

## FEE REPORT FORM

**Agency**

Department of Environmental Protection  
Bureau of Air Quality

**Date**

July 6, 2009

**Contact Person**

Dean Van Orden  
717-783-9264

	<b><u>Prior Year 07/08</u></b>	<b><u>Current Year 08/09</u></b>	<b><u>1<sup>st</sup> Future Year 09/10</u></b>	<b><u>2<sup>nd</sup> Future Year 10/11</u></b>
--	--	--	--	--

**FEE COLLECTIONS:**

**Current**

Title V Fee	\$17,888,191	\$18,519,211	\$17,820,000	\$17,820,000
Permit/plan approval	<u>\$2,594,285</u>	<u>\$1,780,059</u>	<u>\$1,750,000</u>	<u>\$1,750,000</u>
Total	\$20,482,476	\$20,299,270	\$19,570,000	\$19,570,000

**Proposed**

Title V Fee			\$20,581,000	\$20,581,000
Permit/plan approval			\$2,510,000	\$2,510,000
Source Testing			<u>\$1,400,000</u>	<u>\$1,400,000</u>
Total			\$24,491,000	\$24,491,000

**FEE TITLE AND RATE:**

Current See Attached Table

Proposed See Attached Table

**FEE OBJECTIVE:**

The proposed rulemaking amends the existing plan approval fee, operating permit fee schedule and emission fee. The proposal adds additional fees for risk assessment applications, a graduated fee schedule for source testing, a test report review and auditing/monitoring continuous emissions monitoring systems. The proposed fees are calculated to cover the cost incurred by the Department in reviewing those activities. Establishing and updating the fee structure will assist in covering the cost of the Air

Quality Program. Adoption of the proposed rulemaking provides for increased fees and new fees that would be used to cover the direct and indirect costs of administering the air pollution control program. Without adjusting the current fee structure, expenditures may exceed income and may cause reductions in staff or technical services.

The permit and plan approval fees were last adjusted in 2005. The Title V emission fee was established in 1994 and has not been adjusted beyond the Clean Air Act mandated adjustment for cost of living. With the current fee schedule the Clean Air Fund is projected to have a deficit for fiscal year 2013-2014.

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

The proposed fee schedule rulemaking is authorized under section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3). Section 6.3(a) authorizes the Environmental Quality Board (Board) 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 Clean Air Act (CAA) (42 U.S.C. § 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, Small Business 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 this act and not covered by fees required by section 502(b) of the CAA (42 U.S.C. § 7661a(b)).

The proposed amendments will affect the owners or operators of approximately 2500 facilities that are subject to the plan approval and operating permit provisions of the Department's air quality regulations. The proposed amendments adjust the existing fees and establish new fees to reflect the actual cost of providing these services to the owners or operators of affected facilities in this Commonwealth. There are approximately 800 facilities in the Commonwealth classified as Title V facilities to which the emission fee applies.

Note that the permit and source testing fees do not apply to sources located in Philadelphia or Allegheny Counties which have approved local air pollution control programs.

#### **FEE RELATED ACTIVITIES AND COSTS:**

The increased fees and new fees proposed in the rulemaking will be used to support the Department's air quality program as authorized by the APCA. Activities supported include compliance and complaint inspections, enforcement actions, plan approval review and issuance, operating permit review and issuance, source testing, source test

reviews, technical assistance to the source owners/operators and the general public, and program development. The proposed fee revisions would allow the Department to generally cover the cost of program implication. This would provide a sound basis for continued air quality assessments and planning that are fundamental to protecting public health and welfare and the environment.

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

Implementation of the new schedule of fees proposed in Chapter 139, Subchapter D, for the source testing and monitoring program would fund observations of stack emissions source testing and audits of Continuous Emission Monitoring (CEM) systems by Department staff. Observations and audits conducted by Department staff with expertise in source testing and monitoring would ensure that high quality test and monitoring data are collected and submitted to the Department. High quality data is critical to determining compliance with permitted air pollutant emission limits and establishing emission inventories used by the Department in developing programs to protect public health and social well-being.

## **ANALYSIS:**

The proposal is expected to increase revenue to the Department by approximately \$4,921,000 per year through the implementation of increased fees and new fees to cover the costs of administering the air pollution control program. The Department is authorized to provide payment of a portion of the annual Title V emission fees collected by the Department to the local air pollution control agencies in Philadelphia and Allegheny Counties (*25 Pa. Code* § 127.706 (relating to Philadelphia County and Allegheny County financial assistance)). The Department has provided financial assistance to the Philadelphia County Air Management Services (AMS), most recently \$575,000 in 2008. Philadelphia County has submitted a financial assistance request for \$650,000 for FY 09-10. Allegheny County has never requested financial assistance. Philadelphia County AMS projects an increasing need for assistance under § 127.706 and may increase the request to \$900,000 to \$1,000,000 per year depending on its need.

The revised fee schedule for Title V emission fees produces revenue of approximately \$20,581,000. Actual expenditures for the past two fiscal years have been \$26,218,000

and 23,872,000. The additional revenue from the revised fee schedule with a drawdown of the current Title V fund balance will support projected fund expenditures.

Application of the revised fee schedule for permits, plan approval and source testing will cause revenue to increase to approximately \$3,910,000. Income to the Mobile and Area Facilities fund also includes penalties and reimbursements for coke oven inspections. Total income for the fund was \$7,699,000 and \$5,697,000 for the past two fiscal years. Actual expenditures for the past two fiscal years have been \$12,880,000 and \$8,504,000. The additional revenue from the revised fee schedule with a drawdown of the current Mobile and Area Facility fund balance will support projected fund expenditures.

Revenue and expenditure projections show negative spending by 2013 without the revised fee schedule.

#### **RECOMMENDATION AND COMMENT:**

The Department recommends the proposed Air Quality Fee Schedule revision be approved. The revised fee schedule will support continued operation of the Air Quality program in the Commonwealth.

The rulemaking will require that every 5 years, the Department provide the Environmental Quality Board with an evaluation of the fees and recommend regulatory changes to the Environmental Quality 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 program costs.

The proposed revisions were discussed with the Air Quality Technical Advisory Committee (AQTAC) at its meetings of December 11, 2008, and February 12, 2009. The AQTAC voted at the February 12, 2009, meeting to concur with the Department's recommendation to move the proposal forward to the Board for consideration as proposed rulemaking. In addition, the proposed amendments were discussed with the Citizens Advisory Council on February 17, 2009, and the Small Business Compliance Advisory Committee on March 4, 2009.