, in addition to the review outlined under the Regulatory Review Act (RRA). Lastly, the Board and the Department consistently seek opportunities to engage productively with interested parties, including the Legislature. The Department's Legislative Office works to address issues and ensure that the Legislature is informed of actions by the Department and the Board.

IRRC also mentioned that the criteria in the RRA requires consideration of the economic impact of the regulation and protection of the public health, safety and welfare and that public comments raise valid concerns related to both criteria. In response, the revenue that will be generated by the fees in this final-form rulemaking would provide essential funding for the Air Quality Program to continue fulfilling its statutory obligation of protecting the public health and welfare from harmful air pollution. The Department's Fee Report and the Regulatory Analysis Form for this final-form rulemaking, both available on the Department's website, as well as the responses below provide additional information to address the concerns raised in the comments.

Additionally, IRRC commented that the Department identifies subsection 6.3(a) of the APCA as the statutory authority to amend the air quality fee schedule. The legislators commented that the Department does not have the statutory authority to propose the expansive fee increases and that there are two other subsections in section 6.3 of the APCA that must be considered in the

construct of any fee schedule revisions: subsection (c), which establishes the emission fee for Title V sources, and subsection (j), which authorizes certain categories of fees not related to Title V of the Clean Air Act. The legislators claim that, based upon their review of these subsections, the General Assembly clearly intended to prescribe specific and limited categories of fees for Title V and Non-Title V sources and that any other fees that go beyond the explicit authorization in these subsections goes beyond statutory authority.

In response, the Board explains that Subsection 6.3(a) of the APCA provides the Board with broad authority to establish fees sufficient to cover the indirect and direct costs of administering the Air Quality Program, including the air pollution control plan approval process, operating permit program required by Title V of the CAA and other requirements of the CAA. The succeeding subsections, including subsections (c) and (j), authorize certain types of fees but do not limit the Board's authority under subsection 6.3(a) to establish other fees. Section 6.3(a) is clear and unambiguous in that and does not limit the Board's ability to raise fees so long they are used to support the air pollution control program authorized under the APCA. These fees are used to support a wide range of air pollution control activities like asbestos abatement activities, risk assessments, and Requests for Determinations, to name a few. Similarly, the broad language of this section shows an over-all legislative policy to give the Board and DEP the regulatory flexibility to promulgate the necessary fee schedules to fund air pollution control activities. Finally, a narrow reading of this section would render it ineffective.

The current regulations which were last revised in 1994 with staged plan approval and operating permit application increases over an ensuing 10 years have a similar fee structure to the final-form regulations. See 24 Pa.B. 5899 (November 26, 1994). As required under section 5(a) the RRA, 71 P.S. § 745.5(a), the Department submitted a copy of the 1994 rulemaking to the Chairpersons of the House Conservation Committee and the Senate Environmental Resources and Energy Committee for review and comment, and those regulations were deemed approved by both Committees on October 11, 1994. See 24 Pa.B. 5910. Consequently, it is difficult to see how the final-form rulemaking exceeds the APCA statutory authority.

Subsection 6.3(e) and 6.3(j) both reference interim fees. Subsection 6.3(e) specifies the interim fee amounts for Title V sources for processing operating permit applications and an annual operating permit administration fee. Subsection 6.3(j) specifies the interim fee amounts for non-Title V sources for processing plan approval applications, processing operating permit applications and an annual operating permit administration fee. Further subsection 6.3(j) must be read in conjunction with subsection 6.3(e). Subsection 6.3(e) does not specify the interim plan approval application fee for Title V sources. Instead, subsection 6.3(j) clarifies that Title V sources are only subject to the interim plan approval fees in subsection (j) because the Title V sources are already subject to the interim operating permit application and annual operating permit administration fees in subsection 6.3(e). It should also be noted that the interim fees in subsection 6.3(j) were only in place until the Board adopted regulations that established fees for non-Title V sources and the interim fees in subsection 6.3(e) were no longer applicable once the board established the alternative fees under subsection 6.3(c).

