

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Environmental Protection

(2) Agency Number:

Identification Number: #7-478

IRRC Number: #2980

(3) PA Code Cite: 25 Pa. Code Chapter 127, Subchapter I

(4) Short Title: Air Quality Title V Fee Amendment

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(6) 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

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

The final rulemaking amends the Title V annual emission fee codified in § 127.705 (relating to emission fees) of Chapter 127, Subchapter I (relating to plan approval and operating permit fees). An adequate fee must result in the collection and retention of revenue sufficient to cover the costs of administering the air quality permit program as required under section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3). To meet these obligations, the final rulemaking increases the Title V annual emission fee paid by the owner or operator of a Title V facility to \$85 per ton of "regulated pollutant" for up to 4,000 tons of each regulated pollutant beginning with emissions occurring in calendar year 2013, payable by September 1, 2014. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is \$57.50 per ton of regulated pollutant for up to 4,000 tons of emissions of each regulated pollutant. The revised Title V annual emission fee is an increase of \$27.50 per ton of regulated pollutant from the 2013 assessed annual fee. For Title V annual emission fee purposes, the term "regulated pollutant," as defined in section 502 of the Clean Air Act (CAA) (42 U.S.C.A. § 7661a), 40 CFR § 70.2 (relating to definitions), and § 127.705(d), means a volatile organic compound, each pollutant regulated under sections 111 and 112 of the CAA (42 U.S.C.A. §§ 7411 and 7412), and each pollutant for which a National Ambient Air Quality Standard (NAAQS) has been promulgated, except that carbon monoxide shall be excluded from this reference. Minor clarifying amendments are made for § 127.701 (relating to general provisions).

If published in the *Pennsylvania Bulletin* as final rulemaking, the final-form regulation will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP) and as an amendment to the Title V Program Approval codified in 40 CFR Part 70, Appendix A (relating to approval status of state and local operating permits programs).

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

The Title V annual emission fee amendment final rulemaking is authorized under section 6.3 of the APCA. 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 and operating permit program required by Title V of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7661-7661f), other requirements of the CAA and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Small Business Compliance Advisory Committee (SBCAC) and Office of Small Business Ombudsman.

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

(9) 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 110(a)(2)(E)(i) of the CAA (42 U.S.C.A. § 7410(a)(2)(E)(i)) requires necessary assurances that the Commonwealth will have adequate personnel, funding, and authority under State (and as appropriate local) law to carry out the implementation of the SIP.

Section 502(b) of the CAA 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 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. Implementing regulations in 40 CFR § 70.9 (relating to fee determination and certification) provide that the State program shall require that the owners or operators of Title V sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for stationary sources:

(i) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(ii) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;

(iii) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

(iv) Implementing and enforcing the terms of any Part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;

- (v) Emissions and ambient monitoring;
- (vi) Modeling, analyses, or demonstrations;
- (vii) Preparing inventories and tracking emissions; and
- (viii) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the CAA (42 U.S.C.A. § 7661f) in determining and meeting their obligations under this part.

Section 6.3 of the APCA 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, other requirements of the CAA and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, SBCAC and Office of Small Business Ombudsman.

There are no relevant court decisions.

(10) 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.

Title V annual emission fees are payable by the owners and operators of facilities in this Commonwealth that are classified as major sources of air pollution under section 501 of the CAA (42 U.S.C.A. § 7661) and are subject to the permitting provisions of Title V of the CAA. Section 502(b) of the CAA required the EPA to adopt rules establishing the minimum elements of Title V operating permit programs including a requirement that the owner or operator of all sources subject to the requirements obtain a permit under Title V of the CAA and pay an annual emission fee to state and local agencies sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V of the CAA.

On July 30, 1996, the EPA granted full approval of Pennsylvania's Title V Operating Permits Program in accordance with Title V of the CAA and implementing regulations in 40 CFR Part 70. See 61 FR 39597 (July 30, 1996). Pursuant to 40 CFR § 70.9(a) and (b) (relating to fee determination and certification), the State program must "require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs." The fee schedule must result in the collection and retention of revenues sufficient to cover the Title V permit program costs.

The Commonwealth has established a uniform Title V annual emission fee, which is imposed statewide. The local air pollution control agencies in Allegheny and Philadelphia Counties collect the Title V annual emission fee revenue for affected sources under their jurisdictions.

The amendment to the existing Title V annual emission fee is designed to cover all reasonable costs required to develop and administer the Title V permit requirements. These reasonable costs include the cost for certain activities related to major facility operations, including the review and processing of plan approvals and operating permits; emissions and ambient air monitoring; preparing applicable regulations and guidance; modeling, analyses and demonstrations; and preparing emission inventories and tracking

emissions. Direct and indirect program costs include personnel costs; operating expenses such as telecommunications, electricity, travel, auto supplies and fuel; and the purchase of fixed assets such as air samplers and monitoring equipment, vehicles and trailers.

To meet these obligations, the final rulemaking increases the Title V annual emission fee paid by the owner or operator of a Title V facility to \$85 per ton of "regulated pollutant" for emissions of up to 4,000 tons of each regulated pollutant beginning with emission fees payable by September 1, 2014, for emissions occurring in calendar year 2013. The initial Title V annual emission fee, established at 24 Pa.B. 5899, November 26, 1994, was \$37 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant per Title V facility. As provided in § 127.705(e), the emission fee imposed under § 127.705(a) has been increased in each year after November 26, 1994, 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. Under the existing regulatory framework, the Title V annual emission fee has not been revised since 1994. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is \$57.50 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant. In order to collect fees sufficient to cover Title V program costs, the increase to the Title V annual emission fee is an increase of \$27.50 per ton of emissions of each regulated pollutant from the 2013 assessed annual emission fee.

Title V annual emission fee revenues collected are no longer sufficient to cover program costs. Installation of air pollution control technology over the past two decades on major stationary sources, the retirement or curtailment of operations by major sources including certain refineries and coal-fired power plants, and the conversion at many major facilities from burning coal or oil to burning natural gas in order to comply with the requirements to attain and maintain the NAAQS has resulted in the decreased emission of regulated pollutants that are subject to the annual emission fee, and revenues collected have been decreasing as a result. The increase to the Title V annual emission fee considers the impact on collected Title V annual emission fee revenues from the retirement of certain sources and the announced retirement of sources, including certain electric generating units. The decline in interest rates paid on savings account balances has also affected the funds as the investments earn less interest in the current economy compared to the early years of the program.

As shown in Table 1, the projected Title V Major Emission Facilities Account ending balance for fiscal year (FY) 2014-2015 under the current fee structure, \$3.073 million, will not be sufficient to cover program costs for the Department during FY 2015-2016. Deficits in the Department's Title V Major Emission Facilities Account of \$7.235 million, \$19.406 million, \$32.001 million, and \$45.028 million are currently projected for the 2015-2016, 2016-2017, 2017-2018, and 2018-2019 fiscal years, respectively. (Source: Attachment 1 - Comparative Financial Statement; Clean Air Fund; Major Emissions without Fee Increase; Title V only.)

Table 1
Title V Annual Emission Fee Revenue Projected to Fiscal Year (FY) 2018-2019,
without an increase to the Title V Annual Emission Fee,
in \$ thousands

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
	ACTUAL	ACTUAL	REBUDG ET	PLAN YR.1	PLAN YR.2	PLAN YR.3	PLAN YR.4	PLAN YR.5
Beginning Balance	25,460	22,804	20,404	12,674	3,073	(7,235)	(19,406)	(32,001)
Title V Revenue	16,847	15,612	13,000	10,300	10,000	9,000	9,000	9,000
Interest on Title V Funds	552	452	600	448	448	0	0	0
Total Title V Funds Available	42,859	38,868	34,404	23,422	13,521	1,765	(10,406)	(23,001)
Total Title V Expenditures	20,055	18,464	21,330	20,349	20,756	21,171	21,595	22,027
Ending Balance Title V Fund	22,804	20,404	12,674	3,073	(7,235)	(19,406)	(32,001)	(45,028)

The final rulemaking establishes a new Title V annual emission fee of \$85 per ton for emissions of up to 4,000 tons of regulated pollutant, from which future increases based on the Consumer Price Index will be calculated. The increased Title V annual emission fee revenue will be used to adequately fund the Commonwealth's air quality Title V permit programs as authorized by the APCA. Revenue to the Department from the fee increase will be used solely to address the projected deficits in the Title V Major Emission Facilities Account in the Clean Air Fund.

The final Title V annual emission fee of \$85 per ton of emissions for up to 4,000 tons of each regulated pollutant will result in projected increased revenue to the Department of \$5.1 million in the Title V Account for fiscal years 2014-2015 and 2015-2016, and \$3.5 million for fiscal years 2016-2017, 2017-2018, and 2018-2019, when the fee is imposed beginning with emissions occurring in calendar year 2013 and payable by September 1, 2014. (Fee projections may be further reduced if additional facilities close or curtail operations.) An increase in the Title V annual emission fee to \$85 per ton of emissions for up to 4,000 tons of each regulated pollutant will provide projected increased emission fee revenue of approximately \$570,000 and \$167,000 for the Title V programs in Allegheny County and Philadelphia County, respectively.

However, as shown in Table 2, despite the projected increased revenues from the fee increase, the projected Title V Major Emission Facilities Account ending balance for FY 2015-2016, \$2.951 million, will not be sufficient to cover program costs for the Department during FY 2016-2017. Deficits in the Department's Title V Major Emission Facilities Account of \$5.720 million, \$14.815 million and \$24.342 million are projected for the 2016-2017, 2017-2018 and 2018-2019 fiscal years, respectively, after implementation of the Title V annual emission fee increase. (Source: Attachment 2 - Comparative Financial Statement; Clean Air Fund; Major Emissions with Fee Increase; Title V only.) These anticipated deficits necessitate further remedies to ensure the solvency of the program. Sources of sustainable adequate program funding need to be reevaluated quickly to preclude the air quality permit program operating with a deficit, as shown in Tables 1 and 2.

Table 2
Title V Annual Emission Fee Revenue Projected to FY 2017-2018,
with a \$27.50/ton increase to the Title V Annual Emission Fee from
\$57.50/ton in FY 2012-2013 to \$85/ton in FY 2014-2015,
in \$ thousands

	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19
	ACTUAL	ACTUAL	REBUDG ET	PLAN YR.1	PLAN YR.2	PLAN YR.3	PLAN YR.4	PLAN YR.5
Beginning Balance	25,460	22,804	20,404	12,674	8,166	2,951	(5,720)	(14,815)
Title V Revenue	16,847	15,612	13,000	15,393	15,093	12,500	12,500	12,500
Interest on Title V Funds	552	452	600	448	448	0	0	0
Total Title V Funds Available	42,859	38,868	34,004	28,515	23,707	15,451	6,780	(2,315)
Total Title V Expenditures	20,055	18,464	21,330	20,349	20,756	21,171	21,595	22,027
Ending Balance Title V Fund	22,804	20,404	12,674	8,166	2,951	(5,720)	(14,815)	(24,342)

Failure to adjust the Title V emission fee structure to adequately cover program costs may cause significant reductions in the Title V staffing complement and technical services. Reduced staffing will cause delays in processing and issuing plan approvals for Title V facilities and Title V operating permits, potentially resulting in delays for industry to implement new or improved processes and loss of revenue to industry, loss of jobs for the community, and loss of tax revenue for the Commonwealth. New or modified sources of air pollution at Title V facilities cannot be constructed without a plan approval. The installation of air pollution control equipment requires Department approval of a plan approval application prior to the installation. In addition, fewer staff to conduct inspections, to respond to complaints, and to pursue enforcement actions will result in less oversight of industry compliance or noncompliance and in reduced protection of the environment and public health and welfare of the citizens of this Commonwealth. As part of its evaluation of EPA Region 3's oversight of Pennsylvania's Title V Program, the EPA Office of Inspector General is currently collecting data regarding the adequacy of Pennsylvania's Title V fee revenue.

Decreased revenues will also impact the Commonwealth's air monitoring network, which provides the data to substantiate the Commonwealth's progress in attaining and maintaining the NAAQS instituted by the EPA under the CAA. Decreased revenues may also impact the Small Business Stationary Source Technical and Environmental Compliance Assistance Program by reducing the amounts of grants and number of services available to small businesses. This could potentially lead to fewer viable small businesses and slow the economic recovery of the Commonwealth by reducing the numbers of available jobs. Further, a failure to attain and maintain the NAAQS and to satisfy the Commonwealth's obligations under the CAA could trigger mandatory sanctions by the EPA including 2-to-1 emission offsets for major new or modified stationary sources and loss of federal highway funds in accordance with section 179 of the Clean Air Act.

In accordance with 40 CFR § 70.10(b) and (c) (relating to Federal oversight and sanctions), the EPA may withdraw approval of a Title V Permit Program, in whole or in part, if the EPA finds that a State or local

agency has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after the issuance of a notice of deficiency (NOD). The EPA is authorized to, among other things, withdraw approval of the program and promulgate a Federal Title V Permit Program in this Commonwealth that would be administered and enforced by the EPA. In this instance, all Title V emission fees would be paid to the EPA instead of the Department. Additionally, mandatory sanctions would be imposed under section 179 of the CAA (42 U.S.C.A. § 7509) if the program deficiency is not corrected within 18 months after the EPA issues the deficiency notice. These mandatory sanctions include 2-to-1 emission offsets for the construction of major sources and loss of Federal highway funds (\$1.06 billion in 2012 if not obligated for projects approved by the Federal Highway Administration). The increase in the Title V annual emission fee avoids the issuance of a Federal Title V Permit Program NOD; Federal oversight and mandatory CAA sanctions will also be avoided. The EPA may also impose discretionary sanctions which would adversely impact Federal grants awarded under sections 103 and 105 of the CAA (42 U.S.C.A. §§ 7403 and 7405).

Retaining sufficient staff (including permitting, monitoring, enforcement, source testing and legal personnel) to support the Title V permitting program is a critical component of improving air quality within this Commonwealth and assuring compliance with the health- and welfare-based NAAQS. The benefits to Commonwealth residents of attaining and maintaining the NAAQS are significant. The EPA has estimated the monetized health benefits of attaining the NAAQS. For example, the EPA estimated that the monetized health benefits of attaining the 8-hour ozone standard of 0.075 ppm range from \$8.3 billion to \$18 billion on a national basis. See Regulatory Impact Analysis, Final National Ambient Air Quality Standard for Ozone, July 2011, http://www.epa.gov/glo/pdfs/201107_OMBdraft-OzoneRIA.pdf. Prorating that benefit to the Commonwealth, based on population, results in a public health benefit of \$337 million to \$732 million. The projected costs of increased Title V annual emission fees ranging from \$5,830,000 in fiscal year 2014-2015 to \$4,237,000 in fiscal year 2018-2019 to regulated industry Commonwealth-wide pale by comparison. The Department is not stating that these estimated monetized health benefits would all be the result of implementing the increase to the Title V annual emission fee, but the EPA estimates are indicative of the benefits to Commonwealth residents of attaining the NAAQS. Ensuring that there are sufficient staff and resources to implement the Title V permitting program is one part of the overall air quality program to attain and maintain the NAAQS in this Commonwealth.

Adequate funding assures the regulated industry that their plan approval applications and permits will be reviewed in a timely manner, sustaining their profitable business and maintaining jobs. The Small Business Stationary Source Technical and Environmental Compliance Assistance Program benefits due to the continuance of grants and support services available to the owners and operators of small businesses, which will maintain jobs and lead to creation of new jobs. Attaining and maintaining public health and welfare goals will attract and retain residents needed to fill the jobs created by the regulated industries and small businesses. Maintaining a healthy environment will benefit the agricultural and tourism industries, both of which provide many jobs. All of these situations will increase tax revenues to the Commonwealth.

The increase to the Title V annual emission fee assures the residents of this Commonwealth that the Commonwealth's air pollution control program is adequately funded for the next few years. The anticipated increased revenues will allow the Department and County agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth; take action, when necessary, to reduce emissions to achieve healthful air quality; and ensure continued protection of the environment and the public health and welfare of the residents of this Commonwealth.

The final rulemaking does not establish a fee structure for carbon dioxide and other greenhouse gases (GHG) including hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.

On June 3, 2010, the EPA finalized the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). See 75 FR 31514. As the Tailoring Rule relates to the applicability of Title V annual emission fees for a "regulated pollutant" as defined in section 502 of the CAA, the EPA did not mandate revisions to state and local Title V programs to account for these emissions. See 75 FR 31514, 31585. The EPA reasoned that it would be difficult to apply this fee to GHGs, based on the large amount of GHG emissions relative to other pollutants and the need for better data to establish a GHG-specific fee amount. See 75 FR 31514, 31585. However, the EPA did commit to addressing this issue in a future rulemaking and to work with states to develop a workable fee approach. See 75 FR 31514, 31586. The EPA has not yet proposed a fee schedule under the CAA for GHG emissions. Consequently, the Board is not, at this time, imposing Title V emission fees for GHG emissions from major stationary sources in this Commonwealth.

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

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

In accordance with 40 CFR § 70.10(b) and (c), the EPA may withdraw approval of a Title V Permit Program, in whole or in part, if the EPA finds that a State or local agency has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after the issuance of a NOD. The EPA is authorized to, among other things, withdraw approval of the program and promulgate a Federal Title V Permit Program that would be administered and enforced in this Commonwealth by the EPA. In this instance, all Title V emission fees would be paid to the EPA instead of the Department. Additionally, mandatory sanctions would be imposed under section 179 of the CAA if the program deficiency is not corrected within 18 months after the EPA issues the deficiency notice. These mandatory sanctions include 2-to-1 emission offsets for the construction of major sources and loss of Federal highway funds (\$1.06 billion in 2012 if not obligated for projects approved by the Federal Highway Administration). The EPA may also impose discretionary sanctions which would adversely impact Federal grants awarded under sections 103 and 105 of the CAA.

The increase in the Title V annual emission fee avoids the issuance of a Federal Title V Permit Program NOD; Federal oversight and mandatory and discretionary CAA sanctions will also be avoided.

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

The final Title V emission fee is similar to those in other states and does not place the Commonwealth at a competitive disadvantage. In some cases, the Commonwealth is very competitive and may be able to draw new industry on the basis of having a lower Title V annual emission fee than nearby states. This could serve to increase total Title V fee revenue to the Commonwealth if there are more sources subject to the annual emission fee.

All states are required by the CAA to collect Title V annual emission fees and to adjust the fees based on the Consumer Price Index. Several nearby states have already taken action to address the issue of declining

revenues due to declining emissions of regulated pollutants. Connecticut, Maryland, New York and New Jersey no longer limit emission fee applicability to 4,000 tons per regulated pollutant. In 2013, Connecticut imposed a fee of \$301.09 per ton of emissions of regulated pollutants based on an "Inventory Stabilization Factor," upwards from a fee of \$283.46 per ton imposed in 2012 and with no cap on the amount of emissions of regulated pollutants subject to this fee. The Connecticut fee is adjusted periodically to ensure that collected Title V annual emission fee revenue is adequate for at least 2 years of permit program operating costs. In 2012, New York assessed a Title V annual emission fee ranging from \$45 per ton of regulated pollutant for emissions of less than 1,000 tons per year to \$65 per ton for emissions of more than 5,000 tons per year; the fee is applied to emissions of up to 7,000 tons of any regulated pollutant. The New York Title V emission fee for 2013 has not changed from 2012 levels. The state of New Jersey imposes a Title V annual emission fee in 2013 of \$112.07 per ton with no cap on emissions, upwards from \$106.67 per ton in 2012. Maryland recently established a revised annual emission fee of \$55.70 per ton with no cap on the amount of emissions of regulated pollutants subject to this fee plus an annual fee of \$200 per Title V facility. West Virginia recently revised its Title V annual emission fee to \$31.87 per ton of emissions of regulated pollutant with a 4,000 ton cap. Virginia's Title V annual emission fee in 2013 is \$58.88 per ton of emissions of regulated pollutant (4,000 ton cap), upwards from the 2012 fee of \$57.90 per ton; further, in 2012 Virginia established additional Title V facility fees including yearly maintenance fees ranging from \$1,500 to \$10,000 and Title V Permit application and Title V Permit renewal fees of \$20,000 and \$10,000, respectively, to spread the impact of the increased costs of maintaining the Title V Permit Program across more of the affected permittees.

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

The final rulemaking amends existing provisions in 25 Pa. Code §§ 127.701 and 127.705. Regulations of other Commonwealth agencies are not impacted.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) in the development of the proposed rulemaking. At its September 12, 2012, meeting, the AQTAC voted 16-2-1 to concur with the Department's recommendation to advance the proposed rulemaking to the Board for consideration at its November 20, 2012, meeting.

The Department also conferred with the Citizens Advisory Council (CAC) Air Committee on October 3, 2012, concerning the proposed rulemaking. An overview of the proposal was presented to the SBCAC on October 24, 2012.

