

Executive Summary

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

The Department of Environmental Protection (Department) recommends proposed amendments to 25 Pa. Code Chapters 121, 127 and 139 (relating to general provisions; construction, modification, reactivation and operation of sources; and sampling and testing).

Purpose of the Proposed Rulemaking

The proposed rulemaking would amend existing requirements and fee schedules codified in 25 Pa. Code Chapter 127, Subchapter I (relating to plan approval and operating permit fees), to ensure that fees are sufficient to cover the costs of administering the air quality program, as required under section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3). In addition to increasing the existing fees, fees applicable to plan approval modifications and requests for determination (RFD) of whether a plan approval is required would be proposed. The proposed rulemaking would amend the annual emission fee paid by the owner or operator of a Title V facility for up to 4,000 tons of each “regulated pollutant” and add a new section to address fees for risk assessment applications. The proposed rulemaking would add to 25 Pa. Code Chapter 139 a Subchapter D (relating to testing, auditing and monitoring fees) to establish fees to address Department-performed stack emissions source testing, test report reviews and auditing and monitoring activities related to continuous emissions monitoring systems (CEMS). The proposed rulemaking would:

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

The proposed rulemaking would also add 22 new terms and definitions to § 121.1 (relating to definitions) to explain certain activities and revise the definition for one term to provide clarity.

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

Summary of Proposal

The proposed rulemaking would add definitions to § 121.1 for 22 new terms to explain source testing, test report reviews and CEMS auditing and monitoring activities and revise the definition for one term to provide clarity. New terms and definitions to be added include “CEMS level 1 quarterly report,” “CEMS level 1 quarterly report audit,” “CEMS level 2 system inspection audit,” “CEMS level 3 analyzer audit,” “CEMS level 4 system audit,” “CEMS level 4 system

audit report,” “CEMS level 4 test protocol,” “CEMS level 4 test protocol review,” “CEMS level 4 test report (RATA),” “CEMS level 4 test report (RATA) review,” “CEMS levels,” “CEMS periodic self-audit,” “CEMS phase 1 monitoring plan,” “CEMS phase 1 monitoring plan review,” “CEMS phase 2 test protocol,” “CEMS phase 3 certification test report,” “CEMS phase 3 certification test report review,” “CEMS phases,” “observer,” “RATA-relative accuracy test audit,” “risk assessment,” and “trial burn operating scenario.” The revised term is “CEMS – continuous emissions monitoring system.”

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

The proposed amendments revise § 127.702 (relating to plan approval fees) by deleting reference to fees for past years and increasing fees to reflect the estimated average expenditure for reviewing and processing of plan approval applications. The proposed amendments establish fees for maximum achievable control technology standards plan approval applications, the review of ambient air modeling associated with certain plan approval applications, the submission of requests for determinations and for general plan approval applications.

The proposed amendments revise § 127.703 (relating to operating permit fees under Subchapter F) to clarify when the fees are applicable. The proposed amendments adjust the fees to reflect the actual average expenditure of time to review and take action on the applications. The proposed amendments establish fees for general operating permits.

The proposed amendments revise § 127.704 (relating to Title V operating permit fees under Subchapter G) to clarify when the fees are applicable. The proposed amendments adjust the fees to reflect the actual average expenditure of time to review and take action on the applications. The proposed amendments establish fees for general operating permits.

The proposed amendments revise § 127.705 (relating to emission fees) to adjust the annual Title V emission fee to reflect the Department's actual expenditures on this program.

The proposed amendments add § 127.708 (relating to risk assessment) to establish fees for the conduct of risk assessment and multi-pathway risk assessments beginning with calendar year 2010.

The proposed amendments create a new *25 Pa. Code* Chapter 139, Subchapter D, to establish fees for certain testing, auditing and monitoring activities related to source testing and oversight. The proposed § 139.201 (relating to general provisions) establishes that the fees are deposited into the Pennsylvania Clean Air Fund and would be adjusted by the Consumer Price Index beginning January 1, 2011.

The proposed rulemaking creates § 139.202 (relating to schedule of testing, auditing and monitoring fees) to establish the source testing fee schedule. The fees relate to stack emissions source testing, test report reviews and auditing and monitoring activities related to continuous emissions monitoring systems.

Affected Parties

The proposed amendments will affect the owners and operators of air pollution sources that apply for or hold plan approvals and operating permits or are major facilities as defined under the Title V program and pay the annual emission fee. The owners and operators of facilities that conduct or report source testing or risk assessments would be affected. Small businesses may be affected by the proposed RFD fees.

Advisory Groups

The Air Quality Technical Advisory Committee (AQTAC) reviewed this proposal at its meetings of December 11, 2008, and February 12, 2009. The AQTAC concurred with the Department's recommendation to present the proposal to the Board for approval for proposed rulemaking. In addition, the proposed revisions were reviewed with the Citizens Advisory Council on February 17, 2009. An overview of the proposal was presented to the Small Business Compliance Advisory Committee on March 4, 2009.

Public Comments and EQB Hearings

The Department recommends a 60-day public comment period on the proposed rulemaking and three public hearings.