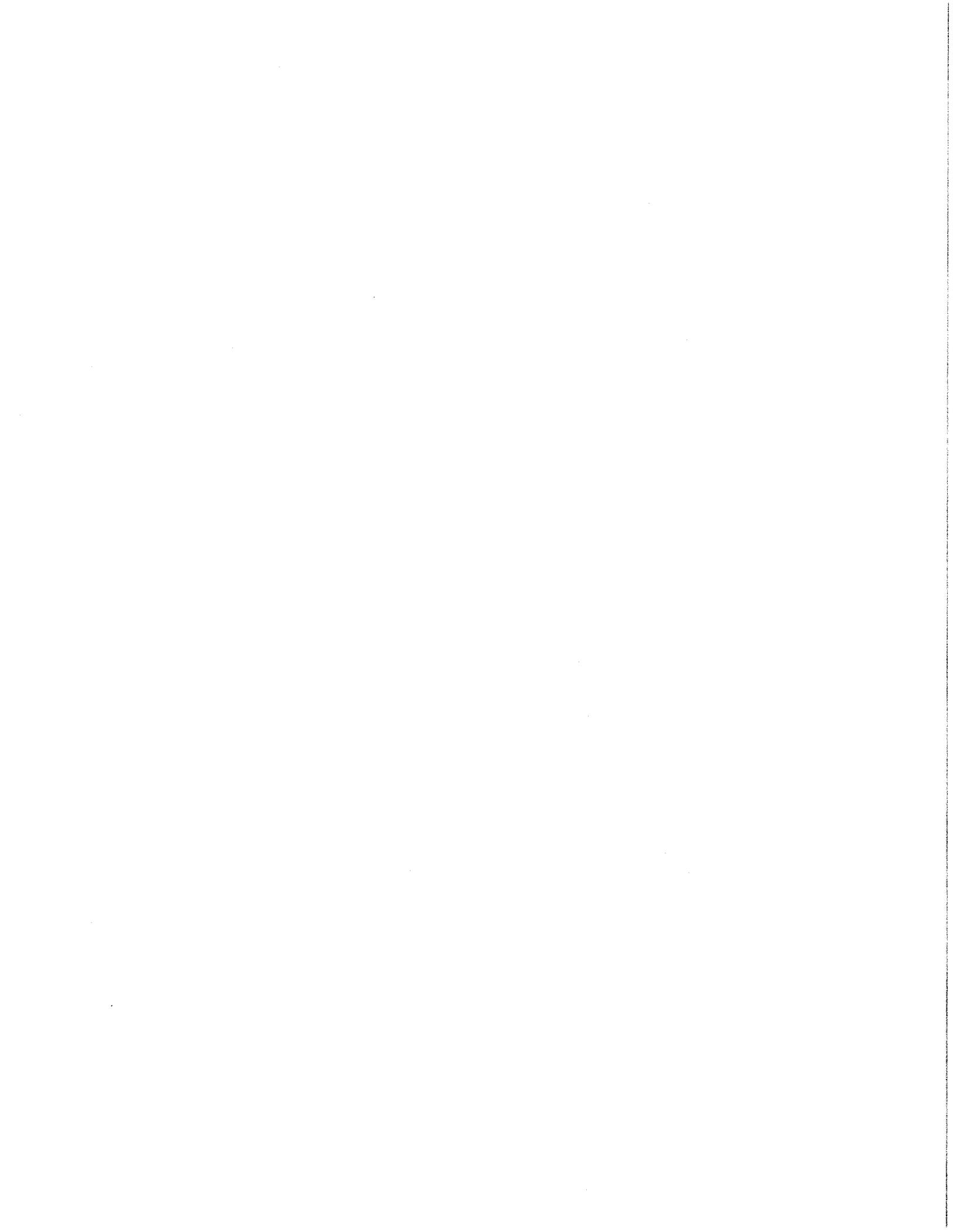


# **Timetable for Review**

**December 1, 2010**

**The review of this final-form regulation was automatically suspended by law as of November 30, 2010. The date IRRC will consider this regulation will not be known until the regulation is resubmitted by the agency to the legislative standing committees established for the 2011-2012 legislative session. See 71 P.S. § 745.5a(j.1). As soon as the agency resubmits the final-form regulation, IRRC will post on this website the date it will consider this final-form regulation in a public meeting.**



# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

## SECTION I: PROFILE

(1) Agency:

Environmental Protection

(2) Agency Number:

Identification Number: 7-441

IRRC Number: 2800

(3) Short Title:

Air Quality Fee Schedule Amendments

(4) *Pa. Code* Cite:

25 *Pa. Code* Chapters 121, 127 and 139

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Michele Tate, 783-8727

Secondary Contact: Randal (Duke) Adams, 783-8727

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

Environmental Quality Board,

P.O. Box 8477

Harrisburg, PA 17105-8477

[regcomments@state.pa.us](mailto:regcomments@state.pa.us)

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
  - Certification by the Governor
  - Certification by the Attorney General

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## Regulatory Analysis Form

Fees final EQB 11-16-2010

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The final rulemaking amends existing requirements and fee schedules codified in Chapter 127, Subchapter I (relating to plan approval and operating permit fees) to ensure that fees collected are sufficient to cover the costs of administering the air program. In addition to increasing the existing fee schedule; the final-form rulemaking adds fees applicable to plan approval modifications and requests for determination of whether a plan approval is required. The final-form regulation adds a new section to address fees for risk assessment applications and amends the annual emission fee paid by the owner or operator of a Title V facility for each ton of regulated pollutant emitted from the facility with a 4,000-ton cap. The final-form regulation also adds to Chapter 139 a Subchapter D (relating to testing, auditing and monitoring fees) to establish fees to address Department-performed source testing, test report reviews and auditing and monitoring activities related to continuous emissions monitoring systems (CEMS). If adopted as final-form rulemaking, the amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan.

(9) Include a schedule for review of the regulation including:

- |   |                                  |
|---|----------------------------------|
| A. The date by which the agency must receive public comments:                               | <u>December 21, 2009</u>         |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>November 17, 19, 20, 2009</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>First Quarter 2011</u>        |
| D. The expected effective date of the final-form regulation:                                | <u>First Quarter 2011</u>        |
| E. The date by which compliance with the final-form regulation will be required:            | <u>Upon publication</u>          |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>Not applicable</u>            |

(10) Provide the schedule for continual review of the regulation.

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 (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.

## Regulatory Analysis Form

Fees final EQB 11-16-2010

### **SECTION II: STATEMENT OF NEED**

(11) State the statutory authority for the regulation. Include specific statutory citation.

The final-form 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 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.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 this act and not covered by fees required by section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)).

Section 6.3(c) of the APCA (35 P.S. § 4006.3(c)) provides that the Board shall establish by regulation a permanent annual air emission fee as required for regulated pollutants by section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)) to cover the reasonable direct and indirect costs of administering the operating permit program required by Title V of the CAA, other related requirements of the CAA and the reasonable indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Programs including the Small Business Compliance Advisory Committee and the Office of Small Business Ombudsman. The emission fee shall not apply to emissions of more than 4,000 tons of any regulated pollutant.

When establishing emission fees, section 6.3(d) of the APCA (35 P.S. § 4006.3(d)) requires the Board consider 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 and the amount of fees charged in neighboring states.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as any deadlines for action.

Section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)) requires the Commonwealth to adopt rules that the owner or operator of all sources subject to the requirement to obtain a permit under Title V of the CAA (42 U.S.C.A. § 7661-7661f) pay an annual fee sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V.

Section 6.3 of the APCA (35 P.S. § 4006.3) authorizes the 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 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, Small Business Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the Board to establish fees by regulation 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.A. § 7661a(b)).

## Regulatory Analysis Form

Fees final EQB 11-16-2010

There are no relevant court decisions.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The final rulemaking amends the existing plan approval and operating permit fee schedules and the base annual Title V emissions fee, adds fees for risk assessment applications and for source testing, test report review, auditing, and monitoring. These fees are designed to recover the Department's costs for certain activities related to processing of plan approvals and operating permits, and source testing, test report reviews, and auditing and monitoring of CEMS and sources. Establishing this fee structure will provide support for 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.

Adoption of the final-form regulation provides for increased fees and new fees that will be used to cover the increased indirect and direct costs of administering the air pollution control program. Failure to adjust the fee structure will cause expenditures to exceed income and may cause reductions in staff or technical services. Reduced staffing will cause delays in processing plan approvals and issuing operating permits, resulting in delays and loss of revenue to industry and reduced protection of the environment and public health and welfare. New or modified sources of air pollution cannot be constructed without a plan approval. The installation of air pollution control equipment requires receipt of a plan approval. Failure to increase the Department's revenue may result in fewer inspections and increases in environmental and public health and welfare problems. A Clean Air Fund deficit is anticipated for fiscal year 2015 (July 1, 2015-June 30, 2016) without the final-form revisions.

The amendments 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.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

Not applicable.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The owners and operators of approximately 887 Title V facilities in the Commonwealth must pay annual emission fees by September 1 each year for regulated pollutants emitted the previous year; this emission fee is not payable by any State entity, instrumentality or political subdivision in relation to any publicly owned or operated facility. These owners and operators will be affected by the revised base Title V emission fee and the revised plan approval and Title V operating permit fees in the final-form amendments. The final rulemaking will affect the owners or operators of approximately 2,500 non-major facilities that are subject to the plan approval and operating permit provisions of the Department's air quality regulations. The final-form rulemaking revises the existing fees and establishes new fees to reflect the cost of providing these services to the owners or operators of affected facilities in this Commonwealth. The owners or operators will be affected when they pay the revised fees.

## Regulatory Analysis Form

Fees final EQB 11-16-2010

### SECTION III: COST AND IMPACT ANALYSIS

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

The owners and operators of approximately 887 Title V facilities in this Commonwealth will be required to comply with the revised Title V emission fee and revised plan approval and Title V operating permit fees in the final-form rulemaking. The owners or operators of approximately 2,500 non-major facilities in this Commonwealth that are subject to the air pollution control plan approval and operating permitting program will be required to comply with the final-form rulemaking.

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The final-form rulemaking revises 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 \$5.9 million 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 affected owners or operators by \$1.4 million per year. No new legal accounting or consulting procedures would be required.

The additional costs were estimated by reviewing past permitting and Title V fees, multiplying by the future fee structure and subtracting the amounts generated by the existing fee structure. The number and type of source tests, test report reviews and CEMS audits and monitoring activities were reviewed and multiplied by the fee structure to determine the costs.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The final rulemaking is expected to impose no additional direct costs on local governments unless a local government owns or operates an air pollution facility that is permitted by the Department. Any increase in costs would be consistent with the cost increases to private industry.

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no increased costs to state government. The final-form amendments are expected to increase revenue to the Department by approximately \$7.5 million per year through the implementation of increased fees and new fees to cover the costs of administering the air pollution control program. The approved Title V Programs for the local air pollution control programs in Philadelphia and Allegheny Counties collect the Title V emissions fee and should receive increased emission fee revenue of approximately \$121,000 and \$397,000, respectively. 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 (§ 127.706 (relating to Philadelphia County and Allegheny County financial assistance)). The Department has provided financial assistance to the

## Regulatory Analysis Form

Fees final EQB 11-16-2010

Philadelphia County Air Management Services (AMS), most recently \$700,000 in 2010. Allegheny County has never requested financial assistance.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year (10/11)	FY +1 Year (11/12)	FY +2 Year (12/13)	FY +3 Year (13/14)	FY +4 Year (14/15)	FY +5 Year (15/16)
<b>SAVINGS:</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Regulated Community	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Savings</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>COSTS:</b>						
Regulated Community	\$6 M	\$8.06 M	\$8.06 M	\$8.06 M	\$8.06 M	\$8.06 M
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Costs</b>	\$6 M	\$8.06 M	\$8.06 M	\$8.06 M	\$8.06 M	\$8.06 M
<b>REVENUE LOSSES:</b>						
Regulated Community	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Local Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
State Government	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total Revenue Losses</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 (07/08)	FY-2 (08/09)	FY-1 (09/10)	Current FY (10/11)
Environmental Program Management (161-10382)	\$39,685,000	\$37,664,000	\$32,694,000	\$29,357,000
Clean Air Fund Major Emission Facilities (215-20077)	\$18,353,000	\$22,660,000	\$22,939,000	\$24,732,000
Clean Air Fund Mobile and Area Facilities (233-	\$5,855,000	\$7,949,000	\$6,641,000	\$9,382,000

## Regulatory Analysis Form

Fees final EQB 11-16-2010

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(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The final regulation amends the plan approval and operating fee schedule and annual Title V emission fee and adds risk assessment fees in Chapter 127, Subchapter I. These fees would contribute to public health and social well-being by maintaining current staffing levels for the air quality permit review, source testing, monitoring and inspection programs. 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 fee schedule proposed for Chapter 139, Subchapter D, for the source testing and monitoring program would provide support and resources for continued observation of stack emissions source testing and auditing of CEMS by Department staff. Observations conducted by Department staff with expertise in source testing and CEMS auditing and monitoring would ensure that high quality test and monitoring data are collected and submitted to the Department. High quality data are critical to determine compliance with permitted air pollutant emission limits and establish emission inventories used by the Department to develop programs to protect public health and social well-being. Staff would be able to complete the review of reports on a timely basis. The timely review of the reports was highlighted as an area of concern in a recent EPA program review.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The proposed regulation was approved by the EQB at its meeting on July 21, 2009. The public comment period opened October 17, 2009, and closed on December 21, 2009, for a 66-day public comment period. Public hearings were held in three locations, including Harrisburg on November 17, 2009; Norristown on November 19, 2009; and Pittsburgh on November 20, 2009. (39 Pa.B. 6049, October 17, 2009)

The final-form rulemaking was discussed with the Air Quality Technical Advisory Committee (AQTAC) at its October 21, 2010, meeting. The final-form rulemaking was discussed with the Citizens Advisory Council (CAC) on October 18, 2010. The AQTAC and CAC concurred with the Department's recommendation to move the final-form rulemaking forward to the Board. In addition, the comments to the proposed rulemaking were discussed with the Small Business Compliance Advisory Committee on July 28, 2010. On October 29, 2010, the SBCAC sent a letter to the Department recommending that the fee for Requests for Determination submitted by the owners or operators of small businesses be reduced or waived.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There are no other regulatory schemes available.

## Regulatory Analysis Form

Fees final EQB 11-16-2010

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Companion Federal regulations do not exist for the final-form rulemaking. However, section 502(b)(3)(B) of the CAA (42 U.S.C.A. § 7661a(b)(3)(B)) and its implementing regulations in 40 CFR Part 70 establish the statutory and regulatory framework for Title V emission fee programs. If the EPA Administrator determines that the permitting authority is not adequately administering and enforcing an approved fee program, the Administrator may collect reasonable fees from the owners and operators of Title V sources.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The fees in the final rulemaking are similar to those in other states and will not place the Commonwealth at a competitive disadvantage.

All states are required by the CAA to collect annual Title V emission fees and to adjust the fees based on the consumer price index. Several states, including Connecticut, Maryland, New York and New Jersey, no longer limit emission fee applicability to 4,000 tons per regulated pollutant. In 2006, Connecticut imposed a fee of \$224.60 per ton based on an "Inventory Stabilization Factor," which is adjusted periodically to ensure that Title V fees are adequate for at least two years. In 2010, New York is assessing an annual Title V emission fee ranging from \$45.00 per ton for emissions of less than 1,000 tons per year to \$65 per ton for emissions of more than 5,000 tons per year; the fee is applied to emissions of up to 7,000 tons of any regulated pollutant. Title V fees in New Jersey are \$103.93 per ton with no cap on emissions; New York imposes Title V fees ranging from \$45-\$65 per ton with a 7,000-ton cap; and Maryland recently established a fee of \$53 per ton with no cap on regulated pollutants plus a base fee of \$200. However, the 2010 annual Title V emission fee, \$23.92, imposed in West Virginia is less than the presumptive minimum of \$25.00 established under section 502(b)(3)(B)(i) of the CAA (42 U.S.C.A. § 7661a(b)(3)(B)(i))—the alternative emission fee program, based on program costs was approved by the EPA.

The plan approval and operating permit fees are similar in other states. Fees for major (new source review (NSR) or prevention of significant deterioration (PSD)) permits range from \$20,200 in Maryland to \$10,000 in West Virginia. Similar permits in Delaware are charged a base fee of \$5,132 plus a user fee based on the emissions. The Department currently assesses a plan approval fee of \$5,300 for NSR applications. The Department's final-form rulemaking contains a plan approval fee of \$6,300 for NSR applications filed during the 2011-2015 calendar years, increasing to \$8,000 for NSR applications filed for the calendar years beginning in 2021. The Department currently assesses a plan approval fee of \$22,700 for PSD applications. The Department's final-form regulation includes a plan approval fee of \$27,200 for PSD applications filed during the 2011-2015 calendar years, increasing to \$35,700 for PSD applications filed for the calendar years beginning in 2021. An analysis of the fee schedule must be submitted to the Board within 5 years after the adoption of the fee schedule amendments.

Minor plan approval and permit fees in other states range from \$160 in New York to \$200 plus an emission fee in Maryland. A permit to install (similar to a plan approval) fee in Ohio ranges from \$200 to \$6,000 depending on the size of the facility. The Department is proposing to assess a fee of \$1,300. It is not always possible to directly compare each state's fees because of the variety of ways to define the permits.

## Regulatory Analysis Form

Fees final EQB 11-16-2010

Several states now collect fees for source testing or monitoring. New Jersey collects fees to evaluate source testing (\$450 to \$500 per test protocol), test observation (\$200 to \$500), and to review the test report. Idaho charges a fee for services not to exceed \$7,500 per facility per year. Wisconsin collects a fee for emission testing and environmental assessment. Delaware collects a user fee that ranges from \$3,000 to \$200,000 per year based on the hours expended at the facility. The Department's final-form rulemaking fees are within these ranges.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The final rulemaking amends existing 25 *Pa. Code* Chapters 121, 127 and 139. Regulations of other Commonwealth agencies are not impacted.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The final-form amendments do not add or change the existing reporting, recordkeeping or other paperwork requirements.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Department has not developed any special provisions to meet particular needs of affected groups. The final-form amendments would impact the owners or operators of facilities subject to the air pollution control plan approval and permitting program.



**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU**

**(Pursuant to Commonwealth Documents Law)**

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**2010 NOV 23 P 1:02**

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Copy below is hereby approved as to form and legality.  
Attorney General

By: \_\_\_\_\_  
(Deputy Attorney General)

DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-441

DATE OF ADOPTION NOVEMBER 16, 2010

BY John Hanger

TITLE JOHN HANGER  
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY Andrew C. Clark

**NOV 23 2010**  
DATE OF APPROVAL

(Deputy General Counsel)  
(Chief Counsel - Independent Agency)  
(Strike inapplicable title)

Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

**NOTICE OF FINAL RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**Air Quality Fee Schedules**

**25 Pa. Code, Chapters 121, 127 and 139**



**Title 25-ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD  
[25 PA. CODE CHS. 121, 127 and 139]**

The Environmental Quality Board (Board) amends Chapters 121, 127 and 139 (relating to general provisions; construction, modification, reactivation and operation of sources; and sampling and testing) to read as set forth in Annex A. This final-form rulemaking will address any disparity between the program income generated by fees and the cost of administering the program.

These amendments were adopted by order of the Board at its meeting of November 16, 2010.

**A. Effective Date**

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

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

**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, (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, (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 electronically through the Department of Environmental Protection's (Department) web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) (Keyword: Public Participation).

**C. Statutory Authority**

This final-form rulemaking is adopted under the authority of section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3), which grants 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 final-form 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 final-form regulation adds a new section to address fees for risk assessment applications. The final-form regulation amends the existing emission fee paid by the owner or operator of a Title V facility.

The final-form regulation also adds 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 reviews and auditing, and activities related to continuous emissions monitoring systems (CEMS).

The final rulemaking ensures that any difference between the existing and new fees that generate revenue for the air quality program is comparable with the costs of administering that program. This will ensure that the program is self-sustaining. The fee revisions allow the Department to maintain staffing levels in the air quality program. This provides a sound basis for continued air quality assessments and planning that are fundamental to protecting public health and welfare and the environment.

Increased funding for the plan approval and operating permit program continues to allow for timely and complete review of plan approval and operating permit applications. Implementation of new fees for risk assessment applications allows 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 funds 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 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 this final-form regulation. At its October 21, 2010, meeting, the AQTAC concurred with the Department's recommendation to advance the amendments to the Board for consideration as final-form rulemaking.

The Department also conferred with the Citizens Advisory Council (CAC) Air Committee concerning the final-form regulation on October 18, 2010. The CAC concurred with the Department's recommendation to advance the amendments to the Board for consideration as final-form rulemaking.

The Small Business Compliance Advisory Committee (SBCAC) discussed the rulemaking at its July 28, 2010, meeting. On October 29, 2010, the SBCAC sent a letter to the Department recommending that the fee for Requests for Determination submitted by the owners or operators of small businesses be reduced or waived.

#### **E. Summary of Comments and Responses**

A commentator understands the necessity of increasing the annual Title V emission fees over the next several years. The commentator states that the fees are intended to cover most, if not all of the activities related to the air program. The Board appreciates the comment.

A commentator supports the proposed periodic evaluation of the sufficiency of the fee program. The commentator requests that any recent evaluations be made available to the public for review. The Board acknowledges the support for the periodic evaluation specific in proposed § 127.701(d) (relating to general provisions). The most recent evaluation of the program funding was conducted and published in the Department's report entitled "Evaluation of the Pennsylvania Air Quality Program 2002 – 2007."

A commentator states that the proposed fee schedules are extreme considering that there is no justification in terms of man-hour requirements associated with the fees. The Board disagrees that the proposed fee schedules are extreme. The fee schedules were developed based on an analysis of the overall current and projected incomes and expenditures for the Clean Air Fund. A review of the current and expected workload was completed assessing the need for increased fees and additional fees. As a result, the fee schedules were developed to meet those needs.