Additionally, under 40 CFR 70.9 (relating to fee determination and certification), the Department's Air Quality Program is required to establish fees that are sufficient to cover the permit program costs, including costs related to preparing regulations or guidance, reviewing

permit applications, general administrative costs of running the program, implementing and enforcing the terms of a permit, emissions and ambient monitoring, modeling, analyses, or demonstrations, preparing inventories and tracking emissions, and providing small business assistance.

IRRC commented that the legislators object to the annual maintenance fee because it is not explicitly authorized by statute. The legislators assert that the statute only authorizes an annual operating permit “administration” fee, therefore; it cannot be replaced with an annual operating permit “maintenance” fee.

In response, subsection 6.3(j)(3) of the APCA provides for an annual operating permit administration fee, an undefined term in the act. It does not, however, limit the Board to using that exact name for the fee. The annual operating permit maintenance fee in this final-form rulemaking is the annual operating permit administration fee. The Board merely adjusted the name of the fee to better describe its purpose since these fees are used to cover the Department’s costs for evaluating the facility to ensure that it is ‘maintaining’ compliance, including the costs of inspections, reviewing records and reviewing permits. This name change is also evident by the fact that the Department will stop assessing the currently titled annual operating permit administration fee after December 31, 2020.

A representative of the regulated community commented that the annual operating permit maintenance fee will spread out the cost obligations to all sources in an equitable manner.

The Board agrees. The annual operating permit maintenance fee is designed to recover costs to the Department for providing services to facility owners and operators that are otherwise absorbed in the revenue generated from emission fees paid by the owners and operators of the Title V facilities, permitting fee revenue from the owners and operators of both Title V and Non-Title V facilities, and General Fund money. This final-form rulemaking collects an annual operating permit maintenance fee of \$8,000 from the owners and operators of all affected Title V facilities. The Board chose this approach based on the equities involved among the number of impacted Title V facility owners and operators. This option spreads the cost obligation for supporting the Title V Operating Permit Program across 289 Title V facility owners and operators. For comparison, the current fee schedule spreads the cost obligations of supporting the Title V Operating Permit Program across 102 Title V facility owners and operators.

IRRC asked the Board to explain why it believes that the proposed fees for PAL, ambient air impact modeling of certain plan approval applications, risk assessments, asbestos project notifications, RFDs and for claims of confidential information are authorized by statute and consistent with the intent of the General Assembly.

The fees identified by IRRC are authorized under subsection 6.3(a) of the APCA. As stated above, subsection 6.3(a) provides the Board with broad authority to establish sufficient fees to cover the indirect and direct costs of administering the air pollution control plan approval process, operating permit program required by Title V of the CAA, other requirements of the CAA and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the Board

by regulation to establish fees to support the air pollution control program authorized by the APCA and not covered by fees required by section 502(b) of the CAA. The complexity of the Department's air quality permitting program has increased since its implementation in 1994 as new and more stringent requirements have been promulgated by the EPA. These revised fees are designed to recover the Department's costs for certain activities related to processing of applications for plan approvals and operating permits, including risk assessments and ambient air impact modeling of certain plan approval applications, without burdening all owners and operators of permitted sources with costs for services that they do not use or need. Without these separate fees, plan approval application fees applicable to all owners and operators of permitted sources would have to be adjusted higher. Establishing this fee structure will provide support for the continuation of the Department's Air Quality Program and ensure continued protection of the environment and the public health and welfare of the citizens of this Commonwealth as required by the APCA and the CAA.

IRRC asked the Board to explain why it believes it has the statutory authority to require these new fees to be assessed cumulatively. The legislators commented that the APCA does not authorize the Department to split apart the plan approval application into disparate parts only to then add them together for a higher cumulative fee.

On November 26, 1994, after significant public input, including several hearings and public meetings, and an evaluation of the fee structure by an outside consultant, the Board's amendments to the Department's plan approval and operating permit program were established as required to be consistent with the 1992 APCA amendments. See 24 Pa.B. 5937, 5938. As a result of public comments opposing the proposed fee structure and recommendations that the Department establish fees based on the time necessary to process the plan approval application, the Department established the six categories of plan approval fees to better reflect the actual cost to the Commonwealth of evaluating plan approval applications. See 24 Pa.B. 5903. As required under section 5(a) the RRA (71 P.S. 745.5(a)), the Department submitted a copy of the proposed rulemaking to the Chairpersons of the House Conservation Committee and the Senate Environmental Resources and Energy Committee for review and comment, and the final-form regulation was deemed approved by both Committees on October 11, 1994. See 24 Pa.B. 5910.

