

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: Kelly J. Heffner, 783-8727

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

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

The proposed rulemaking would amend existing requirements and fee schedules codified in *25 Pa. Code* Chapter 127, Subchapter I (relating to plan approval and operating permit fees) to ensure that fees are sufficient to cover the costs of administering the air program. In addition to increasing the existing fee schedule, fees applicable to plan approval modifications and requests for determination of whether a plan approval is required would be proposed. The proposed rulemaking would also add a new section to address fees for risk assessment applications. The proposed rulemaking would amend the annual emission fee paid by the owner or operator of a Title V facility for up to 4,000 tons of each "regulated pollutant." The proposed rulemaking would also add 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).

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

- | | |
|---|------------------------------------|
| A. The date by which the agency must receive public comments: | <u>4th Quarter 2009</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>4th Quarter 2009</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>4th Quarter 2010</u> |
| D. The expected effective date of the final-form regulation: | <u>4th Quarter 2010</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>4th Quarter 2010</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 with an evaluation of the fees in this subchapter and recommend regulatory changes to the Environmental Quality Board to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

SECTION II: STATEMENT OF NEED

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

The proposed fee schedule rulemaking is authorized under section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3). Section 6.3(a) authorizes the Environmental Quality Board (Board) to establish fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process, operating permit program required by Title V of the Clean Air Act (CAA) (42 U.S.C. § 7661-7661f), other requirements of the CAA and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Small Business Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the Board by regulation to establish fees to support the air pollution control program authorized by this act and not covered by fees required by section 502(b) of the CAA (42 U.S.C. § 7661a(b)).

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. § 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 emissions 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. § 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. § 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. § 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

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(12 continued)

required by section 502(b) of the CAA (42 U.S.C. § 7661a(b)).

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 proposed amendments to the existing plan approval and operating permit fee schedule and emission fee, 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 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 proposed rulemaking provides for increased fees and new fees that will be used to cover the increased direct and indirect 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 projected for fiscal year 2013 (July 1, 2013-June 30, 2014).

The final-form revisions 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 proposed amendments will affect the owners or operators of approximately 2500 facilities that are subject to the plan approval and operating permit provisions of the Department's air quality regulations. The proposed amendments adjust the existing fees and establish new fees to reflect the actual cost of providing these services to the owners or operators of affected facilities in this Commonwealth. The owners or operators will be affected when they pay the revised fees.

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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 or operators of approximately 2500 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 proposed 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 proposed rulemaking adjusts the fees to be paid by the owners or operators of affected facilities. The Department estimates that the increase in emission fees will result in additional costs of \$2,761,000 per year to the owners or operators of affected facilities. The adjusted plan approval and permit fees are estimated to result in an increase in costs of \$760,000 per year. The source testing fees would increase costs to owners or operators by \$1.4 million per year. No new legal accounting or consulting procedures would be required.

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

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(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 (08/09)	FY +1 Year (09/10)	FY +2 Year (10/11)	FY +3 Year (11/12)	FY +4 Year (12/13)	FY +5 Year (13/14)
SAVINGS:	\$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
Total Savings	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
COSTS:						
Regulated Community	\$0.00	\$4.9 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
Total Costs	\$0.00	\$4.9 M				
REVENUE LOSSES:						
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
Total Revenue Losses	\$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 (05/06)	FY-2 (06/07)	FY-1 (07/08)	Current FY (08/09)
Clean Air Fund Major Emission Facilities (215- 20077)	\$24,290,000	\$26,218,000	\$23,872,000	\$24,053,000
Clean Air Fund Mobile and Area Facilities (233- 20084)	\$8,231,000	\$12,863,000	\$8,505,000	\$9,613,000
Environmental Program Management (161-10382)	\$37,049,000	\$36,868,000	\$39,909,000	\$41,800,000

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

The proposed amendments to the plan approval and operating fee schedule and emission fee and the addition of risk assessment fees in *25 Pa. Code* Chapter 127, Subchapter I, 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 allow for observation of stack emissions source testing and auditing of CEMS. 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 U. S. Environmental Protection Agency (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 revisions were discussed with the Air Quality Technical Advisory Committee (AQTAC) at its meetings of December 11, 2008, and February 12, 2009. The AQTAC voted at its February 12, 2009, meeting to move the proposal forward to the Board for consideration as proposed rulemaking. In addition, the proposed amendments were discussed with the Citizens Advisory Council on February 17, 2009, and the Small Business Compliance Advisory Committee on March 4, 2009.

(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.

(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 proposed amendments. However, section 502(b)(3)(B) of the CAA (42 U.S.C. § 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.

