Fee Analysis

BACKGROUND AND INTRODUCTION

Title V of the Clean Air Act provides the statutory framework for the Operating Permit Program, under which major sources of air pollution are required to obtain a Title V permit and regularly certify compliance with the permit's applicable requirements. The United States Environmental Protection Agency (EPA) has delegated responsibility for running the Title V program to state and local permitting authorities and established standards for those programs under regulations promulgated at 40 C.F.R. Part 70. More than 15,000 Title V permits have been issued by state and local air pollution control agencies.

The requirement to establish an adequate permit fee schedule is a key provision of Title V. EPA's Part 70 regulations require that permitting authorities charge Title V sources annual fees under a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. 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.

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

In the fall of 2014, the National Association of Clean Air Agencies (NACAA) conducted a survey to determine whether state and local agencies' Title V fee revenues were effective in maintaining sufficient funding for running their operating permit programs. This survey was conducted in collaboration with the New Jersey Department of Environmental Protection (NJDEP) and Amec Foster Wheeler (NJDEP's air program consultants).

Fifty state and local air pollution control agencies participated in the survey (31 state agencies and 19 local agencies). Collectively, these agencies regulate 6,880 Title V facilities, at a combined total program cost of $186 million. A report that summarizes the survey's findings with respect to program revenue, program cost, backlogs, full time equivalents, number of Title V facilities, fee per Title V facility, emission and other fees, and how fees are adjusted is available here. In addition, the survey data have been compiled into two spreadsheets: a short version that contains the most important elements of data and a long version that contains all the data details. They are available here.

Of particular note, **46% of survey respondents reported that the revenue from their Title V emission fees was insufficient to fully fund their Title V programs**. A discussion of various approaches for sustaining and improving future funding of Title V programs is provided in the following pages. The discussion provides a comparison of program funding scenarios that are based primarily on emission fees versus funding scenarios that are based on diversified sources of program revenue.

We hope that state and local agencies will find this information useful when considering strategies to address Title V funding shortfalls and maintaining sufficient funding for their programs.

HOW AGENCIES ARE ADDRESSING SHORTFALLS IN THEIR TITLE V FEES

A majority of respondents with insufficient emission fees have made or plan to make adjustments to the annual emission fees charged by their programs. Based on the responses received, the following approaches have been or being considered to address shortfalls in Title V emission fees:

- **Periodic Adjustments** - This is the most common method of adjusting emission fees. The established base Title V emission fee ($ per ton of regulated pollutant) is adjusted periodically by the Consumer Price Index (CPI).
- **Legislative Approval** - The Title V emission fees are set in state statutes and rules; rule changes via legislature are required to ensure adequate revenue is available to fund the Title V program.
- **Surplus from Previous Years** - Several agencies collect enough emission fees to create a surplus that is saved in a Title V account. This surplus is then used in years where agencies experience shortfalls. A number of respondents use their emission fee surplus from prior years to balance expenses where emission fees are not enough to fully fund the Title V program.

Many state and local agencies worked with their stakeholders to increase the per-ton emission fee to account for the drop in emissions they had encountered. For example, the Michigan Department of Environmental Quality (MDEQ) experienced a 4.5% emissions decrease that needed to be addressed. The MDEQ assembled a stakeholder workgroup to evaluate their current fee structure to fully fund the Title V program.

Several states, despite recent increases in emission fees, continue to face Title V funding shortfalls. Utah is proposing to modify its state statute to make up for lost fees due to a considerable decrease in emissions. The proposed changes include setting different rates for different pollutants, increasing the current fee cap and charging a minimum fee.

INCREASING EMISSION FEES AND INTRODUCING NEW FEES – A MULTI-PRONGED APPROACH

In situations where emission fees alone were not sufficient to fund a Title V program, agencies engaged in stakeholder discussions to create new proposals for funding Title V programs. Stakeholder participation provided opportunities to develop an understanding and an agreement to address funding concerns or issues. Agencies also undertook cost saving measures that included limiting discretionary expenditures by cutting travel and training, reducing staff through layoffs, reducing contracted services, holding vacancies, managing cash flow more effectively, and streamlining efforts such as online permitting.

- **The Missouri Department of Natural Resources** worked with stakeholders to increase its emission fees from $40 per ton to $48 per ton (a 20% increase). However, the increased emission fees were not enough to address the full shortfall of the program on its own. The MDNR undertook another fee revision through the rulemaking process that includes emission, permit, and asbestos fees. The new fees will take effect on January 1, 2016 and are expected to address the Title V funding shortfall.
- **The Iowa Department of Natural Resources** received an appropriation of $1.4 million to address the overall shortfall in its air quality program funding. The DNR was instructed by the Iowa General

Assembly to form a stakeholder group to study funding for the air quality program. The DNR is continuing to look for cost savings and methods to reduce the expenditures on non-value added activities. Over $2 million in budget reductions and avoided costs have allowed the Title V fee to remain at current levels for five years.

