

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CHS. 121 AND 127 ]

### Air Quality Fee Schedule Amendments

[49 Pa.B. 1777]

[Saturday, April 13, 2019]

The Environmental Quality Board (Board) proposes to amend 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. This proposed rulemaking amends existing requirements in Subchapter F and existing air quality plan approval and operating permit fee schedules in Subchapter I. It also proposes new fees in Subchapter I to address the disparity between revenue and expenses for the Department of Environmental Protection's (Department) Air Quality Program. These increased fees and new fees would be used to provide a sound fiscal basis for continued air quality assessments and planning that are fundamental to protecting the public health and welfare and the environment. Increased funding for the Air Quality Program will also continue to allow for timely and complete review of plan approval and operating permit applications that provides the certainty businesses need to expand or locate in this Commonwealth.

This proposed rulemaking is given under Board order at its meeting of December 18, 2018.

#### A. *Effective Date*

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

If published in the *Pennsylvania Bulletin* as a final-form rulemaking, the final-form rulemaking will be submitted to the United States Environmental Protection Agency (EPA) 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.

#### B. *Contact Persons*

For further information, contact Viren Trivedi, Chief, Division of Permits, Bureau of Air Quality, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 783-9476; or Jennie Demjanick, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800)

654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department's web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board (EQB)").

### *C. Statutory Authority*

This proposed rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P.S. § 4005(a)(1)), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth and section 5(a)(8) of the APCA (35 P.S. § 4005(a)(8)), which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401ô 7671q).

This proposed rulemaking is further authorized under section 6.3 of the APCA (35 P.S. § 4006.3), which grants to the Board the authority to adopt regulations to establish fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process; operating permit program required by Title V of the CAA (42 U.S.C.A. §§ 7661ô 7661f); other requirements of the CAA; and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the Board by regulation to establish fees to support the air pollution control program authorized by this act and not covered by fees required by section 502(b) of the CAA (42 U.S.C.A. § 7661a(b)).

### *D. Background and Purpose*

The proposed new and increased fees are needed to cover the Department's costs related to implementing the air pollution control plan approval and operating permit process required under the CAA and APCA to attain and maintain the National Ambient Air Quality Standards (NAAQS) for air pollutants including ozone, particulate matter, lead, carbon monoxide, nitrogen dioxide and sulfur dioxide, as well as other requirements of the CAA, APCA and regulations promulgated thereunder. Controlling air pollutant emissions is essential to protecting public health and the environment.

The Department's Air Quality Program issues plan approval and operating permits for two types of sourcesô major and nonmajor. See 24 Pa.B. 5899 (November 26, 1994). This program was subsequently reviewed and approved by the EPA. See 61 FR 39597 (July 30, 1996). Major sources are those that emit air pollution above designated thresholds under the CAA, and nonmajor sources are those that emit air pollution below the thresholds. See 42 U.S.C.A. § 7661. Major sources are subject to the statutory requirements under Title V of the CAA and are referred to as Title V sources. *Ibid.* Conversely, nonmajor sources are subject to the APCA, but not Title V of the CAA, and are referred to as Non-Title V sources.

In recent years, the Department, like many State and local agencies, has experienced shortfalls in fee revenue due to emissions reductions at major facilities. This shortfall has led many agencies to re-evaluate their fee structures. A number of State and local agencies are currently in the process of adjusting their fee schedules to address the decline in program funding.

The Department currently regulates approximately 500 Title V and 2,100 Non-Title V facilities in this Commonwealth. Establishing the proposed fee structure would provide the necessary financial support to continue the Department's air quality plan approval application and operating permit process and initiatives to protect the public health and welfare of the approximately 12.8

million residents of this Commonwealth and the environment. This financial support will also help ensure the timely issuance of air quality permits for the regulated community, which will help retain and attract businesses to this Commonwealth.

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 (\$1.5 billion in 2015) 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 (42 U.S.C.A. §§ 7403 and 7405). Implementation of the proposed increased fees and new fees in Subchapter I would avoid the issuance of a Federal Title V Permit Program NOD, and Federal oversight and mandatory CAA sanctions.

Section 9.2(a) of the APCA (35 P.S. § 4009.2(a)) provides for the establishment of the Clean Air Fund and separate accounts, if necessary, to comply with the requirements of the CAA. The CAA and its implementing regulations specifically provide that any fees collected under the Title V Operating Permit Program have to be used solely for the costs of that program. See 42 U.S.C.A. § 7661a(b)(3)(C)(iii) and 40 CFR 70.9(a) (relating to fee determination and certification). As a result, in this Commonwealth, the Clean Air Fund consists of two "special fund" appropriations: the Title V Account and the Non-Title V Account. The Title V Account collects the revenue received from the Title V air quality permitting and emission fees. The Non-Title V Account collects the revenue received from the Non-Title V air quality permitting fees and the fines and penalties from both Title V and Non-Title V facilities.

The Title V Account expenditures exceeded revenue in fiscal year (FY) 2016-2017 and they are projected to exceed revenue for the foreseeable future beginning with FY 2018-2019. Expenditures are projected to exceed revenue in each of FYs 2021-2022 and 2022-2023 by more than \$4 million. The Title V Account ending balance is currently projected to decrease by \$17.122 million from \$22.575 million in FY 2015-2016 to \$5.453 million in FY 2022-2023.