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

The proposed fees 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, New York and New Jersey, no longer limit emission fee applicability to 4,000 tons per regulated pollutant. In 2007, the New Jersey Department of Environmental Protection imposed an annual Title V emission fee of \$102.93 per ton of regulated pollutant with no cap on emissions. In Connecticut, a fee of \$224.60 per ton was imposed based on an "Inventory Stabilization Factor," which is adjusted periodically to ensure that Title V fees are adequate for at least two years. In 2007, New York imposed an annual Title V emission fee of \$45.00 per ton; the fee is applied to emissions of up to 6,000 tons of any regulated pollutant. The 2007 annual Title V emission fee, \$22.89, 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. § 7661a(b)(3)(B)(i)). Maryland has a fee of \$41.96 per ton plus a \$200 base fee. Maryland will lift the 4000 ton cap in 2010. Title V emission fee schedules are being amended in other states, including Delaware and Maryland, to ensure that fees are sufficient to cover program costs.

The permitting 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 is proposing a plan approval fee of \$6,300 for NSR applications filed during the 2010-2014 calendar years, increasing to \$8,000 for NSR applications filed for the calendar years beginning in 2020. The Department currently assesses a plan approval fee of \$22,700 for PSD applications. The Department is proposing a plan approval fee of \$27,200 for PSD applications filed during the 2010-2014 calendar years, increasing to \$35,700 for PSD applications filed for the calendar years beginning in 2020.

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.

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 \$7500 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 proposed fees are within these ranges.

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

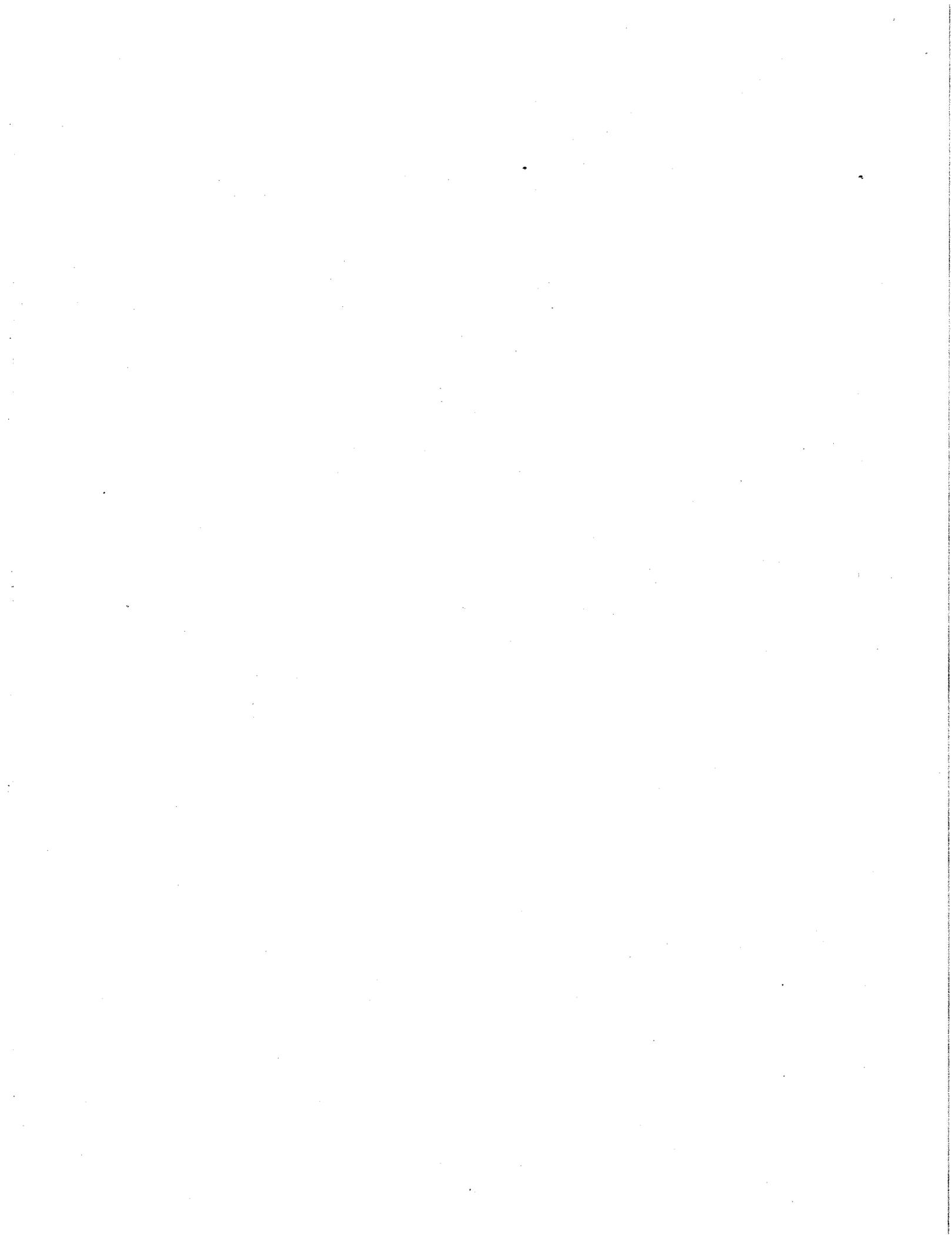
The proposed rulemaking will amend existing *25 Pa. Code* Chapters 121, 127 and 139. Regulations of other Commonwealth agencies are not impacted.