A commentator understands the budgetary pressures being felt by State agencies and recognizes the need for the Board to increase fees which were previously established and have not been increased for almost 15 years. However, the proposed rule puts an onerous financial burden on industry, including manufacturing facilities. The Board recognizes the potential burden placed on all facility owners and operators that are impacted by the fee schedule changes. The Board has not proposed a fee increase for many years. In addition, the fees are gradually increased over a number of years, rather than in a single year.

Two commentators state that the proposed rule significantly increases the annual emission fees and adds a significant amount of new annual air permit-related activity fees. The proposed rule puts an onerous financial burden on manufacturing facilities. The Board appreciates the impact that increased fees may have on a facility. However, the Board is obligated under the APCA to impose fees to recoup the cost of the air quality program.

Two commentators state that the preamble indicates that the Commonwealth would benefit from the amendments because the Department would be able to maintain needed staffing levels. However, many agencies are implementing cost cutting measures, eliminating, reducing or reevaluating the services they provide in order to be more competitive and effective. The Board agrees. The Department has made significant cost reductions and eliminated some activities. However, the remaining programs operated by the Department are mandated by the Clean Air Act (CAA), the APCA, or the implementing regulations. As such, the Department cannot eliminate those activities.

A commentator recommends that the Board should consider whether the emissions fee cap of 4,000 tons per regulated pollutant, presently specified in the APCA, should be modified to adjust for disproportionate emission fee impacts on industry. The Board thanks the commentator for the suggestion, but legislative revisions to the APCA are beyond the scope of this rulemaking.

Three commentators note that the permit fee increases are fixed through 2020. The commentators recommend an alternative fee increase scheme, as occurs under the emission fees, rather than the proposed fixed increase. The Board cannot raise fees, except for the Title V

emission fee in § 127.705 (relating to emission fees), based on the Consumer Price Index (CPI). The APCA only authorizes the Title V emission fee to be increased based on the CPI.

A commentator states that fees charged to citizens or industry without publishing a supporting rationale or basis potentially usurps the duties and responsibilities given to the Legislature. The Board should update the Apogee Research Report to support the fee increase. The Board disagrees that the proposed fee schedule revision usurps the responsibilities given to the Legislature. The information to support the proposed fee rulemaking was discussed with the AQTAC. The Board disagrees that the Apogee Research Report should be updated. The Department hired Apogee Research to help develop the first Title V fee schedule when the Title V program was being established. The Department now has 16 years of experience with the Title V program and is able to forecast the need for a revision to the fee schedule.

The commentator states that the Board should be required to submit any fees or increases to fees to an independent time/labor review body that would equitably and openly determine the fairness of such charges. The Board disagrees that the fee schedule should be forwarded to an independent time/labor review body. The Board considered the proposed rulemaking and is responsible for assessing the need for the rulemaking.

The commentator opposes the inclusion of charges for General Permits. The purpose of a general permit is to minimize Department-required review and action for standard practices, not an income vehicle. The Board has not proposed to change any fee associated with General Permits.

A commentator understands the need for the Department to increase permit fees and testing fees, but the proposed increase in the emission fee is exorbitant. A 30% increase in 1 year is unjustified. The fee increase will have a significant negative consequence to the regulated communities' budgets. The Board understands that any fee increase may have consequences to the budgets of the regulated community. Section 6.3 of the APCA (35 P.S. § 4006.3) authorizes the 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 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, 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 the APCA and not covered by fees required by section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)). In this rulemaking, the Board has considered the cost of the air program and proposed fees sufficient to maintain the program.

The commentator is concerned about the size of the fee increase during a 1-year period. The commentator states that it would be more equitable to propose a phase-in approach over the next 3 to 5 years, identifying permit and testing fee increases for each year. Emission fees should continue to be based on the Consumer Price Index. The Board understands that the fee increase will have an impact on the regulated community. However, delaying the full implementation of the fee increase over a 3- to 5-year period will delay the full benefit of the increase available to support the air program.

A commentator encourages the Board to not impose an increase in the Title V fee and restrict the increase to the Consumer Price Index as authorized by the CAA. If an increase is needed, it should be delayed until 2011 so that the regulated community can budget for the increase. The Board disagrees. The proposed increase is needed to support the Title V program as required by the CAA and APCA. Due to the delay in finalizing the rulemaking, the increase in fees will not go into effect until 2011.

A commentator expresses concern that the proposed Title V fee increase will exacerbate the cost differences, with plants in other states, associated with environmental compliance. The proposed Title V fee increase will result in a fee higher than other states. The Board agrees that while there are differences in fee schedules between states, the proposed fees are similar to other states with air programs the same size as in this Commonwealth. For example, Title V fees in New Jersey are \$103.93 per ton with no cap on emissions; New York imposes Title V fees ranging from \$45-\$65 per ton with a 7,000-ton cap; and Maryland recently established a fee of \$53 per ton with no cap on regulated pollutants plus a base fee of \$200.

A commentator states that the proposed Title V fee increase is a near doubling of the emission fees under § 127.705. The Board disagrees that the Title V fee is doubling. The current Title V fee is \$54 per ton of emissions of each regulated pollutant. The proposed fee will increase to \$70 per ton, which is an increase of 30%. The Board is not proposing to revise the original fee established in 1994 but is setting a new base fee that will apply to emissions released during calendar year 2010; CPI adjustments would be calculated for the 2012 and succeeding calendar years.

A commentator states that the increase in emission fees from \$56 to \$70 as proposed under § 127.705 is excessive. The Board disagrees. The established Title V fee for 2009 and 2010 is \$54 per ton of pollutant. A \$56 dollar fee has not been calculated. The proposed fee was established to reflect the cost of administering the program as required by the CAA. It is a reasonable fee reflective of the program's needs.

The commentator states that Title V is a mature program and there are no anticipated changes to the existing Title V program that would warrant such a large increase as proposed. The Board agrees that the Title V program is a mature program. However, there are several new activities that impact the Title V program. For example, the Department has invested approximately \$1.2 million to develop and implement a new computer system for the continuous emission monitoring system to replace an antiquated system that could no longer be supported. Additional resources will be needed for maintenance of the system and to modify the system if necessary. Such investments were not anticipated when the Title V program was established. The EPA recognized that there could be a need to adjust the Title V fees. In a memo issued on August 4, 1993, the EPA addressed the need for future adjustments to the fee schedule stating that there is a continuing requirement to demonstrate the adequacy of the fees. The EPA stated that the states were obligated to update and adjust their fee schedules periodically if the fees collected are not sufficient to fund the direct and indirect costs of the permit program.

Three commentators state that the CAA and the operating permit rule (40 CFR Part 70) require that the Title V operating permit fees recover 100% of the costs of certain program activities. This category includes all permit issuance, source testing, compliance monitoring, inspections, enforcement, and program development activities associated with Title V sources.

The Board agrees that section 502(b)(3) of the CAA requires that Title V permit holders pay an annual fee, or equivalent fee over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements. The Department has established in the final-form regulation a revised annual Title V emission fee and revised Title V permit fees sufficient to support the costs of the Title V program. The Department's Title V fee income with the revised fee structure is estimated to be approximately \$23.5 million in September 2011. However, expenditures are estimated to be \$ 24.7 million. The difference will be taken from the Clean Air Fund Major Source Facilities (Title V) account. Consequently, the Department will collect sufficient fees to support the activities required under Title V of the CAA. Allegheny County and Philadelphia County have approved local air pollution control programs as authorized under section 12 of the APCA (35 P.S. § 4012). Both counties are authorized to collect Title V emissions fees to support the Title V permitting program in those counties. In 2009, Allegheny County collected \$1.3 million in Title V emission fees; expenditures in 2009 were \$1.4 million. In 2009, Philadelphia County collected \$410,000, with expenditures of \$1.75 million. The increase in the base Title V emissions fee in the final-form regulation should increase the Title emissions fee revenue by approximately \$397,000 for Allegheny County and \$121,000 for Philadelphia County.

A commentator states that by imposing testing, monitoring, and auditing fees, the Title V facilities will be charged twice for the same services. The Board disagrees that the proposed testing, monitoring, and auditing fees found in Chapter 139 are duplicative. Guidance provided by the EPA was reviewed concerning the establishment of Title V fees. Under the CAA, its implementing regulations, and the EPA guidance, Title V fees are to be sufficient to cover the direct and indirect costs of the permit program. In the August 4, 1993, memorandum from John Seitz, the EPA stated that a state may design the fee structure as it deems appropriate. The structure may include base fees on actual or allowable emissions, fees based on categories of sources, or annual fees or fees covering some period of time. The Department has proposed to assess fees for source testing and monitoring services. These fees, when assessed to Title V facilities, will be placed in the Title V fund to cover the permitting program as required by the CAA.

A commentator states that the Federal CAA, Operating Permit Rule (40 CFR Part 70) and APCA require that the Title V operating permit fees recover the costs of certain program activities. The proposed Chapter 139 fees duplicate fees that are already covered by the Title V fee. The proposed amendments to Chapter 139 should be revised to exclude program activities encompassed in the Title V fee and other operating permit administration fees. The Board agrees that the CAA, APCA, and implementing regulations require that the Title V operating permit fee recover certain costs. The Board has modified the base Title V emission fee to cover certain program costs. However, there are certain services that are needed by a limited number of owners and operators. In this instance, the Board believes that the users of these services should pay for the activity and should not require all permittees to support the service. As provided in the EPA August 4, 1993 memo, the state may adopt different fees to address the needs.

A commentator contends that the proposal to establish source testing fees will unfairly tax smaller facilities because of the costs to cover the review of source testing activities. The commentator's facility has six narrow-width coating lines and four foil-rolling mills. Currently during stack tests, similar equipment is grouped together under a common protocol; the stack tests are performed in succession and reports are included in the same binder for Department

review. Under the proposed fee structure, there is no allowance for the grouping of similar sources in the protocol review, stack test review or source test observation fee. The Board disagrees with the commentator. The proposed fee schedule does not alter the current procedures for “grouping” sources. The same procedure will continue to be followed. If one protocol is submitted for several sources, then one fee is charged for protocol review.

Three commentators state that, in the case of Title V facilities, the proposed increases to the existing operating permit fees, including emission fee, should provide adequate funding. The commentators provide a quote that Title V operating permit fees recover 100% of certain program costs. The commentators point out that the proposed Chapter 139 fees are not permit fees and are not applicable to meet the Title V funding requirement. The Board has proposed a revision of the permit fee schedule to reflect the costs of the program. Under EPA guidance dated August 4, 1993, the Department has the flexibility to propose a range of fees so long as the total fees meet the direct and indirect costs of the program. The fees may include base fees on actual or allowable emissions, fees based on source categories or type of pollutants, fees based on some basis other than emissions, annual fees or fees covering other periods of time.

Three commentators state that Title V facilities should either pay the proposed increased emission fee and other proposed operating permit fee increases in Chapter 127 or the emission fee should remain unchanged with Title V facilities paying the testing fees. Requiring Title V facilities to pay both the increased operating permit fees and the testing fees is extracting payment twice from the Title V facilities. The Board disagrees. According to guidance provided by the EPA on August 4, 1993, a state “may design its fee structure as it deems appropriate, provided the fee structure raises sufficient revenue to cover all reasonable direct and indirect permits program costs.” The Board has established the Title V annual emission fee sufficient to cover Title V permits program costs. However, there are certain services that are needed by a limited number of owners and operators of both Title V and non-Title V facilities. The proposed source testing and monitoring fee schedule was designed to recover costs incurred by the Department for providing these services. Due to a decline in appropriations under the General Fund for environmental protection programs, the Department has relied on special funds to cover those costs in order to maintain a continuity of services and to adequately protect public health and the environment. In this instance, the Board believes that the users of these services should pay for such services, rather than establishing a higher fee that would be imposed on all permittees to support the services. Such fees are authorized by section 6.3 of the APCA. The Department recommended the fee schedule proposed by the Board by analyzing the current and projected income and expenditures for the Clean Air Fund. The Board considered actual Clean Air Fund expenditures during the past 16 years. A review of the current and expected workload was completed to assess the need for additional fees. As a result, the proposed fee schedule was developed to ensure that fees are sufficient to administer program costs.

The proposed fee schedule results in significantly disproportionate impact on facilities that use CEMS and conduct frequent stack sampling regardless of the facilities’ relative impact on the environment. Facilities that rely on less onerous compliance tools such as parametric monitoring, work practices and periodic sampling would be affected less even where those facilities have equal or greater environmental impact. The Board agrees that facilities that do frequent sampling or use CEMS would be impacted by the proposed fees. The final-form regulation requires the owners and operators of facilities that do frequent sampling or use CEMS

to cover the actual costs of those services and development and maintenance of electronic systems designed to streamline source testing operations.

The proposed sampling, testing, and CEM fees for submissions made by Title V facilities in support of demonstrating compliance with their Title V permit should not be included in the final-form rulemaking. In accordance with the Federal requirements for establishing the Title V emission fees as specified under § 127.705, these air program costs are to be included in the determination of these fees. The Board has proposed a fee schedule revision that reflects the direct and indirect costs of the permitting program as required by the CAA. Under EPA guidance dated August 4, 1993, the Department has the flexibility to propose a range of fees so long as the total fees meet the direct and indirect costs of the program. The fees may include base fees on actual or allowable emissions, fees based on source categories or type of pollutants, fees based on some basis other than emissions, annual fees or fees covering other periods of time, etc. The EPA guidance does not restrict the Title V fee to be solely an emission fee.

Three commentators state that the proposed fee for a Department-conducted source test is quite expensive compared to private testing firms. Companies should have the opportunity to contract with a private firm to control the testing costs. The Board agrees that the owners and operators of facilities should have the opportunity to contract with private firms to conduct testing costs. The Department's plan approvals and operating permits require the owner or operator to periodically test the emission sources with a Department-approved testing protocol. While the Department is authorized to conduct source testing, private testing companies perform the majority of source testing conducted in this Commonwealth for the regulated community. Therefore, an owner or operator may continue to choose a private testing company to conduct source testing instead of having these services performed by the Department.

A commentator states that the Board is proposing a fee of \$400 for an RFD which is a simple and straightforward process. It is unreasonable to charge \$400 for 1 or 2 hours of Department staff time. The Board disagrees. In establishing the proposed fee schedule, the Department reviewed the staff time associated with processing RFDs. On average, the Department spent 7.5 hours reviewing and responding to each RFD submitted using the paper form. This includes clerical, technical and supervisory time. The estimate also does not include the time for the computer system development, maintenance and oversight for the electronic system. The costs for the computer system development are over \$800,000. Therefore, the Board believes that the proposed fee is justifiable.

A commentator recommends that the Department should coordinate the changes being made to the plan approval exemption list with the new fee schedule. The exemption list is being revised to require previously exempted sources to submit an RFD so that the Department has an inventory and notice of these sources. The commentator states that a notice for inventory purposes should not require a detailed evaluation and should not be subject to a fee. However, the Department has not finalized the proposed Air Quality Exemption List. The comment period closed on July 18, 2010. Proposed revisions to the exemption for the oil and gas industry will include an option to allow facility owners and operators to submit a RFD prior to the submission of a plan approval or operating permit application. This flexibility will allow both the owners and operators of affected facilities and the Department to determine if a plan approval or permit is needed. A fee for this technical review is appropriate. The RFD process is used to determine sources of minor significance. Emission inventories for this sector will be established in

accordance with the source reporting and emission statement requirements in Chapter 135 (relating to reporting of sources).

Two commentators state that proposed § 127.702(h) (relating to plan approval fees) should be revised to indicate that the additional fees are payable only when the affected modifications to the plan approval application are initiated by the owner or operator. The Board disagrees with the commentator. The proposed section has been revised to clarify that the fees are due and payable by the owner or operator of a source when an amendment of a plan approval or revision of an application that requires reassessment of a control technology determination or of the ambient impacts of the source is submitted, whether the amendment or revision is initiated by the owner or operator of the source or by the Department. In the case of the owner or operator of the source initiating the amendment or revision that requires reassessment of the control technology determination or of the ambient impacts of the source, the owner or operator has initiated the action and is required to pay the fee. If the Department has found that the plan approval or application is not approvable in its current form, the Department initiates the action that requires the owner or operator of the source to submit additional information. To be approvable, the owner or operator must submit an amendment or revision on which the Department can take final action. In both cases, the appropriate fee would be due and payable by the owner or operator of the source.

Two commentators state that the proposed fees in § 127.704 (relating to Title V operating permit fees under Subchapter G) should not apply to activities that do not require significant Department action or intervention, such as administrative amendments, minor modifications and transfer of ownership. Such changes occur frequently during the term of the permit but have no environmental impact. The Board disagrees that these fees should not apply. The Department will expend staff time to process each request. The proposed fee will cover that cost.

A commentator indicates that for plan approval fees, the notice should provide the rationale behind how the Department determined the magnitude of the fee increases. The permit fees should be based upon the legitimate effort associated with administering the permit program. The Board's proposed rulemaking considered actual expenditures and the overall direct and indirect cost of administering and implementing the air program to determine the magnitude of the fee increases. The Board proposed a revision to the fee schedule to reflect the cost of the program. For the existing permit fees, the Board proposed a general increase of 20% to reflect the increased costs. The proposed new fees for RFDs, ambient air quality analysis, risk assessments, and source testing and monitoring were developed by reviewing the staff time associated with the activity. The fee was calculated based on the average staff costs and the time associated with the activity. The overall fee schedule proposal was based primarily on the Clean Air Fund history since the fee structure was established in November 1994. To this end, the Board considered the revenue, spending and budgeting history and determined that the annual expenses exceeded revenue. For example, in Fiscal Year (FY) 2008-2009 actual revenue from Title V emission fees was approximately \$18,476,000; expenditures totaled \$22,660,000. For the non-Title V appropriation, revenue generated from application fees and civil penalties was \$5,720,000; expenditures were approximately \$7,949,000. At the time the rulemaking was proposed, a Clean Air Fund deficit was projected by FY 2013. Consequently, the Board proposed increases in the plan approval and permitting fees and new fees sufficient to meet the program costs as required by the APCA.

A commentator states that there should not be extra fees for Risk Assessments as these are included in the existing permit fees. The Board disagrees with the commentator. Risk assessments are staff resource intensive. Only a few are conducted each year depending on the applications received for certain sources including cement kilns, incinerators and landfills. Because these assessments are not required for all plan approval applications, the fee is justified to cover program costs of the complex reviews and analyses.

The commentator states that fees for sources subject to case-by-case maximum achievable control technology (MACT) should recognize that small sources will not require any controls. Small gas-fired industrial boilers will not require a detailed MACT analysis and should not be subject to the large fees that may make sense for a large coal-fired boiler. The Board disagrees. The proposed fee schedule in § 127.702 for MACT review applies solely to sources that emit at least 10 tons per year of a single hazardous air pollutant (HAP) or 25 tons or more of a combination of HAPs. Each MACT application must be reviewed in accordance with applicable Federal and state law and regulations. Small gas-fired industrial boilers would be subject to a MACT analysis if the HAP thresholds are exceeded.

Three commentators believe that the increase in the Title V fee represents a 25% increase over the likely Consumer Price Index adjusted fee, a substantial increase in the fee and stated that based on the draft report "Adequacy of Funding for the Air Quality Program 2002-2007, Table 3. Revenue History," the emission fees provided \$18,335,445 in revenue. The proposed fee increase will bring in an additional \$4.5 million. This is a substantial increase when the fund had a \$2 million surplus in 2006-2007. The Board disagrees. The commentators are referencing the report entitled "An Evaluation of the Pennsylvania Air Quality Program 2002-2007," which is mandated every 5 years under section 4.3 of the APCA. On pages 48-50 of that report, the Department showed the revenues and expenditures for the air program during FY2001/2002 – FY 2006/2007, which were sufficient for the time period evaluated. However, revenue has decreased and expenditures have increased substantially since that report was prepared. Over the next 3 years, the Department estimates Title V and non-Title V revenue of approximately \$27.4 million with projected expenditures of approximately \$32 million. With the draw-down on the balance of the Clean Air Fund and projected increase in revenue of approximately \$7.5 million, fees should adequately cover program costs based on current cost assumptions including personnel, operating expense, program services and fixed assets. The Department will continue to examine and implement cost reduction measures, as appropriate.

One commentator indicated that it is unclear whether greenhouse gases (GHG) will be charged a fee even though the EPA has proposed that GHGs would not be subject to emission fees. The Department should exclude GHGs from the fee structure or establish a different fee structure taking into account considerations pertinent to GHG regulation. The Board agrees that this fee schedule revision should not cover GHG emissions and, therefore, will not impose the Title V emission fee on GHGs. The EPA's Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule published at 75 FR 31514 does not include a mechanism for assessing Title V emission fees. In this final action, the EPA indicates that GHGs are not pollutants subject to the Title V emission fee and that states cannot collect the Title V emission fee on GHGs. The EPA indicated that states could establish other fees, including permit fees sufficient to cover the costs of the GHG program; the EPA will consider fees for GHG permitting during subsequent rulemaking addressing the GHG permitting process. Therefore, the Department has not conducted a detailed analysis of the potential costs of a GHG program

and has not proposed to revise the fee schedule to include GHG costs at this time. Such a review may occur in the future.

## **F. Summary of the Final-form Rulemaking and Changes from Proposed to Final-form Rulemaking**

### *Summary of final-form rulemaking*

The final-form rulemaking adds the following 21 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,” “RATA-relative accuracy test audit,” “risk assessment” and “trial burn operating scenario.” The final amendments revise the definition of one term to provide clarity: “CEMS – continuous emissions monitoring system.” The proposed term “observer” and its definition have been deleted at final because the term and definition are no longer needed.

Final changes to § 127.701 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 program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

Final changes to § 127.702 provide for, among other things, the following proposed fee provisions:

Under subsection (b), and except as otherwise provided, the owner or operator of a source requiring approval under 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: one thousand three hundred dollars for applications filed during the 2011-2015 calendar years; one thousand six hundred dollars for applications filed during the 2016-2020 calendar years; and two thousand dollars for applications filed for the calendar years beginning in 2021.