In the Non-Title V Account, expenditures have exceeded revenue beginning with FY 2015-2016. Expenditures are projected to exceed revenue in each of FYs 2021-2022 and 2022-2023 by more than \$6.5 million. The Non-Title V Account is projected to have a deficit of \$4.359 million by FY 2019-2020 and \$24.214 million by FY 2022-2023 as expenditures outpace revenue.

If this proposed rulemaking is promulgated as a final-form rulemaking in 2020, the anticipated increase in revenue would keep the entire Clean Air Fund solvent. Without the fee amendments, the Clean Air Fund ending balance is projected to be \$3.457 million in FY 2020-2021, to have a \$7.344 million deficit in FY 2021-2022, and a \$18.761 million deficit in FY 2022-2023.

Conversely, the Clean Air Fund ending balances with the fee amendments are projected to be \$15.552 million in FY 2020-2021, \$16.872 million in FY 2021-2022 and \$16.835 million in FY 2022-2023.

The Department has sought to maintain parity between its revenue and expenditures over the last several years by reducing costs associated with administering the Air Quality Program. These cost reductions include streamlining the air permitting program through implementing the Permit Decision Guarantee policy, creating the online Request for Determination (RFD) form, developing general plan approvals and general operating permits for 19 source categories, and not filling open staff positions. The remaining reasonable costs that cannot be readily reduced include the cost to perform certain activities related to major facility operations, including the review and processing of plan approvals and operating permits; emissions and ambient air monitoring; compliance inspections; developing regulations and guidance; modeling, analyses and demonstrations; and preparing emission inventories and tracking emissions. Direct and indirect program costs include personnel costs; office space leases; 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.

The Department has taken steps to improve the quality, efficiency and responsiveness of the Air Quality Program, including by increasing its efforts to communicate with applicants for plan approvals and operating permits. These efforts include making greater use of preapplication conferences to help applicants with questions or concerns regarding plan approval and operating permit applications; corresponding with applicants at critical points in the plan approval and operating permit review process; and creating a series of guides about plan approvals and operating permits to provide information to applicants and the public.

A key provision of Title V is the requirement to establish a financially adequate permit fee schedule. Both section 6.3 of the APCA (35 P.S. § 4006.3) and the EPA's 40 CFR Part 70 regulations require permitting authorities to charge Title V sources annual fees under a fee schedule that results in the collection and retention of revenues sufficient to cover the entirety of Title V permit program costs. See 40 CFR 70.9. Title V permit fees are used to implement and enforce the permitting program, including review of new permit applications and revisions or renewals of existing permits; monitoring facility compliance; taking enforcement actions for noncompliance; performing monitoring, modeling and analysis; tracking facility emissions; and preparing emission inventories.

Regulations related to the fee schedules for plan approval and operating permit activities were last revised in November 1994, with staged increases occurring over the ensuing 10 years. See 24 Pa.B. 5899 (November 26, 1994). The last of the staged plan approval and operating permit fee increases occurred in January 2005.

The Board revised the Title V annual emission fee in 2013. At that time, the Department projected that the increased annual emission fee would not be sufficient to maintain the Title V fund and noted that a revised annual emission fee or other revised permitting fees would be needed within 3 years. See 43 Pa.B. 7268 (December 14, 2013). This is due, in part, because emissions subject to the Title V annual emission fee have decreased by 39% since 2000 and continue to decrease as more emissions reductions are required to attain and maintain the revised applicable NAAQS established by the EPA. Installation of air pollution control technology over the past 2 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 Title V annual emission fee, and revenues

collected have been decreasing as a result. This is resulting in reduced revenue for the Air Quality Program, even with the revised Title V annual emission fee adopted in 2013.

As revenue for the program has decreased over the past several years, one area of cost cutting has been reducing the staffing complement. Failure to adjust the Air Quality Program fees structure to adequately cover program costs will cause additional staff reductions. Reduced staff will cause delays in processing plan approval and operating permit applications and issuing approved plan approvals and operating permits. Delays in the issuance of the plan approvals and operating permits can cause economic disruptions because 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. This may result in delays for industry to implement expanded, new or improved processes, with associated loss of revenue to industry, loss of jobs for the community and loss of tax revenue for the Commonwealth. Delays in receiving plan approvals can have a major impact on an owner's or operator's decision to operate or expand operations in this Commonwealth.

Further, fewer Department staff to conduct inspections, respond to complaints and pursue enforcement actions will result in less oversight of regulated industry compliance or noncompliance. This will result in reduced protection of the environment and public health and welfare of the citizens of this Commonwealth.

Decreased program revenues will also impact the operation and maintenance of the Commonwealth's ambient air monitoring network, which provides the data to measure the Commonwealth's progress in attaining and maintaining the NAAQS established by the EPA. Decreased program 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 reduce the economic vitality of this Commonwealth by reducing the number of available jobs and tax revenue generated by these small businesses.

By addressing the Clean Air Fund deficits, the Department will be able to continue to serve the regulated community and protect the quality of air in this Commonwealth. Furthermore, 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, including implementation of a Federal Implementation Plan (FIP) and collection of all fees and revenue by the EPA.

