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December 18, 2009

**Via email:** [RegComments@state.pa.us](mailto:RegComments@state.pa.us)

The Honorable John Hanger  
Secretary  
Department of Environmental Protection &  
Chairperson, Environmental Quality Board  
Rachel Carson State Office Building, 16<sup>th</sup> Floor  
400 Market Street  
Harrisburg, PA 17101

**Subject: Comments on Proposed Rulemaking, Environmental Quality Board [25 PA CODE CHS. 121, 127 AND 139], Air Quality Fee Schedules, [39 Pa.B. 6049] [Saturday, October 17, 2009]**

Dear Secretary Hanger:

On behalf of its 24,000 members and customers, representing the spectrum of Pennsylvania industry, business, and commercial enterprises, the Pennsylvania Chamber of Business and Industry appreciates the opportunity to provide feedback and comment regarding the PA Department of Environmental Protection's proposed rulemaking for 25 PA Code Ch. 121, 127 and 139], Air Quality Fee Schedules, [39 Pa.B. 6049] as published in the Saturday, October 17, 2009 PA Bulletin.

The Pennsylvania Chamber understands the budgetary pressures being felt by State agencies and recognizes the need for the Department to increase the fees which were previously established and have not been increased for almost 15 years. However, the proposed rule puts an onerous financial burden on industry, including manufacturing facilities. Many businesses have been forced to lay off employees as they struggle to battle some of the worst economic conditions they have ever faced. Fierce competition has caused prices and profit margins to drop significantly. Recouping increased manufacturing costs through price increases is not a viable option for most companies. The proposed rule significantly increases the annual emission fees and adds a significant amount of new annual air permit related activity fees for all permitted facilities. Some of our member companies have told us that the proposed air permit related fee increases will result in further hardship to their facilities, industry and ultimately negatively impact their community as well.

As an alternative to fee increases, the Department should consider potentially more effective and sustainable options for supporting the air program. Such options include:

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- Conducting a thorough evaluation of the services being provided by DEP, and consideration of eliminating programs that offer only marginal environmental or public benefits relative to their cost;
- Elimination of any unfunded air quality programs;
- Increasing the use of technology and standardized process (i.e. electronic reporting, issuing more general permits);
- Consolidation of offices, and increased efficiencies within the office environment;
- Adopting EPA regulations rather than spending limited available resources developing state-specific rules and regulations, unless otherwise necessary to mitigate unfairness to Pennsylvania businesses.
- Consider whether the emissions fee cap of 4,000 tons per regulated pollutant, presently specified in the State Air Pollution Control Act, should be modified to adjust for disproportionate emission fee impacts on industry.

#### §127.701 General Provisions

In spite of the fact that the fee increases under 127.702 are being proposed for 2010 to 2020, new paragraph (d) under this section would allow DEP to revise those fees (presumably upward) every five years. Discretionary and frequent revisions of a regulatory fee program authorized by statute are not an appropriate method to address shortfalls in DEP's budget due to reductions in the Commonwealth's budget. Clear guidelines defining when and how the fees may be increased are necessary.

#### §127.702 Plan Approval Fees

For Plan Approval fees, the public notice should provide for public education and review the rationale behind how the Department determined the magnitude of the fee increases. We feel that permit fees should be based upon the legitimate effort associated with the administering the permit program. The regional offices need to be staffed with sufficient permit engineers to meet the demands for their services. The new permit fees need to be based upon, and then in fact used to fund, an ideal design staffing level in the regional offices and not on the current understaffed State. Somehow the DEP needs to decouple the frequent hiring freezes and staffing cuts associated with the annual budgeting process from programs that are self funded like NSR and Title V. A reasonable permit review timetable is even a higher priority for regulated entities than reasonable permit fees, and the Department should calibrate its fees, and use the funds so generated, for that purpose as called for by authorizing legislature.

The revised paragraph (h) should indicate that the additional fees are payable only when the affected modifications to the plan approval application are initiated by the owner or operator, and not when DEP requires the application be modified. Otherwise, the plan approval process could be seen as a fee generation tool rather than the compliance tool it was created to be.

At the proposed §127.702(j) (2) it appears there is a requirement to pay a request for determination (RFD) fee with the submission of a Plan Approval or under §127.703(e) (2) relating to operating permit fee as a routine action. We oppose the assessment of fees for RFDs at time of submission. The added time to process the check request for this new fee will remove all benefit from the recently rolled out web based RFD system. The Department's new eRFD system was established to speed the review process. The efficiency gains are completely lost if a check request must be submitted to complete the RFD. The State is working on an electronic payment method for RFDs but if this system is not successful then fees should be payable within 30 days of submission of an RFD.

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

The proposed fees should not apply equally to re-issuance of a Title V operating permit and those permitting activities that do not require significant DEP action or intervention, such as administrative amendments, minor modifications and transfer of ownership. In addition to requiring relatively minimal effort and resources, these activities can occur frequently during the term of a permit and have no adverse environmental impact. Yet, under the proposed rule, these activities would result in significant cost and potential delay in processing for the permit holder.

#### Sampling and testing

##### §139.201 General Provisions

The fees schedule described on Table 1 covers the years 2010 to 2020. However, paragraph (e) would allow DEP to revise those fees every five years. As stated before, this creates more uncertainty for the regulated community. There must be clear guidelines defining when and how the fees may be increased. This may be perceived as way of balancing the program budget due to reduction in the Commonwealth resources, and could be a disincentive for facilities to implement emission reduction measures.

##### §139.202 Schedule for testing, auditing and monitoring fees

The fees associated with stack testing are far too complicated. The best example of this is the Department will require a fee to pay for someone to come and observe a stack/CEM test. This fee will start out at \$675 per observer for the first day of CEM testing and \$350/DEP observer for each additional day with a maximum of two observers for CEM testing. For source testing the fee is a straight \$675 per day per observer with a maximum of two observers. Presumably this fee will need to be paid as part of the protocol submittal. How will a company know what the fee will be? Will the DEP send one or two observers? Will they observe one day or five days? This doesn't consider the probability that stack testing rarely stays on schedule. Between testing equipment and operational issues testing dates can significantly change. Does this mean the site will have to submit an additional fee for tests that get unexpectedly extended? We understand that the intent is to make the user of the services pay the cost; however, the question of when a permittee will be required to negotiate observer numbers and the number of testing days that will be observed adds complexity and confusion. We recommend that the Department support incorporating these costs into the protocol or testing results review fees.

The proposed fee schedule also results in a significantly disproportionate impact upon facilities that are required to install numerous CEM systems and conduct frequent stack samplings, regardless of the facilities' relative impact upon the environment. This could result in significant additional expense for facilities that have installed many CEMS. Facilities that rely on less onerous and/or accurate compliance tools such as parametric monitoring, work practices and periodic sampling would be affected less, even where those facilities have equal or greater environmental impact.

These proposed sampling, testing and CEM fees for submissions made by Title V facilities in support of demonstrating compliance with their Title V permit should not be included in the final rule. In accordance with the federal requirements for establishing the Title V emission fees as specified under 127.705, these air program costs are to be included in the determination of these emission fees.

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Again, the Pennsylvania Chamber appreciates the opportunity to provide comments on the proposed "Air Quality Fee Schedules." Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Barr". The signature is fluid and cursive, with the first name "Gene" and last name "Barr" clearly distinguishable.

Gene Barr

Vice President, Government and Public Affairs