Under subsection (c), the owner or operator of a source requiring approval under 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: six thousand three hundred dollars for applications filed during the 2011-2015 calendar years; seven thousand three hundred dollars for applications filed during the 2016-2020 calendar years; and eight thousand dollars for applications filed for the calendar years beginning in 2021.

Under subsection (d), the owner or operator of a source requiring approval under Chapter 122 (relating to national standards of performance for new stationary sources), Chapter 124 (relating to national emission standards for hazardous air pollutants) or § 127.35(b) (relating to 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: two thousand dollars for applications filed during the 2011-2015 calendar years; two thousand five hundred dollars for applications filed during the 2016-2020 calendar years; and three thousand dollars for applications filed during the calendar years beginning in 2021.

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: ten thousand dollars for applications filed during the 2011-2015 calendar years; twelve thousand dollars for applications filed during the 2016-2020 calendar years; and fourteen thousand dollars for applications filed during the calendar years beginning in 2021.

Under subsection (f), the owner or operator of a source requiring approval under 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: twenty-seven thousand two hundred dollars for applications filed during the 2011-2015 calendar years; thirty thousand seven hundred dollars for applications filed during the 2016-2020 calendar years; and thirty-five thousand seven hundred dollars for applications filed during the calendar years beginning in 2021.

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: four hundred dollars for applications filed during the 2011-2015 calendar years; five hundred dollars for applications filed during the 2016-2020 calendar years; and six hundred fifty dollars for applications filed during the calendar years beginning in 2021.

Under subsection (h), the amendment of a plan approval or revision of an application 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.

Under subsection (h)(1), the owner or operator of a source requiring 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 owner or operator of a source requiring 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 - three thousand five hundred dollars for applications filed during the 2011-2015 calendar years; four thousand five hundred dollars for applications filed during the 2016-2020 calendar years; and six thousand dollars for applications filed for calendar years beginning in 2021; for all other modeling as defined in 40 CFR 51, Appendix W - seven thousand five hundred dollars for applications filed during the 2011-2015 calendar years; nine thousand dollars for applications filed during the 2016-2020 calendar years; and eleven thousand dollars for applications filed for the calendar years beginning in 2021.

Under subsection (j), the owner or operator of a source that submits a request for determination for a plan approval shall pay a fee equal to: four hundred dollars for requests for determination filed during the 2011-2015 calendar years; five hundred dollars for requests for determination filed during the 2016-2020 calendar years; and six hundred fifty dollars for requests for determination filed for the calendar years beginning in 2021.

Under subsection (k), the owner or operator of a source proposing to use a general plan approval under 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. The Department will establish these fees at the time the general plan approval is issued and will publish the fees in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice; and review period).

Final changes to § 127.703 (relating to operating permit fees under Subchapter F) provide for, among other things, the following final fee provisions:

Under subsection (a) each applicant for an operating permit, which is not a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required under this section to the Department. These fees apply to an administrative amendment, extension, minor modification, revision, renewal, reissuance or transfer due to a change of ownership of each operating permit or part thereof.

Under subsection (b), for processing an application for an operating permit: five hundred dollars for applications filed during the 2011-2015 calendar years; six hundred dollars for applications filed during the 2016-2020 calendar years; and eight hundred fifty dollars for applications filed for the calendar years beginning in 2021.

Under subsection (c), for the annual operating permit administration fee: five hundred dollars for the 2011-2015 calendar years; six hundred dollars for the 2016-2020 calendar years; and seven hundred fifty dollars for the calendar years beginning in 2021. 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 or for both a plan approval and an operating permit shall pay a single fee equal to: four hundred dollars for requests for determination filed during the 2011-2015 calendar years; five hundred dollars for requests for determination filed during the 2016-2020 calendar years; and six hundred fifty dollars for requests for determination filed for the calendar years beginning in 2021.

Under subsection (f), the owner or operator of a source proposing to use a general plan approval under Subchapter H (relating to general plan approvals and operating permits) shall pay a fee that will not be greater than the fees established under this section. The Department will establish these fees at the time the general plan approval is issued and will publish the fees in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

Final changes to § 127.704 provide for, among other things, the following proposed fee provisions:

Under subsection (a), each applicant for an operating permit, which is a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required under this section to the Department. These fees apply to an administrative amendment, extension, minor modification, revision, renewal, reissuance or transfer due to a change of ownership of each operating permit or part thereof.

Under subsection (b), for processing an application for an operating permit: nine hundred dollars for applications filed during the 2011-2015 calendar years; one thousand one hundred dollars for applications filed during the 2016-2020 calendar years; and one thousand five hundred dollars for applications filed for the calendar years beginning in 2021.

Under subsection (c), the annual operating permit administrative fee: nine hundred dollars for applications filed during the 2011-2015 calendar years; one thousand one hundred dollars for applications filed during the 2016-2020 calendar years; and one thousand three hundred dollars for applications filed for the calendar years beginning in 2021.

Under subsection (e), the owner or operator of a source proposing to use a general plan approval under Subchapter H (relating to general plan approvals and operating permits) shall pay a fee which will not be greater than the fees established under § 127.704. The Department will establish these fees at the time the general plan approval is issued and will publish the fees in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

Final changes to § 127.705 provide for, among other things, under subsection (a) that the Title V emission fee is \$70 per ton for each ton of regulated pollutant actually emitted from the facility. The owner or operator of a Title V facility located in Philadelphia County or Allegheny County shall pay the emission fee to the county Title V program approved by the Department under Section 12 of the act (35 P.S. § 4012) and § 127.706 (relating to Philadelphia County and Allegheny County financial assistance).

Under subsection (b), the emission fees required by this section shall be due on or before September 1 of each year for emissions from the previous calendar year. The fees required by this section shall be paid for emissions occurring in calendar year 2010 and for each calendar year thereafter.

Under subsection (d), the emission fee imposed under subsection (a) shall be increased in each calendar year after \_\_\_\_\_ (*Editor's note: The blank refers to the effective date of adoption of this final rulemaking.*), 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.

Final amendments to § 127.708 (relating to risk assessment) provide 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: five thousand dollars for applications filed during the 2011-2015 calendar years; six thousand dollars for applications filed during the 2016–2020 calendar years; and seven thousand two hundred dollars for applications filed for the calendar years beginning in 2021.

Under subsection (c), for a risk assessment that is inhalation only for all other modeling: nine thousand dollars for applications filed during the 2011-2015 calendar years; eleven thousand dollars for applications filed during the 2016–2020 calendar years; and thirteen thousand dollars for applications filed for the calendar years beginning in 2021.

Under subsection (d), for a risk assessment that is multi-pathway: ten thousand dollars for applications filed during the 2011-2015 calendar years; twelve thousand dollars for applications filed during the 2016–2020 calendar years; and fourteen thousand five hundred dollars for applications filed for the calendar years beginning in 2021.

Chapter 139 is amended to add Subchapter D. This subchapter establishes fees for testing, auditing and monitoring activities that the Department undertakes to administer the requirements of the APCA or the CAA. 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). The Department will bill the applicant, owner or operator of an air contamination source for the applicable testing, auditing or monitoring fees after the completion of the required testing, auditing or monitoring activity. The applicant, owner or operator shall submit payment for the testing, auditing or monitoring fee to the Department of Environmental Protection, Bureau of Air Quality, Division of Source Testing and Monitoring, PO Box 8468, Harrisburg, PA 17105-8468 within 60 days of the billing date.

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 program with the objective of ensuring fees meet all program costs and programs are self-sustaining.

Under final § 139.202 (relating to schedule of testing, auditing and monitoring fees) for testing, auditing and monitoring activities performed by Department personnel for calendar years 2011-2015, 2016-2020, and calendar years beginning with 2021, 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 listed in Table I of Annex A.

*Summary of changes from proposed to final-form rulemaking*

Under § 121.1, the proposed term and definition “observer” was deleted.

Under § 127.702, the effective calendar years were changed to 2011-2015, 2016-2020, and 2021. These changes were made to be in agreement with the effective date of the final-form rulemaking.

Under § 127.703, the effective calendar years were changed to 2011-2015, 2016-2020, and 2021. These changes were made to be in agreement with the effective date of the final-form rulemaking.

Under § 127.704, the effective calendar years were changed to 2011-2015, 2016-2020, and 2021. These changes were made to be in agreement with the effective date of the final-form rulemaking.

Under § 127.705, the original Title V emission fee of \$37 per ton for each ton of a regulated pollutant actually emitted from a facility is revised to \$70 per ton. Under subsection (b) the fees required by this section shall be paid for emissions occurring in calendar year 2010 and each calendar year thereafter, revised from calendar year 1994. Under subsection (d), the fee imposed under subsection (a) shall be increased in each calendar year after the effective date of this rulemaking by the percentage, if any, that the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year.

Under § 127.708, the effective calendar years were changed to 2011-2015, 2016-2020, and 2021. These changes were made to be in agreement with the effective date of the final-form rulemaking.

Under § 139.202, the effective calendar years were changed to 2011-2015, 2016-2020, and 2021. These changes were made to be in agreement with the effective date of the final-form rulemaking.

## **G. Benefits, Costs and Compliance**

### **Benefits**

Overall, the citizens of this Commonwealth will benefit from this final-form rulemaking because the fee revisions will allow the Department to maintain staffing levels in the air quality program. This will provide a sound basis for continued air quality assessments and planning that is fundamental to protecting public health and welfare and the environment.

### **Compliance Costs**

The final-form regulation revises 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 \$5.9 million 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 will increase costs to affected 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 final-form rulemaking that industry would need to comply with.

## **H. 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 final-form rulemaking allows the Department to maintain staffing levels in the air quality program, which will provide a sound basis for continued air quality assessments and planning that is fundamental to protecting public health and welfare and the environment.

## **I. Sunset Review**

This final-form rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

## **J. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 6, 2009, the Department submitted a copy of the notice of proposed rulemaking published at 39 *Pa.B.* 6049, to IRRC and the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on xxxx, xx, 20xx, the final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on xxxx, xx, 20xx, and approved the 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 Pennsylvania Code* §§ 7.1 and 7.2.
- (2) At least a 60-day public comment period was provided as required by law, and all comments were considered.
- (3) These final-form regulations do not enlarge the purpose of the proposed rulemaking published at 39 Pa.B. 6049.
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.
- (5) These regulations are reasonably necessary to attain and maintain the ozone and PM2.5 National Ambient Air Quality Standards.

**L. Order of the Board**

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

- (a) The regulations of the Department of Environmental Protection, *25 Pa. Code* Chapters 121, 127 and 139 are amended by amending §§ 121.1 and 127.701-127.705 and adding §§ 127.708, 139.201 and 139.202 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 order and Annex A 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 order and Annex A to IRRC and the Committees as required by the Regulatory Review Act.
- (d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This final-form rulemaking will be submitted to the EPA as an amendment to the Pennsylvania SIP.
- (f) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JOHN HANGER  
Chairperson

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P.S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*CEMS—Continuous emissions monitoring system—*[For purposes of Chapter 127, Subchapter E, all]

~~[(i) All] [of the] THE TOTAL equipment that~~

~~[(A) That] may be required to meet the data acquisition and availability requirements [of Chapter 127, Subchapter E] [set forth by the Department] ESTABLISHED UNDER THE ACT OR CLEAN AIR ACT to sample, condition, analyze and provide a record of emissions on a continuous basis.~~

~~[(B) That may be necessary for the determination, collection and reporting of a pollutant or parameter in the applicable units of measurement in accordance with the requirements set forth by the Department.~~

~~[(ii) The requirements may be set forth by the Department in one or more of the following:~~

~~[(A) Plan approval.~~

~~[(B) Permit.~~

~~[(C) Order.~~

~~[(D) Technical guidance.~~

~~(E) Chapter 127, Subchapter E (relating to new source review).~~

~~(F) Chapter 139, Subchapter C (relating to requirements for source monitoring for stationary sources).~~

~~(G) Other regulations.]~~

CEMS level 1 quarterly report—The written emissions report submitted quarterly to the Department by the owner or operator of a facility with a CEMS. The format and content of the report are specified in the *Continuous Source Monitoring Manual* referenced in § 139.102(3) (relating to references).

CEMS level 1 quarterly report audit—The audit conducted by the Department on the CEMS level 1 quarterly emissions report submitted by the owner or operator of a facility.

(i) The audit includes both of the following activities:

(A) A review of the emissions report for consistency in both format and content with the current *Continuous Source Monitoring Manual* referenced in § 139.102(3).

(B) Subsequent processing of the emissions report through the Continuous Emission Monitoring Data Processing System (CEMDPS), from which a written report summarizing the quarterly report submitted by the facility is generated.

(ii) Initial submittal refers to the first time the CEMS level 1 quarterly report is submitted for audit.

(iii) Resubmittal refers to subsequent submittals of the CEMS level 1 quarterly report to correct incorrect data or calculations or to supply missing data or calculations.

CEMS level 2 system inspection audit—

(i) ~~[A random or as-needed]~~ AN audit conducted by the Department of the CEMS at a facility, which consists of all of the following:

(A) A system configuration and equipment inspection.

(B) A diagnostic check of the analyzers.

(C) An operational audit.

(D) A data inspection.

(ii) The term includes a field systems inspection audit.

CEMS level 3 analyzer audit—

(i) [A random or as-needed] AN audit conducted by the Department of analyzer performance of the CEMS at a facility, which includes both of the following actions:

(A) Each analyzer is challenged with Department-supplied calibration gases or neutral density filters (opacity) at three operational levels.

(B) The results obtained from the facility analyzers are compared to the values of the reference materials.

(ii) The term includes an analyzer performance audit.

CEMS level 4 system audit—An audit OF THE SYSTEM PERFORMANCE OF THE CEMS CONDUCTED by [either] the Department or the FACILITY owner or operator [of the facility of the system performance of the CEMS, conducted] in accordance with the Department's current RATA procedures, when [both of the following occur:

(i) Testing] TESTING is conducted using EPA-approved test methods [;

(ii) The] AND THE test results are reported in the applicable units of measurement in the CEMS level 4 system audit report.

CEMS level 4 system audit report—The written report containing the results of a Department- or company-conducted CEMS level 4 system audit of the system performance of the CEMS.

CEMS level 4 test protocol—A test protocol that describes all test procedures and methods to be used to inspect the CEMS.

CEMS level 4 test protocol review—Department review of the information contained in the CEMS level 4 test protocol.

CEMS level 4 test report (RATA)—The test report detailing the results of the testing conducted on the CEMS.

CEMS level 4 test report (RATA) review—Department review of the information contained in the CEMS level 4 test report (RATA).

CEMS levels—A four-level inspection and audit program that the Department uses to determine the continued accuracy and reliability of installed, certified CEMS.

CEMS periodic self-audit—A periodically conducted audit of system performance that is required of the owner or operator of a certified CEMS, which follows the current RATA

procedures listed in the CEMS phase 2 performance testing section of the current Continuous Source Monitoring Manual referenced in § 139.102(3).

CEMS phase 1 monitoring plan—

(i) The initial written monitoring plan application for the installation of a CEMS, submitted by the owner or operator of a facility to the Department.

(ii) The monitoring plan application must indicate the probable capability of a monitoring system to meet all of the regulatory requirements.

CEMS phase 1 monitoring plan review—Review of the CEMS phase 1 monitoring plan by the Department.

(i) Initial certification refers to a currently uncertified CEMS undergoing the process of certification for the first time.

(ii) Recertification refers to a currently certified CEMS undergoing the process of the CEMS phase 1 monitoring plan review due to a change from the currently approved system.

CEMS phase 2 test protocol—

(i) The report that documents the performance testing that will be conducted on the CEMS by the owner or operator of the facility to obtain Department certification.

(ii) The report is submitted to the Department in the form of a written test protocol as specified in the Continuous Source Monitoring Manual referenced in § 139.102(3).

CEMS phase 3 certification test report—The written report submitted to the Department by the owner or operator of the facility, which includes all of the following information to verify the compliance of the CEMS with all regulatory requirements:

(i) Identification of all analyzer/measurement device serial numbers.

(ii) Identification of all raw data and calculations for the testing specified in the CEMS phase 2 test protocol submitted by the owner or operator of the facility.

(iii) All additional data or testing required by the Department[3].

CEMS phase 3 certification test report review—Review of the CEMS phase 3 certification test report by the Department, which, if approved in writing, results in the certification of the CEMS.

CEMS phases—

(i) The certification process for a new, currently uncertified CEMS.

(ii) The recertification process for a currently certified CEMS for which the owner or operator has applied for a change from the currently approved system.

\* \* \* \* \*

[ Observer—For purposes of Chapter 139, Subchapter D (relating to testing, auditing and monitoring fees), Department staff qualified to observe testing.]

\* \* \* \* \*

RATA—Relative accuracy test audit—A performance test of the CEMS required as part of the following:

(i) A CEMS phase 2 test protocol.

(ii) A CEMS level 4 system audit, when conducted by the Department.

(iii) The CEMS periodic self-audit.

\* \* \* \* \*

Risk assessment—The determination of potentially adverse health effects from exposure to chemicals, including both quantitative and qualitative expressions of risk.

\* \* \* \* \*

Trial burn operating scenario—A demonstration of process capability for a source using an operating method or operating process different from the process operating conditions described in the operating permit.

\* \* \* \* \*

## CHAPTER 127. CONSTRUCTION, MODIFICATION, REACTIVATION AND OPERATION OF SOURCES

### Subchapter I. PLAN APPROVAL AND OPERATING PERMIT FEES

#### § 127.701. General provisions.

\* \* \* \* \*

(b) 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 act (35 P.S. § 4009.2).

(c) Fees collected under this subchapter to implement the requirements of Title V of the Clean Air Act and the Small Business Stationary Source Technical and Environmental Compliance Assistance, Compliance Advisory Committee and the Office of Small Business Ombudsman shall be made payable to the Pennsylvania Clean Air Fund and deposited into a restricted revenue account within the Clean Air Fund.

(d) At least every 5 years, the Department will provide the EQB with an evaluation of the fees in this subchapter and recommend regulatory changes to the EQB 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.

§ 127.702. Plan approval fees.

\* \* \* \* \*

(b) Except as provided in subsections (c)—~~[(g)]~~ (j), the owner or operator of a source requiring approval under Subchapter B (relating to plan approval requirements) shall pay a fee equal to:

(1) ~~[Seven hundred fifty dollars for applications filed during the 1995—1999 calendar years.~~

(2) ~~Eight hundred fifty dollars for applications filed during the 2000—2004 calendar years.~~

(3) ~~[One thousand dollars for applications filed] [for] [during] [the] [calendar years beginning in] [2005] [~~—2009~~ calendar years.~~

~~—(2) One thousand three hundred dollars for applications filed during the [2010—2014] 2011-2015 calendar years.~~

~~[(3)] (2) One thousand six hundred dollars for applications filed during the [2015—2019] 2016-2020 calendar years.~~

~~[(4)] (3) Two thousand dollars for applications filed for the calendar years beginning in [2020] 2021.~~

(c) [A] The owner or operator of a source requiring approval under Subchapter E (relating to new source review) shall pay a fee equal to:

(1) [Three thousand five hundred dollars for applications filed during the 1995—1999 calendar years.

(2) Four thousand three hundred dollars for applications filed during the 2000—2004 calendar years.

(3) [~~Five thousand three hundred dollars for applications filed~~] [beginning in] [~~during the~~] [2005] [~~—2009 calendar years~~].

~~—(2) Six thousand three hundred dollars for applications filed during the [2010—2014] 2011-2015 calendar years.~~

~~[(3)] (2) Seven thousand three hundred dollars for applications filed during the [2015—2019] 2016-2020 calendar years.~~

~~[(4)] (3) Eight thousand dollars for applications filed for the calendar years beginning in [2020] 2021.~~

(d) [A] **The owner or operator of a** source subject to standards adopted under Chapter 122 (relating to national standards of performance for new stationary sources), [or to standards adopted under] Chapter 124 (relating to national emission standards for hazardous air pollutants) **or § 127.35(b) (relating to maximum achievable control technology standards for hazardous air pollutants)** shall pay a fee equal to:

(1) [One thousand two hundred dollars for applications filed during the 1995—1999 calendar years.

(2) One thousand four hundred dollars for applications filed during the 2000—2004 calendar years.

(3) [~~One thousand seven hundred dollars for applications filed~~] [beginning in] [~~during the~~] [2005] [~~—2009 calendar years~~].

~~—(2) Two thousand dollars for applications filed during the [2010—2014] 2011-2015 calendar years.~~

~~[(3)] (2) Two thousand five hundred dollars for applications filed during the [2015—2019] 2016-2020 calendar years.~~

~~[(4)] (3) Three thousand dollars for applications filed during the calendar years beginning in [2020] 2021.~~

(e) [A] **The owner or operator of a** source subject to § 127.35(c), (d) or (h) [(relating to maximum achievable control technology standards for hazardous air pollutants)] shall pay a fee equal to:

(1) ~~[Five thousand five hundred dollars for applications filed during the 1995—1999 calendar years.~~

(2) Six thousand seven hundred dollars for applications filed during the 2000—2004 calendar years.

~~(3) [Eight thousand dollars for applications filed] [beginning in] [during the] [2005] [— 2009 calendar years.~~

~~—(2) Ten thousand dollars for applications filed during the [2010—2014] 2011-2015 calendar years.~~

~~[(3)] (2) Twelve thousand dollars for applications filed during the [2015—2019] 2016-2020 calendar years.~~

~~[(4)] (3) Fourteen thousand dollars for applications filed during the calendar years beginning in [2020] 2021.~~

(f) [A] The owner or operator of a source requiring approval under Subchapter D (relating to prevention of significant deterioration of air quality) shall pay a fee equal to:

(1) [Fifteen thousand dollars for applications filed during the 1995—1999 calendar years.

(2) Eighteen thousand five hundred dollars for applications filed during the 2000—2004 calendar years.