In considering the downward trend of emissions, the impact of emission fees and other fees on the regulated community, and the needs of the Air Quality Program the Department evaluated the establishment of an annual operating permit maintenance fee to replace the annual operating permit administration fee that is currently required under §§ 127.703(c) and 127.704(c) (relating to operating permit fees under Subchapter F; and Title V operating permit fees under Subchapter G). These annual operating permit administration fee amounts were set in 2005 and have not increased since then.

The revenue generated from the annual operating permit administration fees does not adequately cover the costs of Department services provided to facility owners and operators for this fee. To remedy this, the Board is proposing to collect an annual operating permit maintenance fee instead of the current annual operating permit administration fee. The proposed annual operating permit maintenance fees are designed to recover costs to the Department for providing services to facility owners and operators that are otherwise absorbed in the revenue generated from the emission fees paid by the owners and operators of Title V facilities, permitting fee revenue from the owners and operators of both Title V and Non-Title V facilities,

and General Fund money. The proposed annual operating permit maintenance fees would be applicable to the owners and operators of affected Non-Title V and Title V facilities.

In addition to proposing the annual operating permit maintenance fees, the Board proposes to address the Clean Air Fund deficits by amending existing fees in Subchapter I related to plan approval and operating permit applications for the owners and operators of both Non-Title V and Title V facilities. The Board is also proposing to address these deficits through new fees related to applications for plantwide applicability limits (PAL), modifications of existing plan approvals and analyses of ambient impacts of a source. Fees for RFDs, claims of confidential information and for submission of notifications for asbestos abatement or regulated demolition or renovation projects are also proposed.

This proposed rulemaking also adds a new section under Subchapter I to address fees for risk assessment applications. Implementation of fees for risk assessment applications will allow for program resources to address this important area of public health and social well-being by evaluating the risks associated with observed levels of contaminants. A new section under Subchapter I is also proposed to address fees for the use of general plan approvals or general operating permits issued by the Department.

These increased fees and new fees would be used to support the Department's Air Quality Program as authorized by the APCA. The fee revisions will allow the Department to maintain staffing levels in the Air Quality Program as well as cover operating expenses such as telecommunications, electricity, travel, auto supplies and fuel along with the purchase of fixed assets such as air samplers and monitoring equipment, vehicles and trailers. The Department established the proposed fees by identifying the number of staff required and the approximate time necessary to complete each review or action, including the amount of salaries and benefits. The Department also compared the proposed fees to those of this Commonwealth's approved local air pollution control agencies (Philadelphia and Allegheny Counties) and to those of surrounding states.

The Board is proposing to collect an annual operating permit maintenance fee under § 127.703(d) from the owners or operators of affected Non-Title V facilities. An annual operating permit maintenance fee of \$2,500 is proposed to be collected from the owners or operators of all affected synthetic minor facilities for calendar years 2021 to 2025; an annual operating permit maintenance fee of \$2,000 is proposed to be collected from the owners or operators of all affected facilities that are not synthetic minors for calendar years 2021 to 2025. The annual operating permit maintenance fees collected under § 127.703(d) are projected to generate revenue of approximately \$4.6 million for the Non-Title V Account.

The Department considered three options for revising the Title V emission fee under § 127.705 (relating to emissions fees) and implementing an annual operating permit maintenance fee for the owners and operators of affected Title V facilities. The first option would not increase the current emission fee under § 127.705 and would collect an annual operating permit maintenance fee of \$10,000 under § 127.704(d) from the owners or operators of affected Title V facilities. The second option would increase the Title V emission fee to \$110 per ton up to the 4,000-ton cap per regulated air pollutant and collect an annual operating permit maintenance fee of \$5,000 from the owners or operators of all affected Title V facilities. The third option would increase the Title V emission fee to \$118 per ton up to the 4,000-ton cap, establish an emission fee floor of \$5,000 per facility and not collect an annual operating permit maintenance fee from the owners or operators of affected Title V facilities. The amount of revenue anticipated to be generated is approximately equal between the three options. Each of these options would generate annual revenue of approximately \$21 million or an increase of approximately \$6 million over

current Title V facility revenue.

The first option of no increase to the emission fee and implementation of the annual operating permit maintenance fee of \$10,000 would spread the cost obligation for supporting the Title V Operating Permit Program across 310 Title V facility owners and operators versus 206 Title V facility owners and operators for the second option. The third option, due to the emission fee floor of \$5,000, would affect 129 Title V facility owners and operators that would bear the bulk of generating the total emission fee revenue collected, rather than 102 Title V facility owners and operators under the current fee structure in § 127.705.

The Department proposes the first option to leave the Title V emission fee listed in § 127.705 unchanged and collect an annual operating permit maintenance fee of \$10,000 from the owners and operators of all affected Title V facilities. This approach was chosen based on the equities involved among the number of impacted facilities. However, the Department is seeking comment on its approach to amend the fees payable by the owners and operators of Title V facilities and other potential approaches that spread the cost obligations in an equitable manner.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) and the Small Business Compliance Advisory Committee (SBCAC) in the development of this proposed rulemaking. On June 14, 2018, and July 25, 2018, respectively AQTAC and SBCAC concurred with the Department's recommendation to move this proposed rulemaking forward to the Board for consideration.