The Department presented the draft final-form regulation to the AQTAC on June 13, 2013, for action. The AQTAC, by a majority vote, concurred with the Department's recommendation to advance the final rulemaking to the Board for consideration at its August 20, 2013, meeting. The final draft rulemaking was discussed with the CAC on July 16, 2013. The SBCAC was also consulted on July 24, 2013.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The owners and operators of approximately 560 Title V facilities in this Commonwealth (including facilities in Allegheny and Philadelphia Counties) are affected by the revised Title V annual emission fee for emissions of up to 4,000 tons of each regulated pollutant. The number of affected facilities was determined by review of the Department's database of Title V-permitted facilities. The categories of Title V facilities include electric power generation under the Acid Rain program (40 CFR Parts 72 through 78), refining, municipal waste combustors, commercial and industrial solid waste incinerators, Portland cement manufacturing, ferrous and nonferrous metal smelting, glass manufacturing, and other industrial sectors that meet the definition of a major source of air pollution as defined in the CAA and the APCA. The owners/operators of the Title V facilities are required to pay the specified Title V annual emissions fee based on their actual emissions each calendar year of regulated pollutants up to 4,000 tons of emissions of each regulated pollutant.

The Department reviewed its database of Title V-permitted facilities to determine how many, and which, potentially meet the definition of small business specified in Section 3 of the Regulatory Review Act, as "in accordance with the size standards described by the United States Small Business Administration's (SBA) Small Business Size Regulations under 13 CFR Chapter 1 Part 121 (relating to Small Business Size Regulations) or its successor regulation." Given the large number of facilities affected by this regulation, there is no precise method to determine how many meet the specified definition of "small business." However, the SBA has a method by which the Department can determine with a reasonable degree of certainty whether a source is a small business – the SBA Dynamic Small Business Search database.

The SBA Dynamic Small Business Search database contains information about small businesses that have registered with the SBA. It is the Department's understanding that this self-certifying database incorporates the small business criteria contained in 13 CFR Chapter 1, Part 121, such as Standard Industrial Classification Code and number of employees, when the owners/operators of the companies register. Registration in this database benefits small businesses because the database assists government contracting officers in determining whether a company is eligible to apply for government contracts as a small business. Therefore, there is a high likelihood that a business that qualifies as a small business will be registered in the database. The SBA does not, however, maintain a definitive listing of small businesses.

The Department reviewed the SBA Dynamic Small Business Search database to determine which of the 560 Title V companies, if any, are registered as small businesses with the SBA. In addition, the Department reviewed other data sources including the U. S. Department of Energy, Energy Information Agency database on electric generating to determine whether electric generating units in Pennsylvania meet the definition of small business. The Department also reviewed information available on individual company internet sites for information that could identify a company as a small business. Based on these reviews, the Department estimates that 65 of the 560 facilities potentially meet the definition of small business as defined by the Small Business Administration.

(16) List the persons, groups or entities, including small businesses, which will be required to comply with the regulation. Approximate the number that will be required to comply.

The owners and operators of approximately 560 Title V facilities in this Commonwealth (including affected facilities in Allegheny and Philadelphia Counties) are subject to the revised Title V annual emission fee in the final rulemaking on emissions of up to 4,000 tons of each regulated pollutant. (See the response in No. 15 for a description of the types of companies.) Approximately 65 of these facilities may meet the definition of small business under the SBA size regulations.

As required under Title V of the CAA and 40 CFR Part 70 these Title V facilities are defined as major sources due to the amount of emissions of regulated pollutants reported on an annual basis and the owners and operators must pay the Title V annual emission fee imposed by § 129.705(a).

The owners and operators of Title V facilities in this Commonwealth have been paying permanent Title V annual emission fees since the Board promulgated the emission fee schedule in November 1994 (24 Pa.B. 5899, November 26, 1994). Interim annual air emission fees were established by the General Assembly in the July 1992 amendments to the APCA (Act of July 9, 1992, P.L. 460, No. 95).

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The financial impact on the owners and operators of Title V facilities regulated by the Department, collectively, will be additional annual emission fee costs of approximately \$5.1 million per year for fiscal years 2014-2015 and 2015-2016; additional annual emission fee costs in fiscal years 2016-2017, 2017-2018 and 2018-2019 for these owners and operators are expected to be about \$3.5 million per year due to decreasing amounts of emissions of regulated pollutants as major sources install additional controls, convert to burning natural gas (a cleaner energy source) instead of coal or oil, or shut down certain facilities. Costs to the owners and operators of Title V facilities regulated by the County agencies are expected to be about \$570,000 and \$167,000 in FY 2014-2015 in Allegheny County and Philadelphia County, respectively.

In 2012, the owners or operators of Title V facilities under the Department's jurisdiction that have been identified as potentially small businesses paid \$1.6 million in Title V annual emission fees for emissions of regulated pollutants during the 2011 calendar year. With the proposed fee increase and assuming no change in their emissions profile, these owners or operators are projected to pay \$2.4 million collectively in emission fees in 2014 for emissions during the 2013 calendar year.

The overall net economic impact of increased Title V annual emission fee revenue on individuals, small businesses, businesses, and labor communities is positive. Although industry does incur increased fees, the revenue generated by the rulemaking assures continued air quality permit program operations. Retaining sufficient staff to support the Title V permitting program is a critical component of improving air quality and assuring compliance with the NAAQS. The benefits of attaining and maintaining the NAAQS are significant. The EPA has estimated the monetized health benefits of attaining the NAAQS. For example, the EPA estimated that the monetized health benefits of attaining the 8-hour ozone standard of 0.075 ppm range from \$8.3 billion to \$18 billion on a national basis. See Regulatory Impact Analysis, Final National Ambient Air Quality Standard for Ozone, July 2011, http://www.epa.gov/glo/pdfs/201107_OMBdraft-OzoneRIA.pdf. Prorating that benefit to the Commonwealth, based on population, results in a public health benefit of \$337 million to \$732 million.

The projected costs of increased Title V annual emission fees ranging from \$5,830,000 in fiscal year 2014-2015 to \$4,237,000 in fiscal year 2018-2019 to regulated industry Commonwealth-wide pale by comparison.

The Department is not stating that these estimated monetized health benefits would all be the result of increasing the Title V annual emission fee to \$85 per ton for emissions of up to 4,000 tons of each regulated pollutant, but the EPA estimates are indicative of the benefits of attaining the NAAQS. Ensuring that there are sufficient staff and resources to implement the Title V permitting program is one part of the overall air quality program to attain and maintain the NAAQS in this Commonwealth. Adequate funding will assure the regulated industry that their plan approval applications and permits will be reviewed in a timely manner, sustaining their profitable business and maintaining jobs. The Small Business Stationary Source Technical

and Environmental Compliance Assistance Program benefits due to the continuance of grants and support services available to the owners and operators of small businesses, which will maintain jobs and lead to creation of new jobs.

Attaining and maintaining public health and welfare goals will attract and retain residents needed to fill the jobs created by the regulated industries and small businesses. Maintaining a healthy environment benefits the agricultural and tourism industries, both of which provide many jobs. All of these situations will increase tax revenues to the Commonwealth.

Sustaining the activities and resources of the Title V Permit Program provides the tools to attain and maintain the NAAQS, satisfy the Commonwealth's obligations under the CAA, and avoid the imposition of punitive actions by the EPA including the loss of Federal highway funds (\$1.06 billion in 2012 if not obligated for projects approved by the Federal Highway Administration). Maintaining the program benefits the citizens and environment of the Commonwealth by maintaining the gains in healthful air quality that have been made since the mid-90s through reductions of emissions of regulated air pollutants from major sources.

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

Revenues from the increase to the Title V annual emission fee will be used to cover the direct and indirect costs of administering the Commonwealth's air pollution control program. Direct and indirect program costs include personnel costs for carrying out program activities including processing of permits and facility inspections, operating expenses such as telecommunications, electricity, travel, auto supplies and fuel, and the purchase of fixed assets such as air samplers and monitoring equipment, vehicles, and trailers.

Title V annual emission fee revenues collected are no longer sufficient to cover program costs. Installation of control technology over the past two decades on major stationary sources, the retirement or curtailment of operations by major sources including certain refineries and coal-fired power plants, and the conversion at many major facilities from burning coal or oil to burning natural gas in order to comply with the requirements to attain and maintain the NAAQS has resulted in the decreased emission of regulated air pollutants that are subject to the annual emission fee, and revenues collected have been decreasing as a result. The increase to the Title V annual emission fee includes the impact from the retirement or deactivation of certain stationary sources and the announced retirement or deactivation of sources, including certain electric generating units, on collected Title V annual emission fee revenues. The decline in interest rates paid on account balances in the Clean Air Fund has also affected the funds as the investments earn less interest in the current economy compared to the early years of the program.

The increased revenues will allow the Department and the approved local air pollution control agencies in Allegheny and Philadelphia Counties to maintain current staffing levels for the next few years for the air quality Title V permit review and inspection programs and continue providing adequate oversight of the air pollution sources in this Commonwealth. Anticipated funding deficits, however, necessitate further remedies to ensure the future solvency of the program. Sources of sustainable adequate program funding need to be reevaluated within the next 5 years, or the program will be operating with a deficit. However, the \$85 per ton Title V annual emission fee will support the Title V permitting program over the next few years while the Department completes a reanalysis of the air quality permitting and operating fee structures.

Retaining sufficient staff (including permitting, monitoring, enforcement, source testing and legal personnel) to support the Title V permitting program is a critical component of improving air quality within this Commonwealth and assuring compliance with the health- and welfare-based NAAQS. The benefits to

Commonwealth residents of attaining and maintaining the NAAQS are significant. The EPA has estimated the monetized health benefits of attaining ambient air quality standards. For example, the EPA estimated that the monetized health benefits of attaining the 8-hour ozone standard of 0.075 ppm range from \$8.3 billion to \$18 billion on a national basis. See Regulatory Impact Analysis, Final National Ambient Air Quality Standard for Ozone, July 2011, http://www.epa.gov/glo/pdfs/201107_OMBdraft-OzoneRIA.pdf. Prorating that benefit to the Commonwealth, based on population, results in a public health benefit of \$337 million to \$732 million. The projected costs of increased Title V annual emission fees ranging from \$5,830,000 in fiscal year 2014-2015 to \$4,237,000 in fiscal year 2018-2019 to regulated industry Commonwealth-wide pale by comparison. The Department is not stating that these estimated monetized health benefits would all be the result of increasing the Title V annual emission fee, but the EPA estimates are indicative of the benefits to Commonwealth residents of attaining the NAAQS. Ensuring that there are sufficient staff and resources to implement the Title V permitting program is one part of the overall air quality program to attain and maintain the NAAQS in this Commonwealth.

Failure to adjust the emission fee structure to adequately cover program costs could cause significant reductions in the Title V staffing complement and technical services. Reduced staffing will cause delays in processing and issuing plan approvals for Title V facilities and Title V operating permits, potentially resulting in delays for industry to implement new or improved processes and consequent loss of revenue to industry, loss of jobs for the community, and loss of tax revenue for the Commonwealth. New or modified sources of air pollution at Title V facilities cannot be constructed without a plan approval. The installation of air pollution control equipment requires Department approval of a plan approval application prior to the installation. Further, fewer staff to conduct inspections, respond to complaints, and pursue enforcement actions will result in less oversight of industry compliance or noncompliance and in reduced protection of the environment and public health and welfare of the citizens of this Commonwealth. Failure to attain and maintain healthful air quality goals and to provide continued protection of the environment and the public health and welfare of the citizens of this Commonwealth could lead to healthy residents leaving the Commonwealth and a declining number of employable residents. This will make it difficult for industry and businesses to sustain their operations, leading to a loss of industry, jobs, and tax revenue.

Decreased revenues and further reductions in the complement will also impact the Commonwealth's network of air monitors, which provides the data to substantiate the Commonwealth's progress in attaining and maintaining the NAAQS instituted by the EPA under the CAA. Decreased revenues could also impact the Small Business Stationary Source Technical and Environmental Compliance Assistance Program by reducing the amounts of grants and number of support services available to support compliance assistance for the owners and operators of small businesses. This could potentially lead to fewer viable small businesses and slow the economic recovery of the Commonwealth by reducing the numbers of available jobs. Further, a failure to attain and maintain the NAAQS and to satisfy the Commonwealth's obligations under the CAA could trigger mandatory sanctions by the EPA.

In accordance with 40 CFR § 70.10(b) and (c), the EPA may withdraw approval of a Title V Permit Program, in whole or in part, if the EPA finds that a State or local agency has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after the issuance of a NOD. The EPA is authorized to, among other things, withdraw approval of the program and promulgate a Federal Title V Permit Program in this Commonwealth that would be administered and enforced by the EPA. In such instances, all Title V emission fees would be paid to the EPA instead of the Department. Additionally, mandatory sanctions would be imposed under section 179 of the CAA if the program deficiency is not corrected within 18 months after the EPA issues the deficiency notice. These mandatory sanctions include 2-to-1 emission offsets for the construction of major sources and loss of Federal highway funds (\$1.06 billion in 2012 if not obligated for projects approved by the Federal Highway Administration).

The EPA may also impose discretionary sanctions which would adversely impact Federal grants awarded under sections 103 and 105 of the CAA. The increase in the Title V annual emission fee avoids the issuance of a Federal Title V Permit Program NOD for the next few years; Federal oversight and mandatory and discretionary CAA sanctions will also be avoided.

Additionally, as part of its evaluation of EPA Region 3's oversight of Pennsylvania's Title V Program, the EPA Office of Inspector General is currently collecting data regarding the adequacy of Pennsylvania's Title V fee revenue.

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

The final rulemaking adjusts the Title V annual emission fee to be paid by the owners or operators of affected facilities to \$85 per ton for emissions of up to 4,000 tons of each regulated pollutant, payable September 1, 2014, on emissions of regulated pollutants occurring in calendar year 2013. The current Title V annual emission fee due September 1, 2013, for emissions that occurred in calendar year 2012 is \$57.50 per ton for emissions of up to 4,000 tons of each regulated pollutant. The revised fee is an increase of \$27.50 per ton of emission of regulated pollutant from the 2013 Title V annual emission fee assessed for 2012 emissions of regulated pollutants.

The financial impact on the owners and operators of Title V facilities regulated by the Department, collectively, is additional annual emission fee costs of approximately \$5.1 million per year for fiscal years 2014-2015 and 2015-2016; additional annual emission fee costs in fiscal years 2016-2017, 2017-2018 and 2018-2019 for these owners and operators are expected to be about \$3.5 million per year due to decreasing amounts of emissions of regulated pollutants as major sources continue to install additional air pollution controls, convert to burning natural gas (a cleaner energy source) instead of coal or oil, or shut down certain facilities in order to comply with the requirements to attain and maintain the NAAQS. Costs to the owners and operators of Title V facilities regulated by the approved local air pollution control agencies are expected to be about \$570,000 and \$167,000 in FY 2014-2015 in Allegheny County and Philadelphia County, respectively. The revised Title V annual emission fee is expected to result in total increased costs of \$5.8 million for the regulated community in emission fee payments to the three agencies in fiscal year 2014-2015.

The additional costs were estimated by reviewing past Title V annual emission fees paid and estimating future fee revenue using the revised fee and assuming emission rates at Title V facilities remain constant.

No new legal, accounting or consulting procedures would be required.

(20) 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. The increase in costs would be consistent with the cost increases to private industry.

The approved Title V Programs for the local air pollution control agencies in Philadelphia and Allegheny Counties collect the Title V emission fees for sources under their jurisdictions. An increase in the Title V

annual emission fee will provide increased emission fee revenue of approximately \$570,000 and \$167,000 in Allegheny County and Philadelphia County, respectively.

(21) 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 costs to state government. Pursuant to section 6.3(f) of the APCA (35 P.S. § 4006.3(f)), Title V emission fees are not payable by any State entity, instrumentality or political subdivision.

The final Title V annual emission fee of \$85 per ton for emissions of up to 4,000 tons of each regulated pollutant will result in projected increased revenue to the Department of approximately \$5.1 million in the Title V Account for fiscal years 2014-2015 and 2015-2016, and \$3.5 million for fiscal years 2016-2017, 2017-2018, and 2018-2019, if, beginning in 2014, the fee is imposed for emissions occurring in calendar year 2013. Both the CAA and the APCA and regulations adopted under the acts require that the fee be paid by September 1 each year for emissions of regulated pollutants from the preceding year. Consequently, the increased Title V annual emission fee will be payable by September 1, 2014, for 2013 emissions of regulated pollutants. An increase in the Title V annual emission fee will provide projected increased emission fee revenue of approximately \$570,000 and \$167,000 for the Title V programs in Allegheny County and Philadelphia County, respectively. The revised Title V annual emission fee is expected to result in total increased costs of \$5.8 million for the regulated community in emission fee payments to the three agencies in fiscal year 2014-2015.

The Department is authorized under § 127.706 (relating to Philadelphia County and Allegheny County financial assistance) to provide payment of a portion of the Title V annual emission fee revenue collected by the Department to the local air pollution control agencies in Philadelphia and Allegheny Counties. The Department has provided financial assistance to the Philadelphia County Air Management Services (AMS), including \$700,000 in FY 2012-2013. Based on the approved Clean Air Fund Spending Plan for fiscal year 2013-2014, the grant for AMS in FY 2013-2014 is expected to be \$700,000. Allegheny County has never requested financial assistance.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The final amendments do not add or change the existing reporting, recordkeeping, or other paperwork requirements for the regulated community.

(23) 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 13/14	FY+1 Year 14/15	FY+2 Year 15/16	FY+3 Year 16/17	FY+4 Year 17/18	FY+5 Year 18/19
SAVINGS:	\$	\$	\$	\$	\$	\$
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	\$5,830,000	\$5,830,000	\$4,237,000	\$4,237,000	\$4,237,000
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	\$5,830,000	\$5,830,000	\$4,237,000	\$4,237,000	\$4,237,000
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

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 2010-2011	FY-2 2011-2012	FY-1 2012-2013	Current FY 2013-2014
Environmental Program Management (161-10382)	\$28,881,000	\$27,755,000	\$23,663,000	\$26,297,000
Clean Air Fund Major Emission Facilities (215-20077)	\$20,565,000	\$20,055,000	\$17,545,000	\$21,330,000
Clean Air Fund Mobile and Area Facilities (233-20084)	\$5,620,000	\$2,710,000	\$7,420,000	\$8,610,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

The Department estimates that 65 of 560 Title V facilities may meet the definition of small business as defined by the Small Business Administration.

The owners and operators of approximately 560 Title V facilities which include the estimated 65 small businesses in this Commonwealth (including Allegheny and Philadelphia Counties) are affected by the revised Title V annual emission fee for emissions of up to 4,000 tons of each regulated pollutant. The number of affected facilities was determined by a review of the Department's database of Title V-permitted facilities. The categories of Title V facilities include electric power generation under the Acid Rain program (40 CFR Parts 72 through 78), refining, municipal waste combustors, commercial and industrial solid waste incinerators, Portland cement manufacturing, ferrous and nonferrous metal smelting, glass manufacturing, and other industrial sectors that meet the definition of a major source of air pollution as defined in the CAA and the APCA. The owners/operators of the Title V facilities are required to pay the specified Title V annual emission fee based on their actual emissions of regulated pollutants up to 4,000 tons of each regulated pollutant each calendar year.

The owners and operators of Title V facilities in this Commonwealth have been paying permanent Title V annual emission fees since the Board promulgated the emission fee schedule in November 1994 (24 Pa.B. 5899, November 26, 1994). Interim annual air emission fees were established by the General Assembly in the July 1992 amendments to the APCA (Act of July 9, 1992, P.L. 460, No. 95).

Section 502 of the CAA defines what major facilities are subject to the Title V emission fees and section 507 defines what companies may be a small business. Small businesses as defined by the CAA are not subject to the Title V annual emission fee requirement and are not impacted by the not rulemaking.

(b) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

No changes to reporting, recordkeeping, or other administrative procedures are included as part of this final rulemaking. The owners and operators of subject facilities are familiar with the existing requirements for reporting and recordkeeping for their entity and have the professional and technical skills needed for continued compliance with these requirements.

(c) A statement of probable effect on impacted small businesses.

The potential impact on the owners and operators of small businesses collectively may be approximately \$778,000 in increased annual emission fee costs. While approximately 65 Title V facilities may meet the definition of small business under the SBA size regulations cited by the Regulatory Review Act, Act 76 of 2012, the owners and operators of these facilities have been subject on an ongoing basis to the Title V annual emission fee imposed by § 129.705(a) due to the amount of emissions of regulated pollutants reported on an annual basis; further, these facilities are classified as major sources of air pollution under section 501 of the CAA and are subject to the permitting provisions of Title V of the CAA. The owners or operators of Title V facilities that have been identified as potentially small businesses paid \$1.6 million in Title V annual emission fees in 2012 for emissions during the 2011 calendar year. With the fee increase and no change expected in their emissions profile, these owners or operators of air contamination sources qualifying as a small business under the SBA definition are projected to pay \$2.4 million in emission fees in 2014.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the

proposed regulation.