In the 1994 regulatory amendments, the Board stated that "the fees for plan approvals are still based on the complexity of the plan approval application" and that "the new fee structure is a better reflection of the actual cost to the Commonwealth for evaluating plan approval applications." See 24 Pa.B. 5902. The Board's position and the plan approval fee structure remains unchanged in this final-form rulemaking. The Board still holds that applicants should only have to pay for the service rendered, particularly considering that every plan approval application is different and requires a level of review based on the number and complexity of the components. The six categories of plan approval fees required under § 127.702(b)—(g) were established in 1994. Thus, applicants have been paying separate fees for the processing of the components of plan approval applications since implementation of the fee schedule in 1994. Without the current the fee structure, the Department would have to assess a higher application fee for all applicants.

The legislators commented that the current fee structure for the Department as authorized by the APCA for the Title V program is based on an emission fee model. The Legislature through

the APCA, and Congress through the CAA, clearly intended for the emission fee to be the main source of revenue for the Title V program.

The legislators are correct that the current fee structure for the Department as authorized by the APCA for the Title V program is based on an emission fee model. In fact, most of the fees referenced in section 6.3 of the APCA are considered emission fees. Under subsection 6.3(d) of the APCA, “the board shall establish a *permanent air emission fee* which considers the size of the air contamination source, the resources necessary to process the application for plan approval or an operating permit, the complexity of the plan approval or operating permit, the quantity and type of emissions from the sources, the amount of fees charged in neighboring states, the importance of not placing existing or prospective sources in this Commonwealth at a competitive disadvantage and other relevant factors.” Subsection 6.3(f) further states that the fees referenced in subsections (b), (c) and (j) are emissions fees.

However, the legislators seem to be referencing the *permanent annual air emission fee* required under subsection 6.3(c). The APCA includes the annual air emission fee as required for regulated pollutants under section 502(b) of the CAA, but does not stipulate that the annual air emission fee is to provide a certain percentage of the revenue for the Title V program, only that the annual air emission fee is a component of the fee schedule for the Title V program. Further, the Board does not agree that Congress through the CAA clearly intended for the annual air emission fee to be the main source of revenue for the Title V program. In the EPA’s July 21, 1992, final rule addressing the Part 70 operating permit program, the EPA stated that “...[t]he EPA interprets title V to offer permitting authorities flexibility in setting variable fee amounts for different pollutants or different source categories, as long as the sum of all fees collected is sufficient to meet the reasonable direct and indirect costs required to develop and administer the provisions of title V of the Act, including section 507 as it applies to part 70 sources.” See 57 FR 32258 (July 21, 1992). Additionally, the EPA stated that “...[t]he State is not required to assess fees on any particular basis and can use application fees, service-based fees, emissions fees based on either actual or allowable emissions, other types of fees, or any combination thereof.” See 57 FR 32292.

The legislators expressed that while they truly appreciate the achievements in pollution reduction and the efforts made to provide for cleaner air, they believe that this goal can be achieved while not harming our economy. The RRA (71 P.S. § 745.5b) requires IRRC to consider the economic or fiscal impacts of a regulation, specifically the adverse effects on prices of goods and services, productivity or competition.

The Department reviewed the real gross domestic product (RGDP) data for this Commonwealth’s private manufacturing sector available on the website of the Federal Reserve Bank of St. Louis, Missouri, for the years 1997—2018. The Board’s last increase to the permitting fee schedule was implemented in 2005. The RGDP output for this Commonwealth’s private manufacturing sector averaged over the years 2005—2017 is greater than \$81 billion. The projected increase in permitting fee revenue of approximately \$13 million is 0.01% of the average annual total private manufacturing RGDP of the past 12 years. The Department contends that \$13 million spread out across this Commonwealth’s entire air quality regulated community will not have a significant adverse effect. Rather, by increasing the fee revenue and providing the Department the means to increase staffing, the Department will be able to review,

approve and issue permits more quickly, thereby providing the regulated community with the opportunity to expand their businesses and hire more people. This will increase the industrial output and improve this Commonwealth's economy.

