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Independent Regulatory Review Commission

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Environmental Quality Board
P.O Box 8477
Harrisburg, PA 17105-8477

Subject: Proposed Amendments to 25 Pa. Code, Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees) as set forth in Annex A

Introduction

The Appalachian Region Independent Power Producers Association ("ARIPPA"), on behalf of its member companies, hereby provides comment on the subject proposal to amend 25 Pa. Code, Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees) as set forth in Annex A. ARIPPA supports adequate and sustainable funding for implementing the air pollution control plan approval and operating permit process required under the Clean Air Act (CAA) and the Pennsylvania Air Pollution Control Act (APCA) to meet the national ambient air quality standards (NAAQS) as well as other requirements of the CAA and the APCA and the regulations promulgated to accomplish those efforts. The Title V fees were established for major sources to pay for their regulation by the Pennsylvania Department of Environmental Protection (DEP). However, ARIPPA does not believe that the current proposal provides adequate, sustainable, nor equitable funding relative to the payment of Title V fees by some major sources.

ARIPPA appreciates the need for DEP to address the current structural deficit in the Title V program. Of the options considered by DEP during this rulemaking process to provide additional funding for the Title V program, the current proposal represents perhaps the fairest approach of those DEP proposed. However, ARIPPA believes that this proposal is still insufficient, as DEP failed to consider alternative fee schemes which would create both an adequate and sustainable funding stream. ARIPPA believes that to address these funding issues, the Title V fee for the electric generating sources should be assessed based upon the number of "net" megawatt hours (MWh) generated rather than being based upon the emissions of "regulated pollutants" as is currently required and is included in the proposed rulemaking.

Further, ARIPPA notes that the current DEP proposal fails to address carbon dioxide (CO2) as a "regulated" pollutant in the amendments to Chapters 121 or 127 as is required by the CAA and APCA. It is the opinion of ARIPPA that DEP not addressing CO2 in this rulemaking proposal as a "regulated pollutant," for which Title V emissions fees must be paid, is inconsistent with and perhaps in violation of current statute and would thereby require amendment to the APCA, as is further explained later in these comments.

The alternative proposal supported by ARIPPA using net MWh to assess Title V fees for electric generating sources could facilitate the elimination of CO2 from the Title V program funding and provide for adequate, sustainable Title V program funding from the electric generating sector regardless of future plant retirements, future emissions reductions requirements, and future fuel conversions. Absent adequate and sustainable Title V funding from the electric generating sources the assessment of an emission fee for CO2 would likely be inevitable.

Importantly, the amount of electricity being sold into PJM and used by the states serviced by PJM is actually flat or decreasing which means that any new, lower cost facility will "take away" the electric market opportunity from other higher cost facilities. In PA, new natural gas generation, based upon installed capacity, is by far the largest type of new electric generation. As natural gas fired electric generating capacity continues to grow, there is less electric market opportunity for coal-fired and coal refuse to energy EGUs which continue to be relied upon in this DEP proposed rulemaking to pay the overwhelming majority of Title V emissions fees.

Notably, the Title V major sources that are most severely and disproportionately impacted by the Title V emissions fees are the coal refuse to energy facilities. While their pollution control equipment is very effective, which is necessary to allow the use of polluting coal refuse removed from the environment being used as fuel, because of their small sizes (only one facility larger than 110 megawatts net installed capacity is among the 13 facilities) these facilities all emit below the 4,000 ton per pollutant per facility cap for all regulated pollutants, as there are simply too few net megawatt hours (MWh net) sold into PJM to amortize the costs of the Title V emissions fees as is proposed by DEP in this rulemaking. Consequently, the Title V emissions fees have and will continue to have a much greater effect on the electric price that is bid into PJM for these facilities and their ability to compete in the PJM market. Due to the small size of the facilities and the correspondingly small number of MWh net sold into PJM, current Title V emissions fees and the proposed administrative fees on top of those emissions fees will impose a far greater economic burden on these environmentally beneficial energy facilities.