~~(3) [Twenty-two thousand seven hundred dollars for applications filed] [beginning in] [during the] [2005] [— 2009 calendar years.~~

~~—(2) Twenty-seven thousand two hundred dollars for applications filed during the [2010—2014] 2011-2015 calendar years.~~

~~[(3)] (2) Thirty thousand seven hundred dollars for applications filed during the [2015—2019] 2016-2020 calendar years.~~

~~[(4)] (3) Thirty-five thousand seven hundred dollars for applications filed during the calendar years beginning [2020] IN 2021.~~

(g) Except as provided in subsection (h), the owner or operator of a source proposing a [minor] modification of a plan approval, extension of a plan approval[, and] or transfer of a plan approval due to a change of ownership, shall pay a fee equal to:

(1) [Two hundred dollars for applications filed during the 1995—1999 calendar years.

(2) Two hundred thirty dollars for applications filed during the 2000—2004 calendar years.

~~(3) [Three hundred dollars for applications filed] [beginning in] [during the] [2005] [~~2009~~ calendar years.~~

~~(2) Four hundred dollars for applications filed during the [2010—2014] 2011-2015 calendar years.~~

~~(3) (2) Five hundred dollars for applications filed during the [2015—2019] 2016-2020 calendar years.~~

~~(4) (3) Six hundred fifty dollars for applications filed during the calendar years beginning in [2020] 2021.~~

(h) The [modification] amendment of a plan approval or revision of an application [by the applicant] that [includes] requires the reassessment of a control technology determination or of the ambient impacts of the source [will not be considered] is a [minor] significant modification of the plan approval or application.

(1) The [applicant proposing] OWNER OR OPERATOR OF A SOURCE REQUIRING 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).

(2) The [applicant proposing] OWNER OR OPERATOR OF A SOURCE REQUIRING 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:

(i) For modeling using a screening technique as defined in 40 CFR 51, Appendix W:

(A) Three thousand five hundred dollars for applications filed during the [2010—2014] 2011-2015 calendar years.

(B) Four thousand five hundred dollars for applications filed during the [2015—2019] 2016-2020 calendar years.

(C) Six thousand dollars for applications filed for calendar years beginning in [2020] 2021.

(ii) For all other modeling as defined in 40 CFR 51, Appendix W:

(A) Seven thousand five hundred dollars for applications filed during the [2010—2014] 2011-2015 calendar years.

(B) Nine thousand dollars for applications filed during the [2015—2019] 2016-2020 calendar years.

(C) Eleven thousand dollars for applications filed for the calendar years beginning in [2020] 2021.

(i) The Department may establish application fees for general plan approvals and plan approvals for sources operating at multiple temporary locations **[which] that** will not be greater than the fees established **[by subsection (b)] under this section**. These fees **[shall] will** 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).

(i) The owner or operator of a source that submits a request for determination for [:

(1) A] A plan approval [application] shall pay a fee equal to:

[(i)] (1) Four hundred dollars for requests for determination filed during the [2010—2014] 2011-2015 calendar years.

[(ii)] (2) Five hundred dollars for requests for determination filed during the [2015—2019] 2016-2020 calendar years.

[(iii)] (3) Six hundred fifty dollars for requests for determination filed for the calendar years beginning in [2020] 2021.

[(2) 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.]

(k) The owner or operator of a source proposing to use a general plan approval under Subchapter H (relating to general plan approvals and operating permits) shall pay a fee that will not be greater than the fees established under this section. The Department will establish these fees at the time the general plan approval is issued and will publish the fees in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

### **§ 127.703. Operating permit fees under Subchapter F.**

(a) Each applicant for an operating permit, which is not a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required **[by] under** this section to the Department. These fees apply to **[the] an administrative amendment, extension, minor** modification, revision, renewal **[and],** reissuance **or transfer due to a change of ownership** of each operating permit or part thereof.

(b) The fee for processing an application for an operating permit is:

(1) ~~[Two hundred fifty dollars for applications filed during the 1995—1999 calendar years.~~

(2) Three hundred dollars for applications filed during the 2000—2004 calendar years.

(3) ~~[Three hundred seventy-five dollars for applications filed] [for] [during] [the] [calendar years beginning in] [2005] [~~—2009 calendar years.~~~~

~~—(2) Five hundred dollars for applications filed during the [2010—2014] 2011-2015 calendar years.~~

~~[(3)] (2) Six hundred dollars for applications filed during the [2015—2019] 2016-2020 calendar years.~~

~~[(4)] (3) Eight hundred fifty dollars for applications filed for the calendar years beginning in [2020] 2021.~~

(c) The annual operating permit administration fee is[:] due on or before March 1 of each year for the current calendar year. THE FEE IS:

(1) [Two hundred fifty dollars for applications filed during the 1995—1999 calendar years.

(2) Three hundred dollars for applications filed during the 2000—2004 calendar years.

(3) ~~[Three hundred seventy-five dollars for applications filed] [during] [~~for~~] [the] [years beginning in] [2005] [~~—2009 calendar years.~~~~

~~—(2) Five hundred dollars for the [2010—2014] 2011-2015 calendar years.~~

~~[(3)] (2) Six hundred dollars for the [2015—2019] 2016-2020 calendar years.~~

~~[(4)] (3) Seven hundred fifty dollars for the calendar years beginning in [2020] 2021.~~

(d) The Department may establish application fees for general operating permits and operating permits for sources operating at multiple temporary locations **[which] that** will not be greater than the fees established **[by] under** this section. These fees **[shall] will** be established at the time the operating permit 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).

(e) The owner or operator of a source that submits a request for determination for [:

~~—(1) An~~ AN operating permit OR FOR BOTH A PLAN APPROVAL AND AN OPERATING PERMIT shall pay a SINGLE fee equal to:

~~[(i)]~~ (1) Four hundred dollars for requests for determination filed during the [2010—2014] 2011-2015 calendar years.

~~[(ii)]~~ (2) Five hundred dollars for requests for determination filed during the [2015—2019] 2016-2020 calendar years.

~~[(iii)]~~ (3) Six hundred fifty dollars for requests for determination filed for the calendar years beginning in [2020] 2021.

~~[(2) Both an operating permit under this section and a plan approval under § 127.702(j) (relating to plan approval fees) shall pay one request for determination fee.]~~

(f) The owner or operator of a source proposing to use a general plan approval under Subchapter H (relating to general plan approvals and operating permits) shall pay a fee that will not be greater than the fees established under this section. The Department will establish these fees at the time the general plan approval is issued and will publish the fees in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

#### **§ 127.704. Title V operating permit fees under Subchapter G.**

(a) Each applicant for an operating permit, which is a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required [by] under this section to the Department. These fees apply to [the] an administrative amendment, extension, **minor** modification, revision, renewal [and], reissuance **or transfer due to a change of ownership** of each operating permit or part thereof.

(b) The fee for processing an application for an operating permit is:

(1) [Five hundred dollars for applications filed during the 1995—1999 calendar years.

(2) Six hundred fifteen dollars for applications during the 2000—2004 calendar years.

(3) [Seven hundred fifty dollars for applications filed during the] [calendar years beginning in] [2005] [~~—2009 calendar years.~~

~~—(2)~~ Nine hundred dollars for applications filed during the [2010—2014] 2011-2015 calendar years.

~~[(3)]~~ (2) One thousand one hundred dollars for applications filed during the [2015—2019] 2016-2020 calendar years.

~~[(4)] (3) One thousand five hundred dollars for applications filed for the calendar years beginning in [2020] 2021.~~

(c) The annual operating permit administration fee to be paid by **THE OWNER OR OPERATOR OF** a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions) is:

(1) ~~[Six hundred fifteen dollars for applications filed during the 2000—2004 calendar years.~~

(2) ~~[Seven hundred fifty dollars for applications filed during the] [years beginning in] [2005] [~~—2009 calendar years.~~~~

~~—(2) Nine hundred dollars for applications filed during the [2010—2014] 2011-2015 calendar years.~~

~~[(3)] (2) One thousand one hundred dollars for applications filed during the [2015—2019] 2016-2020 calendar years.~~

~~[(4)] (3) One thousand three hundred dollars for applications filed for the calendar years beginning in [2020] 2021.~~

(d) The Department may establish application fees for general operating permits and operating permits for sources operating at multiple temporary locations **[which] that** will not be greater than the fees established **[by] under** this section. These fees **[shall] will** be established at the time the operating permit 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).

(e) The owner or operator of a source proposing to use a general plan approval under Subchapter H (relating to general plan approvals and operating permits) shall pay a fee that will not be greater than the fees established under this section. The Department will establish these fees at the time the general plan approval is issued and will publish the fees in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

## § 127.705. Emission fees.

(a) ~~[The] [Beginning January 1, 2010, the]~~ owner or operator of a Title V facility including A Title V [facilities] FACILITY located in ~~[Allegheny County and]~~ Philadelphia County **OR ALLEGHENY COUNTY**, except a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions), shall pay an annual Title V emission fee of ~~[\$37] \$70~~ per ton for each ton of a regulated pollutant actually emitted from the facility. The owner or operator will not be required to pay an emission fee for emissions of more than 4,000 tons of each regulated pollutant from the facility. ~~[Sources]~~ **THE OWNER OR OPERATOR OF A TITLE V FACILITY** located in Philadelphia County ~~[and]~~ **OR** Allegheny County shall pay the emission fee to the county **TITLE V** program ~~[if the county Title V program has~~

~~received approval~~ **APPROVED BY THE DEPARTMENT** under section 12 of the act (35 P.S. § 4012) and § 127.706 (relating to Philadelphia County and Allegheny County financial assistance).

(b) [From November 26, 1994, through 1999, the owner or operator of a phase I affected unit or an active substitution unit as defined by Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642) shall pay an annual emission fee of \$14 per ton for each ton of a regulated pollutant actually emitted from the unit. The owner or operator will not be required to pay an emission fee for emissions of more than 4,000 tons of each regulated pollutant from the facility. Sources located in Philadelphia County and Allegheny County shall pay the emission fee to the county program if the county Title V program has received approval under section 12 of the act (35 P.S. § 4012), and § 127.706. Beginning in the year 2000, sources covered by this subsection shall pay the fees established in subsection (a). The other provisions of this subsection notwithstanding, the owner or operator of a phase I affected unit or an active substitution unit as defined by Title IV of the Clean Air Act will not be required to pay more than \$148,000 plus the increase established by subsection (e) for each regulated pollutant emitted from a Title V facility. Substitution units identified as conditional substitution units by the owner or operator shall pay the emission fee established by subsection (a).]

[(c)] The emissions fees required by this section shall be due on or before September 1 of each year for emissions from the previous calendar year. The fees required by this section shall be paid for emissions occurring in calendar year [1994] [2009] 2010 and for each calendar year thereafter.

[(d)] (c) As used in this section, the term "regulated pollutant" means a VOC, each pollutant regulated under sections 111 and 112 of the Clean Air Act (42 U.S.C.A. §§ 7411 and 7412) and each pollutant for which a National ambient air quality standard has been promulgated, except that carbon monoxide shall be excluded from this reference.

[(e)] (d) The emission fee imposed under subsection (a) shall be increased in each calendar year after [November 26, 1994] [2010] (EDITOR'S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS FINAL-FORM RULEMAKING.), 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:

(1) The Consumer Price Index for a calendar year is the average of the Consumer Price Index for All-Urban Consumers, published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

(2) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

**§ 127.708. Risk assessment.**

*(Editor's Note: The following section is new and printed in regular type to enhance readability.)*

(a) Each applicant for a risk assessment shall, as part of the plan approval application, submit the application fee required by this section to the Department.

(b) The owner or operator of a source applying for a risk assessment that is inhalation only with a screening model shall pay a fee equal to:

(1) Five thousand dollars for applications filed during the ~~[2010—2014]~~ 2011-2015 calendar years.

(2) Six thousand dollars for applications filed during the ~~[2015—2019]~~ 2016-2020 calendar years.

(3) Seven thousand two hundred dollars for applications filed for the calendar years beginning in ~~[2020]~~ 2021.

(c) The owner or operator of a source applying for a risk assessment that is inhalation only for all other modeling shall pay a fee equal to:

(1) Nine thousand dollars for applications filed during the ~~[2010—2014]~~ 2011-2015 calendar years.

(2) Eleven thousand dollars for applications filed during the ~~[2015—2019]~~ 2016-2020 calendar years.

(3) Thirteen thousand dollars for applications filed for the calendar years beginning in ~~[2020]~~ 2021.

(d) The owner or operator of a source applying for a risk assessment that is multi-pathway shall pay a fee equal to:

(1) Ten thousand dollars for applications filed during the ~~[2010—2014]~~ 2011-2015 calendar years.

(2) Twelve thousand dollars for applications filed during the ~~[2015—2019]~~ 2016-2020 calendar years.

(3) Fourteen thousand five hundred dollars for applications filed for the calendar years beginning in ~~[2020]~~ 2021.

## CHAPTER 139. SAMPLING AND TESTING

*(Editor's Note: The following §§ 139.201 and 139.202 are new and printed in regular type to enhance readability.)*

### Subchapter D. TESTING, AUDITING AND MONITORING FEES

#### § 139.201. General provisions.

(a) This subchapter establishes fees for testing, auditing and monitoring activities that the Department undertakes to administer the requirements of the act or the Clean Air Act.

(b) 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 act (35 P.S. § 4009.2).

(c) The Department will bill the applicant, owner or operator of an air **[contaminant]** **CONTAMINATION** source for the applicable testing, auditing or monitoring fees after the completion of the required testing, auditing or monitoring activity.

(d) The applicant, owner or operator shall submit payment for the testing, auditing or monitoring fee to the Department **OF ENVIRONMENTAL PROTECTION, BUREAU OF AIR QUALITY, DIVISION OF SOURCE TESTING AND MONITORING, PO BOX 8468, HARRISBURG, PA 17105-8468** within 60 days of the billing date.

(e) At least every 5 years, the Department will provide the EQB with an evaluation of the fees in this subchapter and recommend regulatory changes to the EQB 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.

#### § 139.202. Schedule of testing, auditing and monitoring fees.

(a) For testing, auditing and monitoring activities performed by Department personnel for calendar years ~~[2010—2014]~~ **2011-2015**, 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 listed in Table I for the ~~[2010—2014]~~ **2011-2015** calendar years.

(b) For testing, auditing and monitoring activities performed by Department personnel for calendar years ~~[2015—2019]~~ **2016-2020**, 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 listed in Table I for the ~~[2015—2019]~~ **2016-2020** calendar years.

(c) For testing, auditing and monitoring activities performed by Department personnel for calendar years beginning with ~~[2020]~~ **2021**, 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 listed in Table I for the calendar years beginning with [2020] 2021.

<b>TABLE I</b>				
<b>Schedule of Testing, Auditing and Monitoring Fees for Activities Performed by Department Personnel</b>				
<i>Activity</i>	<i>Fee Basis</i>	<i>Fee Amount</i>		
		<i>Calendar Years</i>		
		<del>[2010- 2014]</del> <u>2015</u>	<del>[2015- 2019]</del> <u>2016- 2020</u>	<del>[2020]</del> <u>2021+</u>
<b>(1) CEMS certification activities</b>				
(i) CEMS phase 1 monitoring plan review, initial certification	Base fee (includes one air contamination source):	\$1,500	\$1,800	\$2,200
	Charge for each additional air contamination source:	\$500	\$600	\$700
	Charge for each CEMS:	\$200	\$240	\$300
(ii) CEMS phase 1 monitoring plan review, recertification	Base fee (includes one air contamination source):	\$750	\$900	\$1,100
	Charge for each additional air contamination source:	\$250	\$300	\$360
	Charge for each CEMS:	\$100	\$120	\$150
(iii) CEMS phase 3 certification test report review	Base fee (for each submittal):	\$750	\$900	\$1,100
	Charge for each CEMS:	\$200	\$240	\$300
(iv) CEMS test observation	One day <del>[, per observer, maximum of two observers*]:</del>	\$675	\$810	\$1,000
	Charge for each additional day <del>[, per observer, maximum of two observers*]:</del>	\$350	\$420	\$500
<b>(2) CEMS test report review activities (not linked with a CEMS phase 1 certification application)</b>				
(i) CEMS level 4 test protocol review	Per submittal:	\$500	\$600	\$700
(ii) CEMS level 4 test	Base fee (for each submittal):	\$500	\$600	\$700

report (RATA) review				
	Charge for each CEMS:	\$150	\$180	\$200
<b>(3) CEMS audit activities</b>				
(i) CEMS level 1 quarterly report audit, initial submittal	For each initial submittal, whichever is less:			
	Per facility:	\$500	\$600	\$700
	Per air contamination source:	\$200	\$240	\$300
	Per CEMS:	\$100	\$120	\$150
(ii) CEMS level 1 quarterly report audit, resubmittal	Per CEMS:	\$200	\$240	\$300
(iii) CEMS level 2 system inspection audit	Per test program:	\$1,000	\$1,200	\$1,500
(iv) CEMS level 3 analyzer audit	Per air contamination source:	\$1,000	\$1,200	\$1,500
	Charge for each CEMS, per air contamination source:	\$200	\$240	\$300
(v) CEMS level 4 system audit	Base fee per facility (includes one air contamination source):	\$2,500	\$3,000	\$3,600
	For each additional air contamination source at same facility:	\$1,000	\$1,200	\$1,500
	Lb/hr test, per air contamination source:	\$500	\$600	\$700
<b>(4) Source testing activities</b>				
(i) Source test protocol review	Per protocol:	\$675	\$810	\$1,000
	Review additional information, per request:	\$100	\$120	\$150
(ii) Trial burn source test protocol review	Per protocol:	\$1,700	\$2,040	\$2,500
(iii) Source test report review	Per air contamination source (as defined in the permit):	\$1,000	\$1,200	\$1,500
	Review of additional test information, per air contamination source, per request:	\$300	\$360	\$450
(iv) Trial burn source test	Per trial burn operating	\$3,050	\$3,660	\$4,400

report review	scenario:			
(v) Source test observation* [ <del>*</del> ]	Per day [ <del>per observer,</del> <del>maximum of two observers*</del> ]:	\$675	\$810	\$1,000
(vi) Department-conducted source test	Per pollutant or parameter per day, laboratory costs included:	\$3,000	\$3,600	\$4,400

~~[\*When more than one observer is required to conduct observation.~~

~~\_\*]~~ \*A source test observation does not include visible emission observations that are not part of a Department test plan.



**PENNSYLVANIA**  
**Air Quality Fee Schedules**  
**25 Pa. Code Chapters 121, 127 and 139**  
**39 Pa.B. 6049 (October 17, 2009)**  
**Environmental Quality Board Regulation # 7-441**  
**(Independent Regulatory Review Commission # 2800)**

**Comment and Response Document**

## Air Quality Fee Schedules Proposed Rulemaking

On October 17, 2009, the Environmental Quality Board (Board, EQB) published a notice of public hearings and comment period for a proposed rulemaking concerning revisions to *25 Pa. Code* Chapters 121, 127 and 139 (relating to general provisions; construction, modification, reactivation and operation of sources; and sampling and testing) 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 amend the existing annual emission fee paid by the owner or operator of a Title V facility and add a new section to address fees for risk assessment applications. 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). If the revised fee schedule for the Air Program is adopted, the final-form regulation will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP). The public comment period closed on December 21, 2009.

Three public hearings were held on the proposed rulemaking as follows:

November 17, 2009    Department of Environmental Protection  
10:00 AM            Southcentral Regional Office  
                          Susquehanna Room A  
                          909 Elmerton Avenue  
                          Harrisburg, PA 17110

November 19, 2009    Department of Environmental Protection  
10:00 AM            Southeast Regional Office  
                          Delaware River Conference Room  
                          2 East Main Street  
                          Norristown, PA 19401

November 20, 2009    Department of Environmental Protection  
10:00 AM            Southwest Regional Office  
                          Waterfront A Conference Room  
                          400 Waterfront Drive  
                          Pittsburgh, PA 15222

This document summarizes the comments received during the public comment period. Each public comment is listed with the identifying commentator number for each commentator that made the comment. A list of the commentators, including name and affiliation (if any) can be found at the beginning of this document. The Board invited each commentator to prepare a one-page summary of the commentator's comments. Three one-page summaries were submitted to the Board for this rulemaking. No testimony was presented at the hearings. The Senate and House Committees did not submit comments.

**Table of Commentators for the Environmental Quality Board**  
**Air Quality Fee Schedules Rulemaking # 7-441**  
**(IRRC # 2800)**

<b>ID</b>	<b>Name/Address</b>	<b>One Page Summary Submitted for Distribution to EQB</b>	<b>Provided Testimony</b>	<b>Requested Copy of Final Rulemaking after EQB Action</b>
1.	Tony Fago Mill Manager Appleton Papers, Inc. Roaring Spring Mill			X
2.	Vincent J. Brisini Manager, Air Resources RRI Energy	X		
3.	Douglas L. Biden President Electric Power Generation Association	X		
4.	Matthew H. Gontarz Plant Manager Osram Sylvania Products, Inc.			
5.	Gene Barr Vice President Government and Public Affairs Pennsylvania Chamber of Business and Industry			
6.	Peter T. Kimmel V.P. of Operations Armstrong Cement & Supply			
7.	Luis A. Comas Environmental Managing Consultant Sunoco, Inc.			
8.	Jeff A. McNelly Executive Director ARIPPA	X		
9.	Robert R. Perry Advanced Scientist FirstEnergy Corp.			
10.	Peter E. Rigney General Manager Scrubgrass Generating Plant Cogentrix Energy			

11.	Mary Helen Marsh Director of Environmental Programs Exelon Power			
12.	Arthur E. Hall, P.E. Director, Environmental Affairs Wheatland Tube Co.			
13.	Allen Kramer Manager Environmentt, Health and Safety The Boeing Company			
14.	Jesse Hackenberg Engineer, Environmental Compliance JW Aluminum Company			
15.	David C. Cannon Jr. Vice President Environment, Health & Safety Allegheny Energy			
16.	Basil G. Constantelos Managing Director Environmental Services Midwest Generation EME, LLC			
17.	Kim Kaufman Executive Director Independent Regulatory Review Commission			

## General Comments

**1. Comment:** The commentator understands the necessity of increasing the annual Title V emission fees over the next several years. The commentator states that the fees are intended to cover most, if not all of the activities related to the air program. (4)

**Response:** The Board appreciates the comment and agrees that the fees are intended to support the air program as required by Section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3). Section 6.3 authorizes the Environmental Quality Board to establish fees sufficient to cover “the indirect and direct costs” of administering the Department’s air pollution control program

**2. Comment:** A commentator supports the proposed periodic evaluation of the sufficiency of the fee program. The commentator requests that any recent evaluations be made available to the public for review. (6)

**Response:** The Board acknowledges the support for the periodic evaluation specified in proposed § 127.701(d) (relating to general provisions). The most recent evaluation of the program funding was conducted and published in the Department’s report entitled “Evaluation of the Pennsylvania Air Quality Program 2002 – 2007.” The report is available on the Department’s Internet site at <http://www.dep.state.pa.us/dep/deputate/airwaste/aq/default.htm>.