The Department also conferred with the Citizens Advisory Council's (CAC) Policy and Regulatory Oversight Committee concerning this proposed rulemaking on June 15, 2018, and June 25, 2018. On July 17, 2018, the CAC concurred with the Department's recommendation to advance the proposal to the Board for consideration as proposed rulemaking.

#### *E. Summary of Regulatory Requirements*

##### *§ 121.1. Definitions*

This section contains definitions relating to the air quality regulations. This proposed rulemaking adds the definition of "synthetic minor facility" to clarify that it is an air contamination source subject to Federally enforceable conditions that limit the facility's potential to emit to less than the major facility thresholds specified in the definition of "Title V facility."

##### *§ 127.424. Public notice*

This section contains procedures the Department will follow to prepare a notice of action to be taken on applications for an operating permit. Revisions to an incorrect cross reference are proposed to subsections (b) and (e)(3). The current cross references are to § 127.44(a)(1) (4) (relating to public notice) and to § 127.44(a). The correct cross references should be to § 127.44(b)(1) (5) and to § 127.44(b).

##### *§ 127.465. Significant operating permit modification procedures*

This section is new and would establish the procedures the owner or operator of a stationary air contamination source or facility shall follow to make a significant modification to an applicable operating permit.

Subsection (a) would establish that the owner or operator of a stationary air contamination source or facility may make a significant modification to an applicable operating permit under

this section.

Subsection (b) would establish that the significant operating permit modifications must meet the requirements of Chapter 127, including §§ 127.424 and 127.425 (relating to public notice; and contents of notice).

Subsection (c) would establish that the owner or operator of the facility shall submit to the Department, on a form provided by or approved by the Department, a brief description of the change, the date on which the change is to occur and the proposed language for revising the operating permit conditions proposed to be changed.

Subsection (d) would establish that unless precluded by the CAA or regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) shall extend to an operational flexibility change authorized by this section.

Subsection (e) would establish that the Department will take final action on the proposed change for the significant modification of the applicable operating permit and, after taking final action, will publish notice of the action in the *Pennsylvania Bulletin*.

#### § 127.702. Plan approval fees

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

Subsection (a) would be amended to establish that the applicable fees required under subsections (b)–(h) are cumulative.

Under subsection (b), the owner or operator of a source requiring approval under Chapter 127, Subchapter B (relating to plan approval requirements) shall pay a fee equal to \$1,000 for applications filed during calendar years 2005–2020; \$2,500 for applications filed during calendar years 2021–2025; \$3,100 for applications filed during calendar years 2026–2030; and \$3,900 for applications filed for the calendar years beginning with 2031.

Under subsection (c), the owner or operator of a source requiring approval under Chapter 127, Subchapter E (relating to new source review) shall pay a fee equal to \$5,300 for applications filed during calendar years 2005–2020; \$7,500 for applications filed during calendar years 2021–2025; \$9,400 for applications filed during calendar years 2026–2030; and \$11,800 for applications filed for the calendar years beginning with 2031.

Under subsection (d), the owner or operator of a source subject to and requiring approval under Chapter 122, Chapter 124 or § 127.35(b) (relating to national standards of performance for new stationary sources; national emission standards for hazardous air pollutants; and maximum achievable control technology standards for hazardous air pollutants) shall pay the specified fee for each applicable standard up to and including three applicable standards, which is equal to \$1,700 for applications filed beginning the effective date of adoption of this proposed rulemaking through calendar year 2020; \$2,500 for applications filed during calendar years 2021–2025; \$3,100 for applications filed during calendar years 2026–2030; and \$3,900 for applications filed for the calendar years beginning with 2031. An owner or operator that had more than three applicable standards would pay the fee for a maximum of three standards, but the Department's permitting review would include all applicable standards.

Under subsection (e), the owner or operator of a source subject to and requiring approval under § 127.35(c), (d) or (h) shall pay a fee equal to \$8,000 for applications filed during calendar years



2005-2020; \$9,500 for applications filed during calendar years 2021-2025; \$11,900 for applications filed during calendar years 2026-2030; and \$14,900 for applications filed for the calendar years beginning with 2031.

Under subsection (f), the owner or operator of a source requiring approval under Chapter 127, Subchapter D (relating to prevention of significant deterioration of air quality) shall pay a fee equal to \$22,700 for applications filed during calendar years 2005-2020; \$32,500 for applications filed during calendar years 2021-2025; \$40,600 for applications filed during calendar years 2026-2030; and \$50,800 for applications filed for the calendar years beginning with 2031.

Subsection (g) addresses the fees payable by the owner or operator of a source that is proposing a minor modification of a plan approval, an extension of a plan approval or a transfer of a plan approval due to a change of ownership. Subsection (g) would be amended to delete the requirements for the minor modifications and add requirements to establish that the owner or operator of a source that submits a plan approval application for a PAL permit under § 127.218(b) (relating to PALs), to cease a PAL permit under § 127.218(j) or to increase a PAL under § 127.218(l) shall pay a fee equal to \$7,500 for applications filed during calendar years 2020-2025; \$9,400 for applications filed during calendar years 2026-2030; and \$11,800 for applications filed for the calendar years beginning with 2031.