(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 proposed 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 proposed amendments would impact the owners or operators of facilities subject to the air pollution control plan approval and permitting program.



FEE REPORT FORM

Agency

Department of Environmental Protection
Bureau of Air Quality

Date

July 6, 2009

Contact Person

Dean Van Orden
717-783-9264

<u>Prior Year 07/08</u>	<u>Current Year 08/09</u>	<u>1st Future Year 09/10</u>	<u>2nd Future Year 10/11</u>
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FEE COLLECTIONS:

Current

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

Proposed

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

FEE TITLE AND RATE:

Current See Attached Table

Proposed See Attached Table

FEE OBJECTIVE:

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

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

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

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

The proposed fee schedule rulemaking is authorized under section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3). Section 6.3(a) authorizes the Environmental Quality Board (Board) to establish fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process, operating permit program required by Title V of the Clean Air Act (CAA) (42 U.S.C. § 7661-7661f), other requirements of the CAA and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Small Business Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the Board by regulation to establish fees to support the air pollution control program authorized by this act and not covered by fees required by section 502(b) of the CAA (42 U.S.C. § 7661a(b)).

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

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

FEE RELATED ACTIVITIES AND COSTS:

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

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

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

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

ANALYSIS:

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

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

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

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

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

RECOMMENDATION AND COMMENT:

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

The rulemaking will require that every 5 years, the Department provide the Environmental Quality Board with an evaluation of the fees and recommend regulatory changes to the Environmental Quality Board to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet program costs.

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

Department of Environmental Protection
Proposed Revised Air Quality Fee Schedule
July 2, 2009

Fee Title	Section	Current	Proposed 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)	\$ 52.00	\$ 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 per observer max 2 observer	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
Proposed Revised Air Quality Fee Schedule
July 2, 2009

Fee Title	Section	Current	Proposed 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 - each day	139 D	\$ -	\$ 675.00
Department Conducted Source Test, per pollutant per day, laboratory costs included	139 D	\$ -	\$ 3,000.00

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

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

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

By: 
(Deputy Attorney General)

OCT 01 2009

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

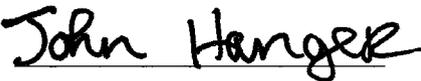
Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-441

DATE OF ADOPTION July 21, 2009

BY 

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

DATE OF APPROVAL

SEP 3 2009

(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 PROPOSED RULEMAKING

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

Air Quality Fee Schedules

25 Pa. Code, Chapters 121, 127 and 139



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

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

This notice is given under Board order at its meeting of July 21, 2009.

A. Effective Date

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

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

B. Contact Persons

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

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

C. Statutory Authority

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

D. Background and Summary

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

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

These increased fees and new fees would be used to support the Department's air quality program as authorized by the APCA. This will ensure that the program is self-sustaining. The fee revisions would allow the Department to maintain staffing levels in the air quality program. This would provide a sound basis for continued air quality assessments and planning that are fundamental to protecting public health and welfare and the environment.

Increased funding for the plan approval and operating permit program would continue to allow for timely and complete review of plan approval and operating permit applications. Implementation of new fees for risk assessment applications would allow for resources to address this important area of public health and social well-being by evaluating the risks associated with observed levels of contaminants.

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

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

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

E. Summary of Regulatory Revisions

The proposed amendments add the following 22 new definitions and terms to § 121.1 (relating to definitions) to explain source testing, auditing and monitoring activities used in the substantive provisions under either Chapter 127, Subchapter I or Chapter 139, Subchapter D: "CEMS level 1 quarterly report," "CEMS level 1 quarterly report audit," "CEMS level 2 system inspection audit," "CEMS level 3 analyzer audit," "CEMS level 4 system audit," "CEMS level 4 system audit report," "CEMS level 4 test protocol," "CEMS level 4 test protocol review," "CEMS level 4 test report (RATA)," "CEMS level 4 test report (RATA) review," "CEMS

levels,” “CEMS periodic self-audit,” “CEMS phase 1 monitoring plan,” “CEMS phase 1 monitoring plan review,” “CEMS phase 2 test protocol,” “CEMS phase 3 certification test report,” “CEMS phase 3 certification test report review,” “CEMS phases,” “observer,” “RATA-relative accuracy test audit,” “risk assessment” and “trial burn operating scenario.” The proposed amendments revise the definition of one term to provide clarity: “CEMS – continuous emissions monitoring system.”

Proposed changes to § 127.701 (relating to general provisions) ensure that fees are made payable to the Pennsylvania Clean Air Fund and that at least every 5 years, the Department will provide the Board with an evaluation of the fees in this subchapter and recommend regulatory changes to the Board to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

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

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

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

Under subsection (d), the owner or operator of a source requiring approval under Chapter 122, Chapter 124 or § 127.35(b) (relating to national standards of performance for new stationary sources; national emission standards for hazardous air pollutants; and maximum achievable control technology standards for hazardous air pollutants), including a proposed revision to an application that requires reassessment of a control technology determination, shall pay a fee equal to \$2,000 for applications filed during the 2010-2014 calendar years; \$2,500 for applications filed during the 2015-2019 calendar years; and \$3,000 for applications filed during the calendar years beginning in 2020.