**3. Comment:** The commentator is supportive of a reasonable and appropriate fee schedule so that any necessary reviews and approvals are implemented in a timely manner. (6)

**Response:** The Board appreciates the commentator’s support for the revised fee schedule. The fee schedule amendments are necessary for the collection of fees sufficient to cover the costs of administering the air program, including the plan approval and operating permit programs, so that reviews and approvals are conducted in a timely manner.

**4. Comment:** A commentator states that the proposed fee schedules are extreme considering that there is no justification in terms of man-hour requirements associated with the fees. (12)

**Response:** The Department recommended the fee schedule proposed by the Board by analyzing the current and projected income and expenditures for the Clean Air Fund. The Department considered actual Clean Air Fund expenditures during the past 16 years. A review of the current and expected workload was completed to assess the need for increased fees and additional fees. As a result, the proposed fee schedules were developed to ensure that fees are sufficient to administer program costs.

**5. Comment:** A commentator understands the budgetary pressures being felt by State agencies and recognizes the need for the Department to increase fees which were previously established and have not been increased for almost 15 years. However, the proposed rule puts an onerous financial burden on industry, including manufacturing facilities. (5)

**Response:** The Board appreciates the commentator's recognition of the need for fee increases and concerns raised regarding a potential financial burden placed on all facility owners and operators that are impacted by the fee schedule changes. However, fees collected are no longer sufficient to cover program costs. Under the existing regulatory framework, plan approval and operating permit fees have not increased since January 2005, as promulgated in the final-form rulemaking published November 26, 1994 (24 Pa.B. 5899, p. 5937-5938). In regards to the Title V emission fee, the Department has relied on consumer price index (CPI) adjustments to the base fee, which was established November 26, 1994 (24 Pa.B. 5899, p. 5939). The fee schedule in the final-form rulemaking would apply prospectively to applications submitted to the Department on or after the date of publication of the final-form rulemaking in the *Pennsylvania Bulletin*—therefore the new fees should not take effect prior to the spring of 2011. The final-form rulemaking retains the phased-in approach for periodic increases in plan approval and operating permit fees.

**6. Comment:** Three commentators recognize the need for the Department to increase the fees which were previously established and have not been increased for almost 15 years. If this provides the resources to conduct and finalize necessary activities it will be money well spent. (2, 3, 11)

**Response:** The Board thanks the commentators for their support of the fee schedule amendments. If the revised fee schedule is approved as final-form rulemaking, the Department anticipates the ability to retain current staffing levels of "Clean Air Fund" positions to provide the services necessary for administering the Commonwealth's air pollution control program.

**7. Comment:** The proposed rule significantly increases the annual emission fee and adds a significant amount of new annual air permit-related activity fees. The proposed rule puts an onerous financial burden on manufacturing facilities. (1, 5)

**Response:** While the Board understands the concerns of the commentators, the Department is obligated under section 6.3 of the APCA (35 P.S. § 4006.3) to establish fees sufficient to cover indirect and direct costs of administering the air quality program. Because air program expenditures continue to exceed revenue, the existing fee schedule must be amended to ensure that fees collected are sufficient to cover program costs.

**8. Comment:** A commentator supports the proposed periodic evaluation of the sufficiency of the fee program. (6)

**Response:** The Department appreciates the support and will conduct periodic fee schedule evaluations at least every 5 years and will make recommendations to the Board for fee adjustments, as appropriate. When feasible, this evaluation will coincide with the periodic program evaluation mandated under Section 4.3 (relating to evaluation) of the APCA.

**9. Comment:** The preamble indicates that the Commonwealth would benefit from the amendments because the Department would be able to maintain needed staffing levels. However, many agencies are implementing cost cutting measures including eliminating,

reducing or reevaluating the services they provide in order to be more competitive and effective. (5, 7)

**Response:** As a result of the unprecedented budget shortfalls in the General Fund in recent years, the Department has implemented numerous cost reduction and streamlining measures and has reevaluated services and eliminated some activities. However, the remaining programs implemented and administered by the Department are mandated by the Federal Clean Air Act (CAA) (42 U.S.C.A. § 7661-7661f), the APCA and the implementing regulations. The Department must also demonstrate to the EPA that it has sufficient funds and staff to implement, administer and enforce CAA requirements including delegated programs for new source performance standards and national emission standards for hazardous air pollutants, and the Title V Permits Program and new source permitting programs—these programmatic activities cannot be eliminated. Nonetheless, approximately 24 full-time-equivalent (FTE) positions have been eliminated since 2007. Certain innovative program development projects including the development of an electronic permitting system for general plan approvals and general operating permits have been put on hold.

**10. Comment:** The Department should consider whether the emissions fee cap of 4,000 tons per regulated pollutant, presently specified in the APCA, should be modified to adjust for disproportionate emission fee impacts on industry. (5)

**Response:** The Department agrees that the restriction on the payment of emission fees, which is currently limited to 4,000 tons per “regulated pollutant” as mandated under Section 6.3 of the APCA and its implementing regulations, should be repealed. However, a legislative amendment to the APCA would be necessary. Certain states including the State of New Jersey require the payment of fees for all regulated pollutant emissions. New York now requires the payment of emission fees for up to 7,000 tons per regulated pollutant, rather than 4,000 tons. Maryland has eliminated its cap beginning with fees due in 2011. During the ongoing evaluation of the adequacy of the Pennsylvania fee schedule for the air program, the Department will consider the commentator’s recommendation.

**11. Comment:** The review of the program every 5 years will allow DEP to revise the fees. Such frequent revisions of a regulatory fee program are not an appropriate method to address Commonwealth budget shortfalls. Clean guidelines defining when and how the fees may be increased are necessary. (5, 7)

**Response:** As proposed, § 127.702(d) does not require the Board or Department to revise the fee schedule every 5 years. The provision, if adopted, would require the Department to conduct periodic evaluations of the fee schedule at least every 5 years and make recommendations to the Board for fee adjustments, as appropriate. When feasible, this evaluation will coincide with the periodic program evaluation mandated under Section 4.3 of the APCA. The fee structure in the final-form rulemaking is consistent with the existing framework which provides for periodic fee increases. However, if the Department determines during the periodic evaluation that a revision of the fee structure is warranted and makes a recommendation to the Board for a revision, a proposed rulemaking with public hearings and public comment period would be required by law before a revision to the fee schedule could be implemented.

**12. Comment:** A commentator supports reasonable increases in the fees that provide the necessary income for DEP, its Bureau of Air Quality, and the Department's air quality program, especially if the increases allow the Department to provide services in a timely and efficient manner. (4)

**Response:** The Board thanks the commentator for the support of the Department's Air Program and proposed fee schedule revisions.

**13. Comment:** Three commentators note that the permit fee increases are fixed through 2020. The commentators recommend an alternative fee increase scheme, as occurs under the emission fees, rather than the proposed fixed increase. (2, 3, 11)

**Response:** The regulatory framework for periodic fee increases from 2011-2020 is consistent with the framework adopted in November 1994 for the air quality fee schedule (24 Pa.B. 5899). The alternative fee increase scheme recommended by the commentators would adjust fees by using the CPI. While the Department considered this approach for non-Title V fees, the CAA and APCA limit the use of CPI adjustments to Title V emission fees only. Therefore, non-Title V fees for the air program cannot be adjusted in this manner

**14. Comment:** A commentator recognizes that the Title V fee is mandated by the CAA, however, the Commonwealth budget and correlating taxes should properly pay for basic PADEP overhead and services. (8)

**Response:** Section 6.3 of the APCA expressly requires the Board to establish fees sufficient to cover the indirect and direct costs of administering Pennsylvania's air program. The Department agrees that the Commonwealth budget should appropriate funds for basic program overhead and services. However, due to a decline in appropriations under the General Fund for environmental protection programs, the Department has relied on special funds to cover those costs in order to maintain a continuity of services and to adequately protect public health and the environment.

**15. Comment:** Fees charged citizens or industry without publishing supporting rationale or basis potentially usurps the duties and responsibilities given to the Legislature. The Department should update the Apogee Research report to support the fee increase. (8)

**Response:** The Board disagrees that the proposed fee schedule revision usurps the responsibilities given to the Legislature. The information to support the proposed fee rulemaking was discussed with the Air Quality Technical Advisory Committee. The Department hired Apogee Research in 1993/1994 to conduct a review and recommend a fee structure because of the 1990 Amendments to the CAA, including the Title V Permits Program. The Department has now gained approximately 16 years of experience and records of actual expenditures since the adoption and implementation of regulations to implement CAA requirements including the Title V program. In light of the extensive record of actual expenses, the Department did not think it necessary to incur additional costs for a contractor to develop the proposed changes to the existing fee schedule; expenditures including salaries, operational, and fixed asset costs are known and can be forecasted to the future. Therefore, the Department did not incur additional

expenses to update the Apogee Research Report, which was developed prior to the implementation of CAA and APCA requirements.

**16. Comment:** The commentator states that the Department should be required to submit any fees or increases to fees to an independent time/labor review body that would equitably and openly determine the fairness of such charges. (8)

**Response:** The Board disagrees that the proposed fee schedule should be forwarded to an independent time/labor review body. The Department's Bureau of Fiscal Management provides assistance and supporting documentation, including financial statements, which show actual and budgeted funds and expenditures. The Board reviewed the proposed rulemaking and under section 6.3 of the APCA is responsible for establishing fees sufficient to cover program costs.

**17. Comment:** The commentator states that fees should be based on transparent, published independent CPI or COLA indexes rather than the step increases proposed. (8)

**Response:** As discussed in the response to comment 13, the APCA does not authorize the Department to adjust fees, except the Title V emission fee, in the manner recommended by the commentator.

**18. Comment:** The commentator opposes the inclusion of charges for General Permits. The purpose of a general permit is to minimize PADEP-required review and action for standard practices, not be an income vehicle. (8)

**Response:** The Board has not proposed to change any fee associated with General Permits. The fees for each general permit are proposed in the general permit for public review and comment for 45 days prior to establishing or modifying the general permit and its fees.

**19. Comment:** The commentator states that the EQB should be cognizant that certain environmental issue associations have voiced openly their perceptions that DEP is unduly influenced by industry. The commentator disagrees with this perception. (8)

**Response:** The Board thanks the commentator for recognizing that the Department "is not unduly influenced by industry." The Department is responsible for protecting the air resources of this Commonwealth and implementing the requirements of the CAA and will continue to collaborate with stakeholders, including citizens, groups and associations and the regulated industry, as appropriate.

**20. Comment:** The DEP and its employees should serve as separate independent judges of filings/permits and not be unduly influenced by the need to make budget. (8)

**Response:** The Department does not make decisions on permits or applications based on the need to raise revenue or make budget. Permitting decisions are based on the content of an application and the technical information provided to demonstrate compliance with applicable laws and regulations.

## **General Comments on the Impact of the Regulation**

**21. Comment:** A commentator understands the need for the Department to increase permit fees and testing fees, but the proposed increase in emission fees is exorbitant. A 30% increase in 1 year is unjustified. The fee increase will have a significant negative consequence to the regulated communities' budgets. (15)

**Response:** Section 6.3 of the APCA (35 P.S. § 4006.3) authorizes the 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 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 this act and not covered by fees required by section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)). For the proposed fee schedule amendments, the Department evaluated the cost of the air program and proposed fees sufficient to maintain the program and demonstrate to the EPA that the Department has adequate resources to administer and enforce the Commonwealth's Air Program.

**22. Comment:** The regulated community has established budgets for 2010. The increase in fees has not been included in these budgets. (9, 15)

**Response:** The final-form rulemaking will require compliance with the revised fee schedule in 2011; this revised fee structure would apply to any applicant who submits an application to the Department on or after the effective date of the final-form rulemaking. In September 2011, the owners and operators of Title V facilities will pay emission fees for 2010 emissions up to 4,000 tons per regulated pollutant. Since the rulemaking was proposed October 17, 2009 (39 Pa.B. 6049), with calendar year 2010 fee implementation dates and a January 1, 2010, implementation date for the revised Title V emission fee, the proposed rulemaking provided sufficient notice for the regulated community to budget for air program fee increases beginning with calendar year 2010. The Department has revised the date for the increased plan approval and operating permit fees to be calendar year 2011 in the final-form rulemaking; the increased Title V emission fee for emissions released in 2010 is retained in the final-form rulemaking.

**23. Comment:** The commentator is concerned about the size of the fee increase during a 1-year period. The commentator states that it would be more equitable to propose a phase-in approach over the next 3 to 5 years, identifying permit and testing fee increases for each year. Emission fees should continue to be based on the Consumer Price Index. (15)

**Response:** While the Department understands that the initial fee increases will have an impact on the regulated community, fees must be sufficient to cover program costs. The final-form rulemaking retains the existing regulatory framework for subsequent increases, which are phased in over 10 years. The existing fee structure, which was adopted in November 1994, has been implemented flawlessly—however, expenditures for Title V and non-Title V programs continue to exceed the amount of revenue generated each year. If the final-form rulemaking is adopted,

subsequent increases in the new Title V emission fee would be established based on the CPI adjustments. However, the periodic fee schedule evaluation, discussed in the response to Comment 11, could show that additional adjustments are necessary in order for the fund to remain solvent.

**24. Comment:** The Department is encouraged to not impose an increase in the Title V fee and restrict the increase to the Consumer Price Index as authorized by the CAA. If an increase is needed, it should be delayed until 2011 so that the regulated community can budget for the increase. (9)

**Response:** The proposed Title V fee increase is needed to support the Title V program, as required by the CAA and APCA. Due to the delay in finalizing the rulemaking, the increase in the fee will take effect in 2011, for emissions released in calendar year 2010, as the commentator recommends.

**25. Comment:** The proposed Title V fee increase will exacerbate the cost differences, with plants in other states, associated with environmental compliance. The proposed Title V fee increase will result in a fee higher than other states. (14)

**Response:** The APCA and the CAA require that the Department establish fees sufficient to support the air program. The proposed fee schedule is designed to impose fees sufficient to recover the cost of administering the program. While there are differences in fee schedules between states, the proposed fees are similar to other states with air programs the same size as Pennsylvania. For example, Title V emission fees in New Jersey are \$103.93 per ton with no cap on emissions; New York's 2010 emission fee ranges from \$45 (for facilities with emissions of less than 1,000 tons per year) to \$65 per ton for facilities having total annual emissions of 5,000 tons or more with a 7,000 ton cap; Maryland has a \$53 per ton emission fee with no cap on emissions; and Connecticut imposed a \$224.60 per ton emission fee, in 2006, based on an "Inventory Stabilization Factor," which is adjusted periodically to ensure that Title V fees are adequate for at least two years to support its air program.

**26. Comment:** The proposed increase to the air emission program fees sends the message that Pennsylvania is not interested in maintaining a manufacturing base. (14)

**Response:** The Board disagrees—fees must be sufficient to cover the indirect and direct costs of protecting the air resources of this Commonwealth. The fee schedule amendments will allow the Department to maintain staffing levels to support permitting for industrial and other facilities and other critical program functions including planning, monitoring source testing, and compliance and enforcement activities.

**27. Comment:** The proposed Title V fee increase is a near doubling of the emission fees under 25 Pa. Code § 127.705. (13)

**Response:** The current Title V emission fee is \$54 per ton of emissions up to 4,000 tons per regulated pollutant. The proposed fee would increase to \$70 per ton, which is an increase of 30%. The Department is not proposing to revise the original fee established in 1994 but rather is

setting a new base fee that will be effective beginning in 2011 for emissions released in calendar year 2010 and sufficient to cover program costs including salaries, operational expenses, and fixed assets.

**28. Comment:** The Title V program was to be funded through an established base fee per ton of pollutant needed to develop and administer the program. The expectation was that costs to sources would be relatively modest. In reality, the Title V program costs far exceed original estimates and provide no tangible environmental benefit. (10)

**Response:** The Title V program is a federally mandated operating permit program which streamlines the way Federal, state, tribal, and local authorities regulate air pollution by consolidating all air pollution control requirements into a single, comprehensive operating permit that covers all aspects of a source's year-to-year air pollution activities. The program is designed to make it easier for sources to understand and comply with control requirements, and results in improved air quality. EPA guidance dated August 4, 1993, does not restrict states to a base fee per ton of pollutant. A State may design its fee structure as it deems appropriate, provided the fee structure raises sufficient revenue to cover all reasonable direct and indirect permits program costs. The Board established the original fee structure in 1994 based on the analysis of the potential program costs that were anticipated at that time. Not anticipated were the significant costs associated with electronic systems and the expansion of certain activities such as air monitoring. The EPA guidance anticipated that adjustments to the Title V funding would be needed, stating: "Changes in fee structure over time are inevitable and may be required by the following events:

- Results of periodic audits/accountings.
- Revised number of part 70 sources (discovery of new sources, new EPA standards, expiration of the deferral of nonmajor sources).
- Changes in the number of permit revisions.
- Changes in the number of affected units under section 404 (e.g., substitution units).
- CPI-type adjustments.
- Different activities during post-transition period."

The initial program costs did not anticipate the investments made in electronic reporting systems and new applications systems. For example, the cost to develop the electronic Continuous Emission Monitoring Data Processing System is approximately \$1.2 million, which was not anticipated in the original fee structure. Further, the original fee structure did not anticipate the impact of implementation of EPA ambient air monitoring requirements and other activities.

**29. Comment:** The increasing cost of the Title V fee presents economic impacts to facilities under long-term power purchase agreements which do not allow the facilities to recover cost increases. Because we are unable to recover costs, a more equitable fee structure should be considered. (10)

**Response:** The CAA requires that states impose a Title V fee irrespective of contracts that affected facilities may have with other entities. The Board has established the Title V emission fee consistent with EPA guidance and with public review and comment. The fees are assessed

on the emissions from each affected facility, up to 4,000 per regulated pollutant. The owners and operators of the affected facilities are encouraged to reduce emissions to lessen the impact of the emission fee increases.

**30. Comment:** The increase in the Title V emission fee from \$56 to \$70 as proposed under § 127.705 is excessive. (9)

**Response:** The Board proposed the revised fee schedule for emission fees to cover reasonable program costs, which have increased substantially. The Title V emission fee for 2009 and 2010, with the CPI adjustments, is \$54 per ton of pollutant with a 4,000-ton cap. The proposed fee of \$70 was established to reflect the actual costs of administering the program, as required by the CAA and APCA.

**31. Comment:** The CAA requires the state to establish a Title V fee sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program. The CAA provides for the annual application of the Consumer Price Index to the base fee. Presumably, the DEP is already collecting sufficient fees to cover the reasonable cost of the Title V program. (9)

**Response:** The Board proposed the increase in the Title V emission fee to cover the actual costs of administering the program. The Department's Title V expenditures have exceeded income for many years. Income from Title V emission fees has ranged from \$17.8 million to \$18.4 million over the past 4 fiscal years. Actual Title V expenditures have ranged from \$ 22.7 million to \$26.2 million over the same time period.

**32. Comment:** Title V is a mature program and there are no anticipated changes to the existing Title V program that would warrant such a large increase as proposed. (9)

**Response:** The Board agrees that the Title V program, established in November 1994 (24 Pa.B. 5899), is a mature program that requires permit renewals and modifications to incorporate new applicable requirements. In addition to the salary, operations and fixed asset costs, there are several new activities that impact the Title V program. For example, the Department has invested approximately \$1,200,000 to develop and implement a new computer system for the continuous emissions monitoring system to replace an antiquated system that could no longer be supported. Additional resources will be needed for maintenance of the new system and to modify the system if necessary. Such investments were not anticipated when the Title V program was established. The EPA recognized that there could be a need to adjust the Title V fees. In a memo issued on August 4, 1993, the EPA addressed the need for future adjustments to the fee schedule, stating that there is a continuing requirement to demonstrate the adequacy of the fees. The EPA stated that the states were obligated to update and adjust their fee schedules periodically if the fees are not sufficient to fund the direct and indirect costs of the permit program.

**33. Comment:** The CAA and the operating permit rule (40 CFR Part 70) require that the Title V operating permit fees recover 100% of the costs of certain program activities. This category

includes all permit issuance, source testing, compliance monitoring, inspections, enforcement and program development activities associated with Title V sources. (2, 3, 11)

**Response:** The Board agrees that section 502(b)(3) of the CAA requires that Title V permit holders pay an annual fee, or equivalent fee over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements. The Department has established in the final-form regulation a revised annual Title V emission fee and revised Title V permit fee schedule sufficient to support the costs of the Title V program. The Department's Title V fee income with the revised fee structure is estimated to be \$23.5 million in September 2011. However, expenditures are estimated to be \$ 24.7 million. The difference will be taken from the Clean Air Fund Major Source Facilities (Title V) account. Consequently, the Department will collect sufficient fees to support the activities required under Title V of the CAA. Allegheny County and Philadelphia County have local air pollution control programs approved by the Department as authorized under Section 12 of the APCA (35 P.S. § 4012). Both counties are authorized to collect Title V emissions fees to support the Title V permitting program in those counties. In 2009, Allegheny County collected \$1.3 million in Title V emission fees; expenditures in 2009 were \$1.4 million. In 2009, Philadelphia County collected \$410,000, with expenditures of \$1.75 million. The increase in the base Title V emissions fee in the final-form regulation will increase the local program emissions fee income by \$397,000 (Allegheny County) and \$121,000 (Philadelphia County).