The environmental benefits of these facilities that remove coal refuse from the environment, use it as fuel to create electricity, and then remediate and reclaim the areas from which the coal refuse has been removed using the beneficial ash created by the process are widely recognized and the documented. For example, see DEP's "Reclamation of Refuse Piles using Fluidized Bed Combustion Ash in the Blacklick Creek Watershed, Pennsylvania":
https://blacklickcreekwatershed2.files.wordpress.com/2018/11/reclamation-of-refuse-piles-using-fluidized-bed-combustion-ash.pdf

However, the biggest hurdle this proposed fee package faces is that it fails to address the fact that CO2 became a "regulated pollutant" on December 22, 2015 when the New Source

Performance Standard (NSPS) was finalized for CO2 for new fossil fuel-fired electric utility steam generating units. Based upon the plain language of Section 502 of the CAA, the language of Section 6.3 the APCA, and Title 25 Pa. Code §127.705, the Title V emission fee is to be assessed for each "regulated pollutants."

ARIPPA believes that for DEP not to assess a Title V emissions fee for CO2 on Pennsylvania (PA) major sources affected by the Title V program would require the Pennsylvania General Assembly to modify the APCA to facilitate an alternative solution to exclude CO2 from the imposition of a Title V emission fee. Such as statutory change could also facilitate a change in the Title V funding scheme that provides for more equity in the sharing of adequate and sustainable costs of the DEP Title V program. As a "regulated pollutant," CO2 must be addressed in some fashion prior to any PA Title V fee regulation being finalized.

Background

Organized in 1989, ARIPPA is a nonprofit trade association based in Camp Hill, PA, comprised of independent electric power producers, environmental remediators, and service providers that use coal refuse as a primary fuel to generate electricity. The association represents 13 unique environmentally beneficial electric generation facilities located in PA and that remediate abandoned mine lands (AML) by utilizing circulating fluidized bed (CFB) boiler technology to convert coal refuse into alternative energy and steam.

Today, the are a total of 17 CFB plants convert coal mining refuse into alternative energy in Pennsylvania, West Virginia, Montana, and Utah; however, Pennsylvania contains more than three quarters of these alternative energy facilities. The ARIPPA coal refuse-to-alternative energy plants were originally constructed as Qualifying Facilities (QFs), subject to size restrictions pursuant to the Public Utility Regulatory Policy Act (PURPA). As a result, these facilities are relatively small in size, with all but one facility between 33 to 112 megawatts (MW) net operating capacity with a combined generation capacity just under 1,500 MW. Moreover, expansion of these plants is severely constrained by federal, state and local regulatory requirements, including but not limited to, those imposed through permitting programs, as well as the physical size of these facilities.

These plants play a critical role in environmental remediation in the coal regions where they are located by removing coal refuse piles, remediating and reclaiming mining affected lands and reducing or even eliminating surface and groundwater pollution by acid mine drainage (AMD) from coal refuse piles. By converting coal refuse into alternative energy, ARIPPA members are removing one of the principal sources of contamination to surface water and groundwater in coal mining regions of the United States. In addition, ARIPPA plants work closely with state environmental agency officials, various local watershed groups, and environmental groups such as Earth Conservancy, the Western Pennsylvania Coalition for Abandoned Mine Reclamation (WPCAMR), and the Eastern Pennsylvania Coalition for Abandoned Mine Reclamation (EPCAMR), to reclaim abandoned mine lands and convert polluted streams into clean and usable waterways.

Since its inception, in PA alone, the coal refuse to energy industry has removed and consumed as fuel more than 225 million tons of coal refuse, improved more than 1,200 miles of streams and reclaimed more than 7,200 acres of previously polluted mining affected land. At full capacity, this industry can remove about 10 million tons of coal refuse from the environment and reclaim approximately 200 acres of mining affected land in PA each year. When considering the limited federal dollars for reclamation and remediation of mining affected lands, and the magnitude of coal mining's legacy in the United States, through the operation of their facilities ARIPPA members remove, remediate, and reclaim coal refuse piles that will otherwise remain in communities and other areas throughout the coal regions producing acid mine discharges to surface waters and groundwater and in a number of locales uncontrolled air pollution caused by coal refuse pile fires.