Subsection (h) specifies that the modification of a plan approval that includes the reassessment of a control technology determination or of the ambient impacts of the source will not be considered a minor modification of the plan approval. Subsection (h) would be amended to delete the requirement that the modification of the plan approval is not a minor modification and add requirements to establish that the owner or operator of a source proposing a PAL under Subchapter D that is not included in an application submitted under subsection (f) or subsection (g) shall pay a fee equal to \$7,500 for applications filed during calendar years 2020-2025; \$9,400 for applications filed during calendar years 2026-2030; and \$11,800 for applications filed for the calendar years beginning with 2031.

Subsection (i) is proposed to be deleted where it specifies that the Department may establish application fees for general plan approvals and plan approvals for sources operating at multiple temporary locations which will not be greater than the fees established by subsection (b). These fees shall be established at the time the plan approval is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice and review period). Subsection (i) would be amended to add requirements to establish that the owner or operator of a source proposing a minor modification of a plan approval, an extension of a plan approval or a transfer of a plan approval due to a change of ownership shall pay the fee in paragraph (1) or paragraph (2) as applicable.

Subsection (i)(1) would establish that an applicant for a minor modification of a plan approval may not include an increase in emissions, an analysis of the ambient impacts of the source or a reassessment of a control technology determination. The applicant shall meet the applicable requirements of § 127.44 and pay a fee equal to \$300 for applications filed during calendar years 2005-2020; \$1,500 for applications filed during calendar years 2021-2025; \$1,900 for applications filed during calendar years 2026-2030; and \$2,400 for applications filed for the calendar years beginning with 2031.

Subsection (i)(2) would establish that an applicant for an extension or a transfer of a plan approval shall pay a fee equal to \$300 for applications filed during calendar years 2005-2020; \$750 for applications filed during calendar years 2021-2025; \$900 for applications filed during

calendar years 2026-2030; and \$1,100 for applications filed for the calendar years beginning with 2031.

Under subsection (j), the owner or operator of a source proposing a revision to a plan approval application submitted by the applicant that includes one or more of the changes identified in paragraph (1) or paragraph (2) after the Department has completed its technical review shall pay the fee in paragraph (1) or paragraph (2) as applicable.

Subsection (j)(1) would establish that for an analysis of the ambient impacts of the source, the owner or operator would pay a fee equal to \$9,000 for applications filed during calendar years 2020-2025; \$11,300 for applications filed during calendar years 2026-2030; and \$14,100 for applications filed for the calendar years beginning with 2031.

Subsection (j)(2) would establish that for a reassessment of a control technology determination, the owner or operator would pay the applicable fee under subsection (b).

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

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

Subsection (a) specifies that each applicant for an operating permit, which is not for a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required by this section to the Department. These fees apply to the extension, modification, revision, renewal and reissuance of each operating permit or part thereof. Subsection (a) would be amended to delete the statement that these fees apply to the extension, modification, revision, renewal and reissuance of each operating permit or part thereof or to a transfer of an operating permit due to a change of ownership.

Subsection (b) specifies the fees for processing an application for an operating permit. Subsection (b) would be amended to delete the statement regarding the fee for processing an operating permit and add the requirements that each applicant subject to subsection (a) shall pay a fee equal to the fee specified in paragraphs (1)-(5), as applicable. These fees apply to the application for a new operating permit and for the renewal and reissuance, modification or administrative amendment of an operating permit or part thereof.

Under subsection (b)(1), the fee for a new operating permit would be \$375 for applications filed during calendar years 2005-2020; \$2,500 for applications filed during calendar years 2021-2025; \$3,100 for applications filed during calendar years 2026-2030; and \$3,900 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(2), the fee for a renewal and reissuance of an operating permit or part thereof would be \$375 for applications filed during calendar years 2005-2020; \$2,100 for applications filed during calendar years 2021-2025; \$2,600 for applications filed during calendar years 2026-2030; and \$3,300 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(3), the fee for a minor modification of an operating permit or part thereof would be \$375 for applications filed during calendar years 2005-2020; \$1,500 for applications filed during calendar years 2021-2025; \$1,900 for applications filed during calendar years 2026-2030; and \$2,400 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(4), the fee for a significant modification of an operating permit or part

thereof would be \$375 for applications filed during calendar years 2005 $\hat{c}$  2020; \$2,000 for applications filed during calendar years 2021 $\hat{c}$  2025; \$2,500 for applications filed during calendar years 2026 $\hat{c}$  2030; and \$3,100 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(5), the fee for an administrative amendment of an operating permit or part thereof would be \$375 for applications filed during calendar years 2005 $\hat{c}$  2020; \$1,500 for applications filed during calendar years 2021 $\hat{c}$  2025; \$1,900 for applications filed during calendar years 2026 $\hat{c}$  2030; and \$2,400 for applications filed for the calendar years beginning with 2031.

Subsection (c) specifies the annual operating permit administration fee that is payable each year. Subsection (c) would be amended to specify that the annual operating permit administration fee is \$375 for applications filed through the calendar year of the effective date of adoption of this proposed rulemaking.

Language in subsection (d) is proposed to be deleted where it specifies that the Department may establish application fees for general operating permits and operating permits for sources operating at multiple temporary locations which will not be greater than the fees established by this section, and that these fees shall be established at the time the operating permit is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632. Subsection (d) would then be amended to establish that beginning the effective date of adoption of this proposed rulemaking, the annual operating permit maintenance fee in paragraph (1) or paragraph (2) is due on or before December 31 of each year for the next calendar year.