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

Under subsection (f), the owner or operator of a source requiring approval under Chapter 127, Subchapter D (relating to prevention of significant deterioration of air quality), including a

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

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

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

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

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

Under subsection (k), the owner or operator of a source proposing to use a general plan approval under Chapter 127, Subchapter H (relating to general plan approvals and operating permits) shall pay a fee which will not be greater than the fees established under § 127.702. These fees shall be established at the time the general plan approval is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice and review period).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 139 is proposed to be amended to add Subchapter D. This subchapter is proposed to establish fees for testing, auditing and monitoring activities that the Department undertakes to administer the requirements of the APCA or the Clean Air Act. The fees collected under this subchapter shall be made payable to the Pennsylvania Clean Air Fund and deposited into the Clean Air Fund established under section 9.2 of the APCA (35 P.S. § 4009.2). At least every 5 years, the Department will provide the Board with an evaluation of the fees in this subchapter and recommend regulatory changes to the Board to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

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

F. Benefits, Costs and Compliance

Benefits

Overall, the citizens of this Commonwealth would benefit from these proposed amendments because the fee revisions would allow the Department to maintain staffing levels in the air quality program. This would provide a sound basis for continued air quality assessments and planning that are fundamental to protecting public health and welfare and the environment.

Compliance Costs

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

Compliance Assistance Plan

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

Paperwork Requirements

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

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This proposed rulemaking would allow the Department to maintain staffing levels in the air quality program, which would provide a sound basis for continued air quality assessments and planning that are fundamental to reducing pollution and protecting public health and welfare and the environment.

H. Sunset Review

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

At least every 5 years, the Department will provide the Environmental Quality Board with an evaluation of the fees in this subchapter and recommend regulatory changes to the Environmental Quality Board to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act, 71 P.S. § 745.5(a), on October 6, 2009, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided the IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

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

J. Public Comments

Written Comments: Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by December 21, 2009. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by December 21, 2009. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments: Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by December 21, 2009. A subject heading of the proposal and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within 2 working days, the comments should be retransmitted to ensure receipt.

K. Public Hearings

The Environmental Quality Board will hold three public hearings for the purpose of accepting comments on this proposal. The hearings will be held as follows:

Department of Environmental Protection
Southcentral Regional Office
Susquehanna Room A
909 Elmerton Avenue
Harrisburg, PA 17110

November 17, 2009
10:00 a.m.

Department of Environmental Protection
Southeast Regional Office
Delaware Conference Room
2 East Main Street
Norristown, PA 19401

November 19, 2009
10:00 a.m.

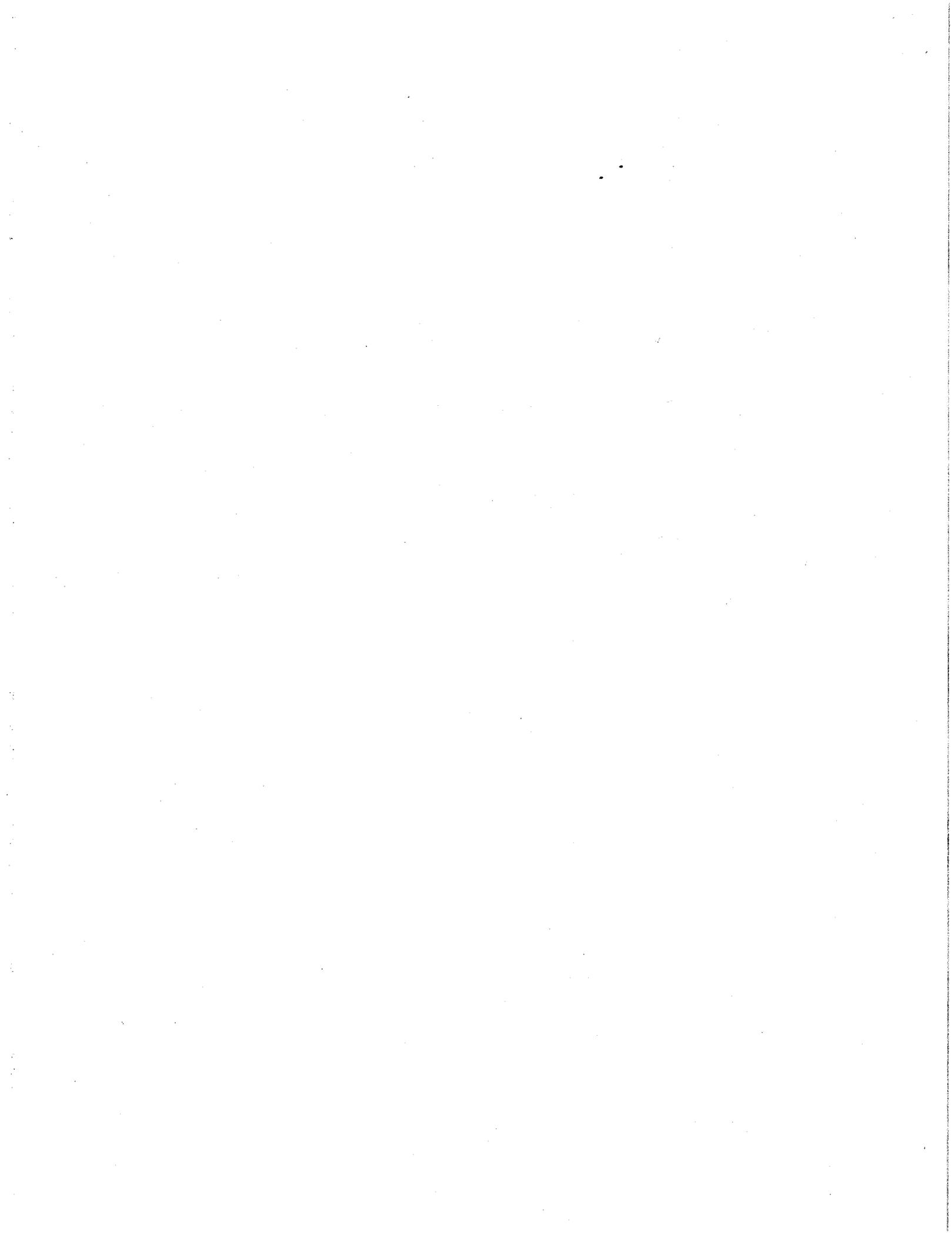
Department of Environmental Protection
Southwest Regional Office
Waterfront Conference Room A and B
400 Waterfront Drive
Pittsburgh, PA 15222-4745