Section 6.3 of the APCA authorizes the Board to establish fees to support the air pollution control program. The Department established source testing fees in the proposed rulemaking to support the air program, as authorized by the APCA. These fees will support activities not covered by the Title V emission fee program. The Department does not believe that this is double charging under Title V. Rather, separate fees are established to address the increased costs associated with source testing and monitoring activities. Several states now collect fees for source testing or monitoring. New Jersey collects fees to evaluate source testing (\$450 to \$500 per test protocol), test observation (\$200 to \$500), and to review the test report. Idaho charges a fee for services not to exceed \$7,500 per facility per year. Wisconsin collects a fee for emission testing and environmental assessment. Delaware collects a user fee that ranges from \$3,000 to \$200,000 per year based on the hours expended at the facility. The Department's final-form regulation fees are within these ranges.

**34. Comment:** A commentator states that the appearance of any type of "plan change" will remove it from a 'minor' event by current rules to a 'significant' event. (8)

**Response:** A minor operating permit modification is a defined term in § 121.1 (relating to definitions), which means a change to incorporate de minimis conditions and other insignificant physical changes to a source or applicable requirements into an existing permit or a change that does not require plan approval but which contravenes an express permit term. Therefore, minor permit changes must qualify as insignificant changes.

#### **Comments on the Proposed Testing and Monitoring Fees**

**35. Comment:** A commentator states that by imposing testing, monitoring, and auditing fees, the Title V facilities will be charged twice for the same services. (4)

**Response:** Section 502(b)(3) of the CAA and its implementing regulations require that Title V permit holders pay an annual fee, or equivalent fee over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements. Not all Title V sources are required to conduct significant source testing or operate continuous emission monitoring systems. It is not equitable to establish higher Title V fees to cover the costs of services used mainly by facilities equipped with continuous emission monitors and those sources which require source testing to demonstrate compliance—the proposed source testing fees would apply to both major and non-major sources for services provided by the Department. EPA guidance dated August 4, 1993, does not restrict states to a base fee per ton of pollutant. A State may design its fee structure as it deems appropriate, provided the fee structure raises sufficient revenue to cover all reasonable direct and indirect permits program costs.

Section 6.3 of the APCA authorizes the Board to establish fees to support the air pollution control program. The Department has established source testing fees to support the air program, as authorized by the APCA. These fees will support activities not covered by the Title V emission fee program. The Department does not believe that this is double charging under Title V. Rather, separate fees are established to address the increased costs associated with source testing and monitoring activities. Several states now collect fees for source testing or monitoring. New Jersey collects fees to evaluate source testing (\$450 to \$500 per test protocol), test observation (\$200 to \$500), and to review the test report. Idaho charges a fee for services not to exceed \$7,500 per facility per year. Wisconsin collects a fee for emission testing and environmental assessment. Delaware collects a user fee that ranges from \$3,000 to \$200,000 per year based on the hours expended at the facility. The Department's final-form rulemaking fees are within these ranges.

**36. Comment:** The Federal CAA, the Operating Permit Rule (40 CFR Part 70) and the APCA require that the Title V operating permit fees recover the costs of certain program activities. The proposed Chapter 139 fees duplicate fees that are already covered by the Title V fee. The proposed amendments to Chapter 139 should be revised to exclude program activities encompassed in the Title V fee and other operating permit administration fees. (16)

**Response:** The Board agrees that the CAA, the APCA, and implementing regulations require that the Title V operating permit fee recover certain direct and indirect costs of the Title V permitting program. The Department has modified the base Title V emission fee to meet this standard. However, there are certain services that are needed by a limited number of owners and operators. In these instances, the Department believes that the users of these services should pay for the activity and should not require all permittees to support the services. Such fees are authorized by section 6.3 of the APCA.

**37. Comment:** Two commentators request that the revised fee schedule not impose duplicative fees on Title V sources. The Title V fees are to be sufficient to cover all program costs. The

additional fees for testing are already included in the annual Title V emission fees that are being increased significantly. (2, 3)

**Response:** The Board has established the Title V annual emission fee sufficient to cover permits program costs. However, there are certain services that are needed by a limited number of owners and operators. For example, the costs to develop the electronic Continuous Emission Monitoring Data Processing System are approximately \$1.2 million dollars. In this instance, the Department believes that the users of this service should pay, rather than require all permittees to support the service. Such fees are authorized by section 6.3 of the APCA and.

**38. Comment:** The proposal to establish source testing fees will unfairly tax smaller facilities because of the costs to cover the review of source testing activities. The commentator's facility has six narrow-width coating lines and four foil-rolling mills. Currently during stack tests, similar equipment is grouped together under a common protocol; the stack tests are performed in succession and reports are included in the same binder for DEP review. Under the proposed fee structure, there is no allowance for the grouping of similar sources in the protocol review, stack test review or source test observation fee. (14)

**Response:** The proposed fee schedule does not alter the current procedures for "grouping" sources. The same procedure will continue to be followed. If one protocol is submitted for several sources, then one fee is charged for protocol review.

**39. Comment:** Three commentators support the imposition of the testing, auditing, and monitoring fees in the case of plan approval applications, new permit applications, or non-Title V permitted facilities. (2, 3, 11)

**Response:** The Board thanks the commentators for the support but points out that the fees are for all users of the services.

**40. Comment:** These commentators state that, in the case of Title V facilities, the proposed increases to the existing operating permit fees, including the emission fee, should provide adequate funding. The commentators provide a quote that Title V operating permit fees recover 100% of certain program costs. The commentators point out that the proposed Chapter 139 fees are not permit fees and are not applicable to meet the Title V funding requirement. (2, 3, 11)

**Response:** The Board has proposed a revision of the permit fee schedule to reflect the costs of the permit program. The Title V emission fee in the final-form rulemaking is sufficient to cover the costs of the Title V permits program. The Department has proposed to establish separate source testing and monitoring fees as authorized under section 6.3 of the APCA.

**41. Comment:** For sources with annual testing requirements, the protocol review fee of \$675 would be incurred each year, although the protocol is rarely revised from year to year. Similarly, the full test report review fee of \$1,000 would be incurred even for a test conducted year to year. (13)

**Response:** The source testing fee allows the Department to recoup the costs of administering the air quality program source testing activities. While some tests are routine from year to year, there is no guarantee that the source testing firm or staff are the same and will conduct the tests appropriately. Consequently, it is important for Department staff to review each protocol and test report to verify the accuracy of the information.

**42. Comment:** In light of the repetitious nature of emission testing to comply with annual testing requirements, and that the fees are excessive, the testing fees should be deleted or reduced for annual emission testing. (13)

**Response:** The Board has not reduced or eliminated the fees for annual testing requirements. These annual tests require the same Department review and staff time each year as source testing done on an infrequent basis.

**43. Comment:** Fees should not be required for review and approval of stack test protocols that have been previously reviewed and approved. The commentator conducts annual NOx testing and the protocol is generally unchanged. A review and approval fee for the same review and approval should be avoided or at least discounted. (4)

**Response:** The Department must review each protocol and test report each time it is submitted to determine the acceptability and approvability of the information. While the commentator states that the protocol is generally unchanged, this does not mean that there are never any changes. As a result, Department staff must conduct a review of each protocol.

**44. Comment:** The commentator states that fees for test protocol reviews should not be imposed if a previously approved protocol is being submitted. (4)

**Response:** The Department must review each test protocol to determine the acceptability and approvability of the request. While the facility owner or operator may submit a previously approved protocol, Department staff must conduct a new review to determine if the protocol is still approvable or if changes are required to meet new testing standards.

**45. Comment:** Pennsylvania is seeking to increase non-fossil electric generation through the use of biomass. The increase in fees associated with test burn applications and oversight seem in direct contradiction with Pennsylvania's stated goals. These efforts should be exempt from further regulatory burdens. (10)

**Response:** The final-form rulemaking does not incorporate this recommendation because the source testing of biomass combustion must be conducted by the Department to determine the environmental impact of the emissions from biomass sources. Successful testing of biomass sources can lead to increased biomass usage. The testing fees will support the oversight needed for this program.

**46. Comment:** The proposed fees for continuous emission monitoring-related activities should not be imposed on Title V facilities as these costs are already reflected in the annual emission fees. Imposing these fees would be double charging. (9)

**Response:** The Board proposed a revision of the permit fee schedule to reflect the costs of the program. The Title V emission fee in the final-form rulemaking is sufficient to cover the costs of the Title V permits program. The Department has proposed to establish separate source testing and monitoring fees to be paid by all users of these services, as authorized under section 6.3 of the APCA.

**47. Comment:** Many facilities have implemented emission reduction measures which impact the fees paid by the owner or operator. Increasing the fees to make up for this reduction penalizes the facility for making the environmental improvements. (7)

**Response:** The Department has not proposed to increase the fees in response to the installation of control equipment. The Department has proposed to increase the fees to meet the costs of administering the air quality program. The Department supports the reduction in emissions which help attain and maintain the health-based National Ambient Air Quality Standards.

**48. Comment:** As an alternative to fee increases, the EQB should consider alternatives such as conducting a thorough evaluation of the program, increase the use of technology, consolidate offices, and adopt the EPA regulations rather than developing state versions. (7)

**Response:** The Department has considered alternatives to fee increases and implemented such measures, where practical. However, certain alternatives will also require the imposition of fee increases. For example, the increased use of technology requires significant investment in computer system development and maintenance, which were not costs projected when the fees were originally established in 1994. The Department has reduced costs substantially. There have been significant staff reductions over the past 3 years. System development costs have been reduced. The development of additional electronic systems including the e-General Permit system has been put on hold

**49. Comment:** The proposed fee schedule results in significantly disproportionate impact on owners and operators of facilities that use continuous emissions monitoring systems (CEMS) and conduct frequent stack sampling regardless of the facilities' relative impact on the environment. Owners and operators of facilities that rely on less onerous compliance tools such as parametric monitoring, work practices, and periodic sampling would be affected less even where those facilities have equal or greater environmental impact. (5, 7)

**Response:** The final-form regulation requires the owners and operators of facilities that do frequent sampling or use CEMS to cover the actual costs of those services and development and maintenance of electronic systems designed to streamline source testing operations.

**50. Comment:** The proposed sampling, testing, and CEM fees for submissions made by Title V facilities in support of demonstrating compliance with their Title V permit should not be included in the final rule. In accordance with the Federal requirements for establishing the Title V emission fees as specified under § 127.705, these air program costs are to be included in the determination of these fees. (5)

**Response:** The Board has proposed a fee schedule revision that reflects the direct and indirect costs of the permitting program as required by the CAA. EPA guidance dated August 4, 1993, does not restrict states to a base fee per ton of pollutant. A State may design its fee structure as it deems appropriate, provided the fee structure raises sufficient revenue to cover all reasonable direct and indirect permits program costs. The EPA guidance anticipated that adjustments to the Title V funding would be needed, stating: "Changes in fee structure over time are inevitable and may be required by the following events:

- Results of periodic audits/accountings.
- Revised number of part 70 sources (discovery of new sources, new EPA standards, expiration of the deferral of nonmajor sources).
- Changes in the number of permit revisions.
- Changes in the number of affected units under section 404 (e.g., substitution units).
- CPI-type adjustments.
- Different activities during post-transition period."

The initial program costs did not anticipate the investments made in electronic reporting systems and new applications systems. For example, the cost to develop the electronic Continuous Emission Monitoring Data Processing System is approximately \$1.2 million, which was not anticipated in the original fee structure.

Therefore, the Board has proposed a revision of the permit fee schedule to reflect the costs of the program. The Title V emission fee in the final-form regulation should be sufficient to cover the costs of the Title V permits program. The final-form regulation retains the separate source testing and monitoring fees, as authorized under section 6.3 of the APCA.

**51. Comment:** The proposed fees should not be included in the final-form rulemaking and instead the DEP should consider relying solely on reasonable fees under § 127.705. (7)

**Response:** The proposed testing and monitoring fees reflect actual costs of the program. The commentator's recommendation would require an emission fee greater than the \$70 per ton proposed Title V emissions fee, which could unfairly impact those owners or operators of Title V facilities that do not conduct significant testing activities.

**52. Comment:** Should DEP opt not to eliminate the proposed testing fees, the fees should at a minimum be limited to one fee per activity. There should be no fees for subsequent submittals. (7)

**Response:** The final-form rulemaking has retained the proposed fee schedule. Subsequent submittals require the same Department staff review effort to verify that the information is correct and addresses the mistakes or omissions found in previous reports. Submitting supplemental information at the request of the Department is not charged a fee.

**53. Comment:** The fees associated with stack testing are far too complicated. We understand that the intent is to make the user of the services pay the cost; however, the question of when a permittee will be required to negotiate observer numbers and the number of testing days that will

be observed adds complexity and confusion. We recommend that the Department support incorporating these costs into the protocol or testing results review fee. (5)

**Response:** The final-form rulemaking does not incorporate the test observation fee into the test protocol review fee. However, the fee for additional observers was eliminated to simplify the fee schedule.

**54. Comment:** Three commentators state that Title V facilities should either pay the proposed increased emission fee and other proposed operating permit fee increases in Chapter 127 or the emission fee should remain unchanged with Title V facilities paying the testing fees. Requiring Title V facilities to pay both the increased operating permit fees and the testing fees is extracting payment twice from the Title V facilities. (2, 3, 11)

**Response:** According to guidance provided by the EPA on August 4, 1993, a state "may design its fee structure as it deems appropriate, provided the fee structure raises sufficient revenue to cover all reasonable direct and indirect permits program costs." The Board has established the Title V annual emission fee sufficient to cover Title V permits program costs. However, there are certain services that are needed by a limited number of owners and operators of both Title V and non-Title V facilities. The proposed source testing and monitoring fee schedule was designed to recover costs incurred by the Department for providing these services. Due to a decline in appropriations under the General Fund for environmental protection programs, the Department has relied on special funds to cover those costs in order to maintain a continuity of services and to adequately protect public health and the environment. In this instance, the Department believes that the users of these services should pay for such services, rather than establishing a higher emissions fee that would be imposed on all permittees to support the services. Such fees are authorized by section 6.3 of the APCA. The Department recommended the fee schedule proposed by the Board by analyzing the current and projected income and expenditures for the Clean Air Fund. The Department considered actual Clean Air Fund expenditures during the past 16 years. A review of the current and expected workload was completed to assess the need for additional fees. As a result, the proposed fee schedule was developed to ensure that fees are sufficient to administer program costs.

**55. Comment:** The proposed fee for a Department-conducted source test is quite expensive compared to private testing firms. Companies should have the opportunity to contract with a private firm to control the testing costs. (2, 3, 11)

**Response:** The Department's plan approvals and operating permits require the owner or operator to periodically test the emission sources with a Department-approved testing protocol. While the Department is authorized to conduct source testing, private testing companies perform the majority of source testing conducted in this Commonwealth for the regulated community. Therefore, an owner or operator may continue to choose any private testing company to conduct source testing instead of having these services performed by the Department.

**56. Comment:** The commentators state that if a fee is to be charged for Department staff to observe testing, the staff should be qualified under the current specification of ASTM D7036

“Standard Practice for Competence of Air Emission Testing Bodies.” The commentators recommend a change to the definition of Observer to meet this requirement. (2, 3, 11)

**Response:** The ASTM D7036 standard applies to testing bodies, not individuals. The specific provisions of ASTM D7036 are referenced in the EPA Part 75 acid rain monitoring requirements. The EPA incorporated the ASTM standard into its Part 75 regulations to require Air Emission Testing Bodies to conduct relative accuracy test audits (RATA) for SO<sub>2</sub> and NO<sub>x</sub> only. The Department does not conduct RATAs for Part 75. Therefore, no changes are needed.

**57. Comment:** If the Department decides to conduct a test as part of enforcement action, that testing effort should be included in the Title V operating permit fees as specified by the CAA Amendments of 1990 and 40 CFR Part 70. (2, 3, 11)

**Response:** Any Department-conducted source test initiated after enforcement action has begun is not to be part of the Title V fee program, as provided by EPA guidance. Such costs will be covered under the new source testing fee structure. In order to avoid an increase greater than the proposed \$70 per ton Title V emission fee, Department-conducted source tests conducted to determine if there is a compliance problem or to prepare for enforcement action against a Title V facility owner or operator will be imposed solely for source-specific compliance and enforcement activities.

#### **Comments on the Request for Determination Fee**

**58. Comment:** The Department is proposing a fee of \$400 for a request for determination (RFD), which is a simple and straightforward process. It is unreasonable to charge \$400 for 1 or 2 hours of Department staff time. (12)

**Response:** In establishing the proposed fee schedule, the Department reviewed the staff time associated with processing RFDs. On average, Department staff spent 7.5 hours reviewing and responding to each RFD submitted using the paper form. This includes clerical, technical and supervisory time. It should be noted that the estimate does not include the time for the computer system development and maintenance, and oversight for the electronic system. The costs for the computer system development for the electronic RFD system are over \$800,000. Therefore, the proposed fee is reasonable.

**59. Comment:** If the Department insists on charging a fee for an RFD, then it should impose a deadline for its response. (12)

**Response:** The fee is intended to cover the cost of processing and reviewing each RFD, which must be considered on its own merit. Many RFDs require the Department to contact the applicant for additional information before a response can be made. Imposing a response deadline may require the Department to deny many approvable RFDs that only need additional information. Such denials would cause hardship to the applicant and burden the Department with appealable actions.

**60. Comment:** The commentator requests that the EQB clarify what is covered by the new fee for submitting an RFD. The RFD form is also used to provide a 7-day written notice of a de minimis emissions increase under 25 Pa. Code § 127.449 (relating to de minimis emission increases) or provide notice of certain physical changes of minor significance under § 127.14(c) (relating to exemptions). (6)

**Response:** The proposed fee is for all RFDs submitted for review. The source owner or operator should not be using the RFD process to notify the Department of de minimis emission increases or to notify the Department of minor physical changes. Each RFD submitted requires the Department to expend staff time to review the RFD and make a determination. The proposed fee schedule reflects that effort.

**61. Comment:** The Department has a list of permit exemptions. Many owners submit RFDs for sources on the exemption list so that DEP will concur with the determination that a source is exempt from plan approval, operating permit or both. The Department should clarify what is covered by the RFD fee. (4, 6)

**Response:** The Board is establishing the RFD fee for all RFDs submitted to the Department for consideration. Sources and activities identified on the Air Quality Exemption List do not require RFD review and approval by the Department. Submitting a RFD to verify this determination requires the Department to expend staff resources to review and analyze the information. The proposed fee would recover the costs associated with the review.

**62. Comment:** The Department should coordinate the changes being made to the plan approval exemption list with the new fee schedule. The exemption list is being revised to require previously exempted sources to submit an RFD so that the DEP has an inventory and notice of these sources. The commentator states that a notice for inventory purposes should not require a detailed evaluation and should not be subject to a fee. (6)

**Response:** The Department has not finalized the proposed Air Quality Exemption List. The comment period closed on July 18, 2010. Proposed revisions to the exemption for the oil and gas industry will include an option to allow facility owners and operators to submit a RFD prior to the submission of a plan approval or operating permit application. This flexibility will allow both the owners and operators of affected facilities and the Department to determine if a plan approval or permit is needed. A fee for this technical review is appropriate. The RFD process is used to determine sources of minor significance. Emission inventories for this sector will be established in accordance with the source reporting and emission statement requirements in Chapter 135 (relating to reporting of sources).

**63. Comment:** A commentator opposes the assessment of fees for RFDs at the time of submission. The added time to process the check request for this new fee will remove all benefit from the recently rolled out web-based RFD system. The state is working on an electronic payment method for RFDs, but if this system is not successful, then fees should be payable within 30 days of submission of an RFD. (5)

**Response:** The final-form rulemaking will assess fees for RFDs, which will only be processed by the Department if a complete application and fee for the service has been submitted to the appropriate regional office. Consequently, an applicant must submit the appropriate fee at the time of the application. The Department has developed electronic payment systems for other programs and is committed to developing and implementing an electronic payment system for the electronic RFD system.

**64. Comment:** Three commentators support the proposed RFD fee. However, it appears that the proposed § 127.702(j)(2) (relating to plan approval fees) may require payment of an RFD fee with the submission of a plan approval application or under § 127.703(e)(2) (relating to operating permit fees under Subchapter F). If this is the intent of the language, the commentators do not support the fee. The commentators recommend the language be clarified. (2, 3, 11)

**Response:** Proposed § 127.702(j) does not require the submission of an RFD with the submission of a plan approval application. Similarly, § 127.703(e) does not require the submission of an RFD with the submission of an operating permit application. The two sections require the payment of an RFD fee if an RFD is submitted to determine if a plan approval or operating permit is needed. The Department has revised the sections for clarity.

**65. Comment:** A commentator states that the RFD is an administrative function that is a check to make sure that the facility and bureau read current regulations in the same way, not an intensive review of any proposed change. The commentator opposes the proposed fee. (8)

**Response:** The submission of an RFD requires the Department to expend staff resources to review the submission. The facility owner or operator has other means to verify regulation interpretation than use RFDs.

#### **Plan Approval and Operating Permit Fees**

**66. Comment:** Proposed § 127.702(h) should be revised to indicate that the additional fees are payable only when the affected modifications to the plan approval application are initiated by the owner or operator. (5, 7)

**Response:** The proposed section has been revised to clarify that the fees are due and payable by the owner or operator of a source when an amendment of a plan approval or revision of an application that requires reassessment of a control technology determination or of the ambient impacts of the source is submitted, whether the amendment or revision is initiated by the owner or operator of the source or by the Department. In the case of the owner or operator of the source initiating the amendment or revision that requires reassessment of the control technology determination or of the ambient impacts of the source, the owner or operator has initiated the action and is required to pay the fee. If the Department has found that the plan approval or application is not approvable in its current form, the Department initiates the action that requires the owner or operator of the source to submit additional information. To be approvable, the owner or operator must submit an amendment or revision on which the Department can take final action. In both cases, the appropriate fee would be due and payable by the owner or operator of the source.