The least burdensome acceptable alternative has been selected. Section 6.3(d) of the APCA requires that the Board shall establish a permanent air emission fee which considers 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, the amount of fees charged in neighboring states, the importance of not placing existing or prospective sources in this Commonwealth at a competitive disadvantage, and other relevant factors. The Department considered these factors when it originally established the Title V fee program in 1994. Since that time the Department has used actual spending data to evaluate revising the emission fee for regulated pollutants.

The Title V fee structure was established in 1994. For this rulemaking, the Department reconsidered the section 6.3(d) factors along with analyzing actual spending data in revising the fee. Moreover, the Department analyzed alternative fee amounts and alternative compliance dates for the increased Title V annual emission fee. For example, the Department analyzed a wide range of fee amounts on a ton per year basis, but settled on \$85 per ton, which is the lowest amount that was considered to provide sufficient revenues to sustain the program for the next few years. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is \$57.50 per ton. The Department believes that the \$27.50 per ton increase to \$85 is modest, but sufficient to cover the cost of the Title V program in the near term. Overall the increased fee revenue amounts to an additional \$5.1 million for the program, which is only sufficient to cover the costs of the program for the next few years. The Department considered establishing a broad permanent fee structure to include new source testing fees and additional permitting fees in addition to revising the Title V annual emission fee in this rulemaking, but decided to limit the amendment to a "transition" Title V annual emission fee at this time. The Department will need to imminently assess the overall permitting fee structure to ensure the long term financial viability of the program. (See Response 10 for further financial analysis of this issue.) Therefore, the Title V annual emission fee increase is the lowest possible level on a per-ton emissions basis and is expected to provide sufficient revenues for the next few years only. Accordingly, it is the least burdensome alternative for the near term, while producing adequate revenue for the program as required by the CAA. One option that the Department could not consider was exempting Title V facilities that qualify as small businesses from paying an annual emission fee. That is because section 502 of the CAA, and 40 CFR Part 70, requires that the owners/operators of all affected Title V sources pay an annual emission fee based on the tonnage of regulated pollutant.

In addition, the Department looked at a variety of alternative compliance dates for the implementation of the revised fee schedule. However, in light of declining Title V fee revenue due to the installation of air pollution controls or the deactivation or shutdown of major sources including electric generating units, the Department decided that the \$85 per ton emission fee will be assessed beginning in 2014 for emissions occurring in calendar year 2013. This fee will be payable by September 1, 2014.

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

The Department has not developed any special provisions to meet particular needs of affected groups. The final amendments impact the owners or operators of Title V facilities subject to the air pollution control plan approval and permitting program. Minorities, elderly, small businesses, and farmers who are not owners or operators of a Title V facility are not affected by the final rulemaking.

(26) 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.

The least burdensome acceptable alternative has been selected. Section 6.3(d) of the APCA requires that the Board shall establish a permanent air emission fee which considers 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, the amount of fees charged in neighboring states, the importance of not placing existing or prospective sources in this Commonwealth at a competitive disadvantage, and other relevant factors. The Department considered these factors when it originally established the Title V fee program in 1994. Since that time the Department has actual spending data to analyze in revising the fee.

The Title V fee structure was established in 1994. For this rulemaking, the Department reconsidered the section 6.3(d) factors along with analyzing actual spending data in revising the fee. Moreover, the Department analyzed alternative fee amounts and alternative compliance dates for the increased Title V annual emission fee. For example, the Department analyzed a wide range of fee amounts on a ton per year basis, but settled on \$85 per ton, which is the lowest amount that was considered to provide sufficient revenues to sustain the program for the next few years. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is \$57.50 per ton. The Department believes that the \$27.50 per ton increase to \$85 is modest, but sufficient to cover the cost of the Title V program in the near term. Overall the increased fee revenue amounts to an additional \$5.1 million for the program, which is only sufficient to cover the costs of the program for the next few years. The Department considered establishing a broad permanent fee structure to include new source testing fees and additional permitting fees in addition to revising the Title V annual emission fee in this rulemaking, but decided to limit the amendment to a "transition" Title V annual emission fee at this time. The Department will need to imminently assess the overall permitting fee structure to ensure the long term financial viability of the program. (See Response 10 for further financial analysis on this issue.) Therefore, the Title V annual emission fee increase is the lowest possible level on a per-ton emissions basis, and is expected to provide sufficient revenues for the next few years only. Accordingly, it is the least burdensome alternative for the near term, while producing adequate revenue for the program as required by the CAA. One option that the Department could not consider was exempting Title V facilities that qualify as small businesses from paying an annual emission fee. That is because section 502 of the CAA, and 40 CFR Part 70, requires that the owners/operators of all affected Title V sources pay an annual emission fee based on the tonnage of regulated pollutant.

In addition, the Department looked at a variety of alternative compliance dates for the implementation of the revised fee schedule. However, in light of declining Title V fee revenue due to the installation of air pollution controls or the deactivation or shutdown of major sources including electric generating units, the Department decided that the \$85 per ton emission fee will be assessed beginning in 2014 for emissions occurring in calendar year 2013. This fee will be payable by September 1, 2014.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

(a) The establishment of less stringent compliance or reporting requirements for small businesses.

While some Title V facilities may be considered a small business as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, no changes to reporting, recordkeeping, or other administrative procedures are

included in this final rulemaking. The owners and operators of Title V facilities are familiar with the existing requirements for reporting and recordkeeping for their entity and have the professional and technical skills needed for continued compliance with these requirements.

(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

The Department requested comment on the implementation of the proposed fee revision. Two commentators recommended delaying the fee increase or phasing it in over several years.

No commentators addressed the impact of the proposed fee revision on small businesses. However, one commentator stated that the anticipated negative impact on the Department's small business assistance program due to loss of fees is not sufficient justification to increase Title V emission fees.

The Department did consider a delay and different years for the implementation of the Title V fee increase. However, assessing the revised fee on emissions of regulated pollutants occurring in calendar year 2013, due and payable by September 1, 2014, was chosen due to the projected budget deficit and anticipated retirement or deactivation of electric generating units that will have a significant negative impact on the Title V permitting program. Because of declining Title V emission fee revenue due to the installation of air pollution control technology on stationary sources and the retirement or curtailment of operations by major sources including coal-fired power plants, deficits of \$7.235 million and \$19.406 million in fiscal years 2015-2016 and 2016-2017, respectively, are projected for the Title V Major Emission Facilities Account if the Title V annual emission fee is not increased to \$85 per ton of emissions for each regulated pollutant beginning with fees payable in 2014 on emissions of regulated pollutants occurring in 2013.

Section 502 of the CAA defines what major facilities are subject to the Title V emission fees and section 507 defines what companies may be a small business. Small businesses as defined by the CAA are not subject to the Title V annual emission fee requirement and are not impacted by the not rulemaking.

(c) The consolidation or simplification of compliance or reporting requirements for small businesses.

The owners and operators of Title V facilities are familiar with the existing requirements for reporting and recordkeeping for their entity and have the professional and technical skills needed for continued compliance with these requirements.

(d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation.

The final rulemaking does not include design or operational standards.

(e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

While certain Title V facilities may meet the definition of small business under the SBA size definition cited by the Regulatory Review Act, Act 76 of 2012, the owners and operators of these facilities are subject to the Title V annual emission fee imposed by § 129.705(a) due to the amount of emissions of regulated air pollutants reported on an annual basis. This is because section 502 of the CAA, and 40 CFR Part 70, requires that the owners/operators of all affected Title V sources pay an annual emission fee based on the tonnage of regulated pollutant.

These owners and operators have been paying permanent Title V annual emission fees since the Board promulgated the emission fee schedule in November 1994 (24 Pa.B. 5899, November 26, 1994) and have experience with the annual emission fee as a cost of doing business. Interim annual air emission fees were established by the General Assembly in the July 1992 amendments to the APCA (Act of July 9, 1992, P.L. 460, No. 95).

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Declining revenue from collection of Title V annual emission fees for fiscal years 2010-2011, 2011-2012, and 2012-2013 is the basis for revising the existing Title V annual emission fee, which has been in place since November 26, 1994. While the CAA and the APCA and applicable regulations under the acts allow for the increase in the Title V annual emission fee on an annual basis using a formula based on the Consumer Price Index, the successive increases to the 1994 Title V annual emission fee of \$37 have not kept pace with the demands placed upon the air program in attaining and maintaining the NAAQS and for meeting the Commonwealth's obligations under the CAA. These demands include the processing of Title V plan approvals and operating permits, inspections, maintenance and servicing of the ambient air monitoring network, evaluation and processing of CEMS data, and source test protocol reviews and source test report reviews. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is \$57.50 per ton for emissions of up to 4,000 tons of each regulated pollutant. The final revised Title V annual emission fee of \$85 per ton for emissions of up to 4,000 tons of each regulated pollutant, due September 1, 2014, on emissions occurring in calendar year 2013, is an increase of \$27.50 per ton of regulated pollutant from the 2013 assessed annual emission fee.

Comparative financial statements generated by the Department's Office of Budget using reported and projected Title V emissions and Title V emission fee revenue numbers and employee time data provided by the air program form the basis of the cost and savings analysis provided in this regulatory analysis form. One comparative financial statement provides projected revenue and costs without the revised Title V annual emission fee of \$85 for fiscal planning years 2014-2015 through 2018-2019 (Attachment 1); the other comparative financial statement provides projected revenue and costs with the revised Title V annual emission fee of \$85 for fiscal planning years 2014-2015 through 2018-2019.

The Department captures employee time data via the Cross Application Time Sheet reporting system that identifies staff activities which support the fee analysis. Costs associated with other program operational needs are posted into the Commonwealth's SAP Accounting System, which data also supports the fee analysis. This information is included in the Department's Basic Financial Statements that are prepared in conformity with generally accepted accounting principles (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB). The Commonwealth's Basic Financial Statements are jointly audited by the Department of the Auditor General and an independent public accounting firm.

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

A. The date by which the agency must receive public comments: April 8, 2013

B. The date or dates on which public meetings or hearings will be held:

March 5, 6, and 7, 2013

C. The expected date of promulgation of the proposed regulation as a final-form regulation:

December 2013

D. The expected effective date of the final-form regulation:

Date of publication

E. The date by which compliance with the final-form regulation will be required:

September 1, 2014

F. The date by which required permits, licenses or other approvals must be obtained:

N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

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.

**FACE SHEET
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Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL _____

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promulgated by:

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-478

DATE OF ADOPTION SEPTEMBER 17, 2013

BY E. Christopher Abruzzo

**TITLE E. CHRISTOPHER ABRUZZO
ACTING CHAIRMAN**

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY _____

SHAWN E. SMITH

OCT 01 2013
DATE OF APPROVAL

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

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

NOTICE OF FINAL RULEMAKING

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

Air Quality Title V Fee Amendment

25 Pa. Code, Chapter 127, Subchapter I

**FINAL RULEMAKING
ENVIRONMENTAL QUALITY BOARD
[25 PA CODE CH. 127]**

The Environmental Quality Board (Board) amends Chapter 127, Subchapter I (relating to plan approval and operating permit fees) to read as set forth in Annex A. This final-form rulemaking satisfies Federal and state obligations to establish a Title V annual emission fee sufficient to cover the reasonable direct and indirect costs of administering the operating permit program and other related requirements mandated under Title V of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7661—7661f).

This final-form rulemaking was adopted by the Board at its meeting of September 17, 2013.

A. Effective Date

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

The final-form rulemaking will be submitted to the United States Environmental Protection Agency (EPA) upon publication for approval as a revision to the Commonwealth's State Implementation Plan (SIP) and as an amendment to the Title V Program Approval codified in 40 CFR Part 70, Appendix A (relating to approval status of state and local operating permits programs).

B. Contact Persons

For further information, contact Dean Van Orden, Assistant Director, Bureau of Air Quality, P.O. Box 8468, Rachel Carson State Office Building, Harrisburg, PA 17105-8468, (717) 783-9264; or Robert "Bo" Reiley, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available through the Department of Environmental Protection's (Department) web site at www.dep.state.pa.us.

C. Statutory Authority

This final-form rulemaking is authorized under 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, operating permit program required by Title V of the CAA, other requirements of the CAA (42 U.S.C.A. §§ 7401—7671q), 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.

D. Background and Purpose

Title V annual emission fees are payable by the owners and operators of facilities in this Commonwealth that are classified as major sources of air pollution under section 501 of the

CAA (42 U.S.C.A. § 7661) and are subject to the permitting provisions of Title V of the CAA. Section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)) required the EPA to adopt rules establishing the minimum elements of Title V operating permit programs including a requirement that the owner or operator of all sources subject to the requirements obtain a permit under Title V of the CAA and pay an annual emission fee to state and local agencies sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V of the CAA.

On July 30, 1996, the EPA granted full approval of the Commonwealth's Title V Operating Permits Program in accordance with Title V of the CAA and implementing regulations in 40 CFR Part 70 (relating to state operating permit programs). See 61 FR 39597 (July 30, 1996). Pursuant to 40 CFR § 70.9(a) and (b) (relating to fee determination and certification), the state program must "require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs." The fee schedule must result in the collection and retention of revenues sufficient to cover the permit program costs.

In addition to authorizing the establishment of fees sufficient to cover the permitting program required under Title V of the CAA, section 6.3(a) of the APCA also authorizes the Board to adopt regulations to establish fees to support the air pollution control program authorized by the APCA and not covered by fees required by section 502(b) of the CAA. The emission fees currently apply to emissions of up to 4,000 tons of any regulated pollutant. For Title V annual emission fee purposes, the term "regulated pollutant," as defined in section 502 of the CAA and § 127.705(d) (relating to emission fees), means a volatile organic compound, each pollutant regulated under sections 111 and 112 of the CAA (42 U.S.C.A. §§ 7411 and 7412) and each pollutant for which a National Ambient Air Quality Standard (NAAQS) has been promulgated, except that carbon monoxide shall be excluded from this reference.

The final-form rulemaking amends the Title V annual emission fee requirements codified in § 127.705. An adequate fee must result in the collection and retention of revenue sufficient to cover the costs of administering the air permit program as required under section 6.3 of the APCA. The Department has established a uniform Title V annual emission fee across the Commonwealth. The local air pollution control agencies in Allegheny and Philadelphia Counties collect the Title V annual emission fee revenue for sources under their jurisdictions. Minor clarifying amendments are made for § 127.701 (relating to general provisions).

The final-form amendment to the existing Title V annual emission fee is designed to cover all reasonable costs required to develop and administer the Title V permit requirements. These reasonable costs include the cost for certain activities related to major facility operations, including the review and processing of plan approvals and operating permits; emissions and ambient monitoring; preparing applicable regulations and guidance; modeling, analyses and demonstrations; and preparing emission inventories and tracking emissions. Direct and indirect program costs include personnel costs, operating expenses such as telecommunications, electricity, travel, auto supplies and fuel, and the purchase of fixed assets such as air samplers and monitoring equipment, vehicles and trailers.

To meet these obligations, the final-form rulemaking increases the Title V annual emission fee paid by the owner or operator of a Title V facility to \$85 per ton of emissions of "regulated pollutant" for emissions of up to 4,000 tons of each regulated pollutant beginning with emission fees payable by September 1, 2014, for emissions occurring in calendar year 2013. The initial Title V annual emission fee, established at 24 Pa.B. 5899, November 26, 1994, was \$37 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant per Title V facility. As provided in § 127.705(e), the emission fee imposed under § 127.705(a) has been increased in each year after November 26, 1994, 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. Under the existing regulatory framework, the Title V annual emission fee has not been revised since 1994. The current Title V annual emission fee due September 1, 2013, for emissions occurring in calendar year 2012 is \$57.50 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant. In order to collect fees sufficient to cover Title V program costs, the increase to the Title V annual emission fee is an increase of \$27.50 per ton of emissions of each regulated pollutant from 2013 levels.

Title V annual emission fee revenues collected are no longer sufficient to cover program costs. Installation of air pollution control technology over the past two decades on major stationary sources, the retirement or curtailment of operations by major sources including certain refineries and coal-fired power plants, and the conversion at many major facilities from burning coal or oil to burning natural gas has resulted in the decreased emission of regulated pollutants that are subject to the annual emission fee, and revenues collected have been decreasing as a result. The increase to the Title V annual emission fee considers the impact on collected Title V annual emission fee revenues from the retirement of certain sources and the announced retirement of sources, including certain electric generating units. The decline in interest rates paid on savings account balances has also affected the funds as the investments earn less interest in the current economy compared to the early years of the program.

Failure to adjust the emission fee structure to adequately cover program costs may cause significant reductions in the Title V staffing complement, currently 214 positions, and technical services. Reduced staffing will cause delays in processing and issuing plan approvals for Title V facilities and Title V operating permits, potentially resulting in delays for industry to implement new or improved processes and loss of revenue to industry, loss of jobs for the community and loss of tax revenue for the Commonwealth. New or modified sources of air pollution at Title V facilities cannot be constructed without a plan approval. The installation of air pollution control equipment requires Department approval of a plan approval application prior to the installation. Further, fewer staff to conduct inspections, respond to complaints and pursue enforcement actions will result in less oversight of industry compliance or noncompliance and in reduced protection of the environment and public health and welfare of the citizens of this Commonwealth.

Decreased revenues will also impact the Commonwealth's air monitoring network, which provides the data to substantiate the Commonwealth's progress in attaining and maintaining the NAAQS instituted by the EPA under the CAA. Decreased revenues could also impact the Small Business Stationary Source Technical and Environmental Compliance Assistance Program by reducing the amounts of grants and number of services available to small businesses. This could potentially lead to fewer viable small businesses and slow the economic recovery of the Commonwealth by reducing the numbers of available jobs. Further, a failure to attain and

maintain the NAAQS and to satisfy the Commonwealth's obligations under the CAA could precipitate punitive actions by the EPA.

In accordance with 40 CFR § 70.10(b) and (c) (relating to Federal oversight and sanctions), the EPA may withdraw approval of a Title V Permit Program, in whole or in part, if the EPA finds that a State or local agency has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after the issuance of a notice of deficiency (NOD). The EPA is authorized to, among other things, withdraw approval of the program and promulgate a Federal Title V Permit Program in this Commonwealth that would be administered and enforced by the EPA. In this instance, all Title V emission fees would be paid to the EPA instead of the Department. Additionally, mandatory sanctions would be imposed under section 179 of the CAA (42 U.S.C.A. § 7509) if the program deficiency is not corrected within 18 months after the EPA issues the deficiency notice. These mandatory sanctions include 2-to-1 emission offsets for the construction of major sources and loss of Federal highway funds (\$1.06 billion in 2012 if not obligated for projects approved by the Federal Highway Administration). The increase in the Title V annual emission fee avoids the issuance of a Federal Title V Permit Program NOD; Federal oversight and mandatory CAA sanctions would also be avoided. The EPA may also impose discretionary sanctions which would adversely impact Federal grants awarded under sections 103 and 105 of the CAA (42 U.S.C.A. §§ 7403 and 7405).

The final-form rulemaking does not establish a fee structure for carbon dioxide and other greenhouse gases (GHG) including hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons and sulfur hexafluoride. On June 3, 2010, the EPA finalized the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). See 75 FR 31514 (June 3, 2010). As the Tailoring Rule relates to the applicability of Title V annual emission fees for a "regulated pollutant" as defined in section 502 of the CAA, the EPA did not mandate revisions to state and local Title V programs to account for these emissions. See 75 FR 31514, 31585. The EPA reasoned that it would be difficult to apply this fee to GHGs, based on the large amount of GHG emissions relative to other pollutants and the need for better data to establish a GHG-specific fee amount. See 75 FR 31514, 31585. However, the EPA did commit to addressing this issue in a future rulemaking and to work with states to develop a workable fee approach. See 75 FR 31514, 31586. The EPA has not yet proposed a fee schedule under the CAA for GHG emissions. Consequently, the Board did not impose Title V emission fees for GHG emissions from stationary sources in this Commonwealth.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) in the development of this final-form rulemaking. At its June 13, 2013, meeting, the AQTAC concurred with the Department's recommendation to advance the rulemaking to the Board for consideration as final-form rulemaking.

The Department also conferred with the Citizens Advisory Council concerning the final-form rulemaking on July 16, 2013, and with the Small Business Compliance Advisory Committee on July 24, 2013.

E. Summary of the Final-form Rulemaking and Changes from Proposed to Final-form Rulemaking

The Board did not make changes to the rulemaking from proposed to final-form.

The final-form rulemaking revises § 127.701 to clarify that fees paid to the Department are deposited into the Pennsylvania Clean Air Fund. The final amendment also retained some additional editorial changes to this section.