November 20, 2009
10:00 a.m.

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

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

JOHN HANGER
Chairperson



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 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** 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 is 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 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 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 by either the Department or the owner or operator of the facility of the system performance of the CEMS, conducted in accordance with the Department's current RATA procedures, where both of the following occur:

(i) Testing is conducted using EPA-approved test methods.

(ii) 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.

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 in order 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,

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.

(a) This subchapter establishes fees to cover the direct and indirect costs of administering the air pollution control planning process, operating permit program required by Title V of the Clean Air Act (42 U.S.C.A. §§ 7661—7661f), other requirements of the Clean Air Act, the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and the Office of Small Business Ombudsman and the costs to support the air pollution control program authorized by the 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) 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 Environmental Quality Board with an evaluation of the fees in this subchapter and recommend regulatory changes to the Environmental Quality Board to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

§ 127.702. Plan approval fees.

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

(b) Except as provided in subsections (c)—[(g)] (i), 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 calendar years.

(3) One thousand six hundred dollars for applications filed during the 2015-2019 calendar years.

(4) Two thousand dollars for applications filed for the calendar years beginning in 2020.

(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 calendar years.

(3) Seven thousand three hundred dollars for applications filed during the 2015-2019 calendar years.

(4) Eight thousand dollars for applications filed for the calendar years beginning in 2020.

(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 calendar years.

(3) Two thousand five hundred dollars for applications filed during the 2015-2019 calendar years.

(4) Three thousand dollars for applications filed during the calendar years beginning in 2020.

(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 calendar years.

(3) Twelve thousand dollars for applications filed during the 2015-2019 calendar years.

(4) Fourteen thousand dollars for applications filed during the calendar years beginning in 2020.

(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 calendar years.

(3) Thirty thousand seven hundred dollars for applications filed during the 2015-2019 calendar years.

(4) Thirty-five thousand seven hundred dollars for applications filed during the calendar years beginning 2020.

(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 calendar years.

(3) Five hundred dollars for applications filed during the 2015-2019 calendar years.

(4) Six hundred fifty dollars for applications filed during the calendar years beginning in 2020.

(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 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 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 calendar years.

(B) Four thousand five hundred dollars for applications filed during the 2015-2019 calendar years.

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

(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 calendar years.

(B) Nine thousand dollars for applications filed during the 2015-2019 calendar years.

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

(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).

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

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

(i) Four hundred dollars for requests for determination filed during the 2010-2014 calendar years.

(ii) Five hundred dollars for requests for determination filed during the 2015-2019 calendar years.

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

(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 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 calendar years.

(3) Six hundred dollars for applications filed during the 2015-2019 calendar years.

(4) Eight hundred fifty dollars for applications filed for the calendar years beginning in 2020.

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

(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 calendar years.

(3) Six hundred dollars for the 2015-2019 calendar years.

(4) Seven hundred fifty dollars for the calendar years beginning in 2020.

(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 operating permit shall pay a fee equal to:

(i) Four hundred dollars for requests for determination filed during the 2010-2014 calendar years.

(ii) Five hundred dollars for requests for determination filed during the 2015-2019 calendar years.

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

(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 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 calendar years.

(3) One thousand one hundred dollars for applications filed during the 2015-2019 calendar years.

(4) One thousand five hundred dollars for applications filed for the calendar years beginning in 2020.

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

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

(2) **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 calendar years.

