

Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
25 Pa. Code Chapters 121, 127 and 139

The Environmental Quality Board (Board) proposes to amend Chapters 121, 127 and 139 (relating to definitions; construction, modification, reactivation and operation of sources; and sampling and testing) as set forth in Annex A. This proposal will address any disparity between the program income generated by fees and the cost of administering those programs.

This notice is given under Board order at its meeting of _____, 2009.

A. Effective Date

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

These amendments will be submitted to the United States Environmental Protection Agency as a revision to the Pennsylvania State Implementation Plan upon final rulemaking.

B. Contact Persons

For further information, contact Dean Van Orden, Assistant Director, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, telephone: 717-783-8949 or Robert “Bo” Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th floor, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, telephone: 717-787-7060.

Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection’s (Department) web site at (<http://www.depweb.state.pa.us>).

C. Statutory Authority

This action is being taken under the authority of section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3), which grants to the Board the authority to adopt regulations to establish fees to cover the indirect and direct costs of administering the air pollution control program.

D. Background and Summary

The main purpose of this proposed rulemaking is to amend existing requirements and fees codified in Chapter 127, Subchapter I (relating to plan approval and operating permit fees), and add new categories of fees to that subchapter to address modifications of existing plan approvals and requests for determination of whether a plan approval is required. The proposed rulemaking would also add a new section to address fees for risk assessment applications. The

proposed rulemaking would amend the existing annual emission fee paid by the owner or operator of a Title V facility. The proposed rulemaking would also add Subchapter D (relating to testing, auditing, and monitoring fees) to Chapter 139, to add new categories of fees to address Department-performed source testing, test report reviews and auditing and monitoring activities related to continuous emissions monitoring systems (CEMS).

These increased fees and new fees would be used to support the Department's air quality program as authorized by the APCA. This will ensure that the program is self-sustaining. The fee revisions would allow the Department to maintain staffing levels in the air quality program. 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. 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 CEMS 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 are 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.

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of these proposed regulations. At its February 12, 2009, meeting, the AQTAC concurred with the Department's recommendation to advance the proposal to the Board for consideration as proposed rulemaking with publication for a minimum 60-day public comment period and three public hearings.

The Department also conferred with the Citizens Advisory Council (CAC) concerning the proposed rulemaking on February 17, 2009. The CAC concurred with the Department's recommendation to advance the proposal to the Board for consideration as proposed rulemaking. An overview of the proposal was presented to the Small Business Compliance Advisory Committee on March 4, 2009.

E. Summary of Regulatory Revisions

The proposed amendments add the following 22 new definitions and terms to § 121.1 (relating to definitions) to explain source testing, auditing and monitoring activities used in the substantive provisions under either Chapter 127, Subchapter I or Chapter 139, Subchapter D: "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 proposed amendments revise the definition of one term to provide clarity: “CEMS – continuous emissions monitoring system.”

Proposed changes to § 127.701 (relating to general provisions) ensure that fees are made payable to the Pennsylvania Clean Air Fund and that 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.

Proposed changes to § 127.702 (relating to plan approval fees) provide for, among other things, the following proposed fee provisions:

Under subsection (b), the owner or operator of a source requiring approval under Chapter 127, Subchapter B (relating to plan approval requirements), including a proposed revision to an application that requires reassessment of a control technology determination, shall pay a fee equal to \$1,300 for applications filed during the 2010-2014 calendar years; \$1,600 for applications filed during the 2015-2019 calendar years; and \$2,000 for applications filed for the calendar years beginning in 2020.

Under subsection (c), the owner or operator of a source requiring approval under Chapter 127, Subchapter E (relating to new source review), including a proposed revision to an application that requires reassessment of a control technology determination, shall pay a fee equal to \$6,300 for applications filed during the 2010-2014 calendar years; \$7,300 for applications filed during the 2015-2019 calendar years; and \$8,000 for applications filed for the calendar years beginning in 2020.

Under subsection (d), the owner or operator of a source 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), including a proposed revision to an application that requires reassessment of a control technology determination, shall pay a fee equal to \$2,000 for applications filed during the 2010-2014 calendar years; \$2,500 for applications filed during the 2015-2019 calendar years; and \$3,000 for applications filed during the calendar years beginning in 2020.

Under subsection (e), the owner or operator of a source requiring approval under § 127.35(c), (d) or (h), including a proposed revision to an application that requires reassessment of a control technology determination, shall pay a fee equal to \$10,000 for applications filed during the 2010-2014 calendar years; \$12,000 for applications filed during the 2015-2019 calendar years; and \$14,000 for applications filed during the calendar years beginning in 2020.