The final-form rulemaking revises § 127.705 to establish a Title V annual emission fee of \$85 per ton for emissions of up to 4,000 tons of regulated pollutant, beginning with the fees due by September 1, 2014, for emissions from Title V facilities occurring in the 2013 calendar year.

F. Summary of Comments and Responses

Major Comments and Responses on the Proposed Rulemaking

The Board approved publication of the proposed rulemaking at its meeting of November 20, 2012. The proposed rulemaking was published at 43 Pa.B. 677 (February 2, 2013). Three public hearings were held on March 5, 6, and 7, 2013, in Pittsburgh, Norristown, and Harrisburg, PA, respectively. The public comment period closed on April 8, 2013, for a 66-day public comment period.

Public comments were received from four commentators. The Independent Regulatory Review Commission (IRRC) also provided comments.

A commentator says that the proposed increase in the Title V fee shows that the Department has been operating at a level of insufficient funding. There is a concern about the Bureau of Air Quality's ability to purchase air sampling and monitoring equipment, perform modeling analysis and add monitors in the Marcellus Shale counties.

The Board disagrees. The significant drop in Title V revenue that has occurred recently is due to the installation of air pollution control equipment at Title V facilities, reductions in emissions from Title V facilities, and the closure or deactivation of certain large facilities including electric generating units. The Department is able to purchase and operate air monitoring and other equipment using other funds. The Department has recently installed a permanent air monitoring site in Bradford County.

Some commentators oppose the proposed increase in the Title V fee.

The Board understands this resistance, but there is both a Federal and state obligation to revise the Title V emission fee to maintain the Federally mandated Title V permitting program. For instance, section 502(b) of the CAA requires the Department to adopt rules to require the owners and operators of sources subject to the requirement to obtain a Title V permit to pay an annual fee sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Title V permit program requirements. Similarly, section 6.3 of the APCA authorizes the establishment of fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process and operating permit program required by Title V of the CAA.

A commentator believes that imposing a spike or jolt in the Title V emissions fee without phasing the increase in is inappropriate.

The Board did investigate the potential for increasing the Title V emission fee in phases. However, a phased-in emission fee increase would not address the projected deficit in the Clean Air Fund Title V Major Emission Facilities Account. A deficit of \$7,235,000 is projected for the Title V Major Emission Facilities Account by the end of fiscal year 2015-2016. Funds sufficient to support the program need to be collected before the fund is in deficit.

A commentator says that the current and proposed fee structure assumes that the amount of emissions correlate directly with the amount of resources needed to administer the Title V program. This is not true, as a smaller but more complex source may be more demanding of the Department's resources.

The Board agrees that the Title V annual emission fee is directly related to the quantity of emissions of regulated pollutant released from a facility and that a lower emitting facility may not be paying a fee representative of the administrative resources dedicated to that lower emitting facility. However, the Department has stated that it intends to conduct a comprehensive review of all air quality fees in order to develop an equitable and sustainable fee program. At this time, the Board thinks the most equitable and feasible approach to this issue is to ensure that the Title V fee revenues adequately cover the expense of the program.

A commentator asserts that the fees are substantially out of line with fees collected in other states with a strong manufacturing base.

The Board disagrees. The fee is 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 Title V annual emission fees and to adjust the fees annually based on the Consumer Price Index. Several nearby states have already taken action to address the issue of declining revenues due to declining emissions of regulated pollutants. Connecticut, Maryland, New York and New Jersey no longer limit emission fee applicability to 4,000 tons per regulated pollutant. In 2013, Connecticut's Title V emission fee is \$301.09 per ton of regulated pollutant based on an "Inventory Stabilization Factor," upwards from a fee of \$283.46 per ton imposed in 2012 and with no cap on the amount of emissions of regulated pollutants subject to this fee. In 2012, New York assessed a Title V annual emission fee ranging from \$45 per ton of regulated pollutant for emissions of less than 1,000 tons per year to \$65 per ton of regulated pollutant for emissions of more than 5,000 tons per year; the fee is applied to emissions up to 7,000 tons of any regulated pollutant. The New York Title V emission fee for 2013 has not changed from 2012 levels. For 2013, the state of New Jersey imposes a Title V annual emission fee of \$112.07 per ton of emissions of regulated pollutant with no cap on emissions, upwards from \$106.67 per ton in 2012. Maryland's 2013 Title V fee is \$55.70 plus a \$200 base fee; Maryland has no cap on the amount of emissions of regulated pollutants subject to the fee. West Virginia's 2013 Title V annual emission fee is \$31.87 per ton of emissions of regulated pollutant with a 4,000 ton cap. Virginia's 2013 Title V annual emission fee is \$58.88 per ton of emissions of regulated pollutant (4,000 ton cap); further, in 2012 Virginia established additional Title V facility fees including yearly maintenance fees ranging from \$1,500 to \$10,000 and Title V Permit application and Title V Permit renewal fees of \$20,000 and \$10,000, respectively.

A commentator recommends that the Board consider a facility cap as opposed to a fee per pollutant cap.

The Board disagrees. The fee per pollutant cap of 4,000 tons of any regulated pollutant is established in section 502(b) of the CAA and section 6.3 of the APCA. Any revision to the cap would require legislative action and is beyond the scope of the final-form rulemaking.

The commentator thinks that imposing an increase for the current calendar year is essentially a "retroactive tax" because the regulated community did not have prior knowledge of the proposal.

The Board disagrees with the assertion that the Title V annual emission fee is a tax. Neither the Board nor the Department has the authority to establish taxes. The General Assembly retains the authority to propose and pass bills which establish taxes. Moreover, the Department is statutorily mandated under both the APCA and CAA to establish fees to ensure the continued viability of the air quality program.

The Board first proposed a Title V fee amendment in 2009 at 39 Pa.B. 6049 (October 17, 2009). While the 2009 proposal was not finalized, the regulated community has been on notice of the need for additional fees. The current proposal was published in the early part of 2013, which allows companies to adequately plan for the increase based on 2013 emissions. Furthermore, the emission fees required by this amendment are due on or before September 1 of each year for emissions from the previous calendar year. Consequently, emissions for 2013 do not need to be paid until September 1, 2014. This is not retroactive.

The commentator asserts that the reduction in emissions and the shutdown of sources will reduce the Department's workload and should reduce the need for additional fees.

The Board disagrees. The announced facility shutdowns will not reduce the Department's workload. Proposed shutdowns in coal-fired power plants are being offset by the proposed construction of additional natural gas-fired power plants. To date there are nine plan approval applications in various stages of approval with the Department related to the construction of new natural gas-fired power plants. Department air program staff must continue to implement the air pollution laws and regulations, issue plan approvals and operating permits including renewals and amendments, conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, and monitor the ambient air in the Commonwealth. Air program staff operate and maintain a source testing program to ensure compliance with applicable requirements. Significant staff resources have been devoted to permitting and inspection of unconventional natural gas development activities. Further, the Department projects an increased workload due to the implementation of new or revised Federal regulations. Implementation of the new and revised Federal permitting rules will require increased numbers of inspections and permitting actions and outreach to and education of the impacted industry. These Federal rules may require promulgation of new or revision to existing state regulations.

The commentator thinks that the Board fails to recognize the inordinate regulatory costs borne by the manufacturing industry.

The Board disagrees. The Board acknowledges the number of new or revised regulations that impact manufacturing facilities. However, the CAA and APCA require that a Title V fee structure that is sufficient to cover the cost of the Title V permitting program be established.

The commentator notes that 40% of the Title V fees paid in Allegheny County would be paid by one company and that this is not commensurate with the resources needed to administer the Title V program.

The Board agrees that the commentator is correct that the owners or operators, or both, of a few major emitting facilities will pay a large portion of the Title V emission fees assessed by the air program. However, the commentator's facilities are also among the highest emitting facilities in Allegheny County. The Board agrees that the fee structure established by the APCA needs to be reviewed as part of the analysis of all air quality fees that will be conducted over the next 2 years. However, at this time, the most equitable and feasible approach to this issue is to ensure that the Title V annual emission fee revenues adequately cover the expense of the program.

A commentator supports the Board's decision to not establish a fee structure for carbon dioxide and greenhouse gases.

The Board thanks the commentator for their support of the decision. As stated in the proposed rulemaking notice, this rulemaking does not establish a fee structure for carbon dioxide and other GHG including hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride. On June 3, 2010, the EPA finalized the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). See 75 FR 31514. As the Tailoring Rule relates to the applicability of Title V annual emission fees for a "regulated pollutant" as defined in section 502 of the CAA, the EPA did not mandate revisions to state and local Title V programs to account for these emissions. The EPA reasoned that it would be difficult to apply the Title V fee to GHG gases, based on the large amount of GHG emissions relative to other pollutants and the need for better data to establish a GHG-specific fee amount. However, the EPA did commit to addressing this issue in a future rulemaking and to work with states to develop a workable fee approach. The EPA has not yet proposed a fee schedule under the CAA for GHG emissions. Consequently, the Board did not propose to impose Title V emission fees for GHG emissions from stationary sources in this Commonwealth.

The commentator urges the Board to make any Title V emission fee increase temporary, because the Title V fee revenue will return once the economy improves.

The Board disagrees. The reduction in Title V emission fee revenue is expected to continue to decline due mainly to the closure of certain large coal-fired electric generating units. As a result, Title V fee revenue is not expected to return to previous levels once the economy improves. Therefore, the Title V fee revision must be promulgated to cover the cost of administering the Title V program.

The commentator questions why the same numbers of Department staff are needed for inspections when the number of Title V facilities is decreasing.

The Board agrees that there has been a reduction in the number of Title V facilities. However, this reduction in the number of Title V facilities does not have a direct impact on the number of inspectors needed. This is because the inspections have become more complex, taking longer to conduct and to document than inspections that occurred at the start of the program in the early 1990s.

The commentator requests that the Board consider delaying implementation of the fee by 1 year or implementing the increase over several years.

The Board has analyzed the solvency of the Clean Air Fund Title V Major Emission Facilities Account and determined that there will not be sufficient funds to sustain the Title V permitting program beginning in fiscal year 2015-2016. Failure to address the Title V revenue shortfall now will result in a program without sufficient funds to operate. This in turn will have significant impacts on regulated industry, including the delay in revising and addressing plan approvals and operating permits including renewals and amendments.

A commentator thinks that the Board could impose a fee higher than \$85 per ton and still remain below the level charged by several other states.

The Board agrees that a higher fee could have been proposed. The Title V fee of \$85 per ton of emissions of up to 4,000 tons of regulated pollutant will provide a bridge to allow additional time for the development of a comprehensive fee structure for the air quality program.

A commentator asks whether the regulation will result in the air quality program operating at a loss again in just 2 years.

The Board agrees that the increase to the Title V annual emission fee is not a permanent solution to funding the air quality program. The current Comparative Financial Statement for the Clean Air Fund shows that the Title V Major Emission Facilities Account will have a negative balance at the end of fiscal year 2015-2016. As noted in the minutes of the November 20, 2012, Board meeting, the final-form rulemaking provides a "bridge" for the Department to address its imminent budget needs while allowing the Department and interested stakeholders sufficient time to examine the most appropriate means to support the Title V program in the future as new air pollution control technologies, the abundance of natural gas, and the retirement of coal-fired power plants continue to reduce emissions of regulated pollutants.

The commentator wants to know whether the Board explored offsetting all or a portion of the proposed increase through cost reductions.

The Board believes that the Department has made significant cost reductions in the Title V program. The Department has eliminated or postponed the purchase of fixed assets. The Department has reallocated program costs to the Mobile and Area Facilities Account of the Clean Air Fund where permissible to prolong the solvency of the Title V Major Emission Facilities Account. For example, the Department transferred \$485,000 of expenditures from the Title V Major Emission Facilities Account to the Mobile and Area Facilities Account of the Clean Air Fund in fiscal year 2012-2013. These expenditures included staff training, certain travel expenses, computer and computer software purchases, health certifications, and certain utility charges. For fiscal year 2013-2014, the Department will transfer \$240,000 in operating expenses to the Mobile and Area Facilities Account of the Clean Air Fund and reduce computer systems support spending by \$150,000. The Department will continue to look for cost reductions that can be implemented without negatively impacting the Title V permitting program.

The commentator asks how the fee increase will affect employment.

The Board considered whether an increase to the Title V annual emission fee would put Pennsylvania businesses at a competitive disadvantage with comparable businesses in the surrounding states or draw business and employment opportunities away from the Commonwealth. The Board finds that in some cases, the Commonwealth would be very competitive and may be able to draw new industry on the basis of having a lower Title V annual emission fee than nearby states.

The commentator wonders whether the Board considered a delay or phase-in of the increase to allow businesses time to accommodate the full impact and whether it is reasonable to impose the fee increase on emissions that already occurred in 2013.

The Board did consider a delay and different years for the implementation of the Title V fee increase. However, assessing the revised fee on emissions of regulated pollutants occurring in calendar year 2013, due and payable by September 1, 2014, was chosen due to the projected budget deficit and anticipated retirement or deactivation of electric generating units that will have a significant negative impact on the Title V permitting program. Because of declining Title V emission fee revenue due to the installation of air pollution control technology on stationary sources and the retirement or curtailment of operations by major sources including coal-fired power plants, deficits of \$7.235 million and \$19.406 million in fiscal years 2015-2016 and 2016-2017, respectively, are projected for the Title V Major Facilities Account.

The Board has analyzed the solvency of the Clean Air Fund Title V Major Emission Facilities Account and determined that there will not be sufficient funds to sustain the Title V permitting program beginning in fiscal year 2015-2016. Failure to address the Title V revenue shortfall now will result in a program without sufficient funds to operate. This will have significant impacts on industry, including the delay in revising and addressing plan approvals and operating permits including renewals and amendments since the Department will necessarily be forced to reduce staff in order to balance the budget. There will not be sufficient staff to conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, monitor the ambient air in the Commonwealth, and operate and maintain a source testing program to ensure compliance with applicable requirements. All of these factors could contribute to a loss of employment opportunities and slow the economic recovery in this Commonwealth. The Board first proposed a Title V annual emission fee increase in 2009, thereby providing notice to the affected owners and operators of Title V facilities of the need to address the revenue shortfall. Further, payment of the emission fees for emissions occurring in calendar year 2013 will not be due until September 1, 2014, 19 months after publication on February 2, 2013, of the rulemaking notice proposing the increase to the Title V annual emission fee.

The commentator asks the Board to explain how the costs imposed by the fee increase are justifiable compared to the benefits the fees produce.

Retaining sufficient staff (including permitting, monitoring, enforcement, source testing and legal personnel) to support the Title V permitting program is a critical component of improving air quality and assuring compliance with the NAAQS. The benefits of attaining and maintaining the NAAQS are significant. The EPA has estimated the monetized health benefits of attaining ambient air quality standards. For example, the EPA estimated that the monetized health benefits of attaining the 8-hour ozone standard of 0.075 ppm range from \$8.3 billion to \$18 billion on a National basis. See Regulatory Impact Analysis, Final National Ambient Air Quality

Standard for Ozone, July 2011, http://www.epa.gov/glo/pdfs/201107_OMBdraft-OzoneRIA.pdf. Prorating that benefit to the Commonwealth, based on population, results in a public health benefit of \$337 million to \$732 million. The projected costs to the regulated industry Commonwealth-wide in increased fees ranging from \$5,830,000 in fiscal year 2014-2015 to \$4,237,000 in fiscal year 2018-2019 pale by comparison.

The Board is not stating that these estimated monetized health benefits would all be the result of implementing the increase to the Title V annual emission fee, but the EPA estimates are indicative of the benefits of attaining the NAAQS. Ensuring that there are sufficient staff and resources to implement the Title V permitting program is one part of the overall air quality program to attain and maintain the NAAQS in this Commonwealth. Adequate funding will assure the regulated industry that their plan approval applications and permits will be reviewed in a timely manner, sustaining their profitable business and maintaining jobs. Attaining and maintaining public health and welfare goals will attract and retain residents needed to fill the jobs created by the regulated industries and small businesses. Maintaining a healthy environment will benefit the agricultural and tourism industries, both of which provide many jobs. All of these situations will increase tax revenues to the Commonwealth.

Implementing the proposed increase to the Title V annual emission fee will assure the residents of this Commonwealth that the Commonwealth's air pollution control program is adequately funded for the next few years. The anticipated increased revenues will allow the Department and approved local air pollution control agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to reduce emissions to achieve healthful air quality and ensure continued protection of the environment and the public health and welfare of the residents of this Commonwealth.

G. Benefits, Costs and Compliance

Benefits

The increased Title V annual emission fee revenue will be used to adequately fund the Commonwealth's air quality Title V permit programs as authorized by the APCA. Without an increase in the annual emission fee, Clean Air Fund Title V Major Emission Facilities Account deficits of \$7.235 million, \$19.406 million, \$32.001 million and \$45.028 million are projected for the Department's Title V program for fiscal years 2015-2016, 2016-2017, 2017-2018 and 2018-2019, respectively. Revenue to the Department from the fee increase will be used solely to address the projected deficits in the Title V Major Emission Facilities Account in the Clean Air Fund.

The Title V annual emission fee of \$85 per ton for emissions of up to 4,000 tons of each regulated pollutant will result in projected increased revenue to the Department of \$5.1 million in the Title V Account for fiscal years 2014-2015 and 2015-2016, and \$3.5 million for fiscal years 2016-2017, 2017-2018 and 2018-2019, if the fee is imposed beginning with emissions occurring in calendar year 2013 and payable by September 1, 2014. An increase in the Title V annual emission fee will provide projected increased emission fee revenue of approximately \$570,000 and \$167,000 for the approved local air pollution control agency Title V programs in Allegheny County and Philadelphia County, respectively. The increase in the Title V annual

emission fee will result in a combined projected increase of revenue to the three agencies of \$5.8 million in fiscal year 2014-2015.

The increase to the Title V annual emission fee will assure the regulated industry that their plan approval applications and permits are reviewed in a timely manner, sustaining their business and maintaining jobs. Adoption of the revised Title V emission fee will ensure that the Commonwealth's Title V air pollution control permit program is adequately funded for the next few years. The anticipated increased revenue will allow the Department and approved local air pollution control agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to further reduce emissions of regulated pollutants to achieve healthful air quality and ensure continued protection of the environment and the public health and welfare of the residents of this Commonwealth.

Compliance Costs

The owners and operators of approximately 560 Title V facilities in this Commonwealth, including facilities in Allegheny and Philadelphia Counties, will be required to comply with the revised Title V annual emission fee on emissions of up to 4,000 tons of each regulated pollutant. The financial impact on the owners and operators of Title V facilities regulated by the Department, collectively, will be additional annual emission fee costs of approximately \$5.1 million per year for fiscal years 2014-2015 and 2015-2016; additional annual emission fee costs in fiscal years 2016-2017, 2017-2018 and 2018-2019 for these owners and operators are expected to be about \$3.5 million per year due to decreasing amounts of emissions of regulated pollutants as major sources install additional air pollution controls, convert to burning natural gas (a cleaner energy source) instead of coal or oil, or shut down certain facilities. Costs to the owners and operators of Title V facilities regulated by the approved local air pollution control agencies are expected to be about \$570,000 and \$167,000 in fiscal year 2014-2015 in Allegheny County and Philadelphia County, respectively. The revised Title V annual emission fee will result in total projected increased costs of \$5.8 million for the regulated community in Title V emission fee payments to the three agencies in fiscal year 2014-2015.

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 outreach initiative 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 the industry would need to comply.

H. *Pollution Prevention*

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) 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. The anticipated increased revenues will allow the Department and approved local air pollution control agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth, sustain the gains made in healthful air quality, and ensure continued protection of the environment and the public health and welfare of the residents of this Commonwealth.

I. *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.

J. *Regulatory Review*

Under section 5(a) and (f) of the Regulatory Review Act (71 P. S. § 745.5(a) and (f)), on January 22, 2013, the Department submitted a copy of the notice of proposed rulemaking, published at 43 *Pa.B.* 677, to the Independent Regulatory Review Commission (IRRC). In accordance with Section (f) of the Regulatory Review Act (71 P.S. § 745.5(f)), the Department submitted a copy of the notice of proposed rulemaking to the Chairpersons of the House and Senate Environmental Resources and Energy Committees on February 21, 2013.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on xxxx, xx, 2013, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on xxxx, xx, 2013, and approved the final-form rulemaking.

K. *Findings*

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code* §§ 7.1 and 7.2.

- (2) At least a 60-day public comment period was provided as required by law, and all comments were considered.
- (3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 43 Pa.B. 677.
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.
- (5) These regulations are reasonably necessary to cover the indirect and direct costs of administering the air pollution control program, operating permit program required by Title V of the CAA, other requirements of the CAA (42 U.S.C.A. §§ 7401—7671q), 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.