At least 3,000 people are directly or indirectly employed by the coal refuse to energy industry, and live, along with their children, families, and extended families, in communities within close proximity of the alternative energy ARIPPA plants. The surrounding communities, lands, and streams have experienced vast environmental and economic improvements due mainly to the decades of hard work and dedication these workers and the ARIPPA industry have provided. ARIPPA facilities provide a unique environmental benefit by utilizing state-of-the-art FBC technology to convert coal refuse into energy. ARIPPA facilities utilize coal refuse primarily from past mining activities, and thereby reclaim existing and idle/abandoned strip mines and abate acid mine drainage from coal refuse piles, at no cost to taxpayers.

Our industry provides an option for removing coal refuse piles from the environment without shifting the significant cost to public resources. Should that option become unavailable, the entire cost for removal and remediation would fall on taxpayers. The DEP has testified that such costs would reach billions of dollars and require over 500 years to accomplish. For these reasons, EPA, DEP, the Office of Surface Mining Reclamation and Enforcement (OSMRE), and other organizations have long recognized the environmental benefits of the combustion of coal refuse for energy and reclamation. In fact, during the regulatory development of the MATS Rule, EPA stated that "[u]nits that burn coal refuse provide multimedia environmental benefits by combining the production of energy with the removal of coal refuse piles and by reclaiming land for productive use. Consequently, because of the unique environmental benefits that coal refuse-fired EGUs provide, these units warrant special consideration..."[1]

Comments

Comment - ARIPPA does not believe the DEP proposal provides adequate, sustainable Title V program funding for implementing the air pollution control plan approval and operating permit process required under the CAA and the APCA to meet the NAAQS as well as other requirements of the CAA and the APCA and the regulations promulgated to accomplish those efforts.

[1] 76 Fed. Reg. 25,066 https://www.federalregister.gov/d/2011-7237/p-1050

The Title V program in PA has historically and with this proposed rulemaking continues to rely upon the assessment of annual Title V emissions fees which are based upon the emissions of each "regulated pollutants" from a source but are limited to 4,000 tons per regulated pollutant per facility. This emissions fee program is specified in the CAA and the APCA; however, reliance upon emissions fees has been found by other states to not provide adequate Title V program funding and is not the only way the program can and is being implemented in some other states. In 2014, the National Association of Clean Air Agencies (NACAA) documented this situation in a report called, "FUNDING OF TITLE V PROGRAMS, NACAA 2014 Survey Data:"
http://www.4cleanair.org/sites/default/files/Documents/FeeAnalysis_2014NACAASurvey_Dec2015.pdf.

The data from this survey identified that some states reliance upon an emissions fee program to fund their Title V programs had already resulted in inadequate and unsustainable funding. Quite simply, the requirement to use emissions fee to fund Title V programs never envisioned the dramatic changes that have and are continuing to occur to the makeup of the electric generating sources that are now, and will be, operating in the electric markets.

When the 1990 CAA Amendments mandated the Title V permit program, the primary source of fuel for electricity generation was coal and the facilities generating the electricity were owned by vertically integrated, rate-based regulated electric utilities. Consequently, the Title V emission fees were simply passed along as costs to the ratepayers. It was essentially a covert "tax" on every ratepayer to provide funding for the implementation, operation, and enforcement of the major source permitting program required by the CAA. In the case of the coal refuse to energy electric generating units (EGUs), they operated under power purchase agreements with those same rate-based utilities, which provided adequate funding to allow the payment of Title V emission fees and remain financially viable. Consequently, the ratepayers paid for the Title V program through higher electric bills and other private sector Title V major sources, such as manufacturing, benefited from this disproportionate funding of the Title V program.