- **Puget Sound Clean Air Agency** raised Title V fees in 2012 by 30% on base fees and by 20% on emission fees. These fees were increased due to an increase in operation costs and not due to emission reductions. The program noted that emission fees alone were insufficient to fully fund the Title V program; now a combination of fees sufficiently funds the program.

- **Spokane Regional Clean Air Agency** revised its fees in 2013 by increasing the emission fee. However, emission fees alone do not fully fund the Title V program. In addition to emission fees, Spokane's annual fee structure includes a base fee and a permit review time fee.

- **The Georgia Environmental Protection Division** has increased the emission fee for sources with coal-fired EGUs by about 10% and increased the synthetic minor fee by about 13% over 2011 levels. Despite these increases, the GEPD is projecting that by 2017 expenses will exceed revenue by $1.6 million and the shortfall is expected to increase over time due to inflation of expenses. To address this shortfall, GEPD is considering several new options, including automatic CPI adjustments, a maintenance fee paid by all Title V sources (in addition to emission fees), and new application fees.

SOME STOP-GAP MEASURES

In some cases, agencies have implemented funding enhancement steps that include legislative changes to allow motor vehicle inspection fees to be used for indirect costs of implementing permitting programs (e.g., ambient monitoring, planning), shifting costs to radioactive materials fees, and shifting costs to EPA's Performance Partnership Grants (Section 105 funds). Some other measures under consideration, such as tag fees and gas taxes, would require legislation or constitutional amendments.

TITLE V PROGRAMS WITH SUFFICIENT FUNDING – WHAT'S WORKING

A majority of respondents with sufficient funding for their Title V programs made adjustments to their emission fees based on annual evaluations of expected costs and expenditures. These fee adjustments were generally coupled with cost saving measures, such as streamlining the program for improved resource utilization and reducing staffing by not filling positions lost due to retirements or resignations.

Two states, Connecticut and New Hampshire, use a fee stabilization approach. The basic concept of that approach is to divide the needed program's cost (adjusted annually for inflation) by the quantity of each year's emissions to arrive at a dollar per ton emission fee for that year. This approach ensures that as emissions go up or down, the total amount collected remains at the level of pre-determined program needs.

Another successful approach to diversifying Title V program revenue is provided by the Washington State Department of Ecology and the local agencies within Washington State. Basically, these agencies divide their Title V program revenue into three distinct components, which are adjusted to cover their projected Title V program costs, as follows:

1. Emission fees cover 33.3% of the projected program cost;

2. A facility fee covers another 33.3% of the projected program cost; and

3. A fee based on the complexity of each Title V source covers the remaining 33.3% of the projected program cost.

EPA's OVERSIGHT OF TITLE V PROGRAMS

In October 2014, EPA's Office of Inspector General (OIG) issued a detailed report that evaluated EPA's oversight of state and local Title V programs' fee revenue practices. The report identified significant weaknesses in EPA's oversight of these practices, including a failure to identify corrective actions for Title V revenue sufficiency and accounting practices. The report noted that annual Title V program expenses often exceeded Title V revenues over the 5-year period reviewed in the report (2008-2012). The report emphasized that the decline in resources jeopardizes state and local Title V program implementation and increases the risk of permitting authorities misusing funds and operating in violation of EPA's Title V regulations.

The report recommends the following action items for EPA:

- Assess, update and re-issue the agency's 1993 Title V fee guidance as appropriate;
- Establish a fee oversight strategy to ensure consistent and timely actions to identify and address violations of 40 C.F.R. Part 70;
- Emphasize and require periodic reviews of Title V fee revenue and accounting practices in Title V program evaluations; and
- Address shortfalls in staff expertise as regions update their workforce plans.

EPA has committed to taking appropriate corrective actions, the completion of which is ongoing.

Full report is available at http://www.epa.gov/office-inspector-general/report-enhanced-epa-oversight-needed-address-risks-declining-clean-air-act

CONCLUSION

Permitting authorities continue to face declining Title V fee revenues for a number of reasons, including their reliance on emission-based fee structures. State and local authorities may now be required to apply corrective actions due to increased emphasis on EPA's oversight of Title V program fees. With increasing federal oversight, increased citizen participation in the permitting process, and important public health concerns at stake, program costs are expected to rise and revenue shortfalls will remain a common theme until the funding structure is stabilized and programs become financially sustainable. Such measures may include diversifying the revenue structure, sufficient and sustainable public funding, and appropriate cost controls.