**67. Comment:** The proposed fees in § 127.704 (relating to Title V operating permit fees under Subchapter G) should not apply to activities that do not require significant DEP action or intervention, such as administrative amendments, minor modifications and transfer of ownership. Such changes occur frequently during the term of the permit but have no environmental impact. (5, 7)

**Response:** As previously stated, fees must be sufficient to cover the indirect and direct costs of administering the Commonwealth's air pollution control program. The Department will expend staff time to process each request. The proposed fee will cover that cost.

**68. Comment:** For the plan approval fees, the notice should provide the rationale behind how the Department determined the magnitude of the fee increases. The permit fees should be based upon the legitimate effort associated with administering the permit program. (5)

**Response:** The Board's proposed rulemaking considered actual expenditures and the overall direct and indirect cost of administering and implementing the air program to determine the magnitude of the fee increases. The Board proposed a revision to the fee schedule to reflect the costs of the program. For the existing permit fees, the Department recommended to the Board an average increase of 20% to reflect the increased costs of administering the air program based on the review of a 16-year history of expenditures. The proposed new fees for RFDs, ambient air quality analysis, risk assessments, and source testing and monitoring were developed by reviewing the staff time associated with each activity. The fee for each service was calculated based on the average staff costs and the time associated with the activity.

The overall fee schedule proposal was based primarily on consideration of the Clean Air Fund history since establishment of the fee structure in November 1994. To this end, the Department reviewed the revenue, spending, and budgeting history and determined that the annual expenses consistently exceeded revenue. For example, in Fiscal Year (FY) 2008-2009, actual revenue from Title V Emission Fees was approximately \$18,476,000; expenditures totaled \$22,660,000. For the non-Title V appropriation, revenue generated from application fees and civil penalties was \$5,720,000; expenditures were approximately \$7,949,000. At the time the rulemaking was proposed, a Clean Air Fund deficit was projected by FY 2013. As a result, the Department recommended to the Board proposed increases in the plan approval and permitting fees and new fees sufficient to cover the indirect and direct program costs, as required by the APCA.

**69. Comment:** The commentator states that the regional offices need to be staffed with sufficient permit engineers to meet the demands for their services. The new permit fees should be based on an ideal design staffing level in the regional offices and not on the current understaffed State. (5)

**Response:** The proposed fee schedule amendments are reflective of the current complement and obligations to implement the requirements of the CAA and APCA. While additional staff would be needed to meet the ideal design staffing levels, fees would need to be increased again prior to 2015 to cover additional indirect and direct costs.

**70. Comment:** A reasonable permit review timetable is an even higher priority for regulated entities than reasonable permit fees and the Department should calibrate its fees and use the funds so generated for that purpose as called for by authorizing legislation. (5)

**Response:** The Department has developed a permit review schedule which is published on the Department's web site. The money-back guarantee will remain in effect and is applicable to the revised fee schedule. Information on the money-back guarantee can be found at: <http://www.dep.state.pa.us/dep/deputate/airwaste/aq/permits/plan.htm>.

**71. Comment:** A commentator states that there should not be extra fees for Risk Assessments as these are included in the existing permit fees. (4)

**Response:** Risk assessments are complex and resource intensive. Only a few are conducted each year depending on the applications received for certain sources including cement kilns, incinerators, and landfills. Because these assessments are not required for all plan approval applications, the fee is justified to cover program costs for the complex reviews and analyses.

**72. Comment:** Three commentators support the imposition of the risk assessment fee for plan approval applications. However, if the risk assessment is linked to an existing Title V permit absent a plan approval application, the fee is not supported. (2, 3, 11)

**Response:** Proposed § 127.708 (relating to risk assessment) states, "[e]ach applicant for a risk assessment shall, as part of the plan approval application, submit the application fee required by this section to the Department." The fee would be due even if there is an existing Title V Permit if the applicant has requested that a risk assessment be conducted.

**73. Comment:** Fees for sources subject to case-by-case maximum achievable control technology (MACT) should recognize that small sources will not require any controls. Small gas-fired industrial boilers will not require any detailed MACT analysis and should not be subject to the large fees that may make sense for a large coal-fired boiler. (4)

**Response:** The proposed fee schedule in § 127.702 for MACT review applies solely to sources, which emit at least 10 tons per year of a single hazardous air pollutant (HAP) or 25 tons or more of a combination of HAPs. Each MACT application must be reviewed in accordance with applicable Federal and state law and regulations. Small gas-fired industrial boilers would be subject to a MACT analysis if the HAP thresholds are exceeded.

**74. Comment:** Three commentators support the proposed changes to §§ 127.702(h)(1) and (2) so long as the fee is triggered by an amendment proposed by the applicant. (2, 3, 11)

**Response:** The proposed section has been revised to clarify that the fees are due and payable by the owner or operator of a source when an amendment of a plan approval or revision of an application that requires reassessment of a control technology determination or of the ambient impacts of the source is submitted, whether the amendment or revision is initiated by the owner or operator of the source or by the Department. In the case of the owner or operator of the source initiating the amendment or revision that requires reassessment of the control technology

determination or of the ambient impacts of the source, the owner or operator has initiated the action and is required to pay the fee. If the Department has found that the plan approval or application is not approvable in its current form, the Department initiates the action that requires the owner or operator of the source to submit additional information. To be approvable, the owner or operator must submit an amendment or revision on which the Department can take final action. In both cases, the appropriate fee would be due and payable by the owner or operator of the source.

**75. Comment:** The increase in the Title V fee represents a 25% increase over the likely Consumer Price Index adjusted fee, a substantial increase in the fee. Based on the draft report "Adequacy of Funding for the Air Quality Program 2002-2007, Table 3. Revenue History," the emission fees provided \$18,335,445 in revenue. The proposed fee increase will bring in an additional \$4.5 million. This is a substantial increase when the fund had a \$2 million surplus in 2006-2007. (2, 3, 11)

**Response:** The commentators are referencing the report entitled "An Evaluation of the Pennsylvania Air Quality Program 2002-2007," which is mandated every five years under Section 4.3 of the APCA. On pages 48-50 of that report, the Department showed the revenue and expenditures for the air program during the FY2001/2002 –FY 2006/2007, which were sufficient for the time period evaluated. However, revenue has decreased and expenditures have increased substantially since that report was prepared. Over the next three years, the Department estimates Title V and non-Title V revenue of approximately \$27.4 million with projected expenditures of approximately \$32 million. With the draw-down on the balance of the Clean Air Fund and projected increase in revenue of approximately \$7.5 Million, fees should adequately cover program costs based on current cost assumptions including personnel, operating expense, program services and fixed assets. The Department will continue to examine and implement cost reduction measures, as appropriate.

**76. Comment:** The commentators are concerned that the new proposed fees in § 127.708 and Chapter 139 are in addition to the proposed amended operating permit fees and may be duplicative for Title V facilities. (2, 3, 11)

**Response:** See the response to Comment 35.

### **Greenhouse Gases**

**77. Comment:** It is unclear whether greenhouse gases (GHG) will be charged a fee even though the EPA has proposed that GHGs would not be subject to emission fees. The Department should exclude GHGs from the fee structure or establish a different fee structure taking into account considerations pertinent to GHG regulation. (13)

**Response:** The Department agrees that this fee schedule revision should not cover GHG emissions and, therefore will not impose the Title V emission fee on GHGs. The EPA's Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule published on June 3, 2010, does not include a mechanism for assessing Title V emission fees (75 FR 31514). In this final action, the EPA indicates that GHGs are not pollutants subject to the Title V

emission fee and that states cannot collect the Title V emission fee on GHGs. The EPA indicated that states could establish other fees, including permit fees sufficient to cover the costs of the GHG program; EPA will consider fees for GHG permitting during subsequent rulemaking addressing the GHG permitting process. Therefore, the Department has not conducted a detailed analysis of the potential costs of a GHG program and has not proposed to revise the fee schedule to include GHG costs at this time. Such a review may occur in the future.

### **Independent Regulatory Review Commission Comments**

The Independent Regulatory Review Commission (IRRC) submitted comments on January 20, 2010. The IRRC comments are summarized and responses provided as follows:

**1. Comment:** The IRRC stated that commentators questioned the dollar amount of the fees in the proposed regulation and how the fee increases were developed.

**Response:** The Department reviewed the overall indirect and direct costs of the air program to determine the need for a fee increase. The Board proposed a revision to the fee schedule to reflect the costs of the program. For the existing permit fees, the Board proposed an average increase of 20% to reflect the increased costs for processing permits. The proposed new fees for RFDs, ambient air quality analysis, risk assessments, and source testing and monitoring were developed by reviewing the staff time associated with each activity and the average staff time for the activity. The fee was calculated based on the average staff costs and the time associated with the activity.

The fee schedule proposal was based primarily on consideration of the Clean Air Fund history since the fee structure was established in November 1994. To this end, the Department reviewed the revenue, spending, and budgeting history and determined that the annual expenses consistently exceeded revenue. For example, in FY 2008-2009, actual revenue from Title V Emission Fees was approximately \$18,476,000; expenditures totaled \$22,660,000. For the non-Title V appropriation, revenue generated from application fees and civil penalties was \$5,720,000; expenditures were approximately \$7,949,000. At the time the rulemaking was proposed, the Clean Air Fund was projected to be exhausted by FY 2013. As a result, the Department recommended to the Board proposed increases in the plan approval and permitting fees and the new fees sufficient to meet the indirect and direct program costs, as required by the APCA.

**2. Comment:** The IRRC stated that commentators noted that the emission fee increase exceeds the Consumer Price Index.

**Response:** The CAA and APCA require that the Title V emission fee be adjusted annually based on the CPI. However, Title V permit program costs have exceeded projections and a fee adjustment is needed. The EPA anticipated such a need when it issued the August 4, 1993, implementation guidance on Title V fees. The EPA recognized that “changes in fee structure over time are inevitable...” The increase in the base Title V Emission Fee reflects increased staff costs, significant costs associated with computer program development, and other costs.

**3. Comment:** The EQB has not provided enough detail regarding the calculation of the dollar amount of the fees. We recommend that the EQB provide with the final-form rulemaking the fully detailed calculation of each fee to establish that the fees are reasonable.

**Response:** The general fee revision process is explained in response to IRRC comment 1. In addition, the new fees for risk assessments, requests for determination, and source testing and monitoring are based on average time expended on these activities. In addition to the staff time, the costs of electronic data processing systems and other costs must be included in the fee consideration.

**4. Comment:** We recommend that the EQB consider the effect of the fee increases on small businesses and industries, and the feasibility of setting lower fees for them.

**Response:** The proposed fee amendments consider the impact of the revised fee schedule on small businesses and industries. A plan approval received from the owner or operator of a small source requires similar review and staff resources as a non-major plan approval received from an owner or operator of a large source. The Department does recognize that review of major sources can be complex and time consuming and has proposed a separate fee schedule for this category of sources.

**5. Comment:** Title V facilities already pay annual fees and some of the new fees duplicate activities that are already covered by the existing fees. The IRRC stated that commentators believe they should either pay fees under Chapter 127 or 139, not both.

**Response:** The owners and operators of Title V facilities will not be charged twice for the same services. Section 502(b)(3) of the CAA requires that the Title V permit holders pay an annual fee, or equivalent fee over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements. The Department has established in the final-form regulation a fee schedule sufficient to cover the costs of the Title V permits program. The annual Title V income with the revised fee is estimated to be \$ 23.5 million in September 2011. Annual expenditures are estimated to be \$ 24.7 million. The difference will be taken from the Clean Air Fund Major Source Facilities (Title V) account. Consequently, the Department will collect sufficient fees to support the activities required under Title V of the CAA.

Section 6.3 of the APCA authorizes the Board to establish fees to support the air pollution control program. The Department recommended that the Board establish source testing fees to support the air program, as authorized by the APCA. These fees will support activities not covered by the Title V program. The Department does not believe that this is double charging under Title V. Rather, a separate fee is established to address the increased costs associated with source testing and monitoring activities. Several states now collect fees for source testing or monitoring. New Jersey collects fees to evaluate source testing (\$450 to \$500 per test protocol), test observation (\$200 to \$500), and to review the test report. Idaho charges a fee for services not to exceed \$7,500 per facility per year. Wisconsin collects a fee for emission testing and environmental assessment. Delaware collects a user fee that ranges from \$3,000 to \$200,000 per

year based on the hours expended at the facility. The Department's final-form rulemaking fees are within these ranges.

**6. Comment:** The emission fee increase is excessive. Emission fees should continue to be calculated using the Consumer Price Index.

**Response:** As discussed in the response to IRRC comment 1, annual Title V income has not kept pace with the expenses incurred. Therefore, an increase in the annual Title V emissions fee is needed. It should be noted that the Title V emissions fee is adjusted annually for the CPI as required by the CAA and APCA. The proposed base Title V emissions fee increase was established to cover reasonable costs incurred by the Department. Section 6.3(d) of the APCA requires that the fee be set considering, among others, the amount of fees charged in neighboring states. Other states have raised the annual Title V emissions fee in recent years to reflect the increasing costs of administering the Title V permits program. For example, Title V emission fees in New Jersey are \$103.93 per ton with no cap on emissions; New York's 2010 emission fee ranges from \$45 (for facilities with emissions of less than 1,000 tons per year) to \$65 per ton for facilities having total annual emissions of 5,000 tons or more, with a 7,000 ton cap; Maryland has a \$53 per ton emission fee with no cap on emissions (for 2011); and Connecticut imposed a \$224.60 per ton emission fee, in 2006, based on an "Inventory Stabilization Factor," which is adjusted periodically to ensure that Title V fees are adequate for at least two years.

**7. Comment:** Subsection 127.702(h) should require payment of a fee only if the modifications are initiated by the applicant, not when DEP requires modifications.

**Response:** Certain modifications or amendments may be necessary in order to determine that the application is true, accurate and complete or to issue a plan approval. The proposed section has been revised to clarify that the fees are due and payable by the owner or operator of a source when an amendment of a plan approval or revision of an application that requires reassessment of a control technology determination or of the ambient impacts of the source is submitted, whether the amendment or revision is initiated by the owner or operator of the source or by the Department. In the case of the owner or operator of the source initiating the amendment or revision that requires reassessment of the control technology determination or of the ambient impacts of the source, the owner or operator has initiated the action and is required to pay the fee. If the Department has found that the plan approval or application is not approvable in its current form, the Department initiates the action that requires the owner or operator of the source to submit additional information. To be approvable, the owner or operator must submit an amendment or revision on which the Department can take final action. In both cases, the appropriate fee would be due and payable by the owner or operator of the source.

**8. Comment:** Payment of fees should not be required when the action has no adverse environmental impact such as administrative amendments, minor modifications and transfer of ownership.

**Response:** The Board has proposed to revise the fee schedule for minor modifications. Each change requires Department staff resources even when there are no obvious environmental impacts.

**9. Comment:** The fees have a disproportionate impact on facilities that have numerous continuous emission monitoring systems.

**Response:** The Board has proposed a fee schedule for CEMS that reflects the time and staff resources directed to the CEMS. The owners and operators of the facilities using CEMS should pay for the services rendered. Small businesses that do not use CEMS should not subsidize the larger facilities. The proposed fees address the Department's time and resource demands for certifying CEMS and processing CEMS reports.

**10. Comment:** How will the fees be implemented under §§ 127.703(j)(2), 127.703(e)(2), 127.704, 127.708, 139.201 and 139.202?

**Response:** The fees for RFDs will be due upon submission of the RFD. Fees due under the Title V operating permit program will be collected as currently collected. Fees for the risk determination will be due upon submission of the risk determination. Fees for source testing and monitoring will be due upon submission of the application. Certain of the source testing and monitoring fees will not be known until the Department conducts the observation or test. These fees will be invoiced to the applicant.

**11. Comment:** Source test fees exceed the cost for a private testing firm to perform the same analysis. Therefore those who pay the fees should have the opportunity to contract with a private firm.

**Response:** The Department's plan approval and operating permits require the owner or operator to periodically test the emission sources with a Department-approved testing protocol. The owner or operator may choose a private testing company to conduct the source testing.

While the Department is authorized to conduct source testing, private testing companies perform the majority of source testing conducted in this Commonwealth for the regulated community. Therefore, an owner or operator may continue to choose any private testing company to conduct source testing instead of having these services performed by the Department.

**12. Comment:** The fiscal impact of the fee increases is affecting already-completed budgets.

**Response:** The final-form rulemaking for the revised fee schedule will become effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*, anticipated to be in Spring 2011. The owners or operators of affected facilities have had notice since the proposed rulemaking was published October 17, 2009, of the proposed fee revisions, providing sufficient time for owners and operators to adjust budgets accordingly for anticipated projects.

**13. Comment:** Long-term contract holders are affected because the contracts cannot be adjusted to accommodate the fee increases.

**Response:** The CAA requires the states to impose a Title V emission fee irrespective of contracts that affected facilities may have with other facilities. The Title V emission fee is consistent with EPA guidance. The fees are based on the emissions from each affected facility

up to 4,000 tons per regulated pollutant. The owners and operators of the facilities are encouraged to reduce emissions to lessen the impact of the fees.

**14. Comment:** The fees associated with stack testing are too complicated.

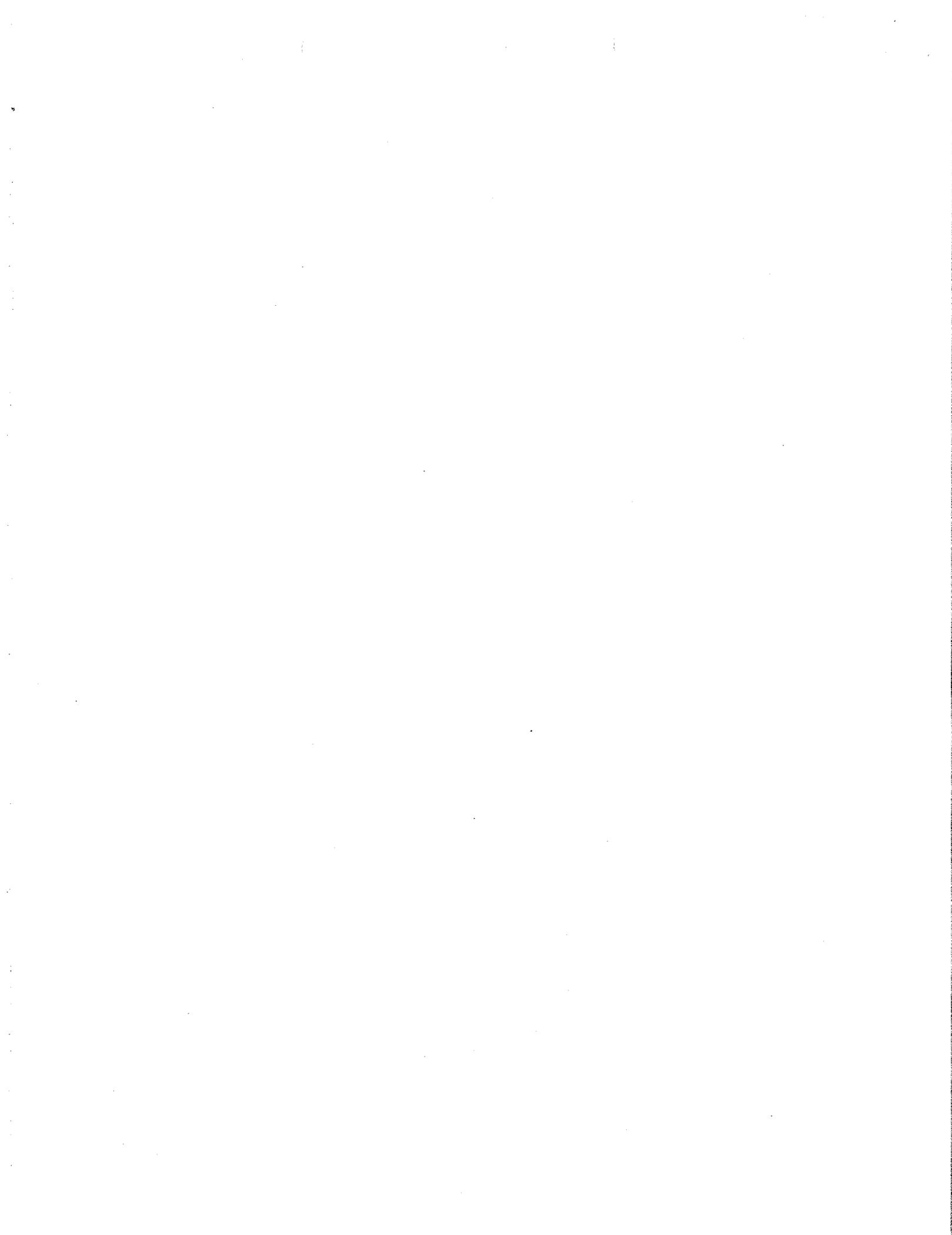
**Response:** The Board has developed a fee schedule that reflects the different aspects of source testing and review. In the final-form rulemaking, the fee for additional observers was eliminated to simplify the fee schedule.

**15. Comment:** The definition of “observer” is vague. The phrase “staff qualified to observe testing” is not clear regarding what qualifications a person must have to be an observer. We recommend adding specific qualifications to this definition.