L. *Order of the Board*

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

- (a) The regulations of the Department of Environmental Protection, 25 *Pa. Code* Chapter 127 are amended by amending §§ 127.701 and 127.705 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Committees as required by the Regulatory Review Act.
- (d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This final-form rulemaking will be submitted to the EPA as an amendment to the Pennsylvania SIP.
- (f) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

E. CHRISTOPHER ABRUZZO
Acting Chairman

FINAL-FORM RULEMAKING
Annex A
TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE III. AIR RESOURCES

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.

§ 127.705. Emission fees.

(a) The owner or operator of a Title V facility including a Title V [facilities] facility located in [Allegheny County and] Philadelphia County or Allegheny County, except a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions), shall pay an annual Title V emission fee of [\$37] \$85 per ton for each ton of a regulated pollutant actually emitted from the facility. The owner or operator will not be required to pay an emission fee for emissions of more than 4,000 tons of each regulated pollutant from the facility.

[Sources] The owner or operator of a Title V facility located in Philadelphia County [and] or Allegheny County shall pay the emission fee to the county Title V program [if the county Title V program has received approval] approved by the Department under section 12 of the act (35 P. S. § 4012) and § 127.706 (relating to Philadelphia County and Allegheny County financial assistance).

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

[(c)] The emissions fees required by this section shall be due on or before September 1 of each year for emissions from the previous calendar year. The fees required by this section shall be paid for emissions occurring in calendar year [1994] 2013 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] _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year. For purposes of this subsection:

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

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



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Bureau of Air Quality

Air Quality Title V Fee Amendment

25 Pa. Code Chapter 127

43 Pa.B. 677-681 (February 2, 2013)

**Environmental Quality Board Regulation # 7-478
(Independent Regulatory Review Commission # 2980)**

Comment and Response Document

Air Quality Title V Fee Amendment Proposed Rulemaking

On February 2, 2013, the Environmental Quality Board (Board, EQB) published a notice of public hearings and comment period for a proposed rulemaking concerning revisions to 25 *Pa. Code* Chapter 127 (relating to construction, modification, reactivation and operation of sources).

The proposed rulemaking would amend § 127.705 (relating to emission fees) to establish a Title V annual emission fee of \$85 per ton for up to 4,000 tons of each regulated pollutant per Title V facility, beginning with the fees due by September 1, 2014, for emissions from Title V facilities in the 2013 calendar year. The initial Title V annual emission fee, established at 24 Pa.B. 5899, November 26, 1994, was \$37 per ton of regulated pollutant up to 4,000 tons of each regulated pollutant per Title V facility. As provided in § 127.705(e), the emission fee imposed under § 127.705(a) has been increased in each year after November 26, 1994, 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. Under the existing regulatory framework, the Title V annual emission fee has not been revised since 1994. The Title V annual emission fee due September 1, 2012, for emissions occurring in calendar year 2011 was \$56 per ton of regulated pollutant for up to 4,000 tons of each regulated pollutant per Title V facility.

If the revised Title V annual emission fee for the Air Program is adopted by the Board and published as final rulemaking in the *Pennsylvania Bulletin*, the final-form regulation will be submitted to the United States Environmental Protection Agency (EPA) for approval as a revision to the Commonwealth's State Implementation Plan (SIP) or as an amendment to the Title V Program Approval codified in 40 CFR Part 70, Appendix A (relating to approval status of state and local operating permits programs), as appropriate.

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Public Comment Period and Public Hearings

The public comment period opened on February 2, 2013, and closed on April 8, 2013, for a 66-day public comment period.

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

March 5, 2013 1 p.m.	Department of Environmental Protection Southwest Regional Office Waterfront A Conference Room 400 Waterfront Drive Pittsburgh, PA 15222-4745
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March 6, 2013 1 p.m.	Department of Environmental Protection Southeast Regional Office Delaware River Conference Room 2 East Main Street Norristown, PA 19401
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March 7, 2013 1 p.m.	Department of Environmental Protection Rachel Carson State Office Building Conference Room 105 400 Market Street Harrisburg, PA 17105
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This document summarizes the comments received during the public comment period. Each public comment is listed with the identifying commentator number for each commentator that made the comment. A list of the commentators, including name and affiliation (if any) can be found on page 4 of this document. The Board invited each commentator to prepare a one-page summary of the commentator's comments. One one-page summary was submitted to the Board for this rulemaking. No testimony was presented at the hearings. The House and Senate Environmental Resources and Energy Committees did not submit comments.

Copies of all comments received are posted on the web site of the Independent Regulatory Review Commission (IRRC) at <http://www.irc.state.pa.us>. Search by Regulation #7-478 or IRRC # 2980.

Table of Commentators for the Environmental Quality Board
Air Quality Title V Emission Fee Amendment Proposed Rulemaking # 7-478
(IRRC # 2980)

ID	Name/Address	One Page Summary Submitted for Distribution to EQB	Provided Testimony	Requested Copy of Final Rulemaking after EQB Action
1.	Emily E. Krafjack President Connection for Oil, Gas & Environment in the Northern Tier, Inc.			
2.	Keith E. Williams Manager Environmental Hercules Cement Co., L.P. dba Buzzi Unicem USA			
3.	David W. Hacker General Attorney US Steel Corporation Law Department	X		
4.	Hon. Greg Vitali Representative PA House of Representatives			
5.	David Sumner Executive Director Independent Regulatory Review Commission			

General Comments

1. Comment: The commentators support the proposed fee increase. (1, 4)

Response: The Department of Environmental Protection (Department, DEP) thanks the commentators for their support.

2. Comment: The commentator believes there is inadequate DEP staffing to ensure compliance and to conduct sampling and ambient air monitoring in the Marcellus Shale area. (1)

Response: This comment is beyond the scope of the rulemaking. Nevertheless, the Department believes that there is sufficient staffing to implement the Title V permitting program. Because the vast majority of the Marcellus Shale activities are conducted at facilities that are not Title V facilities and which pay no Title V emission fees, the Department cannot use Title V funds for the purposes recommended by the commentator.

3. Comment: The proposed increase in the Title V fee shows that the Department has been operating at a level of insufficient funding. There is a concern about the Bureau of Air Quality's ability to purchase air sampling and monitoring equipment, perform modeling analysis and add monitors in the Marcellus Shale counties. There are no permanent air quality monitoring sites in the Marcellus Shale and Northern Tier counties. These areas should be protected. (1)

Response: The significant drop in Title V revenue that has occurred recently is due to the installation of air pollution control equipment at Title V facilities, reductions in emissions from Title V facilities, the closure or deactivation of certain large facilities including electric generating units and significantly lower emissions from new facilities which are being built. The Department is able to purchase and operate air monitoring and other equipment using other funds in the Clean Air Fund and federal grant funds. The Department has recently installed a permanent air monitoring site in Bradford County.

4. Comment: The commentators oppose the proposed increase in the Title V fee. (2, 3)

Response: The Department is obligated to revise the Title V emission fee to maintain the federally mandated Title V permitting program. For instance, section 502(b) of the Clean Air Act (CAA), 42 U.S.C.A. § 7661a(b), requires the Department to adopt rules to require the owners and operators of sources subject to the requirement to obtain a Title V permit to pay an annual fee sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Title V permit program requirements. Similarly, section 6.3 of the Air Pollution Control Act (APCA), 35 P.S. §4006.3(a), authorizes the establishment of fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process and operating permit program required by Title V of the CAA.

As part of its evaluation of EPA Region 3's oversight of Pennsylvania's Title V Program, the EPA Office of Inspector General is currently collecting data regarding the adequacy of Pennsylvania's Title V fee revenue.

The EPA could withdraw the Title V program approval granted in July 1996 if funds are not sufficient to cover program costs. Withdrawal of the Title V program approval would require the EPA to administer and enforce a Federal Title V Program in Pennsylvania; all Title V emission fees would be paid to the EPA instead of DEP. A program deficiency would need to be corrected within 18 months to avoid mandatory Clean Air Act (CAA) sanctions including 2-to-1 emission offsets for the construction of major sources and loss of federal highway funds (\$1.06 billion in 2012 if the funds are not obligated for projects by the Federal Highway Administration).

5. Comment: An increase of approximately 50% is unjustified and unreasonable. The manufacturing sector continues to slowly recover. An increase in fees could adversely impact employment and capital projects. (3)

Response: The proposed \$85 per ton Title V emission fee is 48% higher than the fee assessed in 2013 for emissions during the 2012 calendar year. This higher fee is necessary to ensure that the fees are sufficient to cover the direct and indirect costs of administering the program. The number of permitting actions for major facilities is expected to increase due to the implementation of additional federal requirements. The Department anticipates an increased work load due to the implementation of new or revised federal regulations including, but not limited to, the following:

- Maximum Achievable Control Technology (MACT) standards for boilers
- MACT for electric generating units
- MACT for Commercial and Industrial Solid Waste Incinerators
- MACT for Reciprocating Industrial Combustion Engines
- Area source MACT standards
- New Source Performance Standards (NSPS) including for the natural gas industry
- NSPS for Sewage Sludge Incinerators
- NSPS for Kraft Pulp and Paper Mills
- NSPS for Hospital Medical Infectious Waste Incinerators
- National Ambient Air Quality Standards (NAAQS) for Lead (revised November 12, 2008, 73 FR 66964)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised October 17, 2006, 71 FR 61144)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised January 15, 2013, 78 FR 3086)
- NAAQS for Nitrogen Dioxide (revised February 9, 2010, 75 FR 6474)
- NAAQS for Ozone (revised March 27, 2008, 73 FR 16436)
- Title V Permit Renewal
- Incorporation of new applicable requirements in Title V permits
- Reasonably Available Control Technology

The implementation of certain federal rules may require state regulatory action to attain and maintain the NAAQS. Implementation of the NAAQS requires development of revisions to the SIP, emission inventories, ambient air modeling, inspections of sources, demonstrations to the EPA of adequate Department resources to implement the standards and programs, demonstrations to the EPA that emissions in Pennsylvania will not contribute significantly or interfere with maintenance to downwind nonattainment areas, and revisions to operating permits.

The Department has provided the justification needed to support the fee increase. Adequate funding will assure the regulated industry that their plan approval applications and permits are reviewed in a timely manner, sustaining their profitable business and maintaining jobs. Attaining and maintaining public health and welfare goals will attract and retain residents needed to fill the jobs created by the regulated industries and small businesses. Maintaining a healthy environment will benefit the agricultural and tourism industries, both of which provide many jobs.

The proposed increase to the Title V annual emission fee will assure the residents of this Commonwealth that the Commonwealth's air pollution control program is adequately funded for the next few years. The anticipated increased revenues will allow the Department and approved local air pollution control agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to reduce emissions to achieve healthful air quality and ensure continued protection of the environment and the public health and welfare of the residents of this Commonwealth.

6. Comment: Imposing a spike or jolt in the Title V emissions fee without phasing the increase in is inappropriate. (3)

Response: The Department did investigate the potential for increasing the Title V emission fee in phases. However, a phased-in emission fee increase would not address the projected deficit in the Clean Air Fund Title V Major Emission Facilities Account. A deficit of \$7,235,000 is projected for the Title V Major Emission Facilities Account by the end of fiscal year 2015-2016 if the \$85 per ton emission fee is not adopted by the Board and published as final rulemaking in the *Pennsylvania Bulletin*. (The deficit may be greater should natural gas displace additional coal-fired electric generation in the next few years.) Funds sufficient to support the program need to be collected before the fund is in deficit. As a result, the Board proposed the Title V fee amendment of \$85 at 43 Pa.B. 677 (February 2, 2013). The Department is also committed to reviewing the entire air quality fee structure including application fees for plan approvals and operating permits (including Title V operating permits), risk assessments, base fees, etc., to assure the adequacy of the fees collected to administer the air program.

7. Comment: The current and proposed fee structure assumes that the amount of emissions correlate directly with the amount of resources needed to administer the Title V program. This is not true, as a smaller but more complex source may be more demanding of the Department's resources. (3)

Response: The Department agrees that the Title V annual emission fee is not directly related to the total quantity of emissions released from a facility and that a lower emitting facility may not be paying a fee representative of the administrative resources dedicated to that lower emitting facility. The Department has stated that it intends to conduct a comprehensive review of all air quality fees in order to develop an equitable and sustainable fee program. However, at this time, the most equitable and feasible approach to this issue is to ensure that the Title V fee revenues adequately cover the expense of the program.

8. Comment: The fees are substantially out of line with fees collected in other states with a strong manufacturing base. (3)

Response: The Department disagrees. The proposed fee is similar to those in other states and will not place the Commonwealth at a competitive disadvantage. In some cases, the Commonwealth will be very competitive and may be able to draw new industry on the basis of having a lower Title V annual emission fee than nearby states. This could serve to increase total Title V fee revenue if there are more sources subject to the annual emission fee.

All states are required by the CAA to collect Title V annual emission fees and to adjust the fees annually based on the Consumer Price Index. Several nearby states have already taken action to address the issue of declining revenues due to declining emissions of regulated pollutants. Connecticut, Maryland, New York, and New Jersey no longer limit emission fee applicability to 4,000 tons per regulated pollutant. In 2013, Connecticut's Title V emission fee is \$301.09 per ton of emissions of regulated pollutant based on an "Inventory Stabilization Factor," upwards from a fee of \$283.46 per ton imposed in 2012 and with no cap on the amount of emissions of regulated pollutants subject to this fee. The Connecticut fee is adjusted periodically to ensure that collected Title V annual emission fee revenue is adequate for at least 2 years of permit program operating costs. In 2012, New York assessed a Title V annual emission fee ranging from \$45 per ton of regulated pollutant for emissions of less than 1,000 tons per year to \$65 per ton of regulated pollutant for emissions of more than 5,000 tons per year; the fee is applied to emissions up to 7,000 tons of any regulated pollutant. The New York Title V emission fee for 2013 has not changed from the 2012 level. For 2013, the state of New Jersey imposes a Title V annual emission fee of \$112.07 per ton of regulated pollutant with no cap on emissions. Maryland's 2013 Title V fee is \$55.70 plus a \$200 base fee; Maryland has no cap on the amount of emissions of regulated pollutants subject to the fee. West Virginia's 2013 Title V annual emission fee is \$31.87 per ton of regulated pollutant with a 4,000 ton cap. Virginia's 2013 Title V annual emission fee is \$58.88 per ton of regulated pollutant (4,000 ton cap); further, in 2012 Virginia established additional Title V facility fees including yearly maintenance fees ranging from \$1,500 to \$10,000 and Title V Permit application and Title V Permit renewal fees of \$20,000 and \$10,000, respectively.

9. Comment: The commentator recommends that the EQB consider a facility cap as opposed to a fee per pollutant cap. (3)

Response: The fee per pollutant cap of 4,000 tons of any regulated pollutant is established in section 502(b) of the CAA and section 6.3 of the APCA. While certain states including Connecticut, Maryland, New York, New Jersey, and North Carolina have increased or eliminated the fee per pollutant cap for Title V emissions, any revision to the cap in Pennsylvania would require legislative action and is beyond the scope of the proposed rulemaking. The Department acknowledges that there are alternatives that will be examined as part of the comprehensive fee review, but those alternatives must be within the boundaries of the APCA.

10. Comment: Imposing an increase for the current calendar year is essentially a "retroactive tax." The regulated community did not have prior knowledge of the proposal. (3)

Response: The Department disagrees with the assertion that the Title V annual emission fee is a tax. The Department of Environmental Protection does not have the authority to establish taxes. The General Assembly retains the authority to propose and pass bills which establish taxes. Moreover, the Department is statutorily mandated under both the APCA and CAA to establish fees to ensure the continued viability of the air quality program.

The Board first proposed a Title V fee amendment in 2009 at 39 Pa.B. 6049 (October 17, 2009) and adopted the fee in November 2010. However, the final-form regulation was withdrawn by the Board in December 2011 from consideration by the IRRC. While the 2009 proposal was not finalized, the regulated community has been on notice of the need for additional fees. The current proposed fee amendment was available following consideration by the Board in November 2012 and subsequent publication in the *Pennsylvania Bulletin* in February 2013. In accordance with applicable law and regulations, the Board provided sufficient notice of the proposed fee increase, which allows companies to adequately plan for the increase based on 2013 emissions. Furthermore, the emission fees required by this amendment are due on or before September 1 of each year for emissions from the previous calendar year. Consequently, the Title V fee for emissions of regulated pollutants occurring during the 2013 calendar year does not need to be paid until September 1, 2014. This is not retroactive.

11. Comment: The reduction in emissions and the shutdown of sources will reduce the Department's workload and should reduce the need for additional fees. (3)

Response: The announced facility shutdowns will not reduce the Department's workload. Proposed shutdowns in coal-fired power plants are being offset by the proposed construction of additional natural gas-fired power plants. To date there are nine plan approval applications in various stages of approval with the Department related to the construction of new natural gas-fired power plants. The DEP air program staff must continue to implement the air pollution laws and regulations, issue plan approvals and operating permits including renewals and amendments, conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, and monitor the ambient air in the Commonwealth. Air program staff operate and maintain a source testing program to ensure compliance with applicable requirements. Significant staff resources have been devoted to permitting and inspection of unconventional natural gas development activities. Further, the Department projects an increased workload due to the implementation of new or revised federal regulations including, but not limited to, the following:

- Maximum Achievable Control Technology (MACT) standards for boilers
- MACT for electric generating units
- MACT for Commercial and Industrial Solid Waste Incinerators
- MACT for Reciprocating Industrial Combustion Engines
- Area source MACT standards
- New Source Performance Standards (NSPS) including for the natural gas industry
- NSPS for Sewage Sludge Incinerators
- NSPS for Kraft Pulp and Paper Mills
- NSPS for Hospital Medical Infectious Waste Incinerators

- National Ambient Air Quality Standards (NAAQS) for Lead (revised November 12, 2008, 73 FR 66964)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised October 17, 2006, 71 FR 61144)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised January 15, 2013, 78 FR 3086)
- NAAQS for Nitrogen Dioxide (revised February 9, 2010, 75 FR 6474)
- NAAQS for Ozone (revised March 27, 2008, 73 FR 16436)
- Title V Permit Renewal
- Incorporation of new applicable requirements in Title V permits
- Reasonably Available Control Technology

Implementation of the new and revised federal permitting rules (MACT and NSPS) will require increased numbers of inspections and permitting actions and outreach to and education of the impacted industry. These federal rules may require promulgation of new or revision to existing state regulations. Implementation of the revised NAAQS requires development of revised attainment and maintenance SIPs, emission inventories, ambient air modeling, inspections of affected facilities and sources, demonstrations to the EPA of adequate Department resources to implement the standards and programs, demonstrations to the EPA that emissions in Pennsylvania will not contribute significantly to or interfere with maintenance to downwind nonattainment areas, and may require adoption of new or amendments to existing state regulations and revisions to operating permits. The revisions to the various NAAQS also, in some cases, require the installation of additional ambient air monitors to the existing monitoring network. Implementation of these new federal regulations and revised NAAQS and the necessary infrastructure will require significant education of and outreach to the impacted industries and the public.

12. Comment: The EQB and Department fail to recognize the inordinate regulatory costs borne by the manufacturing industry. The number of significant federal and state rulemakings has resulted in significant costs to the regulated community. The analysis done to support the Title V emission fee increase does not include the impact of these other regulations on industry. (3)

Response: The Department acknowledges the number of new or revised regulations that impact manufacturing facilities. However, the CAA and APCA require the Department to establish a Title V fee structure that is sufficient to cover the cost of the Title V permitting program.

13. Comment: The resources needed to issue renewed Title V permits and to administer the program are less than the resources needed to issue new Title V permits. The EQB analysis does not address the reduction of resources needed to implement the program. (3)

Response: The issuance of a renewed Title V permit is not a simple matter. As stated in the commentator's letter, there have been a significant number of regulatory changes on the federal and state levels that must be reviewed and analyzed for applicability to and compliance for each Title V permit application. See Response to Comment 11.

14. Comment: The majority of the proposed increase of fees would inequitably be absorbed by a few manufacturing facilities and is not commensurate with DEP's resources needed to administer the program. The commentator notes that 40% of the Title V fees paid in Allegheny

County would be paid by one company. This is not commensurate with the resources needed to administer the Title V program. (3)

Response: The commentator is correct that the owners/operators of a few major emitting facilities will pay a large portion of the Title V emission fees assessed by the air program. However, the commentator's facilities are also among the highest emitting facilities in Allegheny County. One of the facilities is located in an area that does not attain the 1-hour PM_{2.5} health-based NAAQS. The monitor in this nonattainment area measures ambient levels of fine particulates that are the second highest in the nation. Consequently, the regulatory agencies do focus significant resources to these facilities. The Department agrees that the fee structure established by the APCA needs to be reviewed as part of the analysis of all air quality fees that will be conducted over the next 2 years. However, at this time, the most equitable and feasible approach to this issue is to ensure that the Title V annual emission fee revenues adequately cover the expense of the program until a revised fees structure can be finalized.