However, the justification underlying that funding mechanism changed with the deregulation of the electric generation industry into a wholesale generation market; the development of Marcellus Shale natural gas; a variety of environmental and market legislation, regulations and policies that were adopted and implemented to achieve a variety of policy outcomes; and, the expiration of the power purchase agreements. These factors have resulted in the retirement of coal and coal refuse to energy EGUs leaving fewer and fewer facilities in the Commonwealth available to pay their disproportionate share of the costs of the Title V program and lower emissions from the remaining coal and coal refuse-fired EGUs resulting in less Title V emissions fee revenue.

When the original Title V fee structure was finalized and implemented, the primary source of funding was emission fees from the regulated electric utilities' coal-fired plants. Today, this is the problem as the electric generation industry is no longer regulated, but a deregulated industry that must compete in the wholesale power markets for capacity and for energy sales. At the same time, the 27 coal-fired units which existed at the time has reduced to 7 units of which two are in the process of converting to natural gas and one is ceasing operations next year.

This proposal results in an increase in the cost of power plant operations. The ever-increasing fee structure has an even greater impact on coal refuse-fired units, which due to their small size (all but one are less than 110 MW net installed capacity), and any further increases in their cost of generation related to fees on a per net megawatt generated basis further reduce their ability to compete. The fees to be established under the CAA were to consider the following in establishing a permanent air emission fee:

- The size of the air emission 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 perspective sources in this Commonwealth at a competitive disadvantage and other relevant factors.

Based on the guidance from the CAA, the proposed rule falls short. With the initial rule directing most of the funding for the program to come from the electric utility sector and the fundamental change from a regulated to a deregulated electric generation industry, the proposed rulemaking fails to address these considerations:

- The size of the emission contamination source (25 MW to 2000 MW);
- The time necessary to complete the review and the ongoing inspections and reviews
- The quantity and type if emissions from the sources (looking at different industrial sectors individually);
- The amount of fees charged in neighboring states (especially as the electric utilities in surrounding states are operating within the competitive PJM RTO as one aspect of the completeness costs;
- The fees where not to place existing or perspective sources in the Commonwealth at a completive disadvantage (this is especially true for coal refuse-fired units as they are small in output resulting in a significant increase in cost of generation based on Title V fees per MWh which has a significant impact on their ability to compete in the capacity and energy markets).

Lastly, the Department was to consider other relevant factors, such as the elimination of or the potential from uncontrolled emissions from burning coal refuse piles that are burning and eliminating coal refuse sites as source of fugitive dust which will continue until these sites are reclaimed and the land restore to a productive use being covered with vegetation (vegetation and soil profiles provide carbon sequestration).

EPA in a variety of rule makings regarding emissions from coal refuse fired sources have stated:

"...Coal refuse piles are an environmental concern because of acid seepage and leachate production, spontaneous combustion, and low soil fertility. Units that burn coal refuse provide multimedia environmental benefits by combining the production of energy with the removal of coal refuse piles and by reclaiming land for productive use. Consequently, because of the unique environmental benefits that coal refuse-fired EGUs provide, these units warrant special consideration ..."

Emissions data for sulfur dioxide (SO2) and nitrogen oxides (NOx), which are submitted to EPA's Clean Air Markets Division (CAMD) by the major emissions sources, are the best publicly available electric generating source emissions data. Using this data, the emission reductions effect on sustainable funding for the PA Title V program is readily observable. Between 2010 and 2017, the heat input from coal and coal refuse-fired sources decreased by about 24% while the tons of SO2 and NOx for which Title V emissions fees would be paid decreased by almost 58%.

All of the issues identified above have undermined the adequacy and sustainability of funding for the PA Title V program. Unfortunately, the continued reliance upon emissions fees to fund the majority of the Title V program in this proposed rulemaking, especially in the case of electric generation sources, perpetuates inadequate and unsustainable Title V program funding.

Regardless of perspective on these issues, the previously identified issues affecting the makeup of the electric markets have resulted in the lack of sustainable funding for the PA Title V program. This lack of adequate, sustainable Title V funding is a serious problem in PA. Without a fully funded Title V program, DEP risks losing primacy of the Title V program and that program will then come under the jurisdiction of the EPA. ARIPPA believes the loss of state control over the Title V program to the federal government is a completely unacceptable circumstance for the Commonwealth and the major sources operating in PA, which should and can be prevented.