**Response:** The Board has deleted this definition as it is no longer needed for the final-form rulemaking.

**16. Comment:** For clarity, the EQB should delete the obsolete fees for the years 2005 to 2009.

**Response:** The fee schedule for the years 2005 to 2009 has been deleted in the final-form rulemaking.



## FEE REPORT FORM

Department of Environmental Protection  
Bureau of Air Quality  
 Agency

November 1, 2010  
 Date

Dean Van Orden  
 Contact Person

717-783-9264  
 Phone Number

	<u>Prior Year 08/09</u>	<u>Current Year 09/10</u>	<u>1<sup>st</sup> Future Year Projected</u>	<u>2<sup>nd</sup> Future Year Projected</u>
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**FEE COLLECTIONS:**

Current				
Title V Fee	\$18,476,192	\$18,127,149	\$17,820,000	\$17,820,000
Permit/plan approval	<u>\$1,731,356</u>	<u>\$1,912,377</u>	<u>\$1,750,000</u>	<u>\$1,750,000</u>
Total	\$20,207,548	\$20,039,526	\$19,570,000	\$19,570,000
Proposed				
Title V Fee			\$23,498,157	\$23,500,000
Permit/plan approval			\$2,510,000	\$2,510,000
Source Testing			<u>\$1,400,000</u>	<u>\$1,400,000</u>
Total			\$27,408,157	\$27,410,000

**FEE TITLE AND RATE:**

Current See Attached Table

Proposed See Attached Table

**FEE OBJECTIVE:**

The final-form amendments to the existing plan approval and operating permit fee schedule and annual Title V emission fee in 25 Pa. Code Chapter 127, Subchapter I (relating to plan approval and operating permit fees), the addition of fees for risk assessment applications and the addition of a schedule for source testing, test report review, auditing and monitoring fees are designed to ensure that fees are sufficient to cover the Department's indirect and direct costs of administering the air pollution control program including certain activities related to processing

of plan approvals and operating permits, and source testing, test report reviews, and auditing and monitoring of continuous emission monitoring systems (CEMS) and sources. Amending the existing fee structure provides support for continuation of the Department's air pollution control program and ensures continued protection of the environment and the public health and welfare of the citizens of this Commonwealth.

Adoption of the final-form rulemaking provides for increased fees and new fees that will be used to cover the indirect and direct costs of administering the air pollution control program. Failure to adjust the fee structure will cause expenditures to exceed revenue and may cause reductions in staff or technical services. Reduced staffing will cause delays in processing plan approvals and issuing operating permits, resulting in delays and loss of revenue to industry and reduced protection of the environment and public health and welfare. New or modified sources of air pollution cannot be constructed without a plan approval. The installation of air pollution control equipment requires receipt of a plan approval. Failure to increase the Department's revenue may result in fewer inspections and increases in environmental and public health and welfare problems. It is anticipated that the Clean Air Fund would be in deficit in fiscal year 2015. The permit and plan approval fees were last adjusted in 2005, in accordance with the fee schedule established in Subchapter I (24 Pa.B. 5899, November 26, 1994). The base Title V emission fee was established in 1994 and has not been revised beyond the Clean Air Act-mandated annual consumer price index (CPI) adjustment. The CPI-adjusted Title V emission fee is no longer adequate to cover Title V-related expenditures.

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 final-form 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 owners and operators of approximately 887 Title V facilities in the Commonwealth must pay annual emission fees by September 1 each year for regulated pollutants emitted the previous year; this emission fee is not payable by any State entity, instrumentality or political subdivision in relation to any publicly owned or operated facility. These owners and operators will be affected by the revised base Title V emission fee and the revised plan approval and Title V operating permit fees in the final-form amendments. The final-form amendments will affect the owners or operators of approximately 2,500 non-major facilities that are subject to the plan approval and operating permit provisions of the Department's air quality regulations. The final-form amendments adjust existing plan approval and operating permit fees and establish new fees to reflect the actual costs of providing these services to the owners or operators of affected

facilities in this Commonwealth. 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.

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

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

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.

#### **ANALYSIS:**

The final-form rulemaking is expected to increase revenue to the Department by approximately \$7,531,000 per year through the implementation of increased fees and new fees to cover the costs of administering the air pollution control program. The approved local air pollution control programs in Philadelphia and Allegheny Counties collect the Title V emissions fee and should receive increased revenue of \$121,000 and \$397,000, respectively. 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)). While the Allegheny County Health Department has never requested financial

assistance, the Department has provided requested financial assistance to the Philadelphia County Air Management Services (AMS), most recently \$650,000 in 2009 and \$700,000 in 2010. Philadelphia County AMS projects an increasing need for assistance under § 127.706 and may request an increase in financial assistance to implement the City Of Philadelphia's Title V Program.

The revised base fee for the annual Title V emissions fee would produce annual revenue for the Department of approximately \$23,498,000. There was a balance of \$22,901,887 in the Clean Air Fund – Major Facilities account (Title V) as of July 30, 2010. Actual expenditures for the past two fiscal years have been \$22,659,921 (FY 08-09) and \$21,876,607 (FY 09-10). The spending authority for this fund as authorized by Governor Rendell (July 1, 2010) has been established at \$24,732,000. The additional revenue from the revised annual Title V emissions fee with a drawdown of the current Title V fund balance will support projected fund expenditures.

Implementation of the revised fee schedule for permits, plan approvals, and source testing should increase revenue by approximately \$2,160,000. Income to the Mobile and Area Facilities fund also includes penalties and reimbursements for coke oven inspections. Total income for the fund was \$5,868,357 (FY 08-09) and \$10,156,571 (FY 09-10). The increase in income in FY 09-10 was the result of a one-time penalty of \$6,000,000. Actual expenditures for the past two fiscal years have been \$7,948,763 (FY 08-09) and \$6,120,724 (FY 09-10). The spending authority for this fund for FY 10-11 as authorized by Governor Rendell was established at \$6,382,000. The spending authority was increased to \$9,382,000 to provide for the one-time funding of a special project. The additional revenue from the revised fee schedule with a drawdown of the current Mobile and Area Facility fund balance is anticipated to support projected fund expenditures.

Revenue and expenditure projections show negative spending by FY 2015 without the revised fee schedule.

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

The final-form Air Quality Fee Schedule amendments should be approved. The revised fee schedule will support continued operation of the Air Quality program in the Commonwealth.

The final-form 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 final-form revisions were discussed with the Air Quality Technical Advisory Committee (AQTAC) at its meeting of October 21, 2010. AQTAC concurred with the Department's recommendation to present the final-form rulemaking to the Board. The Department consulted with the Citizens Advisory Council (CAC) on October 18, 2010. The CAC concurred with proceeding to the Board with the final-form rulemaking. The Department discussed the comments to the proposed rulemaking with the Small Business Compliance Advisory Committee (SBCAC) on July 28, 2010. The SBCAC submitted a letter to the Secretary on October 29, 2010, with a request for consideration by the Board to reduce or waive the RFD fee for small businesses to take into account the financial resources of small business stationary sources.

Department of Environmental Protection  
Final-Form Air Quality Fee Schedule  
October 7, 2010

Fee Title	Section	Current Fee	Revised Fee
Plan Approval Application	127.702(b)	\$ 1,000.00	\$ 1,300.00
Plan Approval Application for New Source Review	127.702(c)	\$ 5,300.00	\$ 6,300.00
Plan Approval Application for National Emission Standard for Hazardous Air Pollutants	127.702(d)	\$ 1,700.00	\$ 2,000.00
Plan Approval Application for New Source Performance Standards	127.702(d)	\$ 1,700.00	\$ 2,000.00
Plan Approval Application for Maximum Achievable Control Technology	127.702(e)	\$ 8,000.00	\$ 10,000.00
Plan Approval Application for Prevention of Significant Deterioration	127.702(f)	\$ 22,700.00	\$ 27,000.00
Minor Modification of Plan Approval	127.702(g)	\$ 300.00	\$ 400.00
Transfer of Ownership of a Plan Approval	127.702(g)	\$ 300.00	\$ 400.00
Plan Approval Extension	127.702(g)	\$ 300.00	\$ 400.00
Plan Approval Amendment Air Quality Modeling-Screening	127.702(h)	\$ -	\$ 3,500.00
Plan Approval Amendment Air Quality Modeling - Other	127.702(h)	\$ -	\$ 7,500.00
Plan Approval Request for Determination	127.702(j)	\$ -	\$ 400.00
Non- Title V Administrative Amendment	127.703(b)	\$ 375.00	\$ 500.00
Non-Title V Minor Operating Permit Modification	127.703(b)	\$ 375.00	\$ 500.00
Operating Permit Application Fee for a non-Title V Facility	127.703(b)	\$ 375.00	\$ 500.00
Renewal of Non-Title V Operating Permit	127.703(b)	\$ 375.00	\$ 500.00
Transfer of Ownership of a non-Title V Operating Permit	127.703(b)	\$ 375.00	\$ 500.00
Annual Operating Permit Administration Fee for a non-Title V Facility	127.703(c)	\$ 375.00	\$ 500.00
Request for Determination - Operating Permit	127.703(e)	\$ -	\$ 400.00
Operating Permit Application Fee for Title V	127.704(b)	\$ 750.00	\$ 900.00
Renewal of Title V Operating Permit	127.704(b)	\$ 750.00	\$ 900.00
Title V Minor Operating Permit Modification	127.704(b)	\$ 750.00	\$ 900.00
Title V Significant Operating Permit Modification	127.704(b)	\$ 750.00	\$ 900.00
Transfer of Ownership of a Title V Operating Permit	127.704(b)	\$ 750.00	\$ 900.00
Title V Administrative Amendment	127.704(b)	\$ 750.00	\$ 900.00
Annual Title V Operating Permit Administration Fee ( "Title V Facility" as defined in 25 Pa. Code Sec. 121.1, subparagraph (iv))	127.704(c)	\$ 750.00	\$ 900.00
Title V Emission Fee per ton of regulated pollutant up to 4,000 tons per pollutant; adjusted annually based on CPI	127.705(a)	\$ 54.00	\$ 70.00
Risk Analysis - Inhalation only, Screening Model	127.708(b)	\$ -	\$ 5,000.00
Risk Analysis - Inhalation only, Other Model	127.708(c)	\$ -	\$ 9,000.00
Risk Analysis - Multi-pathway	127.708(c)	\$ -	\$ 10,000.00
CEMS Phase 1 Monitoring Plan Review Initial Certification, Base Fee	139 D	\$ -	\$ 1,500.00
CEMS Phase 1 Monitoring Plan Review Initial Certification, Charge per additional CEMS	139 D	\$ -	\$ 500.00
CEMS Phase 1 Monitoring Plan Review Initial Certification, Charge for each CEM	139 D	\$ -	\$ 200.00
CEMS Phase 1 Monitoring Plan Review Recertification, Base Fee	139 D	\$ -	\$ 750.00
CEMS Phase 1 Monitoring Plan Review Recertification, Charge per additional source	139 D	\$ -	\$ 250.00
CEMS Phase 1 Monitoring Plan Review Recertification, Charge per additional CEMS	139 D	\$ -	\$ 100.00
CEMS Phase 3 Test Report Review, Base Fee	139 D	\$ -	\$ 750.00
CEMS Phase 3 Test Report Review, Charge per CEMS	139 D	\$ -	\$ 200.00
CEM Test Observation, One day	139 D	\$ -	\$ 675.00
CEM Test Observation, Additional Day	139 D	\$ -	\$ 350.00
CEMS Level 4 test protocol review	139 D	\$ -	\$ 500.00
CEMS Level 4 test report (RATA) review	139 D	\$ -	\$ 500.00
CEMS Level 1 quarterly report audit, initial submittal per facility	139 D	\$ -	\$ 500.00

Department of Environmental Protection  
 Final-Form Air Quality Fee Schedule  
 October 7, 2010

Fee Title	Section	Current Fee	Revised Fee
CEMS Level 1 quarterly report audit, initial submittal per air contamination source	139 D	\$ -	\$ 200.00
CEMS Level 1 quarterly report audit, initial submittal per CEMS	139 D	\$ -	\$ 100.00
CEMS Level 1 quarterly report audit, resubmittal	139 D	\$ -	\$ 200.00
CEMS Level 2 system inspection audit	139 D	\$ -	\$ 1,000.00
CEMS Level 3 analyzer audit, per air contamination source	139 D	\$ -	\$ 1,000.00
CEMS Level 3 analyzer audit, charge for each CEMS	139 D	\$ -	\$ 200.00
CEMS System Audit (Level 4), Base Fee	139 D	\$ -	\$ 2,500.00
CEMS System Audit (Level 4), Additional Source	139 D	\$ -	\$ 1,000.00
CEMS System Audit (Level 4), lb/hr test per source	139 D	\$ -	\$ 500.00
Source Test Protocol Review	139 D	\$ -	\$ 675.00
Source Test Protocol Review, Review Additional Information	139 D	\$ -	\$ 100.00
Source Test Trial Burn Protocol Review	139 D	\$ -	\$ 1,700.00
Source Test Report Review	139 D	\$ -	\$ 1,000.00
Source Test Report, Review Additional Test Information	139 D	\$ -	\$ 300.00
Source Test Trial Burn Report Review	139 D	\$ -	\$ 3,050.00
Source Test Observation - per day	139 D	\$ -	\$ 675.00
Department Conducted Source Test, per pollutant per day, laboratory costs included	139 D	\$ -	\$ 3,000.00



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
POLICY OFFICE

November 23, 2010

Mr. Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
14th Floor  
333 Market Street  
Harrisburg, PA 17120

Re: Final-Form Rulemaking – Air Quality Fee Schedule (#7-441)  
Final-Form Rulemaking – Coal Mining Program Amendments (#7-458)

Dear Mr. Kaufman:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed copies of two final-form rulemakings for review and comment by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (EQB) approved these final-form rulemakings at its November 16, 2010, meeting.

The first final rulemaking enclosed, **the Air Quality Fee Schedule final rulemaking**, amends 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 existing fees, the rulemaking proposes new fees applicable to plan approval modifications and requests for determination (RFD) of whether a plan approval is required. Specifically, the rulemaking amends 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 adds a new section to address fees for risk assessment applications. The rulemaking also adds Subchapter D (relating to testing, auditing and monitoring fees) to 25 *Pa. Code* Chapter 139 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 final-form rulemaking is expected to increase revenue to the Department by approximately \$7.5 million per year to cover the costs of administering the air pollution control program. The rulemaking requires the Department at least every 5 years to provide the Board with an evaluation of the fees, including a recommendation for regulatory changes 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 meet all program costs. The rulemaking, if adopted as final by the Board, will be submitted to the U.S. Environmental Protection Agency as a revision to the State Implementation Plan.

The proposed rulemaking was approved by the Board on July 21, 2009, and was published for public comment in the October 17, 2009, edition of the *Pennsylvania Bulletin*. During the 60-day public comment period, which included three public hearings in Harrisburg on November 17, 2009; Norristown on November 18, 2009; and Pittsburgh on November 20, 2009, the Board



received comments from 17 commentators. As a result of comments received, changes were made to the Definitions section of the final rulemaking, as well as to the effective calendar years for the fee schedules in order to conform the dates with the projected effective date of the final-form rulemaking, which is expected to be 2011.

The final-form regulation was discussed with the Air Quality Technical Advisory Committee (AQTAC) at its October 21, 2010, meeting. The final-form regulation was discussed with the Citizens Advisory Council (CAC) Air Committee on October 18, 2010. The AQTAC and CAC concurred with the Department's recommendation to move the final-form regulation forward to the Board. In addition, the comments on the proposed rulemaking were discussed with the Small Business Compliance Advisory Committee (SBCAC) on July 28, 2010. On October 29, 2010, the SBCAC sent a letter to the Department recommending that the fee for Requests for Determination submitted by the owners or operators of small businesses be reduced or waived.

The second final rulemaking enclosed, **Coal Mining Program Amendments**, includes two categories of amendments. First, the rulemaking includes amendments to address regulatory program deficiencies identified by the Federal Office of Surface Mining Reclamation and Enforcement (OSMRE), which has oversight authority over Pennsylvania's coal mining program. A majority of the deficiencies that are addressed in this final rulemaking are minor and include modifications that are needed to ensure that state regulations are consistent with and as effective as federal regulations. The regulatory deficiencies must be addressed in order for Pennsylvania to retain regulatory authority for its coal mining program. If program deficiencies are not resolved to the satisfaction of OSMRE, the Commonwealth is at risk for losing or receiving less federal funding for the Abandoned Mine Land Reclamation program. Second, the rulemaking includes improvements to the Remining Financial Guarantee program, which are needed because of the transition in the coal mining bonding program from an alternate bonding system, which used acre-based bond rates, to a conventional bonding system where the bond amount is based on the actual costs of reclamation. The amendments included in the rulemaking are not expected to increase or add costs to the regulated community.

The Board approved the proposed rulemaking on March 16, 2010, with a 30-day public comment period. The proposal was published for public comment in the May 1, 2010, edition of the *Pennsylvania Bulletin*. The Board received comments from three commentators, a majority of which requested greater clarity and more precise alignment of federal regulatory language with state program deficiency sections. Comments were also received regarding operator eligibility concerning the remining financial guarantees portion of the rulemaking. As a result of the public comments received on the OSMRE program deficiency amendments, minor changes were made at final rulemaking to enhance clarity and to ensure consistency with federal language. Concerning the remining financial guarantees amendments, changes were made at final rulemaking to clarify that the reclamation liability applies to a proposed mining area rather than the permitted area and that an operator who has participated in the remining financial guarantee program and who has met its obligations is eligible for subsequent remining financial guarantees. At the September 7, 2010, meeting of the Department's Mining and Reclamation Advisory Board (MRAB), the MRAB recommended the Department proceed with the rulemaking to the Board for final approval.

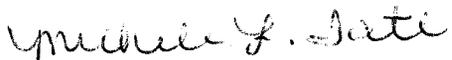


November 23, 2010

The Department of Environmental Protection will provide assistance as necessary to facilitate IRRC's review of these final-form rulemakings under Section 5.1(e) of the Regulatory Review Act. In acknowledgement that the House and Senate Environmental Resources and Energy Committees will not be able to complete their required 20-day review of the enclosed rulemakings because of the adjournment sine die of the legislative session, the Department, in accordance with requirements of Section 5.1(j.1) of the Regulatory Review Act, will resubmit the final-form rulemakings to IRRC and the House and Senate Environmental Resources and Energy Committees when the Committees are designated in 2011. The Department acknowledges that IRRC shall not act on the enclosed regulations until the review time of the Committees has expired. The remaining period for the Committees to complete their review of the enclosed final-form rulemakings will be calculated in adherence with the requirements in Section 5.1(j.1) of the Regulatory Review Act.

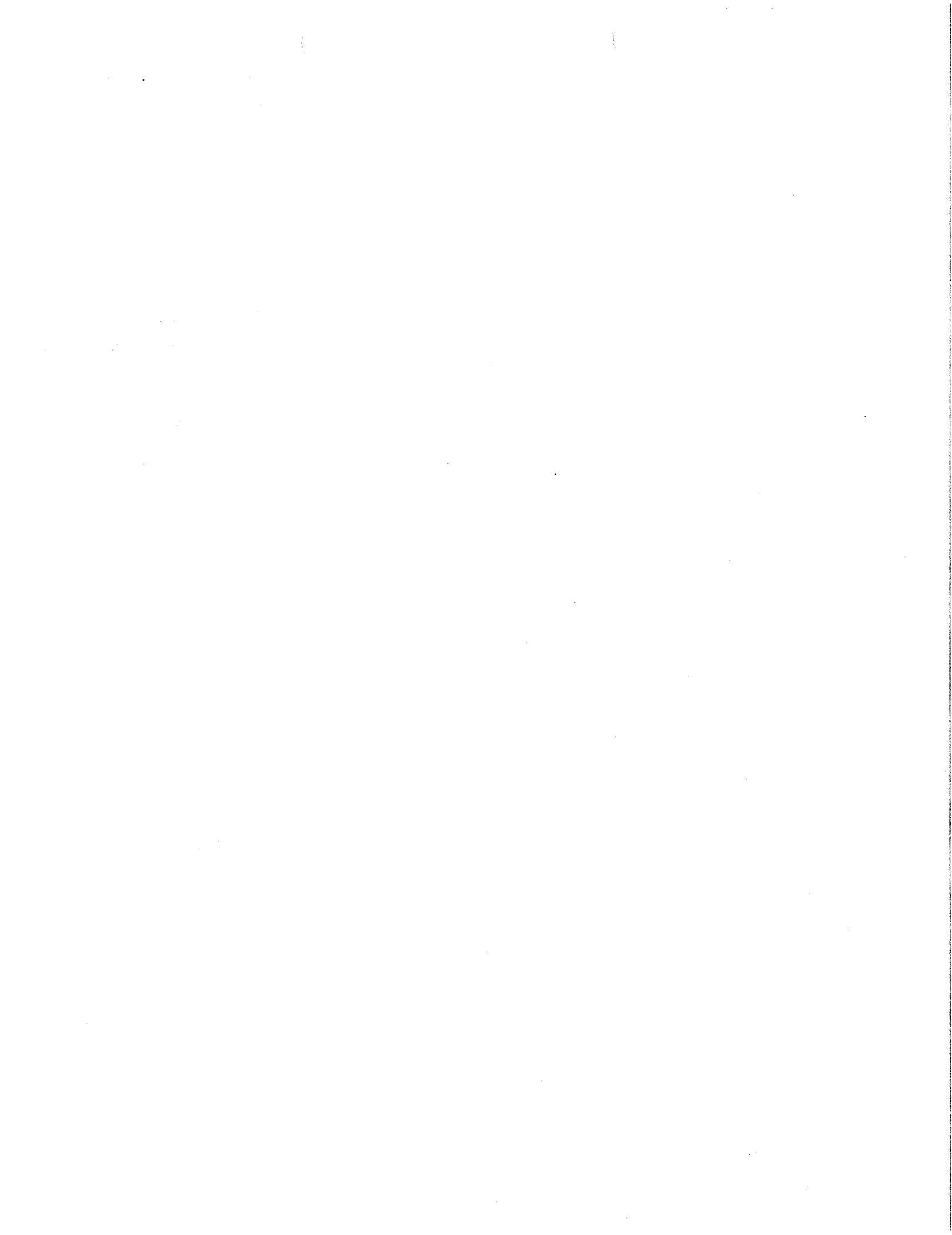
Please contact me at the number above if you have any questions or need additional information.

Sincerely,



Michele L. Tate  
Regulatory Coordinator

Enclosures





**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
 THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7-441  
 SUBJECT: Air Quality Fee Schedules  
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a.  With Revisions
  - b.  Without Revisions

RECEIVED  
 IRRC  
 2010 NOV 23 P 1:02

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
11/23/10	<u>Rhonda Campbell</u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY Rep. Camille George
11/23/10	<u>Rhonda Campbell</u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
11/23/10	<u>D. Castelli</u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY senator mary jo white
11-23-10	<u>A. Rybarczyk</u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
11/23/10	<u>K. Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

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