15. Comment: The proposed Title V emission fee increase would be a disincentive to build or expand a significant manufacturing facility in Pennsylvania. (3)

Response: The Department disagrees that the proposed increase to the Title V annual emission fee would be, by itself, a disincentive to build or expand significant manufacturing facilities in Pennsylvania. Owners or operators of major manufacturing facilities are considering locating in Pennsylvania. The decision by a business owner/operator to locate in this Commonwealth considers many factors, including available labor, taxes, access to resources and transportation, and location of the target market, when making the decision about whether to locate in the Commonwealth. Moreover, the fee increase is in line with or less than recent increases implemented by certain states. See Response to Comment 8.

16. Comment: The commentator supports the Department's decision to not establish a fee structure for carbon dioxide and greenhouse gases. (2)

Response: The Department thanks the commentator for their support of the decision. As stated in the *Pennsylvania Bulletin* proposed rulemaking notice, the proposed rulemaking does not establish a fee structure for carbon dioxide and other greenhouse gases (GHG) including hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride. On June 3, 2010, the EPA finalized the Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (Tailoring Rule). See 75 FR 31514 (June 3, 2010). As the Tailoring Rule relates to the applicability of Title V annual emission fees for a "regulated pollutant" as defined in section 502 of the CAA, the EPA did not mandate revisions to state and local Title V programs to account for these emissions. The EPA reasoned that it would be difficult to apply the Title V fee to GHG gases, based on the large amount of GHG emissions relative to other pollutants and the need for better data to establish a GHG-specific fee amount. However, the EPA did commit to addressing this issue in a future rulemaking and to work with states to develop a workable fee approach. The EPA has not yet proposed a fee schedule under the CAA for GHG emissions. Consequently, the Board did not propose to impose Title V emission fees for GHG emissions from stationary sources in this Commonwealth.

17. Comment: The commentator urges the EQB to make any Title V emission fee increase temporary. The commentator notes that the economy fluctuates and the ongoing recession is expected to be temporary in nature. The Title V fee revenue will return once the economy improves. (2)

Response: The Department agrees that the economy fluctuates and that the recession is expected to be temporary in nature. However, the reduction in Title V emission fee revenue is expected to continue to decline due mainly to the closure of certain large coal-fired electric generating units and the replacement of these facilities with lower emitting natural gas-fired power plants. As a result, Title V fee revenue is not expected to return to previous levels once the economy improves. Therefore, the proposed Title V fee revision must be promulgated to cover the cost of administering the Title V program. The Department did state at the November 20, 2012, EQB meeting that a Title V program supported solely by emission fees may not be the most appropriate approach to ensure the future viability of the program. The fundamental issues associated with the rulemaking are that the Department is required to assess fees to cover the costs associated with the Title V program and that the Department is facing imminent Title V program budget deficits. The rulemaking provides a "bridge" for the Department to address its imminent budget needs while allowing the Department and interested stakeholders sufficient time to examine the most appropriate means to support the Title V program in the future as new air pollution control technologies, the abundance of natural gas, and the retirement of coal-fired power plants continue to reduce emissions of regulated pollutants.

18. Comment: The commentator questions why the same numbers of Department staff are needed for inspections when the number of Title V facilities is decreasing. The commentator disagrees with the assumption that fewer inspectors equates to less environmental protection. (2)

Response: The Department agrees that there has been a reduction in the number of Title V facilities. However, this reduction in the number of Title V facilities does not have a direct impact on the number of inspectors needed. This is because the inspections have become more complex, taking longer to conduct and to document than inspections that occurred at the start of the program in the early 1990s. As stated in the response to comment 13, the number and complexity of regulations have increased, thereby increasing the staff time needed to inspect Title V facilities and assist owners/operators with compliance questions.

19. Comment: The commentator states that the increase in Title V emission fees would slow the economic recovery and would have an impact on small businesses that provide services to the major Title V facilities. The payment of the increased Title V emission fees may result in less employment of citizens of the Commonwealth. The commentator requests that the EQB consider delaying implementation of the fee by 1 year or implementing the increase over several years. (2)

Response: The Department has analyzed the solvency of the Clean Air Fund Title V Major Emission Facilities Account and determined that there will not be sufficient funds to sustain the Title V permitting program beginning in fiscal year 2015-2016. Failure to address the Title V revenue shortfall now will result in a program without sufficient funds to operate. This in turn will have significant impacts on regulated industry, including the delay in revising and

addressing plan approvals and operating permits including renewals and amendments. There will not be sufficient staff to conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, monitor the ambient air in the Commonwealth, and operate and maintain a source testing program to ensure compliance with applicable requirements. All of these factors could contribute to a loss of employment opportunities and slow the economic recovery in this Commonwealth. The Board first proposed a Title V annual emission fee increase in 2009, thereby providing notice to the affected owners/operators of Title V facilities of the need to address the revenue shortfall. Further, payment of the emission fees for emissions occurring in calendar year 2013 will not be due until September 1, 2014, 19 months after publication of the rulemaking notice on February 2, 2013, proposing the increase in the Title V annual emission fee to \$85 per ton of emissions of any regulated pollutant up to 4,000 tons of emissions of regulated pollutant.

20. Comment: Failure to cover the Title V program costs will have several negative consequences, the most notable being significant staffing reductions, which would cause delays in processing and issuing plan approvals, fewer inspections and enforcement actions, and slower complaint response. Inadequate funding will impact the air monitoring network and could impact the Small Business Compliance program. (4)

Response: The Department agrees with the comment. Failure to adequately fund the Title V program will result in loss of program staff and cause the impacts stated by the commentator. These potential consequences are the primary reason for this rulemaking.

21. Comment: The EQB should impose an emission fee that will adequately cover costs associated with administering the air program. The EQB could impose a fee higher than \$85 per ton and still remain below the level charged by several other states. (4)

Response: The Department agrees that a higher fee could have been proposed. The Department has stated that the proposed revision to the Title V annual emission fee will provide a “bridge” to allow additional time for the Department to develop a comprehensive fee structure for the air quality program. To only rely upon a higher emission fee in the future will result in a relatively small number of sources paying the majority of the fees which, from a practical standpoint, is forcing those facilities to subsidize the other facilities.

22. Comment: Another option for increasing revenue to the Title V program is to either raise or eliminate the 4,000 ton cap. (4)

Response: The Department agrees. The recommendation to raise or eliminate the 4,000 ton cap would increase Title V revenue. This approach has been enacted in a number of states including Connecticut, Maryland, New York, New Jersey, and North Carolina. However, the cap is established in section 6.3 of the APCA. A revision to the cap would require legislative action and is beyond the scope of the proposed rulemaking.

23. Comment: An option to cover Title V program costs would be to increase permit and administration fees in addition to the proposed increase in the Title V annual emission fee. (4)

Response: The Department will conduct a comprehensive evaluation of the air quality funding to determine the best long-term option for supporting the program. The evaluation will look at all options including increasing permit and administration fees.

24. Comment: IRRC requests the EQB explain whether the proposed increase is only a temporary solution. Will the regulation result in the air quality program operating at a loss again in just 2 years? (5)

Response: The Department affirms that the proposed increase to the Title V annual emission fee is not a permanent solution to funding the air quality program. The current Comparative Financial Statement for the Clean Air Fund shows that the Title V Major Emission Facilities Account will have a negative balance at the end of fiscal year 2015-2016. As noted in the minutes of the November 20, 2012, EQB meeting, the rulemaking provides a "bridge" for the Department to address its imminent budget needs while allowing the Department and interested stakeholders sufficient time to examine the most appropriate means to support the Title V program in the future as new air pollution control technologies, the abundance of natural gas, and the retirement of coal-fired power plants continue to reduce emissions of regulated pollutants.

25. Comment: IRRC questions whether the 4,000 ton cap should be maintained in its current form. (5)

Response: As stated in the response to comment 22, the cap is established in section 6.3 of the APCA and section 502 of the CAA. A revision to the cap would require legislative action. The Department agrees that a revision to the cap is an option that should be reviewed in the program reanalysis. However, the Board cannot revise the cap through a regulatory revision. A revision to the cap can only be accomplished through legislative action by the General Assembly.

26. Comment: IRRC questions why the reduction in air emissions has not resulted in a commensurate reduction in the cost of enforcement. (5)

Response: The Department acknowledges that the number of Title V facilities has decreased since the beginning of the program in the early 1990s. As described in the response to comment 11, the number and complexity of regulations have increased, increasing the staff time needed to inspect Title V facilities and assist owners/operators with compliance questions. The DEP air program staff must continue to implement the air pollution laws and regulations, issue plan approvals and operating permits including renewals and amendments, conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, and monitor the ambient air in the Commonwealth. Air program staff operate and maintain a source testing program to ensure compliance with applicable requirements. Further, the Department projects an increased workload due to the implementation of new or revised federal regulations including, but not limited to, the following:

- Maximum Achievable Control Technology (MACT) standards for boilers
- MACT for electric generating units
- MACT for Commercial and Industrial Solid Waste Incinerators
- MACT for Reciprocating Industrial Combustion Engines

- Area source MACT standards
- New Source Performance Standards (NSPS) including for the natural gas industry
- NSPS for Sewage Sludge Incinerators
- NSPS for Kraft Pulp and Paper Mills
- NSPS for Hospital Medical Infectious Waste Incinerators
- National Ambient Air Quality Standards (NAAQS) for Lead (revised November 12, 2008, 73 FR 66964)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised October 17, 2006, 71 FR 61144)
- NAAQS for fine Particulate Matter (PM_{2.5}) (revised January 15, 2013, 78 FR 3086)
- NAAQS for Nitrogen Dioxide (revised February 9, 2010, 75 FR 6474)
- NAAQS for Ozone (revised March 27, 2008, 73 FR 16436)
- Title V Permit Renewal
- Incorporation of new applicable requirements in Title V permits
- Reasonably Available Control Technology

Implementation of the new and revised federal permitting rules (MACT and NSPS) will require increased numbers of inspections and permitting actions and outreach to and education of the impacted industry. These federal rules may require promulgation of new or revision to existing state regulations. Implementation of the revised NAAQS requires development of revised attainment and maintenance SIPs, emission inventories, ambient air modeling, inspections of affected facilities and sources, demonstrations to the EPA of adequate Department resources to implement the standards and programs, demonstrations to the EPA that emissions in Pennsylvania will not contribute significantly to or interfere with maintenance to downwind nonattainment areas, and may require adoption of new or amendments to state regulations and revisions to operating permits. The revisions to the various NAAQS also, in some cases, require the installation of additional ambient air monitors to the existing monitoring network. Implementation of these new federal regulations and revised NAAQS and the necessary infrastructure will require significant education of and outreach to the impacted industries and the public.

27. Comment: Did the EQB explore offsetting all or a portion of the proposed increase through cost reductions? (5)

Response: The Department has made significant cost reductions in the Title V program. The Department has eliminated or postponed the purchase of fixed assets. The Department has reallocated program costs to the Mobile and Area Facilities Account of the Clean Air Fund where permissible to prolong the solvency of the Title V Major Emission Facilities Account. For example, the Department transferred \$485,000 of expenditures from the Title V Major Emission Facilities Account to the Mobile and Area Facilities Account of the Clean Air Fund in fiscal year 2012-2013. These expenditures included staff training, certain travel expenses, computer and computer software purchases, health certifications, and certain utility charges. For fiscal year 2013-2014, the Department will transfer \$240,000 in operating expenses to the Mobile and Area Facilities Account of the Clean Air Fund and reduce computer systems support spending by \$150,000. The Department will continue to look for cost reductions that can be implemented without negatively impacting the Title V permitting program. In prior years, costs including staff training, certain travel expenses, computer and computer software purchases, health

certifications, and certain utility charges were "split coded" appropriately between Title V and Non-Title V accounts of the Clean Air Fund. In order to assure the solvency of the Title V account for an extended period, the total cost of certain expenditures was transferred to the Non-Title V account in the Clean Air Fund.

28. Comment: If the reduction of air emissions does not result in a reduction of enforcement costs, how is the fee method put in place in 1994 viable today and into the future? (5)

Response: As stated in the response to comment 24, the Department recognizes that the proposed increase to the Title V annual emission fee is not a permanent solution to funding the Title V program. The current Comparative Financial Statement for the Clean Air Fund shows that the Title V Major Emission Facilities Account will have a negative balance at the end of fiscal year 2015-2016. As noted in the minutes of the November 20, 2012, EQB meeting, the rulemaking provides a "bridge" for the Department to address its imminent budget needs while allowing the Department and interested stakeholders sufficient time to examine the most appropriate means to support the Title V program in the future as new air pollution control technologies, the abundance of natural gas, and the retirement of coal-fired power plants continue to reduce emissions of regulated pollutants.

29. Comment: How did the EQB consider the financial impact for businesses? Could the fee increase be a disincentive to build or expand in Pennsylvania? How will the fee increase affect employment? Could these factors result in a net loss of revenues if a business closes in Pennsylvania? (5)

Response: In answering these questions, the Board will consider whether an increase to the Title V annual emission fee would put Pennsylvania businesses at a competitive disadvantage with comparable businesses in the surrounding states or draw business and employment opportunities away from the Commonwealth. The Department finds that in some cases, the Commonwealth would be very competitive and may be able to draw new industry on the basis of having a lower Title V annual emission fee than nearby states.

For instance, several nearby states have already taken action to address the issue of declining revenues due to declining emissions of regulated pollutants. Connecticut, Maryland, New York, and New Jersey no longer limit emission fee applicability to 4,000 tons per regulated pollutant. In 2013, Connecticut's Title V emission fee is \$301.09 per ton of emissions of regulated pollutant based on an "Inventory Stabilization Factor," upwards from a fee of \$283.46 per ton imposed in 2012 and with no cap on the amount of emissions of regulated pollutants subject to this fee. The Connecticut fee is adjusted periodically to ensure that collected Title V annual emission fee revenue is adequate for at least 2 years of permit program operating costs. In 2012, New York assessed a Title V annual emission fee ranging from \$45.00 per ton of regulated pollutant for emissions of less than 1,000 tons per year to \$65 per ton of regulated pollutant for emissions of more than 5,000 tons per year; the fee is applied to emissions up to 7,000 tons of any regulated pollutant. The New York Title V emission fee for 2013 has not changed from 2012 levels. For 2013, the state of New Jersey imposes a Title V annual emission fee of \$112.07 per ton of regulated pollutant with no cap on emissions. In 2013, Maryland's Title V annual emission fee is \$55.70 plus a \$200 base fee; Maryland has no cap on the amount of emissions of

regulated pollutants subject to the fee. West Virginia's 2013 Title V annual emission fee is \$31.87 per ton of regulated pollutant, with a 4,000 ton cap. Virginia's 2013 Title V annual emission fee is \$58.88 per ton of regulated pollutant (4,000 ton cap); further, in 2012 Virginia established additional Title V facility fees including yearly maintenance fees ranging from \$1,500 to \$10,000 and Title V Permit application and Title V Permit renewal fees of \$20,000 and \$10,000, respectively.

Moreover the Department does not believe that the revision to the Title V annual emission fee, by itself, will be a disincentive for businesses to build or expand in Pennsylvania. The decision by a business owner or operator to locate in the Commonwealth considers many factors, including available labor, taxes, access to resources and transportation, and location of the target market, when making the decision about whether to locate in the Commonwealth. The Commonwealth has been able to and continues to attract businesses and major manufacturing facilities. The Department believes that providing funding for a sustainable Title V program will eliminate doubts and concerns of the owners or operators of Title V facilities as to the ability to obtain a permit and the viability of the services provided by the Department.

30. Comment: Did the EQB consider a delay or phase-in of the increase to allow businesses time to accommodate the full impact? Why is it reasonable to impose the fee increase on emissions that already occurred in 2013? (5)

Response: The Department did consider a delay and different years for the implementation of the increase to the Title V annual emission fee. However, assessing the revised fee on emissions of regulated pollutants occurring in calendar year 2013, due and payable by September 1, 2014, was chosen due to the projected budget deficit and anticipated retirement or deactivation of electric generating units that will have a significant negative impact on the Title V permitting program. Because of declining Title V emission fee revenue due to the installation of air pollution control technology on stationary sources and the retirement or curtailment of operations by major sources including coal-fired power plants, deficits of \$7.235 million and \$19.406 million in fiscal years 2015-2016 and 2016-2017, respectively, are projected for the Title V Major Emission Facilities Account.

The Department has analyzed the solvency of the Clean Air Fund Title V Major Emission Facilities Account and determined that there will not be sufficient funds to sustain the Title V permitting program beginning in fiscal year 2015-2016. Failure to address the Title V revenue shortfall now will result in a program without sufficient funds to operate. This will have significant impacts on industry, including the delay in revising and addressing plan approvals and operating permits including renewals and amendments since the Department will necessarily be forced to reduce staff in order to balance the budget. There will not be sufficient staff to conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, monitor the ambient air in the Commonwealth, and operate and maintain a source testing program to ensure compliance with applicable requirements. All of these factors could contribute to a loss of employment opportunities and slow the economic recovery in this Commonwealth. The Board first proposed a Title V annual emission fee increase in 2009, thereby providing notice to the affected owners and operators of Title V facilities of the need to address the revenue shortfall. Further, payment of the emission fees for emissions occurring in

calendar year 2013 will not be due until September 1, 2014, 19 months after publication on February 2, 2013, of the rulemaking notice proposing the increase in the Title V annual emission fee to \$85 per ton of emissions of any regulated pollutant up to 4,000 tons of emissions of regulated pollutant.

31. Comment: The EQB should explain how the costs imposed by the fee increase are justifiable compared to the benefits the fees produce. (5)

Response: Retaining sufficient staff (including permitting, monitoring, enforcement, source testing and legal personnel) to support the Title V permitting program is a critical component of improving air quality within this Commonwealth and assuring compliance with the health- and welfare-based NAAQS. The benefits to Commonwealth residents of attaining and maintaining the NAAQS are significant. The EPA has estimated the monetized health benefits of attaining ambient air quality standards. For example, the EPA estimated that the monetized health benefits of attaining the 8-hour ozone standard of 0.075 ppm range from \$8.3 billion to \$18 billion on a national basis. See Regulatory Impact Analysis, Final National Ambient Air Quality Standard for Ozone, July 2011, http://www.epa.gov/glo/pdfs/201107_OMBdraft-OzoneRIA.pdf. Prorating that benefit to the Commonwealth, based on population, results in a public health benefit of \$337 million to \$732 million. The projected costs of increased Title V annual emission fees ranging from \$5,830,000 in fiscal year 2014-2015 to \$4,237,000 in fiscal year 2018-2019 to regulated industry Commonwealth-wide pale by comparison. The Department is not stating that these estimated monetized health benefits would all be the result of increasing the Title V annual emission fee, but the EPA estimates are indicative of the benefits to Commonwealth residents of attaining the NAAQS. Ensuring that there are sufficient staff and resources to implement the Title V permitting program is one part of the overall air quality program to attain and maintain the NAAQS in this Commonwealth.

Adequate funding will assure the regulated industry that their plan approval applications and permits will be reviewed in a timely manner, sustaining their profitable business and maintaining jobs. Attaining and maintaining public health and welfare goals will attract and retain residents needed to fill the jobs created by the regulated industries and small businesses. Maintaining a healthy environment will benefit the agricultural and tourism industries, both of which provide many jobs. All of these situations will increase tax revenues to the Commonwealth.

Implementing the proposed increase to the Title V annual emission fee will assure the residents of this Commonwealth that the Commonwealth's air pollution control program is adequately funded for the next few years. The anticipated increased revenues will allow the Department and approved local air pollution control agencies to continue providing adequate oversight of the air pollution sources in this Commonwealth and take action, when necessary, to reduce emissions to achieve healthful air quality and ensure continued protection of the environment and the public health and welfare of the residents of this Commonwealth.

FEE REPORT FORM

Department of Environmental Protection
Bureau of Air Quality
Agency

August 28, 2013
Date

Dean Van Orden
Contact Person

717-783-9264
Phone Number

<u>Prior Year 12/13</u>	<u>Current Year 13/14</u>	<u>1st Future Year Projected</u>	<u>2nd Future Year Projected</u>
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FEE COLLECTIONS:

Current Title V Fee	\$14,708,000	\$13,000,000	\$10,300,000	\$10,000,000
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Proposed Title V Fee			\$15,393,000	\$15,093,000
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FEE TITLE AND RATE:

Current: The Title V emission fee to be paid in 2013 for emissions released in 2012 is \$57.50 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant.

Final: The amended Title V annual emission fee is \$85 per ton of regulated pollutant for emissions of up to 4,000 tons of regulated pollutant to be paid in 2014 for emissions released in 2013.