The legislators commented that it is entirely reasonable that a decline in revenue for the Air Quality Program would coincide with the significant decline in pollution and polluting facilities to be regulated. That is, in fact, the goal. As this goal is increasingly realized, Title V facilities which are regulated under this program should not have to subsidize efforts to reduce air pollution from other sources not under this program.

In response, the Board agrees that facilities regulated under the Title V program should not have to subsidize efforts to reduce air pollution from sources or facilities that are not regulated under the Title V program. Hence, this final-form rulemaking includes a fee-for-service schedule designed to spread the costs of the Air Quality Program across more of the users rather than concentrating the burden on Title V facilities. Moreover, even though emissions are declining, the overall services that the Department provides and the cost of those services continues to increase.

Two commenters and several members of AQTAC mentioned that the proposed fee package did not address the fact that carbon dioxide (CO₂) became a "regulated pollutant" on December 22, 2015, and therefore should be assessed in some way regarding the Title V emission fee dollar per ton calculation.

As mentioned above, in the EPA's July 21, 1992, final rule addressing the Part 70 operating permit program, the EPA stated that "...[t]he EPA interprets title V to offer permitting authorities flexibility in setting *variable fee amounts for different pollutants* or different source categories, as long as the sum of all fees collected is sufficient to meet the reasonable direct and indirect costs required to develop and administer the provisions of title V of the Act, including section 507 as it applies to part 70 sources." [emphasis added] See 57 FR 32258 (July 21, 1992). Therefore, the Department is exercising enforcement discretion to not assess a permanent annual air emission fee for CO₂ emissions or, in other words, assessing a fee of \$0 per ton in this final-form rulemaking.

However, the Department is exploring appropriate ways to address CO₂ emissions. On October 3, 2019, Governor Wolf signed Executive Order 2019-07, directing the Department to develop a proposed rulemaking to abate, control or limit CO₂ emissions from fossil fuel-fired electric generating units as authorized by the APCA. The proposed rulemaking will establish a CO₂ budget consistent with the participating states in the Regional Greenhouse Gas Initiative (RGGI), as well as a fee per ton of CO₂ emitted from a fossil fuel-fired electric generating unit.

G. *Benefits, Costs and Compliance*

Benefits

The revenue from the fees in this final-form rulemaking will be directed to the Clean Air Fund, comprised of the Title V and Non-Title V Accounts. Together, the funds in these accounts currently represent approximately 65% of the Air Quality Program budget. The General Fund

and Federal grants make up the remaining 35%. It is unlikely that General Fund money or Federal grants directed to the Air Quality Program will increase in the foreseeable future to offset the declining revenue from the permitting fees and emission fees. In the early years of the Title V program when there were more facilities and emissions of regulated pollutants were significantly greater than today, the Clean Air Fund balance was large. After many years of drawing down this balance to cover Air Quality Program costs and expenditures that exceeded the combined annual revenue and money from the General Fund and Federal grants, the Clean Air Fund is expected to reach a zero balance sometime in FY 2021-2022. The final-form plan approval application and operating permit fee schedules are designed to bring the Clean Air Fund permitting fee revenue in line with expenditures so that the Air Quality Program is self-sustaining as required under the CAA.

Since deficit spending is not allowed, the Air Quality Program expenditures will need to be decreased by approximately \$13 million per year if these final-form amendments to the fee schedules are not promulgated. To address ongoing shortfalls in Clean Air Fund revenue, the Air Quality Program has seen significant reductions in staff since 2000 (111 positions or 30%). If Clean Air Fund revenue is not restored to sustainable levels, additional reductions in air quality staff at all levels in both the Bureau of Air Quality and the Department's 6 regional offices will be required. Conservatively, a decrease of 80 staff members, an approximately 30% reduction from current staffing levels, would be needed. This would severely impact the ability of the Air Quality Program to process and review permit applications; inspect facilities and respond to citizen complaints; initiate compliance and enforcement activities; and develop the required regulatory and nonregulatory SIP revisions in a timely manner. Failure to maintain an approved SIP could result in the EPA establishing a FIP for the Commonwealth; under a FIP all fees, penalties and other revenue would be paid to the EPA. This would likely be unacceptable to the regulated industry, local governments and the public.

