



SPONSOR: Sen. McDowell & Rep. Heffernan  
Sen. Hansen

DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL NO. 103

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE CLEAN AIR ACT TITLE V  
OPERATING PERMIT PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members  
elected to each house thereof concurring therein):

Section 1. Amend § 6097, Title 7 of the Delaware Code by making deletions as shown by strikethrough and  
insertions as shown by underline as follows:

§ 6097. Fees.

(c) The Department shall collect annual fees, payable annually or in quarterly installments, during calendar years  
~~2015, 2016, and 2017,~~ 2018, 2019, and 2020, from each source that is required to pay the annual fee as set forth in  
subsection (a) of this section. ~~The Title V Operating Permit Program Advisory Committee may review and recommend  
modifications to the 2017 fee schedule should measurable operating efficiencies be gained through ongoing Title V  
Operating Permit Program improvement initiatives.~~ The annual fee for each subject source will be determined by the sum  
of 2 component fees: a base fee as set forth in subsection (d) of this section and a user fee as set forth in subsection (e) of  
this section. ~~For sources that are identified in the 2011 Delaware Point Source Emission Inventory of Estimated Actual Air  
Contaminants or sources that have applied for a Title V Operating Permit or synthetic minor facility permit by December  
31, 2014, the base fee and the user fee shall be calculated as set forth in subsections (d) and (e) of this section. For all other  
sources~~ For any source that becomes subject to the Program after December 31, 2017, the base fee and user fee shall be  
calculated as set forth in subsection (f) of this section.

(d)(1) The base fee relates to services that are common to all sources subject to the program. These services  
include activities such as permit issuance and renewals; stationary source regulation development; ambient monitoring;  
emission inventory; control strategy development; and development, ~~administration~~ administration, and implementation of  
2 additional programs: the Small Business Stationary Source Technical and Environmental Compliance Program and a  
portion of the accidental release prevention program.

(2) In calendar years ~~2015, 2016, and 2017,~~ 2018, 2019, and 2020, the Department will place each subject  
source into 1 of the following ~~44~~ 10 categories:

22	Category A	Greater than 6,000 hours will pay \$ 277,020
23	Category B	from 5,001 to 6,000 hours will pay \$ 108,300
24	Category C	from 4,001 to 5,000 hours will pay \$ 93,480
25	Category D	from 3,001 to 4,000 hours will pay \$ 80,940
26	Category E	from 2,001 to 3,000 hours will pay \$ 57,000
27	Category F	from 1,501 to 2,000 hours will pay \$ 42,180
28	Category G	from 1,001 to 1,500 hours will pay \$ 28,500
29	Category H	from 667 to 1,000 hours will pay \$ 18,240
30	Category I	from 334 to 666 hours will pay \$ 9,120
31	Category J	<del>from 0 up to 333 hours will pay \$ 5,700</del> <u>\$ 5,700.</u>
32	Category K	<del>New sources that have applied for a per-</del>
33		<del>mit after January 1, 2014, will pay \$ 6,840.</del>

(3) The Department's category determination pursuant to paragraph (d)(2) of this section shall be based upon 5 years' data of engineering, compliance, and enforcement hours expended for each facility from ~~2009 to 2013.~~ 2012 to 2016. The Department will continue to track the actual hours spent processing Title V permits and performing other related services under the Title V program. This information may be used in the evaluations of the Title V program associated with the expiration of this statute on ~~December 31, 2017.~~ December 31, 2020.

(e)(1) The user fee relates to activities not identified in subsection (d) of this section for the Program, such as: development, administration, and implementation of a compliance and enforcement program; implementation and enforcement of the terms of any Title V Operating Permit or synthetic minor permit; permit revisions or amendments, including the development of an applicable requirement as part of the processing of the permit issuance, revision or amendment; the supporting and tracking of data; modeling; and adequate resources to determine which sources are subject to the Program. Such fees shall be based on the emissions of each air contaminant, in whole tons and in the aggregate, excluding carbon monoxide (CO) and particulate matter less than 2.5 microns (PM2.5), as listed in the ~~2011~~ 2014 Delaware Point Source Emission Inventory of Estimated Actual Regulated Air Contaminants.