FEE OBJECTIVE:

The amendment to the existing Title V annual emission fee in 25 Pa. Code Chapter 127, Subchapter I (relating to plan approval and operating permit fees) is designed to ensure that fee revenues are sufficient to cover the Department's indirect and direct costs of administering the air pollution control permitting program required by Title V of the Clean Air Act as Amended in 1990.

Section 6.3(a) of the Air Pollution Control Act (APCA) (35 P.S. § 4006.3(c)) authorizes the establishment of fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process and operating permit program required by Title V of the Clean Air Act, other requirements of the Clean Air Act and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman. The Environmental Quality Board (Board) is also authorized to adopt regulations 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 Clean Air Act. Section 6.3(c) of the APCA authorizes the Board to establish by regulation a permanent annual air emission fee as required for regulated pollutants by section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)) to cover the reasonable direct and indirect costs of administering the operating permit program and other related requirements mandated required by Title V of the CAA. As specified in the APCA, the emission fees can not apply to emissions of more than 4,000 tons of any regulated pollutant.

A Title V annual emission fee of \$85 per ton of each regulated pollutant for emissions up to 4,000 tons will result in increased revenue to the Department of \$5.1 million in the Title V Account for the fees due no later than September 1, 2014, for FY 2014-2015.

The final rulemaking provides for an increased Title V annual emission fee that will be used to cover the indirect and direct costs of administering the air pollution control program. Failure to adjust the Title V annual emission fee will cause expenditures to exceed revenue and may cause reductions in staff or technical services. Reduced staffing will cause delays in processing plan approvals and issuing operating permits, resulting in delays and loss of revenue to industry and reduced protection of the environment and public health and welfare. New or modified sources of air pollution cannot be constructed without a plan approval. The installation of air pollution control equipment requires receipt of a plan approval. Failure to increase the Department's revenue may result in fewer inspections and increases in environmental and public health and welfare problems.

The final rulemaking assures the residents 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 owners and operators of approximately 560 Title V facilities in the Commonwealth must pay annual emission fees by September 1 each year for regulated pollutants emitted the previous year; this emission fee is not payable by any State entity, instrumentality or political subdivision in relation to any publicly owned or operated facility.

The final-form rulemaking will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan and as an amendment to the Title V Program Approval codified in 40 CFR Part 70, Appendix A (relating to approval status of state and local operating permits programs).

FEE RELATED ACTIVITIES AND COSTS:

The increased Title V annual emission fee in the final rulemaking will be used to support the Department's air quality program as authorized by the APCA. Activities supported include compliance and complaint inspections, enforcement actions, plan approval review and issuance, operating permit review and issuance, source testing, source test protocol reviews, technical assistance to the source owners and operators and the general public, and program development. The fee revision allows the Department to maintain staffing levels in the air quality program. This provides a sound basis for continued air quality assessments and planning that are fundamental to protecting public health and welfare and the environment.

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

ANALYSIS:

The Clean Air Act and implementing regulations restrict the use of Title V emission fee revenues to the costs of administering the Title V Permits Program and the Small Business Stationary Source Technical and Environmental Compliance Assistance Program. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for major stationary sources and small business stationary sources:

- i. Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
- ii. Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
- iii. General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;
- iv. Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
- v. Emissions and ambient monitoring;
- vi. Modeling, analyses, or demonstrations;

- vii. Preparing inventories and tracking emissions; and
- viii. Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program authorized under Section 507 of the CAA.

The Title V annual emission fee has been adjusted on an annual basis based on the Consumer Price Index (CPI) as required by the CAA and APCA. However, the Title V annual emission fee revenues collected to administer the Commonwealth's air pollution control program are no longer sufficient to cover program costs.

Based on an August 27, 2013, Comparative Financial Statement for the Clean Air Fund, an ending balance of \$12.674 Million is projected for the Major Emission Facilities Account by June 30, 2014. This projection assumes no increase in the Title V annual emission fee, which is currently a CPI-adjusted \$57.50/ton for emissions of up to 4,000 tons of each regulated pollutant (for the fee due no later than September 1, 2013). Note: Greenhouse Gases are not regulated pollutants for Title V fee purposes; the Department did not propose to collect Title V annual emission fees for these pollutants.

The following table shows the ending balances for the Title V Major Emission Facilities Account without a fee increase:

Major Emission Facilities Account: Title V Ending Balance w/o Fee Increase (in thousands)

FY 2011-2012	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016	FY 2016-2017	FY 2017-2018
\$22,804	\$20,404	\$12,674	\$3,073	(\$7,235)	(\$19,406)	(\$32,001)

If a new fee schedule is not adopted, Title V Major Emission Facilities Account deficits of \$7.235 Million, \$19.406 Million and \$32.001 Million are projected under this scenario for FY 2015-2016, FY 2016-2017 and FY 2017-2018, respectively.

Revenue for the Title V Major Emission Facilities Account is from the Title V annual emission fee, interest and lapse of unspent monies. The revenue projections for the Major Emission Facilities Account without a fee increase are forecasted as follows:

Major Emission Facilities Account: Title V Revenue Projections w/o Fee Increase (in thousands)

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
	ACTUAL	ACTUAL	ACTUAL	REBUDGET	PLAN YR.1	PLAN YR.2	PLAN YR.3
Permanent Emission Fees	\$15,542	\$15,762	\$14,708	\$13,000	\$10,300	\$10,000	\$9,000
Prior Year Lapses - Actual:	\$2,399	\$1,085	\$901	\$0	\$0	\$0	\$0
Interest - Title V	\$3,330	\$552	\$452	\$600	\$448	\$448	\$0
Total Revenue	\$21,271	\$17,399	\$16,061	\$13,600	\$10,748	\$10,448	\$9,000

FY 2012-2013 Title V annual emission fee revenue collected is approximately \$3.768 million less than the fee revenue collected in FY 2008-2009 as shown below:

FY 2008-2009	\$18,476,000
FY 2009-2010	\$18,127,000
FY 2010-2011	\$15,542,000
FY 2011-2012	\$15,762,000
FY 2012-2013	\$14,708,000

Title V annual emission fee revenue is expected to continue to decline due to the implementation of federal programs that will require significant reductions in air contaminants including sulfur dioxide and the impact of the curtailment of operations or permanent shutdown of major emission sources including refineries and electric generating units, compliance with the Mercury and Air Toxic Standards for electric generating units and the reduced operations of the remaining coal-fired power plants because of the low price of natural gas. The loss of Title V annual emission fee revenue from these sources is projected to be approximately \$4.5 million by September 2015 compared to fees paid by September 2011. A list of sources which have announced shutdowns, permanently shut down or curtailed operations is provided as follows:

Facility	Fees paid in FY 2011 for 2010 emissions	Fees paid in FY 2012 for 2011 emissions	Projected Fees paid in FY 2013 for 2012 emissions	Projected Fees paid in FY 2014 for 2013 emissions	Announced / Anticipated Shutdown Date
ARMSTRONG	\$443,266	\$460,321	\$269,332	\$0	September 2012
HATFIELDS FERRY	\$461,951	\$505,742	\$566,218	\$627,763	October 2013
MITCHELL	\$152,515	\$134,133	\$216,605	\$240,149	October 2013
CROMBY	\$202,861	\$81,602	\$586	\$0	May 2012
EDDYSTONE	\$466,602	\$110,874	\$22,018	\$0	December 2013
NEW CASTLE	\$328,285	\$312,940	\$282,944	\$418,265	April 2015
ELRAMA POWER	\$186,602	\$63,267	\$35,766	\$0	June 2012
PORTLAND	\$437,394	\$383,499	\$158,511	\$234,321	June 2014
SHAWVILLE	\$524,668	\$479,215	\$405,755	\$599,811	April 2015
TITUS	\$328,122	\$280,171	\$72,810	\$107,632	September 2013
HORSEHEAD MONACA SMELTER	\$229,096	\$187,305	\$80,035	\$88,734	September 2013
SUNBURY	\$425,130	\$341,400	\$189,718	\$0	February 2012
PINEY CREEK	\$95,322	\$103,794	\$80,233	\$29,651	April 2013
KOPPERS	\$12,858	\$12,426	\$11,218	\$12,437	September 2013
HUNLOCK CREEK	\$134,075	\$0	\$0	\$0	May 2010
VIKING ENERGY	\$15,007	\$12,423	\$3,663	\$0	January 2012
SCRUBGRASS GENERATING	\$150,970	\$175,033	\$151,347	\$223,731	Bankruptcy
Total	\$4,594,725	\$3,644,145	\$2,395,410	\$2,358,764	

The announced facility shutdowns will not reduce the Department's workload. The DEP air program staff must continue to implement the air pollution laws and regulations, issue plan approvals and operating permits including renewals and amendments, conduct facility inspections, respond to complaints, assess the risks of hazardous air pollutant emissions, and monitor the ambient air in the commonwealth. Air program staff operate and maintain a source testing program to ensure compliance with applicable requirements. Significant staff resources have been devoted to permitting and inspection of unconventional natural gas development activities. The Department projects increased work load due to the implementation of new or revised federal regulations including, but not limited to, the following:

- Maximum Achievable Control Technology (MACT) standards for boilers
- MACT for electric generating units
- MACT for Commercial and Industrial Solid Waste Incinerators
- MACT for Reciprocating Industrial Combustion Engines
- Area source MACT standards
- New Source Performance Standards (NSPS) including for the natural gas industry
- NSPS for Sewage Sludge Incinerators
- NSPS for Kraft Pulp and Paper Mills
- NSPS for Hospital Medical Infectious Waste Incinerators

- National Ambient Air Quality Standards (NAAQS) for Lead (revised November 12, 2008, 73 FR 66964)
- NAAQS for Sulfur Dioxide (revised June 22, 2010, 75 FR 35520)
- NAAQS for fine Particulate Matter (PM2.5) (revised October 17, 2006, 71 FR 61144)
- NAAQS for fine Particulate Matter (PM2.5) (revised January 15, 2013, 78 FR 3086)
- NAAQS for Nitrogen Dioxide (revised February 9, 2010, 75 FR 6474)
- NAAQS for Ozone (revised March 27, 2008, 73 FR 16436)
- Title V Permit Renewal
- Incorporation of new applicable requirements in Title V permits
- Reasonably Available Control Technology

Implementation of the new and revised federal permitting rules (MACT and NSPS) will require increased outreach and education of the impacted industry, inspections, and permitting. These federal rules may require state regulatory action. Implementation of the NAAQS requires development of revised State Implementation Plans, emission inventories, ambient air modeling, inspections of sources, demonstrations to the EPA of adequate Department resources to implement the standards and programs, demonstrations to the EPA that emissions in Pennsylvania will not contribute significantly or interfere with maintenance to downwind nonattainment areas, and may require adoption of state regulations and revisions to operating permits. The revisions to the NAAQS also, in some cases, require the installation of additional ambient air monitors to the existing monitoring network. Implementation of these programs will also require significant public education and outreach.

The Department has been judicious in expenditures under the Title V Major Emission Facilities Account. The following table shows the three recent fiscal years' expenditures:

	FY 2010-11 (in thousands)	FY 2011-12 (in thousands)	FY 2012-13 (in thousands)
Personnel	\$14,965	\$15,684	\$15,263
Operating	\$3,909	\$2,459	\$2,057
Fixed Assets	\$104	\$297	\$288
Grants	\$981	\$1,009	\$856
Non-Expense/Interagency Transfers	\$606	\$606	\$0
Total Expenditures	\$20,565	\$20,055	\$18,464
Revenue	\$15,542	\$15,762	\$14,708

The table shows that expenditures have exceeded revenue for these three recent fiscal years. The majority of the expenditures are for personnel costs. There are 214 authorized positions supported by the Title V Major Emission Facilities Account. Of

these, there are 190 in the Air Quality program with the remainder in support positions throughout the Department.

Projected Title V annual emission fee revenue includes a \$5.1 Million increase in revenue in FY 2014/2015, assuming a revised Title V annual emission fee of \$85 per ton of regulated pollutant for emissions of up to 4,000 tons of each regulated pollutant is implemented.

FY 2014/2015 DEP Emission Fee Revenue w/o Fee Increases	\$10.3 Million
FY 2014/2015 DEP Emission Revenue w/\$85 per ton Fee	\$15.4 Million
FY 2014/2015 Increased DEP Emission Fee Revenue w/\$85 per ton Fee	\$5.1 Million
FY 2014/2015 Increased Emission Fee Revenue for Philadelphia AMS w/\$85 per ton Fee	\$0.167 Million
FY 2014/2015 Increased Emission Fee Revenue for Allegheny County w/\$85 per ton Fee	\$0.570 Million
Total Fee Increase (DEP, AMS, ACHD) in FY2014/2015 w/\$85 per ton Fee	\$5.837 Million

The final rulemaking is expected to increase revenue to the Department by approximately \$5.1 Million per year for fiscal years 2014-2015 and 2015-2016. The Department is authorized to provide payment of a portion of the Title V annual emission fee revenues collected by the Department to the approved local air pollution control agencies in Philadelphia and Allegheny Counties (25 Pa. Code § 127.706 (relating to Philadelphia County and Allegheny County financial assistance)). While the Allegheny County Health Department (ACHD) has never requested financial assistance, the Department has provided financial assistance to the Philadelphia County Air Management Services (AMS), most recently \$700,000 in 2012 and \$700,000 in 2013. Philadelphia County AMS projects an increasing need for assistance under § 127.706 and may request an increase in financial assistance to implement the City Of Philadelphia's Title V Program.

The revised Title V annual emission fee of \$85 per ton of emissions of regulated pollutant will not be sufficient for the long-term solvency of the Clean Air Fund Title V Major Emission Facilities Account. An ending balance of \$2,951,000 is projected for the Title V Major Emission Facilities Account by the end of FY 2015-2016 after implementation of the fee amendment. (The ending balance may be lower or a deficit may occur should natural gas displace additional coal-fired electric generation.) However, the amended fee will increase revenue during the interim years and allow the Department to complete an evaluation of the air quality plan approval and operating permit fee structure and determine if additional fees, revised fees, or other options should be advanced. If a decision is made to address the shortfall through another increase in the Title V annual emission fee, the EQB would need to propose another

increase in the Title V annual emission fee above the \$85 per-ton fee no later than January 2015. The subsequent rulemaking schedule would require a final revised Title V annual emission fee increase greater than \$85 per ton no later than December 2015 for the Title V fees due by September 1, 2016. This rulemaking schedule for the second proposal is recommended so that there will be sufficient funds to support the program beginning in FY 2016-2017.

Revenue and expenditure projections show negative spending by FY 2015-2016 without the revised Title V annual emission fee.

Implications Associated with Unsustainable Clean Air Fund: Section 110(a)(2)(E)(i) of the Clean Air Act (42 USCA 7410 (a)(2)(E)(i)), requires necessary assurances that the Commonwealth "will have adequate personnel, funding and authority to carry out the State Implementation Plan (SIP)," which must provide for the attainment and maintenance of the health and welfare-based national ambient air quality standards including ozone, particulate matter, lead, carbon monoxide, nitrogen dioxide and sulfur dioxide. In accordance with 40 CFR Part 51, Subpart O, Section 51.280, the SIP must also include a description of the resources available to State and local agencies needed to carry out the plan. If the fee amendments are not adopted to ensure that fees are adequate to support the program, the EPA could find that a "requirement of the approved plan is not being implemented." If the deficiency is not corrected within 18 months after the finding, mandatory sanctions would be triggered under Section 179 of the CAA. These sanctions include loss of federal highway funds and 2-to-1 offsets for the construction of major new or modified stationary sources. If the Commonwealth fails to correct the identified deficiency, the Clean Air Act states that the Administrator of the EPA shall promulgate a Federal Implementation Plan under Section 110(c) at any time within 2 years after the Administrator:

- 1) finds that a state failed to make a required submission or finds that the plan or plan revision submitted by the state does not satisfy the minimum criteria established under Section 110(k)(1)(A), or
- 2) disapproves a state implementation plan submission in whole or in part, unless the state corrects the deficiency and the Administrator approves the plan or plan revision, before the Administrator promulgates such federal implementation plan.

The EPA may also impose discretionary sanctions under Section 179 of the CAA which would adversely impact federal grants (i.e., \$5.8 million for FY 2012-2013) awarded to DEP under Sections 103 and 105 of the CAA.

DEP has implemented the EPA-approved Title V Operating Permit Program since July 1996. Should the EPA determine that the DEP has failed to properly implement the program or failed to require the owners and operators of Title V facilities to pay Title V emission fees sufficient to cover the costs of Pennsylvania's Title V Program, a "Notice of Deficiency" would be issued to DEP and published in the *Federal Register*. Under 40 CFR 70.10(b) and (c), the EPA is authorized to withdraw the Title V program approval if the DEP fails to take corrective action. Withdrawal of the Title V program approval would require the EPA to administer and enforce a Federal Title V Program in

Pennsylvania; all Title V emission fees would be paid to the EPA instead of DEP. If the program deficiency is not corrected within 18 months, mandatory sanctions including 2-to-1 emission offsets for the construction of major sources and loss of federal highway funds would be imposed under Section 179 of the Clean Air Act.

Lastly, further reductions in revenue would require significant reductions in the Title V staff complement—in FY 2012-2013, personnel costs alone are projected to be approximately \$15.263 Million. Significant reductions in staff and technical services will cause delays in the processing and issuance of plan approvals for the construction of new sources, operating permits, conducting inspections, responding to complaints and pursuing enforcement actions. The EPA could also withdraw approval of the Commonwealth's Title V Program which would require the owners and operators of Title V facilities to pay the fees directly to the EPA.

RECOMMENDATION AND COMMENT:

The Air Quality Title V Fee Schedule amendment should be approved as a final rulemaking. The revised Title V annual emission fee will support continued operation of the Air Quality Program in the Commonwealth.

The final-form revisions were discussed with the Air Quality Technical Advisory Committee (AQTAC) at its meeting of June 13, 2013. AQTAC concurred with the Department's recommendation to present the final rulemaking to the Board. The Department consulted with the Citizens Advisory Council (CAC) on July 16, 2013. The CAC concurred with proceeding to the Board with the final rulemaking. The Department discussed the comments to the proposed rulemaking with the Small Business Compliance Advisory Committee on July 24, 2013.