Further, now that the vast majority of electric generators in PA are competitive, private sector companies operating in the PJM wholesale electric market (PJM is the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia), it is inappropriate for one group of competitive Title V major sources (i.e. coal-fired and coal refuse to energy EGUs) in PA to pay a majority of the costs for the regulation of all Title V major sources, especially their electric generation competitors (e.g. natural gas-fired electric generating sources) in PA. This is particularly true when essentially the same levels of effort and cost are required on the part of DEP to regulate these PA competitors in the wholesale electric market regardless of their emissions levels.

As previously identified, the Title V major sources that are most adversely and disproportionately impacted by the current and proposed Title V emissions fees are the coal refuse to energy facilities. The effect of the emissions fees on the coal refuse to energy EGUs is 3.5 times greater than the effected on the coal-fired EGUs and over 75 times greater than the natural gas-fired EGUs. While their small size and fewer MWh of generation is a compounding issue, the main reason for these high emissions fees is that these plants remove highly acidic, high sulfur content, and high ash content coal refuse from polluting the environment to use as fuel. While the pollution control equipment in these facilities is very effective at controlling emissions, e.g. under 40 CFR Part 63, Subpart UUUUU all of the coal refuse to energy units are low emitting EGUs for mercury and all but one are low emitting EGUs for filterable particulate matter (non-mercury metal standard), the quality of the fuel results in levels of emissions that while on a percentage removal basis are similar to the coal-fired units equipped with SO2 emissions controls, are higher on an emission rate basis than other EGUs.

Consequently, ARIPPA believes that DEP should provide an adequate and sustainable funding mechanism for the Title V program by supporting a proposal that, in the case of electric generating sources which are major sources affected by Title V of the CAA, the Title V fees be assessed based upon the calendar year annual amount of net generation (MWh) from each facility with no "cap" placed upon the number of net MWh generated used for the assessment of the fees.

Using the most recent U.S. Energy Information Administration (EIA) data, calendar year 2017, the amount of net generation (MWh) produced in PA by all forms of coal, natural gas, other gases, and all petroleum was 120,939,215 MWh. If a fee of $0.065 per MWh were assessed for each MWh, the amount of revenue to the PA Title V program from the electric generating sources would be $7,861,049. Based on 2018 emissions data from the EPA CAMD database, that amount would exceed the Title V emissions fees to be paid for SO2 and NOx by $1,000,000. Although all regulated pollutants are included in the assessment of fees, this is likely a reasonable estimate of the fees that would be paid by all electric generating sources permitted as major sources under Title V of the CAA, as SO2 and NOx are the principal regulated pollutants for which fees have historically been required.

Rather than assessing independently the proposed annual operating permit maintenance fee for these Title V sources, ARIPPA believes the alternative Title V fee based upon the net generation produced should be used as the basis for all fees from electric generating sources, unless the calculated fee is less than the proposed annual operating maintenance fee. In that case, the higher of the two fees would be paid.

The failure to address the sustainable funding issue in the PA Title V program at this time serves only to perpetuate the disproportionate funding of the Title V program and the inequitable burden on the coal-fired and coal refuse to energy EGUs. By failing to consider the changing makeup of the PA electric generating sources, the proposed rulemaking will inevitably lead to inadequate Title V program revenues in only a few years. The sustainability of PA Title V program funding can either be addressed now through the ARIPPA supported proposal, or it will certainly be addressed in the future, after the Title V fee revenue from coal-fired and coal refuse to energy EGUs which currently sustain the program are lost, by assessing additional fees on the remaining Title V sources, such as natural gas EGUS and industrial sources.