(3) One thousand one hundred dollars for applications filed during the 2015-2019 calendar years.

(4) One thousand three hundred dollars for applications filed for the calendar years beginning in 2020.

(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 Title V facilities located in Allegheny County and Philadelphia 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 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 (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** 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**, 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.

(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 calendar years.

(2) Six thousand dollars for applications filed during the 2015 – 2019 calendar years.

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

(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 calendar years.

(2) Eleven thousand dollars for applications filed during the 2015 – 2019 calendar years.

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

(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 calendar years.

(2) Twelve thousand dollars for applications filed during the 2015 – 2019 calendar years.

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

CHAPTER 139. SAMPLING AND TESTING

(Editor's Note: The following text is new and is 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 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 within 60 days of the billing date.

(e) At least every 5 years, the Department will provide the Environmental Quality Board with an evaluation of the fees in this subchapter and recommend regulatory changes to the Environmental Quality Board to address any disparity between the program income generated by the fees and the Department's cost of administering the air quality program with the objective of ensuring sufficient fees to meet all program costs.

§ 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, 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 calendar years.

(b) For testing, auditing and monitoring activities performed by Department personnel for calendar years 2015-2019, 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 calendar years.

(c) For testing, auditing and monitoring activities performed by Department personnel for calendar years beginning with 2020, the Department will assess a testing, auditing or monitoring fee on the applicant or permittee in accordance with the Schedule of Testing, Auditing and Monitoring Fees listed in Table I for the calendar years beginning with 2020.

TABLE I

Schedule of Testing, Auditing and Monitoring Fees for Activities Performed by Department Personnel				
		Fee Amount		
Activity	Fee Basis	Calendar Years		
		2010-2014	2015-2019	2020+
(1) CEMS certification activities				
(i) CEMS phase 1 monitoring plan review, initial certification	Base fee (includes one air contamination source):	\$1,500.00	\$1,800.00	\$2,200.00
	Charge for each additional air contamination source:	\$500.00	\$600.00	\$700.00
	Charge for each CEMS:	\$200.00	\$240.00	\$300.00
(ii) CEMS phase 1 monitoring plan review, recertification	Base fee (includes one air contamination source):	\$750.00	\$900.00	\$1,100.00
	Charge for each additional air contamination source:	\$250.00	\$300.00	\$360.00
	Charge for each CEMS:	\$100.00	\$120.00	\$150.00
(iii) CEMS phase 3 certification test report review	Base fee (for each submittal):	\$750.00	\$900.00	\$1,100.00
	Charge for each CEMS :	\$200.00	\$240.00	\$300.00
(iv) CEMS test observation	One day, per observer, maximum of two observers*:	\$675.00	\$810.00	\$1,000.00
	Charge for each additional day, per observer, maximum of two observers*:	\$350.00	\$420.00	\$500.00
(2) CEMS test report review activities (not linked with a CEMS phase 1 certification application)				
(i) CEMS level 4 test protocol review	Per submittal:	\$500.00	\$600.00	\$700.00
(ii) CEMS level 4 test report (RATA) review	Base fee (for each submittal):	\$500.00	\$600.00	\$700.00
	Charge for each CEMS:	\$150.00	\$180.00	\$200.00
(3) CEMS audit activities				
(i) CEMS level 1 quarterly report audit, initial submittal	For each initial submittal, whichever is less:			
	Per facility:	\$500.00	\$600.00	\$700.00
	Per air contamination source:	\$200.00	\$240.00	\$300.00
	Per CEMS:	\$100.00	\$120.00	\$150.00

	Fee Amount
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Activity	Fee Basis	Calendar Years		
		2010-2014	2015-2019	2020+
(ii) CEMS level 1 quarterly report audit, resubmittal	Per CEMS:	\$200.00	\$240.00	\$300.00
(iii) CEMS level 2 system inspection audit	Per test program:	\$1,000.00	\$1,200.00	\$1,500.00
(iv) CEMS level 3 analyzer audit	Per air contamination source:	\$1,000.00	\$1,200.00	\$1,500.00
	Charge for each CEMS, per air contamination source:	\$200.00	\$240.00	\$300.00
(v) CEMS level 4 system audit	Base fee per facility (includes one air contamination source):	\$2,500.00	\$3,000.00	\$3,600.00
	For each additional air contamination source at same facility:	\$1,000.00	\$1,200.00	\$1,500.00
	Lb/hr test, per air contamination source:	\$500.00	\$600.00	\$700.00
(4) Source testing activities				
(i) Source test protocol review	Per protocol:	\$675.00	\$810.00	\$1,000.00
	Review additional information, per request:	\$100.00	\$120.00	\$150.00
(ii) Trial burn source test protocol review	Per protocol:	\$1,700.00	\$2,040.00	\$2,500.00
(iii) Source test report review	Per air contamination source (as defined in the permit):	\$1,000.00	\$1,200.00	\$1,500.00
	Review of additional test information, per air contamination source, per request:	\$300.00	\$360.00	\$450.00
(iv) Trial burn source test report review	Per trial burn operating scenario:	\$3,050.00	\$3,660.00	\$4,400.00
(v) Source test observation**	Per day, per observer, maximum of two observers*:	\$675.00	\$810.00	\$1,000.00
(vi) Department-conducted source test	Per pollutant or parameter per day, laboratory costs included:	\$3,000.00	\$3,600.00	\$4,400.00