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), including a

proposed revision to an application that requires reassessment of a control technology determination, shall pay a fee equal to \$27,200 for applications filed during the 2010-2014 calendar years; \$30,700 for applications filed during the 2015-2019 calendar years; and \$35,700 for applications filed during the calendar years beginning 2020.

Under subsection (g), the owner or operator of a source proposing a modification of a plan approval, extension of a plan approval or transfer of a plan approval due to a change of ownership, except as provided in subsection (h), where an amendment of a plan approval or revision of an application by the applicant that requires the reassessment of a control technology determination or of the ambient impacts of the source is a significant modification of the plan approval or application, shall pay a fee equal to \$400 for applications filed during the 2010-2014 calendar years; \$500 for applications filed during the 2015-2019 calendar years; and \$650 for applications filed during the calendar years beginning in 2020.

Under subsection (h)(1), the applicant proposing an amendment of the plan approval or revision to an application that requires reassessment of a control technology determination shall pay fees as established under subsections (b)-(f).

Under subsection (h)(2), the applicant proposing an amendment of a plan approval or revision to an application that requires changes to the ambient impact analysis or Department reanalysis of the ambient impacts of the source to meet the requirements of 40 CFR 51, Appendix W (relating to guideline on air quality models) shall pay fees in accordance with the following: for modeling using a screening technique as defined in 40 CFR 51, Appendix W - \$3,500 for applications filed during the 2010-2014 calendar years; \$4,500 for applications filed during the 2015-2019 calendar years; and \$6,000 for applications filed for calendar years beginning in 2020; for all other modeling as defined in 40 CFR 51, Appendix W - \$7,500 for applications filed during the 2010-2014 calendar years; \$9,000 for applications filed during the 2015-2019 calendar years; and \$11,000 for applications filed for the calendar years beginning in 2020.

Under subsection (j), the owner or operator of a source that submits a request for determination for a plan approval application shall pay a fee equal to \$400 for requests for determination filed during the 2010-2014 calendar years; \$500 for requests for determination filed during the 2015-2019 calendar years; and \$650 for requests for determination filed for the calendar years beginning in 2020. The owner or operator of a source that submits a request for determination for both a plan approval under this section and an operating permit under § 127.703(e) (relating to operating permit fees under Subchapter F) shall pay one request for determination fee.

Under subsection (k), the owner or operator of a source proposing to use a general plan approval under Chapter 127, Subchapter H (relating to general plan approvals and operating permits) shall pay a fee which will not be greater than the fees established under § 127.702. These fees shall be established at the time the general 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).

Proposed changes to § 127.703 provide for, among other things, the following proposed fee provisions:

Under subsection (b) for processing an application for an operating permit - \$500 for applications filed during the 2010-2014 calendar years; \$600 for applications filed during the 2015-2019 calendar years; and \$850 for applications filed for the calendar years beginning in 2020.

Under subsection (c) for the annual operating permit administration fee - \$500 for the 2010-2014 calendar years; \$600 for the 2015-2019 calendar years; and \$750 for the calendar years beginning in 2020. The annual operating permit administration fee is due on or before March 1 of each year for the current calendar year.

Under subsection (e), the owner or operator of a source that submits a request for determination for an operating permit shall pay a fee equal to \$400 for requests for determination filed during the 2010-2014 calendar years; \$500 for requests for determination filed during the 2015-2019 calendar years; and \$650 for requests for determination filed for the calendar years beginning in 2020. The owner or operator that submits a request for determination for both an operating permit under this section and a plan approval under § 127.702(j) shall pay one request for determination fee.

Under subsection (f), the owner or operator of a source proposing to use a general operating permit under Chapter 127, Subchapter H shall pay a fee which will not be greater than the fees established under § 127.703. These fees shall be established at the time the general operating permit is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

Proposed changes to § 127.704 (relating to Title V operating permit fees under Subchapter G) provide for, among other things, the following proposed fee provisions:

Under subsection (b), for processing an application for an operating permit - \$900 for applications filed during the 2010-2014 calendar years; \$1,100 for applications filed during the 2015-2019 calendar years; and \$1,500 for applications filed for the calendar years beginning in 2020.