Comment - ARIPPA does not believe the DEP proposal can be finalized as proposed because the proposal does not address CO2 as a "regulated pollutant." Absent some state legislative action, a Title V emission fee must be collected for CO2 as specified in the CAA, the APCA and DEP regulations. However, the Pennsylvania legislature can take action to amend the APCA to exclude CO2 from the assessment of fees, so long as adequate funding for operation of the Title V program is accomplished through other measures. As finalizing any Title V fee program that does not address CO2 will require the amendment of the APCA, this rulemaking proposal cannot be finalized as proposed. While an APCA amendment is being pursued, the proposed rulemaking should be modified to assess Title V fees for the affected electric generating sources based upon the net generation of electricity from the facility as supported by ARIPPA. The APCA amendment and the alternative Title V fee for major electric generating sources should be made now to provide for the adequate and sustainable funding of the PA Title V program, or it will certainly be addressed in the future after the Title V revenue from coal-fired and coal refuse to energy EGUs is lost, by assessing additional fees on the remaining Title V sources, such as natural gas EGUS and industrial sources. In the alternative, the APCA may allow for the use of net MWh output as a surrogate for emission fees for EGUs.

Section 502 of the CAA includes a definition for "regulated pollutant" that is to be used for Title V fee purposes. That definition includes pollutants regulated under 7411 (Section 111 of the CAA). On December 22, 2015 when EPA finalized the CO2 New Source Performance Standards (NSPS) for new fossil fuel-fired electric utility steam generating units, CO2 became regulated under Section 111(b) of the CAA. At that time, CO2 became by Section 502 definition a "regulated pollutant" and emissions of CO2 from any major source are subject to the assessment of the Title V emission fees for the emissions of CO2.

Regardless of EPA changing the definition of regulated pollutant in their regulation or DEP not including CO2 in this rulemaking, PA major sources are still legally bound by the legislative definition of "regulated pollutant" as specified under CAA Section 502. EPA and DEP cannot change the CAA statutory definition of regulated pollutant or exempt pollutants other than CO, which is specifically exempted in in the federal statute.

Further, DEP cannot ignore the APCA, Section 6.3(m) which incorporates the CAA definition of "regulated pollutant" and the obligation to pay the emission fee for *all* regulated pollutants. Additionally, the DEP regulations themselves define regulated pollutants consistent with Section 502 of the CAA and Section 6.3 (m) of the APCA, and state that the fee is to be paid for each ton of regulated pollutant emitted up to 4,000 tons per facility. If DEP would have, the emissions fee could have been reduced to less than $10 per ton from the EGU sector, which would provide a more equitable fee and begin to narrow the competitive disadvantage the proposed rule perpetuates.

ARIPPA believes that DEP has the flexibility to establish a fee structure for the EGU sector that can utilize net MWh output as the surrogate for emission fees, as it technically addresses the various factors that DEP was to consider in finalizing an emission fee rule. Further, since the regulated CO2 emissions is tied to fossil fuel EGUs, and not other industrial sectors, by addressing emissions from the EGU sector through a fee on net MWh output, DEP also addresses the competitiveness issue in today's deregulated electric market. The APCA may also allow for the use of net MWh output as a surrogate for emission fees for EGUs. This would allow for the fees to non-EGU Title V major sources to be lowered producing economic benefits for these Title V facilities while establishing a sustainable Title V funding program.

ARIPPA is not proposing that CO2 be included for the assessment of Title V fees, as ARIPPA believes that assessment of an emissions fee for CO2 will have a negative effect on the competitiveness of many PA companies. Instead, we are pointing out that this rulemaking proposal is inconsistent with state or federal legislation because CO2 is not included. Consequently, any PA Title V fee rulemaking that includes fees for all regulated pollutants, but ignores CO2, is likely to be challenged and as a minimum be vacated and returned to DEP for revision. Further risking the loss of PA primacy for implementation of the Title V program in PA.

While DEP does not specifically address CO2 in its proposal, it is obvious that by using $93.87 as the projected fee to be assessed for each ton of regulated pollutant in their public presentations to their Air Quality Technical Advisory Committee (AQTAC), that they do not envision CO2 as part of the rule, as APCA Section 6.3 (c) specifically prohibits the collection of fees that are more than is necessary to fund the Title V program. Considering the mass emissions of CO2 from Title V sources and the limitation to only collect necessary fees, the cost per ton would have to be much lower if CO2 were included among the regulated pollutants for which an emissions fee is assessed. Based on the amount of Title V emissions fee revenue the DEP identified in two options, the inclusion of CO2 as a regulated pollutant would require a Title V emission fee in a range of $7.84 per ton to $10.21 per ton to provide the desired annual revenue.