*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 Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
October 6, 2009

Policy Office

717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Proposed Rulemaking: Air Quality Fee Schedule
(25 Pa. Code, Chapters 121, 127 and 139)

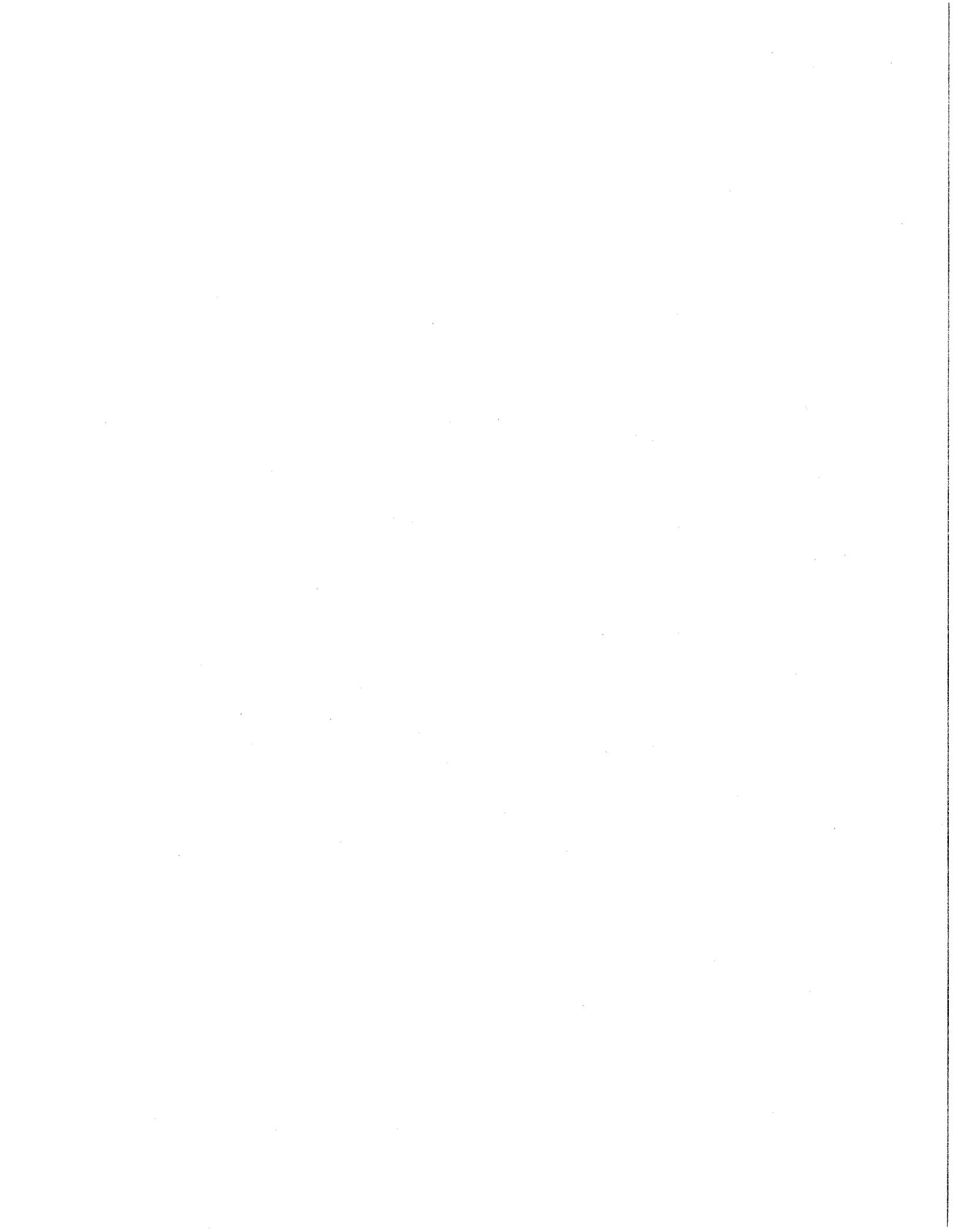
Dear Mr. Kaufman:

Enclosed is a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission pursuant to Section 5(a) of the Regulatory Review Act. The proposed rulemaking is scheduled for publication in the *Pennsylvania Bulletin* on October 17, 2009, with a 60-day public comment period and three public hearings. The Environmental Quality Board (EQB) adopted this proposal on July 21, 2009.

This proposed 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 the existing fees, the rulemaking proposes fees applicable to plan approval modifications and requests for determination (RFD) of whether a plan approval is required. The proposed 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 proposed 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). In addition, the proposed rulemaking includes 22 new terms and definitions in 25 Pa Code Chapter 121 to explain certain activities and revise the definition for one term to provide clarity. The proposed rulemaking requires the Department at least every five years to provide the EQB 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 EQB, will be submitted to the U.S. EPA as a revision to the State Implementation Plan.