Without the revenue from the fees in this final-form rulemaking, in addition to further reductions in Air Quality Program staff, decreases in spending would be needed on the ambient air monitoring network. Shrinking the ambient air monitoring network would, however, virtually eliminate air toxics monitoring and leave large portions of rural areas with no air monitoring. Overall, the citizens of this Commonwealth would suffer from the loss of continued air quality planning, monitoring, permitting and inspection activities that are fundamental to the economy and protecting public health and welfare and the environment. With this final-form rulemaking, the Air Quality Program can maintain its current level of effort, gradually fill 17 currently vacant Title V positions, expand its air monitoring network in shale gas areas and develop new and improved information technology systems including ePermitting and publicly available online air quality data.

Moreover, delays in the issuance of plan approvals and operating permits can cause economic disruptions because the owner or operator of a regulated facility may not operate without an operating permit. Delays in receiving plan approvals can have a major impact on an owner or operator's decision to expand or locate an industrial operation in this Commonwealth. Increased funding for the plan approval and operating permit process will continue to allow for timely and complete review of plan approval and operating permit applications, help retain the current industry and provide certainty for businesses.

Compliance costs

The financial impact on the owners and operators of Title V facilities regulated by the Department, collectively, will be additional plan approval and operating permitting costs of approximately \$900,000 per year as well as approximately \$4 million in annual operating permit maintenance fee costs. Title V small businesses, in total, will pay an estimated additional \$820,000 annually.

The financial impact on the owners and operators of Non-Title V facilities regulated by the Department, collectively, will be additional plan approval and operating permitting costs of approximately \$1.5 million per year as well as approximately \$5.5 million in annual operating permit maintenance fee costs. Non-Title V small businesses, in total, will pay an estimated additional \$3.1 million annually.

Approximately \$1.5 million in asbestos notification fees will be collected from 2,000 licensed remediation contractors, most of whom are small businesses.

Compliance assistance plan

The Department plans to educate and assist the public and regulated community in understanding and complying with the requirements. This will be accomplished through the Department's ongoing compliance assistance program.

Paperwork requirements

There are no additional paperwork requirements associated with this final-form rulemaking. The existing applications and forms will be updated with the new fees.

H. Pollution Prevention

The Pollution Prevention Act (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving State environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

This final-form rulemaking allows the Department to maintain staffing levels in the Air Quality Program and the ambient air monitoring network, which will provide a sound basis for continued air quality assessments and planning that are fundamental to a strong economy, reducing pollution, and protecting public health and welfare and the environment.

I. Sunset Review

The Board is not establishing a sunset date for this final-form rulemaking because it is needed for the Department to carry out its statutory authority. If published as a final-form regulation, the Department will closely monitor its effectiveness and recommend updates to the Board as necessary. At least every 5 years, the Department will provide the Board with an evaluation of the fees in this subchapter 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.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on **DATE**, 2020, the Department submitted a copy of the notice of proposed rulemaking, published at 49 Pa.B. 1777, to IRRC and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on **DATE**, 2020, this final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on **DATE**, 2020, and approved this final-form rulemaking.

K. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) At least a 60-day public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 49 Pa.B. 1777.

(4) These regulations are reasonably necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 121 and 127, are amended to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this final-form regulation to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this final-form regulation to IRRC and the House and Senate Committees as required by the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(d) The Chairperson of the Board shall certify this final-form regulation and deposit them with the Legislative Reference Bureau as required by law.

(e) This final-form regulation will be submitted to the EPA as a revision to the Commonwealth's SIP.

(f) This final-form regulation shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PATRICK McDONNELL,
Chairperson