Under subsection (c), the annual operating permit administrative fee - \$900 for applications filed during the 2010-2014 calendar years; \$1,100 for applications filed during the 2015-2019 calendar years; and \$1,300 for applications filed for the calendar years beginning in 2020.

Under subsection (e), the owner or operator of a source proposing to use a general operating permit under Chapter 127, Subchapter H shall pay a fee which will not be greater than the fees established under §127.704. These fees shall be established at the time the general operating permit is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

Proposed changes to § 127.705 (relating to emission fees) provide for, among other things, under subsection (a) that beginning January 1, 2010, the annual Title V emission fee is \$70 per ton for each ton of regulated pollutant actually emitted from the facility.

Proposed § 127.708 (relating to risk assessment) provides that each applicant for a risk assessment shall, as part of the plan approval application, submit the application fee as follows:

Under subsection (b), for a risk assessment that is inhalation only with a screening model - \$5,000 for applications filed during the 2010-2014 calendar years; \$6,000 for applications filed during the 2015 – 2019 calendar years; and \$7,200 for applications filed for the calendar years beginning in 2020.

Under subsection (c), for a risk assessment that is inhalation only for all other modeling - \$9,000 for applications filed during the 2010-2014 calendar years; \$11,000 for applications filed during the 2015 – 2019 calendar years; and \$13,000 for applications filed for the calendar years beginning in 2020.

Under subsection (d), for a risk assessment that is multi-pathway - \$10,000 for applications filed during the 2010-2014 calendar years; \$12,000 for applications filed during the 2015 – 2019 calendar years; and \$14,500 for applications filed for the calendar years beginning in 2020.

Chapter 139 is proposed to be amended to add Subchapter D. This subchapter is proposed to establish fees for testing, auditing and monitoring activities that the Department undertakes to administer the requirements of the APCA or the Clean Air Act. The fees collected under this subchapter shall be made payable to the Pennsylvania Clean Air Fund and deposited into the Clean Air Fund established under section 9.2 of the APCA (35 P.S. § 4009.2). 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.

Under proposed § 139.202 (relating to schedule of testing, auditing and monitoring fees) for testing, auditing and monitoring activities performed by Department personnel for calendar years 2010-2014, 2015-2019, and calendar years beginning with 2020, the Department will assess a testing, auditing or monitoring fee on the applicant or permittee in accordance with the schedule of testing, auditing and monitoring fees for activities performed by Department personnel listed in Table I of Annex A.

F. Benefits, Costs and Compliance

Benefits

Overall, the citizens of this Commonwealth would benefit from these proposed amendments because the fee revisions would allow the Department to maintain staffing levels in the air quality program. 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.

Compliance Costs

The proposed rulemaking adjusts the fees to be paid by the owners or operators of affected facilities. The Department estimates that the increase in emission fees will result in additional costs of \$2,761,000 per year to the owners or operators of affected facilities. The adjusted plan approval and permit fees are estimated to result in an increase in costs of \$760,000 per year. The source testing fees would increase costs to owners or operators by \$1.4 million per year. No new legal, accounting or consulting procedures would be required.

Compliance Assistance Plan

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

Paperwork Requirements

There are no additional paperwork requirements associated with this proposed rulemaking with which industry would need to comply.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 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 proposed rulemaking would allow the Department to maintain staffing levels in the air quality program, which would provide a sound basis for continued air quality assessments and planning that are fundamental to reducing pollution and protecting public health and welfare and the environment.

H. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

At least every 5 years, the Department will provide the Environmental Quality Board with an evaluation of the fees in this subchapter 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 all program costs.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act, 71 P.S. § 745.5(a), on (blank), the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided the IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, the IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Written Comments: Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by (blank) (within __ days of publication in the *Pennsylvania Bulletin* and within 30 days after the last hearing). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by (blank) (within __ days of publication in the *Pennsylvania Bulletin* and within 30 days after the last hearing). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments: Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by (blank) (within __ days of publication in the *Pennsylvania Bulletin* and within 30 days after the last hearing). A subject heading of the proposal and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within 2 working days, the comments should be retransmitted to ensure receipt.

K. Public Hearings

The Environmental Quality Board will hold __ public hearings for the purpose of accepting comments on this proposal. The hearings will be held at __ p.m. on the following dates:

_____ (blank) _____

_____ (blank) _____

_____ (blank) _____

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, 717-787-4526, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Environmental Quality Board at 717-787-4526 or through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD) to discuss how the Board may accommodate their needs.

JOHN HANGER
Chairperson