Subsection (d)(1) would establish that for a synthetic minor facility, the owner or operator shall pay a fee equal to \$2,500 for calendar years 2021 $\hat{c}$  2025; \$3,100 for calendar years 2026 $\hat{c}$  2030; and \$3,900 for the calendar years beginning with 2031.

Subsection (d)(2) would establish that for a facility that is not a synthetic minor, the owner or operator shall pay a fee equal to \$2,000 for calendar years 2021 $\hat{c}$  2025; \$2,500 for calendar years 2026 $\hat{c}$  2030; and \$3,100 for the calendar years beginning with 2031.

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

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

Subsection (a) specifies that each applicant for an operating permit, which is for a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required by this section to the Department. These fees apply to the extension, modification, revision, renewal and reissuance of each operating permit or part thereof. Subsection (a) would be amended to delete the statement that these fees apply to the extension, modification, revision, renewal and reissuance of each operating permit or part thereof.

Subsection (b) specifies the fees for processing an application for an operating permit. Subsection (b) would be amended to delete the statement regarding the fee for processing an operating permit and add the requirements that each applicant subject to subsection (a) shall pay a fee equal to the fee specified in paragraphs (1) $\hat{c}$  (5), as applicable. These fees apply to the application for a new operating permit and for the renewal and reissuance, modification or administrative amendment of an operating permit or part thereof.

Under subsection (b)(1), the fee for a new operating permit would be \$750 for applications

filed during calendar years 2005 $\hat{\circ}$  2020; \$5,000 for applications filed during calendar years 2021 $\hat{\circ}$  2025; \$6,300 for applications filed during calendar years 2026 $\hat{\circ}$  2030; and \$7,900 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(2), the fee for a renewal and reissuance of an operating permit or part thereof would be \$375 for applications filed during calendar years 2005 $\hat{\circ}$  2020; \$4,000 for applications filed during calendar years 2021 $\hat{\circ}$  2025; \$5,000 for applications filed during calendar years 2026 $\hat{\circ}$  2030; and \$6,300 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(3), the fee for a minor modification of an operating permit or part thereof would be \$375 for applications filed during calendar years 2005 $\hat{\circ}$  2020; \$1,500 for applications filed during calendar years 2021 $\hat{\circ}$  2025; \$1,900 for applications filed during calendar years 2026 $\hat{\circ}$  2030; and \$2,400 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(4), the fee for a significant modification of an operating permit or part thereof would be \$375 for applications filed during calendar years 2005 $\hat{\circ}$  2020; \$4,000 for applications filed during calendar years 2021 $\hat{\circ}$  2025; \$5,000 for applications filed during calendar years 2026 $\hat{\circ}$  2030; and \$6,300 for applications filed for the calendar years beginning with 2031.

Under subsection (b)(5), the fee for an administrative amendment of an operating permit or part thereof would be \$375 for applications filed during calendar years 2005 $\hat{\circ}$  2020; \$1,500 for applications filed during calendar years 2021 $\hat{\circ}$  2025; \$1,900 for applications filed during calendar years 2026 $\hat{\circ}$  2030; and \$2,400 for applications filed for the calendar years beginning with 2031.

Subsection (c) specifies the annual operating permit administration fee that is payable each year by a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions). Subsection (c) would be amended to delete the phrase "to be paid by a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 . . ." and add the requirement for each applicant subject to subsection (a) that is the owner or operator of a facility identified in subparagraph (iv) of the definition of Title V facility in § 121.1 to pay \$750 for applications filed through the calendar year of the effective date of this proposed rulemaking.

The annual operating permit administration fee would then be replaced with the maintenance fee in subsection (d). Beginning the effective date adoption of this proposed rulemaking, the annual operating permit maintenance fee would be payable each year before December 31 for the next calendar year and is equal to \$10,000 for calendar years 2021 $\hat{\circ}$  2025; \$12,500 for calendar years 2026 $\hat{\circ}$  2030; and \$15,600 for the calendar years beginning with 2031. Subsection (d) would also be amended to delete the requirement that specifies that the Department may establish application fees for general operating permits and operating permits for sources operating at multiple temporary locations which will not be greater than the fees established by this section.

Subsection (e) would add requirements to establish that the owner or operator of a source that submits an application for a PAL permit under § 127.218(b), to cease a PAL permit under § 127.218(j) or to increase a PAL under § 127.218(l) shall pay a fee equal to \$10,000 for applications filed during calendar years 2020 $\hat{\circ}$  2025; \$12,500 for applications filed during calendar years 2026 $\hat{\circ}$  2030; and \$15,600 for applications filed for the calendar years beginning with 2031.

Subsection (f) would establish that the owner or operator of a source proposing a PAL under

Subchapter D that is not included in an application submitted under subsection (d) shall pay a fee equal to \$10,000 for applications filed during calendar years 2020-2025; \$12,500 for applications filed during calendar years 2026-2030; and \$15,600 for applications filed for the calendar years beginning with 2031.