If the APCA is not addressed to exclude CO2, then the emission fee of $85 per ton provided in Title 25 Pa. Code §127.205 must be revised to a lower value in the range identified in these comments or be in violation of the APCA. As previously stated, ARIPPA does not support the inclusion of CO2 as a regulated pollutant for assessing Title V fees. However, in this scenario, almost every major source in PA would be paying an annual CO2 emissions fee of $31,360 to $40,840, as well as annual emissions fees for all of the other regulated pollutants that they emit, albeit at the reduced price per ton for each regulated pollutant.

It is also noteworthy that DEP clearly understands the significance of the Title V emissions fee issues associated with CO2. Previously, in the PA Bulletin notice published on April 23, 2016, DEP specifically stated that CO2 would be addressed in this rulemaking process. It is important to note that this proposed rulemaking cannot exclude CO2 without an amendment of the APCA and which, at that time, the amendments to the APCA should not only exclude CO2 from Title V fees, but also to facilitate alternative methods for the assessment of fees consistent with the alternative method supported in these comments to assess the Title V fees on a net MWh basis for the electric generating sources that are regulated as Title V major sources.

Conclusion

Thank you for the opportunity to provide these comments to these proposed amendments to Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees) as set forth in Annex A. ARIPPA appreciates the need to provide additional revenue to adequately fund the DEP Title V program.

However, ARIPPA strongly supports the development of a funding mechanism that provides for adequate and sustainable Title V program funding, and we believe that this DEP proposal does not accomplish those goals. The proposal instead perpetuates the current program that due to recent emissions reductions in Pennsylvania from the electric generation sector has resulted in the insufficient and unsustainable funding for the DEP Title V program.

To change this situation, ARIPPA believes is necessary to re-envision the Title V funding mechanisms, particularly for the energy generating sector that has historically funded the majority of the Pennsylvania Title V program. Simply stated, the DEP cannot continue to rely upon the coal-fired and coal refuse to energy EGUs to fund the majority of the Title V program. The reduction in the emission rates from these units, the reduced operations of these units, the fuel conversion of these units to natural gas and the replacement of the retired units with natural gas-fired electric generation has already resulted in a situation where the Title V program will have lost additional revenue prior to the implementation of this proposal.

Now is the time to take the action to address these Title V funding issues. By adopting an alternative solution for the affected Title V electric generating sources that is supported by ARIPPA where the fees area assessed equitably upon all sources, the funding dynamics are completely changed. Currently, if a large coal-fired EGU retires and is replaced by an equal sized natural gas-fired EGU then over $750,000 in Title V emissions fees for just SO2 and NOx are lost and replaced with a source that only provides about $25,000 in Title V revenue under the same emissions fee program.

Failure to address the Title V funding mechanism to provide for adequate and sustainable funding for the Pennsylvania Clean Air Fund not only affects the electric generating sector, but it will also affect the other industries as they will ultimately be burdened with even higher emissions fees upon the retirement or fuel switching of more coal-fired and coal refuse reclamation to energy EGUs.

The long-term sustainability of Pennsylvania's Title V program funding must be addressed now, as encouraged by ARIPPA, or it will certainly be addressed in the future, after the Title V fee revenue from coal-fired and coal refuse to energy EGUs which currently sustain the program are lost, by assessing additional fees on the remaining Title V sources, such as natural gas EGUs and industrial sources.. Now is the time for DEP and the General Assembly to establish an adequate, equitable, and sustainable solution to the PA Title V fee program and Clean Air Fund funding crisis.

If the Department has any questions about these comments, please contact me at 717-763-7635 or the address set forth above.

Respectfully submitted,

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ARIPPA Executive Director

cc: Gary Merritt, ARIPPA President