The Air Quality Technical Advisory Committee (AQTAC) reviewed the proposed rulemaking at meetings held on December 11, 2008, and February 12, 2009. The AQTAC concurred with the Department's recommendation to present the proposal to the EQB for approval for proposed rulemaking. In addition, the proposed revisions were reviewed with the Citizens Advisory Council on February 17,





2009. An overview of the proposal was also presented to the Small Business Compliance Advisory Committee on March 4, 2009.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(d) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendation or suggestions made by the Commission, as well as the Committees and public commentators, prior to final adoption of this rulemaking.

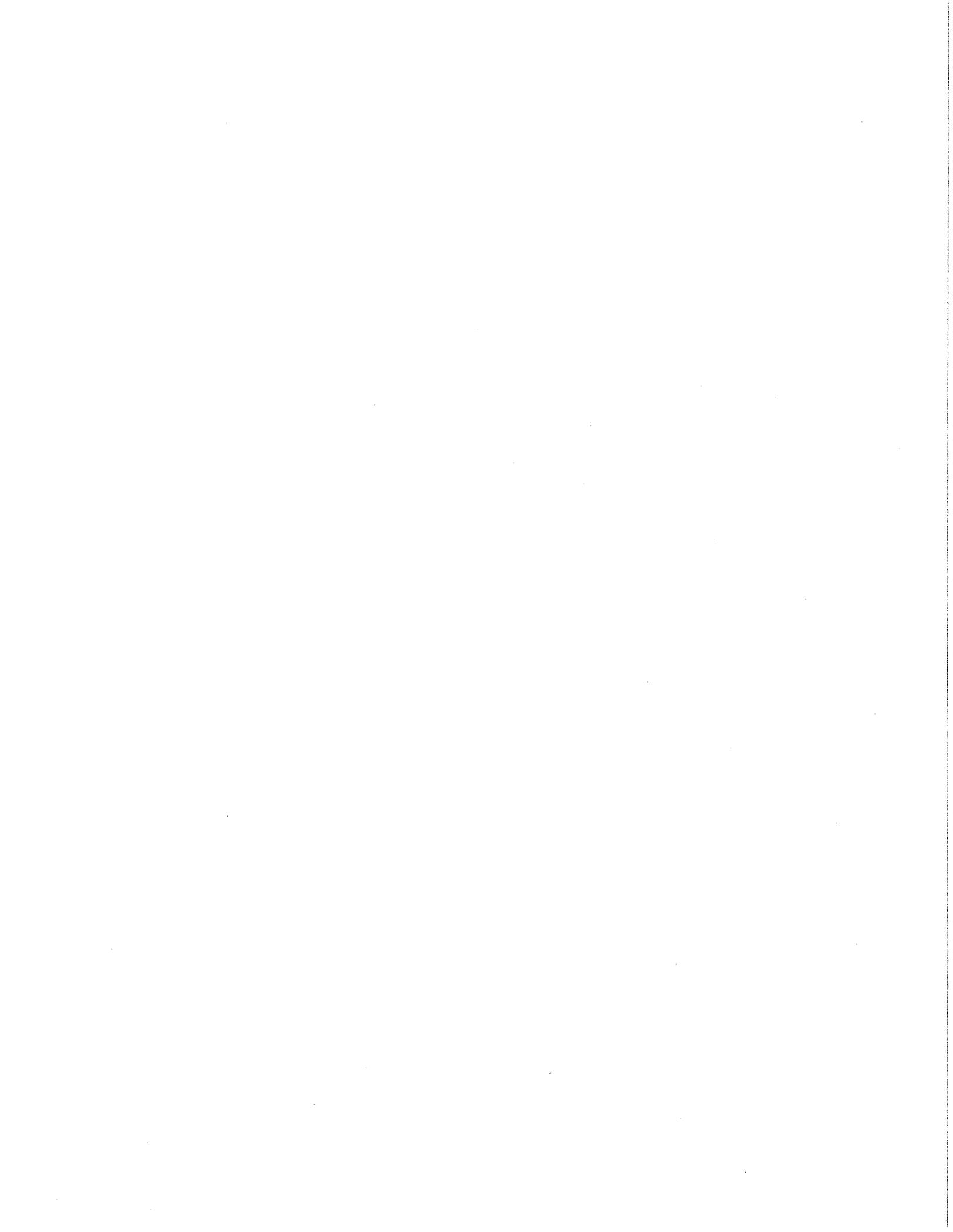
Please contact me at 717-783-8727 if you have any questions or need additional information.

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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10-6-09	<u>D. Neuf</u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
10/6/09	<u>M. Beane</u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
10-6-09	<u>D. Costello</u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
10-6-09	<u>A. Pybarczyk</u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
10/6/09	<u>Dr. Helbert</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
10/6/09	<u>M. Lanning</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