§ 127.705. *Emission fees*

This section specifies the requirements for the owner or operator of a Title V facility including a Title V facility located in Philadelphia County or Allegheny County, except a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1, to pay an annual Title V emission fee.

Subsection (d) specifies that the emission fee imposed under subsection (a) shall be increased in each calendar year after December 14, 2013, 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, paragraph (1) specifies that the Consumer Price Index for All-Urban Consumers shall be used for the adjustment required by this subsection and paragraph (2) specifies which revision of the Consumer Price Index for All-Urban Consumers shall be used. For clarity, subsection (d) would be amended to move the requirements of paragraphs (1) and (2) for the Consumer Price Index for All-Urban Consumers to new subsection (e).

§ 127.708. *Risk assessment*

The Department is proposing to add a new section for risk assessment fees. Subsection (a) would provide that each applicant for a risk assessment shall, as part of the plan approval application, submit the application fee required by this section to the Department.

Subsection (b) would establish that the owner or operator of a source applying for a risk assessment that is inhalation only for all modeling shall pay a fee equal to \$10,000 for applications filed during calendar years 2020-2025; \$12,500 for applications filed during calendar years 2026-2030; and \$15,600 for applications filed for the calendar years beginning with 2031.

Subsection (c) would establish that the owner or operator of a source applying for a multi-pathway risk assessment shall pay a fee equal to \$25,000 for applications filed during calendar years 2020-2025; \$31,300 for applications filed during calendar years 2026-2030; and \$39,100 for applications filed for the calendar years beginning with 2031.

§ 127.709. *Asbestos abatement or regulated demolition or renovation project notification*

This section is new and would establish that an owner or operator of an asbestos abatement or regulated demolition or renovation project that is subject to 40 CFR Part 61, Subpart M (relating to National emission standard for asbestos) or the Asbestos Occupations Accreditation and Certification Act (Act 1990-194) (63 P.S. §§ 2101-2112) and which is not located in Philadelphia County or Allegheny County shall submit to the Department with the required notification form a fee equal to \$300 for forms filed during calendar years 2020-2025; \$400 for forms filed during calendar years 2026-2030; and \$500 for forms filed for the calendar years beginning with 2031.

§ 127.710. *Fees for requests for determination*

Under this new section, fees would be established for RFDs for whether a plan approval, an

operating permit, or both, are needed for the change to the facility. The RFD process allows an owner or operator to avoid the full cost associated with submitting a comprehensive plan approval application by receiving a written determination from the Department. Under this section, the owner or operator of a source subject to Chapter 127 that submits an RFD for a plan approval, an operating permit, or for both a plan approval and an operating permit shall pay the applicable fee specified in paragraph (1) or paragraph (2). Paragraph (1) would establish that the owner or operator of a source that meets the definition of small business stationary source set forth in section 3 of the APCA (35 P.S. § 4003) shall pay a fee equal to \$400 for RFDs filed during calendar years 2020-2025; \$500 for RFDs filed during calendar years 2026-2030; and \$600 for RFDs filed for the calendar years beginning with 2031.

Paragraph (2) would establish that the owner or operator of a source that does not meet the criterion in paragraph (1) shall pay a fee equal to \$600 for RFDs filed during calendar years 2020-2025; \$800 for RFDs filed during calendar years 2026-2030; and \$1,000 for RFDs filed for the calendar years beginning with 2031.

#### *§ 127.711. Fees for claims of confidential information*

Under subsection (a) of this new section, a person submitting information to the Department under Chapter 127 who requests that all or part of that information be kept confidential under section 13.2 of the APCA (35 P.S. § 4013.2) shall include with the request for confidentiality a fee equal to \$300 for requests filed during calendar years 2020-2025; \$400 for requests filed during calendar years 2026-2030; and \$500 for requests filed for the calendar years beginning with 2031.

Subsection (b) would establish that the Department will review the request for confidentiality submitted under subsection (a) in accordance with the procedures specified in section 13.2 of the APCA.

#### *§ 127.712. Fees for the use of general plan approvals and general operating permits under Subchapter H*

Under this proposed section, the Department may establish application fees for the use of general plan approvals and general operating permits under Subchapter H (relating to general plan approvals and operating permits) for stationary or portable sources. These application fees will be established when the general plan approval or general operating permit is issued or modified by the Department. These application fees will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632.

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

#### *Benefits*

The new and revised fees included in this proposed rulemaking will be directed to the Clean Air Fund, comprised of the Title V and Non-Title V Subaccounts. Together, these funds represent approximately 65% of the Air Quality Program budget. The General Fund and Federal Grants make up the remaining 35%. It is unlikely that General Fund moneys or Federal Grants directed toward air quality will increase in the foreseeable future. Therefore, to adequately support the Commonwealth's Air Quality Program, the Clean Air Fund must be adequately funded.

The Air Quality Program has seen significant reductions in staff since 2000 (99 positions or 26%). Over that same time, the Clean Air Fund balance has been reduced 43% and is expected to hit a zero balance sometime during FY 2021-2022. Because deficit spending is not allowed, the

Air Quality Program expenditures would need to be decreased by approximately \$10 million per year if fee revisions are not approved.