COMPARATIVE FINANCIAL STATEMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CLEAN AIR FUND - 138
(in thousands)

	FY 2011-12 ACTUAL	FY 2012-13 ACTUAL	FY 2013-14 REBUDGET	FY 2014-15 PLAN YR.1	FY 2015-16 PLAN YR.2	FY 2016-17 PLAN YR.3	FY 2017-18 PLAN YR.4	FY 2018-19 PLAN YR.5
Beginning Balance	52,928	54,139	46,612	34,659	20,942	6,341	(9,854)	(26,657)
Revenue:								
Major Emission Facilities (Title V):								
Permanent Emission Fees	15,762	14,708	13,000	10,300	10,000	9,000	9,000	9,000
Total Receipts - Major Emission Facilities	15,762	14,708	13,000	10,300	10,000	9,000	9,000	9,000
1 Year Prior Year Lapses - Actual:	1,085	901	0	0	0	0	0	0
≥ 2 Year Prior Year Lapses - Actual:	0	3	0	0	0	0	0	0
Funds Available - Major Emission Facilities	16,847	15,612	13,000	10,300	10,000	9,000	9,000	9,000
Mobile and Area Facilities (Non-Title V):								
Permit/Inspection Fees	1,849	1,588	1,750	1,589	1,589	1,589	1,589	1,589
Fines and Penalties	3,047	2,670	2,000	2,670	2,670	2,670	2,670	2,670
Trf to Environmental Educ. Fund	(142)	(152)	(113)	(152)	(152)	(152)	(152)	(152)
Coke Oven Reimbursement	18	0	148	0	0	0	0	0
Miscellaneous	0	(2)	0	0	0	0	0	0
Reimbursement for Services (A)	7	2	2	0	0	0	0	0
Total Receipts - Mobile and Area Facilities	4,779	4,106	3,787	4,107	4,107	4,107	4,107	4,107
1 Year Prior Year Lapses - Actual:	1,088	370	0	0	0	0	0	0
≥ 2 Year Prior Year Lapses - Actual:	1	0	0	0	0	0	0	0
Funds Available - Mobile and Area Facilities	5,868	4,476	3,787	4,107	4,107	4,107	4,107	4,107
Interest - Title V and Non-Title V	1,261	1,047	1,200	1,048	1,048	1,048	1,048	1,048
Total Funds Available	76,904	75,274	64,599	50,114	36,097	20,496	4,301	(12,502)

COMPARATIVE FINANCIAL STATEMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CLEAN AIR FUND - 138
(in thousands)

	FY 2011-12 ACTUAL	FY 2012-13 ACTUAL	FY 2013-14 REBUDGET	FY 2014-15 PLAN YR.1	FY 2015-16 PLAN YR.2	FY 2016-17 PLAN YR.3	FY 2017-18 PLAN YR.4	FY 2018-19 PLAN YR.5
Expenditures:								
Major Emission Facilities								
Personnel	15,684	15,263	17,005	17,345	17,692	18,046	18,407	18,775
Operating	2,459	2,057	3,293	2,047	2,088	2,130	2,172	2,216
Fixed Assets	297	288	132	107	109	111	114	116
Grants	1,009	856	900	850	867	884	902	920
Non-Expense/Interagency Transfers	606	0	0	0	0	0	0	0
Total Major Emission Facilities	20,055	18,464	21,330	20,349	20,756	21,171	21,595	22,027
Mobile and Area Facilities								
Personnel	437	2,425	425	806	822	838	855	871
Operating	1,356	3,398	3,271	3,106	3,168	3,232	3,297	3,363
Fixed Assets	382	229	172	214	218	222	226	231
Grants	499	776	695	650	663	676	690	704
Non-Expense/Interagency Transfers	36	3,370	4,047	4,047	4,128	4,210	4,295	4,381
Total Mobile and Area Facilities	2,710	10,198	8,610	8,823	8,999	9,179	9,363	9,549
Total Expenditures	22,765	28,662	29,940	29,172	29,755	30,351	30,958	31,578
Ending Balance	54,139	46,612	34,659	20,942	6,341	(9,854)	(26,657)	(44,079)

Permanent Emission Fees numbers for FY 13-14, FY 14-15, FY 15-16, FY 16-17, and FY 17-18 provided by the program. FY 11-12 and FY 12-13 revenue is actual revenue collected.
Internal use only

COMPARATIVE FINANCIAL STATEMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CLEAN AIR FUND - Mobile & Area Facilities w/o Fee Increase
(in thousands)

	FY 2011-12 ACTUAL	FY 2012-13 ACTUAL	FY 2013-14 REBUDGET	FY 2014-15 PLAN YR.1	FY 2015-16 PLAN YR.2	FY 2016-17 PLAN YR.3	FY 2017-18 PLAN YR.4	FY 2018-19 PLAN YR.5
Beginning Balance	27,468	31,335	26,208	21,985	17,869	13,577	9,552	5,344
Revenue:								
Mobile and Area Facilities (Non-Title V):								
Permit/Inspection Fees	1,849	1,588	1,750	1,589	1,589	1,589	1,589	1,589
Fines and Penalties	3,047	2,670	2,000	2,670	2,670	2,670	2,670	2,670
Trf to Environmental Educ. Fund	(142)	(152)	(113)	(152)	(152)	(152)	(152)	(152)
Coke Oven Reimbursement	18	0	148	0	0	0	0	0
Miscellaneous	0	(2)	0	0	0	0	0	0
Reimbursement for Services (A)	7	2	2	0	0	0	0	0
Total Receipts - Mobile and Area Facilities	4,779	4,106	3,787	4,107	4,107	4,107	4,107	4,107
1 Year Prior Year Lapses - Actual:	1,088	370	0	0	0	0	0	0
≥ 2 Year Prior Year Lapses - Actual:	1	0	0	0	0	0	0	0
Funds Available - Mobile and Area Facilities	5,868	4,476	3,787	4,107	4,107	4,107	4,107	4,107
Interest - Non-Title V	709	595	600	600	600	1,048	1,048	1,048
Total Funds Available	34,045	36,406	30,595	26,692	22,576	18,732	14,707	10,499
Expenditures:								
Mobile and Area Facilities								
Personnel	437	2,425	425	806	822	838	855	871
Operating	1,356	3,398	3,271	3,106	3,168	3,232	3,297	3,363
Fixed Assets	382	229	172	214	218	222	226	231
Grants	499	776	695	650	663	676	690	704
Non-Expense/Interagency Transfers	36	3,370	4,047	4,047	4,128	4,210	4,295	4,381
Total Expenditures	2,710	10,198	8,610	8,823	8,999	9,179	9,363	9,549
Ending Balance	31,335	26,208	21,985	17,869	13,577	9,552	5,344	950

Permanent Emission Fees numbers for FY 13-14, FY 14-15, FY 15-16, FY 16-17, and FY 17-18 provided by the program. FY 11-12 and FY 12-13 revenue is actual revenue collected.
Internal use only

COMPARATIVE FINANCIAL STATEMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CLEAN AIR FUND - Major Emissions w/o Fee Increase
(in thousands)

	FY 2011-12 ACTUAL	FY 2012-13 ACTUAL	FY 2013-14 REBUDGET	FY 2014-15 PLAN YR.1	FY 2015-16 PLAN YR.2	FY 2016-17 PLAN YR.3	FY 2017-18 PLAN YR.4	FY 2018-19 PLAN YR.5
Beginning Balance	25,460	22,804	20,404	12,674	3,073	(7,235)	(19,406)	(32,001)
Revenue:								
Major Emission Facilities (Title V):								
Permanent Emission Fees	15,762	14,708	13,000	10,300	10,000	9,000	9,000	9,000
Total Receipts - Major Emission Facilities	15,762	14,708	13,000	10,300	10,000	9,000	9,000	9,000
1 Year Prior Year Lapses - Actual:	1,085	901	0	0	0	0	0	0
≥ 2 Year Prior Year Lapses - Actual:	0	3	0	0	0	0	0	0
Funds Available - Major Emission Facilities	16,847	15,612	13,000	10,300	10,000	9,000	9,000	9,000
Interest - Title V	552	452	600	448	448	0	0	0
Total Funds Available	42,859	38,868	34,004	23,422	13,521	1,765	(10,406)	(23,001)
Expenditures:								
Major Emission Facilities								
Personnel	15,684	15,263	17,005	17,345	17,692	18,046	18,407	18,775
Operating	2,459	2,057	3,293	2,047	2,088	2,130	2,172	2,216
Fixed Assets	297	288	132	107	109	111	114	116
Grants	1,009	856	900	850	867	884	902	920
Non-Expense/Interagency Transfers	606	0	0	0	0	0	0	0
Total Expenditures	20,055	18,464	21,330	20,349	20,756	21,171	21,595	22,027
Ending Balance	22,804	20,404	12,674	3,073	(7,235)	(19,406)	(32,001)	(45,028)

Permanent Emission Fees numbers for FY 13-14, FY 14-15, FY 15-16, FY 16-17, and FY 17-18 provided by the program. FY 11-12 and FY 12-13 revenue is actual revenue collected.
Internal use only

COMPARATIVE FINANCIAL STATEMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CLEAN AIR FUND - 138 w/\$85 Per Ton Fee Increase FY14-15
(in thousands)

	FY 2011-12 ACTUAL	FY 2012-13 ACTUAL	FY 2013-14 REBUDGET	FY 2014-15 PLAN YR.1	FY 2015-16 PLAN YR.2	FY 2016-17 PLAN YR.3	FY 2017-18 PLAN YR.4	FY 2018-19 PLAN YR.5
Beginning Balance	52,928	54,139	46,612	34,659	26,035	16,527	3,832	(9,471)
Revenue:								
Major Emission Facilities (Title V):								
Permanent Emission Fees	15,762	14,708	13,000	15,393	15,093	12,500	12,500	12,500
Total Receipts - Major Emission Facilities	15,762	14,708	13,000	15,393	15,093	12,500	12,500	12,500
1 Year Prior Year Lapses - Actual:	1,085	901	0	0	0	0	0	0
≥ 2 Year Prior Year Lapses - Actual:	0	3	0	0	0	0	0	0
Funds Available - Major Emission Facilities	16,847	15,612	13,000	15,393	15,093	12,500	12,500	12,500
Mobile and Area Facilities (Non-Title V):								
Permit/Inspection Fees	1,849	1,588	1,750	1,589	1,589	1,589	1,589	1,589
Fines and Penalties	3,047	2,670	2,000	2,670	2,670	2,670	2,670	2,670
Trf to Environmental Educ. Fund	(142)	(152)	(113)	(152)	(152)	(152)	(152)	(152)
Coke Oven Reimbursement	18	0	148	0	0	0	0	0
Miscellaneous	0	(2)	0	0	0	0	0	0
Reimbursement for Services (A)	7	2	2	0	0	0	0	0
Total Receipts - Mobile and Area Facilities	4,779	4,106	3,787	4,107	4,107	4,107	4,107	4,107
1 Year Prior Year Lapses - Actual:	1,088	370	0	0	0	0	0	0
≥ 2 Year Prior Year Lapses - Actual:	1	0	0	0	0	0	0	0
Funds Available - Mobile and Area Facilities	5,868	4,476	3,787	4,107	4,107	4,107	4,107	4,107
Interest - Title V and Non-Title V	1,261	1,047	1,200	1,048	1,048	1,048	1,048	1,048
Total Funds Available	76,904	75,274	64,599	55,207	46,283	34,182	21,487	8,184

COMPARATIVE FINANCIAL STATEMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CLEAN AIR FUND - 138 w/\$85 Per Ton Fee Increase FY14-15
(in thousands)

	FY 2011-12 ACTUAL	FY 2012-13 ACTUAL	FY 2013-14 REBUDGET	FY 2014-15 PLAN YR.1	FY 2015-16 PLAN YR.2	FY 2016-17 PLAN YR.3	FY 2017-18 PLAN YR.4	FY 2018-19 PLAN YR.5
Expenditures:								
Major Emission Facilities								
Personnel	15,684	15,263	17,005	17,345	17,692	18,046	18,407	18,775
Operating	2,459	2,057	3,293	2,047	2,088	2,130	2,172	2,216
Fixed Assets	297	288	132	107	109	111	114	116
Grants	1,009	856	900	850	867	884	902	920
Non-Expense/Interagency Transfers	606	0	0	0	0	0	0	0
Total Major Emission Facilities	20,055	18,464	21,330	20,349	20,756	21,171	21,595	22,027
Mobile and Area Facilities								
Personnel	437	2,425	425	806	822	838	855	871
Operating	1,356	3,398	3,271	3,106	3,168	3,232	3,297	3,363
Fixed Assets	382	229	172	214	218	222	226	231
Grants	499	776	695	650	663	676	690	704
Non-Expense/Interagency Transfers	-36	3,370	4,047	4,047	4,128	4,210	4,295	4,381
Total Mobile and Area Facilities	2,710	10,198	8,610	8,823	8,999	9,179	9,363	9,549
Total Expenditures	22,765	28,662	29,940	29,172	29,755	30,351	30,958	31,578
Ending Balance	54,139	46,612	34,659	26,035	16,527	3,832	(9,471)	(23,393)

Permanent Emission Fees numbers for FY 13-14, FY 14-15, FY 15-16, FY 16-17, and FY 17-18 provided by the program. FY 11-12 and FY 12-13 revenue is actual revenue collected.
Internal use only

COMPARATIVE FINANCIAL STATEMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CLEAN AIR FUND - Mobile & Area Facilities w/\$85 Per Ton Fee Increase FY14-15
(in thousands)

	FY 2011-12 ACTUAL	FY 2012-13 ACTUAL	FY 2013-14 REBUDGET	FY 2014-15 PLAN YR.1	FY 2015-16 PLAN YR.2	FY 2016-17 PLAN YR.3	FY 2017-18 PLAN YR.4	FY 2018-19 PLAN YR.5
Beginning Balance	27,468	31,335	26,208	21,985	17,869	13,577	9,552	5,344
Revenue:								
Mobile and Area Facilities (Non-Title V):								
Permit/Inspection Fees	1,849	1,588	1,750	1,589	1,589	1,589	1,589	1,589
Fines and Penalties	3,047	2,670	2,000	2,670	2,670	2,670	2,670	2,670
Trf to Environmental Educ. Fund	(142)	(152)	(113)	(152)	(152)	(152)	(152)	(152)
Coke Oven Reimbursement	18	0	148	0	0	0	0	0
Miscellaneous	0	(2)	0	0	0	0	0	0
Reimbursement for Services (A)	7	2	2	0	0	0	0	0
Total Receipts - Mobile and Area Facilities	4,779	4,106	3,787	4,107	4,107	4,107	4,107	4,107
1 Year Prior Year Lapses - Actual:	1,088	370	0	0	0	0	0	0
≥ 2 Year Prior Year Lapses - Actual:	1	0	0	0	0	0	0	0
Funds Available - Mobile and Area Facilities	5,868	4,476	3,787	4,107	4,107	4,107	4,107	4,107
Interest - Non-Title V	709	595	600	600	600	1,048	1,048	1,048
Total Funds Available	34,045	36,406	30,595	26,692	22,576	18,732	14,707	10,499
Expenditures:								
Mobile and Area Facilities								
Personnel	437	2,425	425	806	822	838	855	871
Operating	1,356	3,398	3,271	3,106	3,168	3,232	3,297	3,363
Fixed Assets	382	229	172	214	218	222	226	231
Grants	499	776	695	650	663	676	690	704
Non-Expense/Interagency Transfers	36	3,370	4,047	4,047	4,128	4,210	4,295	4,381
Total Expenditures	2,710	10,198	8,610	8,823	8,999	9,179	9,363	9,549
Ending Balance	31,335	26,208	21,985	17,869	13,577	9,552	5,344	950

Permanent Emission Fees numbers for FY 13-14, FY 14-15, FY 15-16, FY 16-17, and FY 17-18 provided by the program. FY 11-12 and FY 12-13 revenue is actual revenue collected.
Internal use only

COMPARATIVE FINANCIAL STATEMENT
DEPARTMENT OF ENVIRONMENTAL PROTECTION
CLEAN AIR FUND - 138 Major Emission w/\$85 Per Ton Fee Increase FY14-15
(in thousands)

	FY 2011-12 ACTUAL	FY 2012-13 ACTUAL	FY 2013-14 REBUDGET	FY 2014-15 PLAN YR.1	FY 2015-16 PLAN YR.2	FY 2016-17 PLAN YR.3	FY 2017-18 PLAN YR.4	FY 2018-19 PLAN YR.5
Beginning Balance	25,460	22,804	20,404	12,674	8,166	2,951	(5,720)	(14,815)
Revenue:								
Major Emission Facilities (Title V):								
Permanent Emission Fees	15,762	14,708	13,000	15,393	15,093	12,500	12,500	12,500
Total Receipts - Major Emission Facilities	15,762	14,708	13,000	15,393	15,093	12,500	12,500	12,500
1 Year Prior Year Lapses - Actual:	1,085	901	0	0	0	0	0	0
≥ 2 Year Prior Year Lapses - Actual:	0	3	0	0	0	0	0	0
Funds Available - Major Emission Facilities	16,847	15,612	13,000	15,393	15,093	12,500	12,500	12,500
Interest - Title V	552	452	600	448	448	0	0	0
Total Funds Available	42,859	38,868	34,004	28,515	23,707	15,451	6,780	(2,315)
Expenditures:								
Major Emission Facilities								
Personnel	15,684	15,263	17,005	17,345	17,692	18,046	18,407	18,775
Operating	2,459	2,057	3,293	2,047	2,088	2,130	2,172	2,216
Fixed Assets	297	288	132	107	109	111	114	116
Grants	1,009	856	900	850	867	884	902	920
Non-Expense/Interagency Transfers	606	0	0	0	0	0	0	0
Total Expenditures	20,055	18,464	21,330	20,349	20,756	21,171	21,595	22,027
Ending Balance	22,804	20,404	12,674	8,166	2,951	(5,720)	(14,815)	(24,342)

Permanent Emission Fees numbers for FY 13-14, FY 14-15, FY 15-16, FY 16-17, and FY 17-18 provided by the program. FY 11-12 and FY 12-13 revenue is actual revenue collected.
Internal use only



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

POLICY OFFICE

October 3, 2013

David Sumner
Executive Director
Independent Regulatory Review Commission
14th Floor
333 Market Street
Harrisburg, PA 17120

Re: Final Rulemaking: Air Quality Title V Fee Amendment (#7-478)

Dear Mr. Sumner:

Pursuant to Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed the Air Quality Title V Fee Amendment final-form rulemaking for review and comment by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (EQB) adopted the final rulemaking at its September 17, 2013, meeting.

This final rulemaking includes amendments to 25 *Pa Code* Chapter 127 in order to amend the Title V annual emission fee. Title V annual emission fees are payable by the owners and operators of facilities in this Commonwealth that are classified as major sources of air pollution under section 501 of the Clean Air Act (CAA) and are subject to the permitting provisions of Title V of the CAA. The current Title V annual emission fee is \$57.50 per ton of regulated pollutant. For Title V emission fee purposes, a "regulated pollutant" includes a volatile organic compound, each pollutant regulated under section 111 and 112 of the CAA and each pollutant for which a national primary ambient air quality standard has been promulgated, but does not include carbon monoxide. The final rulemaking would increase the base Title V annual emission fee paid by the owner or operator of Title V facility to \$85 per ton of regulated pollutant for up to 4,000 tons of each regulated pollutant beginning with emissions occurring in calendar year 2013, payable by September 1, 2014. The final rulemaking does not include emission fee requirements for carbon dioxide and other greenhouse gases, including hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons and sulfur hexafluoride. Upon publication in the *Pennsylvania Bulletin* as final rulemaking, the final regulation will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan and as an amendment to the Title V Program Approval codified in 40 CFR Part 70, Appendix A (relating to approval status of state and local operating permits programs).

Federal regulations require that states with authority to implement a Title V Operating Permits Program establish fees sufficient to cover the costs of the permit program. The Air Pollution Control Act also authorizes the establishment of fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process, the operating permit program required by Title V of the CAA, other requirements of the CAA as well as other direct and indirect program costs. The Department of Environmental Protection (DEP) has initiated this rulemaking because Title V annual emission fee revenues collected are no longer sufficient to cover program costs. Factors that are contributing to this budgetary situation include decreased emissions of regulated pollutants that are subject to the annual emission fee. For

example, the installation of control technology over the last past two decades on major stationary sources, the retirement or curtailment of operations by major sources including certain refineries and coal-fired power plants, and the conversion at many major facilities from burning coal or oil to burning natural gas have resulted in a decrease in emissions applicable to the annual emission fee. Failure by DEP to adjust the emission fee structure to adequately cover program costs may cause significant reductions in the Title V staffing complement and technical services, including the potential for federal sanctions by EPA. Without an increase in the annual emission fee, Title V annual emission fee deficits for the Department of \$7.235 million, \$19.406 million, \$32.001 million, and \$45.028 million are projected for fiscal years 2015-2016, 2016-2017, 2017-2018, and 2018-2019, respectively.

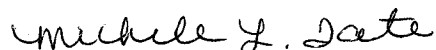
The EQB adopted the proposed rulemaking on November 20, 2012. The proposed rulemaking was published in the Pennsylvania Bulletin on February 2, 2013, where notice of a 60-day public comment period and three public hearings – in Pittsburgh, Norristown and Harrisburg – were advertised. Public comments on the proposed rulemaking were received from five commentators, including the Independent Regulatory Review Commission (IRRC). Commentators questioned the proposed fee increase, including if the EQB had examined ways to reduce the increase, delay it, or phase it in over several years. Commentators also questioned the fee increase in light of the fact that there are fewer Title V facilities operating in Pennsylvania and why a reduction in emissions has not resulted in a commensurate reduction in the cost of enforcement. Commentators also inquired if the EQB explored cost reductions to offset all or a portion of the Title V emission fee increase and if the Title V emission fee method established in 1994 remains viable. Responses to all comments are included in a Comment and Response Document that is included with the final rulemaking package. No changes were made to the rulemaking from proposed to final-form.

DEP presented the final-form regulation to the Air Quality Technical Advisory Committee (AQTAC) on June 13, 2013, and to the Citizens Advisory Council (CAC) on July 16, 2013, and the Small Business Compliance Advisory Committee (SBCAC) on July 24, 2013. The AQTAC, CAC, and SBCAC concurred with DEP's recommendation to advance the final rulemaking to the EQB for consideration.

The Department will provide assistance as necessary to facilitate IRRC's review of the enclosed final-form rulemaking under Section 5.1(e) of the Regulatory Review Act.

Please contact me at 717.783.8727 or by e-mail at mtate@pa.gov if you have any questions or need additional information.

Sincerely,



Michele L. Tate
Regulatory Coordinator

Enclosures



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF POLICY

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO
THE REGULATORY REVIEW ACT

I.D. NUMBER: 7-478

SUBJECT: Air Quality Title V Fee Amendment

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

2013 OCT -3 PM 2:18

RECEIVED
IRRC

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

10-3-13

Dan L. Grijalva

Majority Chair, HOUSE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY
Rep. Ron Miller

10-3-13

Greg Vitali

Minority Chair, HOUSE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY
Rep. Greg Vitali

10/3/13

Gene Yaw

Majority Chair, SENATE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY
Senator Gene Yaw

10-3-13

Richard L. Tox

Minority Chair, SENATE COMMITTEE ON
ENVIRONMENTAL RESOURCES & ENERGY
Senator John Yudichuk

10/3/13

K. Cooper

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