Some decrease in spending would come from shrinking the ambient air quality monitoring network, however, this would virtually eliminate air toxics monitoring and leave large portions of rural areas with no air monitoring. Most of the cost reduction would result in significant decreases in air quality staff at all levels in both the Bureau of Air Quality and the Department's 6 regional offices. Conservatively, a decrease of 80 staff members, an approximately 30% reduction, would be needed. This would severely impact the ability of the Air Quality Program to process and review permit applications; inspect facilities and respond to citizen complaints; initiate compliance and enforcement activities; and develop in a timely manner the required regulatory and nonregulatory SIP revisions. Failure to maintain an approved SIP could result in the EPA establishing a FIP for the Commonwealth; under a FIP all fees, penalties and other revenue would be paid to the EPA. This would likely be unacceptable to the regulated industry, local government and the public.

Overall, the citizens of this Commonwealth would suffer from the loss of continued air quality planning, monitoring, permitting and inspection activities that are fundamental to the economy and protecting public health and welfare and the environment. With this proposed rulemaking, the Air Quality Program could maintain its current level of effort, gradually fill 17 currently vacant Title V positions, expand its air monitoring network in shale gas areas and develop new and improved information technology systems including ePermitting and publicly available online air quality data.

Moreover, delays in the issuance of plan approvals and operating permits can cause economic disruptions because the owner or operator of a regulated facility may not operate without an operating permit. Delays in receiving plan approvals can have a major impact on an owner's or operator's decision to expand or locate an industrial operation in this Commonwealth. Increased funding for the plan approval and operating permit process would continue to allow for timely and complete review of plan approval and operating permit application and help retain the current industry and provide certainty for businesses.

#### *Compliance costs*

The financial impact on the owners and operators of all Title V facilities regulated by the Department, collectively, would be additional plan approval and operating permitting costs of approximately \$900,000 per year as well as approximately \$5 million in annual operating permit maintenance fee costs. Title V small businesses, in total, would pay an estimated additional \$800,000 annually.

The financial impact on the owners and operators of Non-Title V facilities regulated by the Department, collectively, would be additional plan approval and operating permitting costs of approximately \$2 million per year as well as approximately \$4.6 million in annual operating permit maintenance fee costs. Non-Title V small businesses, in total, would pay an estimated additional \$2.5 million annually.

Approximately \$1.5 million in asbestos notification fees would be collected from 2,000 entities, most of which would be small businesses.

#### *Compliance assistance plan*

The Department plans to educate and assist the public and regulated community in

understanding and complying with the proposed requirements. This would be accomplished through the Department's ongoing compliance assistance program.

### *Paperwork requirements*

There are no additional paperwork requirements associated with this proposed rulemaking. The existing applications and forms would be updated with the new fees.

### *G. Pollution Prevention*

The Pollution Prevention Act (42 U.S.C.A. §§ 13101ô 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.

This proposed rulemaking would allow the Department to maintain staffing levels in the Air Quality Program, which would provide a sound basis for continued air quality assessments and planning that are fundamental to a strong economy, reducing pollution, and protecting public health and the environment.

### *H. Sunset Review*

The Board is not establishing a sunset date for this proposed rulemaking because it is needed for the Department to carry out its statutory authority. If published as a final-form rulemaking, the Department will closely monitor its effectiveness and recommend updates to the Board as necessary. At least every 5 years, the Department will provide the Board with an evaluation of the fees in this subchapter and recommend regulatory changes to the Board to address any disparity between the program income generated by the fees and the Department's cost of administering the Air Quality Program with the objective of ensuring sufficient fees to meet all program costs.

### *I. Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 27, 2019, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

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

### *J. Public Comments*

Interested persons are invited to submit written comments, suggestions, support or objections



regarding this proposed rulemaking to the Board. Comments, suggestions, support or objections must be received by the Board by June 17, 2019.

Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows. Comments submitted by facsimile will not be accepted.

Comments may be submitted to the Board by accessing eComment at <https://www.ahs.dep.pa.gov/eComment/>.

Comments may be submitted to the Board by e-mail at [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 business days, the comments should be retransmitted to the Board to ensure receipt.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

#### *K. Public Hearings*

The Board will hold three public hearings for accepting comments on this proposed rulemaking. The hearings will be held at 1 p.m. on the following dates:

May 13, 2019 Department of Environmental Protection Southwest Regional Office  
Waterfront Conference Rooms A and B  
400 Waterfront Drive  
Pittsburgh, PA 15222

May 15, 2019 Department of Environmental Protection Southeast Regional Office  
Delaware and Schuylkill Conference Rooms  
2 East Main Street  
Norristown, PA 19401

May 16, 2019 Department of Environmental Protection  
Southcentral Regional Office  
Susquehanna Conference Rooms A and B  
909 Elmerton Avenue  
Harrisburg, PA 17110

Persons wishing to present testimony at a hearing are requested to call (717) 783-8727 or contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, at least 1 week in advance of the hearing to reserve a time to present testimony. Verbal testimony is limited to 5 minutes for each witness. Witnesses are requested to submit three written copies of their verbal testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans with Disabilities Act of 1990 should contact (717) 783-8727 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate

their needs.

PATRICK McDONNELL,  
Chairperson

**Fiscal Note:** 7-536. No fiscal impact. Certain Commonwealth agencies which operate Title V and Non-Title V facilities will face nominal costs resulting from these proposed changes; (8) recommends adoption.

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