(2) In calendar years ~~2015, 2016, and 2017,~~ 2018, 2019, and 2020, the Department will place each subject source into 1 of the following ~~10~~ 9 categories:

49	Category 1	Greater than 2,000 tons will pay \$ 350,000
50	Category 2	from 1,001 to 2,000 tons will pay \$ 100,000
51	Category 3	from 501 to 1,000 tons will pay \$ 60,000

52 Category 4 from 201 to 500 tons will pay \$ 28,000  
 53 Category 5 from 101 to 200 tons will pay \$ 12,000  
 54 Category 6 from 51 to 100 tons will pay \$ 9,000  
 55 Category 7 from 26 to 50 tons will pay \$ 6,000  
 56 Category 8 from 6 to 25 tons will pay \$ 4,100  
 57 Category 9 from 0 to 5 tons will pay \$ ~~3,950~~ \$ 3,950.  
 58 Category 10 ~~\_\_\_\_\_ New sources that have applied for a per-~~  
 59 ~~\_\_\_\_\_ mit after January 1, 2014, will pay \$ 6,000.~~

60 (f) ~~Sources not included in the 2011 Delaware Point Source Emission Inventory of Estimated Actual Regulated~~  
 61 ~~Air Contaminants or sources that have not applied for a Title V Operating Permit or synthetic minor facility permit by~~  
 62 ~~December 31, 2014, shall be assessed. The Department shall assess~~ a base fee that is consistent with the categories and  
 63 amounts specified in subsection (d) of this section for any source that becomes subject to the Program after December 31,  
 64 2017. The estimated hours on which the base fee assessment is calculated shall include an evaluation of specific regulatory  
 65 applicability to the source. This shall include, but is not limited to, the following: new source review; new source  
 66 performance standards; toxic requirements, to include maximum achievable control technology and National Emission  
 67 Standards for Hazardous Air Pollutants; and continuous emission monitoring requirements. ~~Such sources shall also be~~  
 68 ~~assessed. The Department shall assess~~ a user fee based upon allowable emissions specified in its permit that is consistent  
 69 with the categories and amounts specified in subsection (e) of this section for any source that becomes subject to the  
 70 Program after December 31, 2017.

71 (g)(1) In calendar years ~~2015, 2016, 2017, 2018, 2019, and 2020~~, the Department will grant sources with an active  
 72 Title V or synthetic minor permit on or before ~~December 31, 2014,~~ December 31, 2017, and without delinquent accounts,  
 73 annual user fee credits. The credit shall be determined by the categorical status of a qualifying facility in calendar year  
 74 ~~2014, 2017.~~ 2018, 2019, and 2020 will be calculated as a percentage of the total  
 75 Program annual fee reduction amount of ~~\$300,000. \$385,000.~~ Eligible facilities will be granted the following fee credit  
 76 percentages by category established under paragraph (e)(2) of this section:

77 Category 1 Will receive a credit of ~~26.25% of \$300,000~~ 30.14% of \$385,000  
 78 Category 2 Will receive a credit of ~~7.50% of \$300,000~~ 8.61% of \$385,000  
 79 Category 3 Will receive a credit of ~~4.50% of \$300,000~~ 5.17% of \$385,000  
 80 Category 4 Will receive a credit of ~~2.10% of \$300,000~~ 2.41% of \$385,000  
 81 Category 5 Will receive a credit of ~~0.90% of \$300,000~~ 1.03% of \$385,000

Category 6	Will receive a credit of <del>0.68% of \$300,000</del> <u>0.77% of \$385,000</u>
Category 7	Will receive a credit of <del>0.45% of \$300,000</del> <u>0.52% of \$385,000</u>
Category 8	Will receive a credit of <del>0.30% of \$300,000</del> <u>0.35% of \$385,000</u>
Category 9	Will receive a credit of <del>0.30% of \$300,000</del> <u>0.34% of \$385,000.</u>
Category 10	<del>Will receive a credit of 0%.</del>

(2) ~~The 2018, 2019, and 2020 total Program annual fee reduction amount will be reviewed and adjusted by the Title V Operating Permit Program Advisory Committee as part of the 2018 through 2020 fee negotiation cycle. Fee~~  
~~reduction credit will be terminated on December 31, 2020.~~

(h) These fees may be increased on an annual basis by no more than the Federal Consumer Price Index for the previous calendar year. Any increases in fees are subject to review and approval by the committee established pursuant to § 6099 of this title. After ~~December 31, 2017,~~ December 31, 2020, no fees shall be collected pursuant to this section unless authorized by a further act of the General Assembly. The Department shall consult with the Title V Operating Permit Program Advisory Committee prior to any proposed increase to the complement of full-time equivalent employees funded in whole or in part by the Program.

(i) Annual fees must be paid in full by the end of each calendar year ~~2015, 2016, and 2017.~~ 2018, 2019, and 2020. Any delinquent subject source shall be subject to a 2% compounding monthly interest rate for each month overdue. Each source is required to pay its annual fee. The Department has the authority to revoke a Title V permit on the sole basis that the annual fee has not been paid. Sources that have not paid their annual fee may be given notice that their Title V permit will be revoked for nonpayment of the fee. No permit shall be revoked without 60 days written notice or prior to 3 months past the due date for the fee. Cancellation of the permit shall not relieve the source of the obligation to pay the last year's fee. The Department shall track payment records of overdue and delinquent sources and shall document actions taken to recover delinquent fees. The Department shall include a detailed summary of delinquent facilities in the Title V Annual Status report, including the amount owed and the documented action taken by the Department to collect such fees.

~~(m)(1) The Title V Operating Permit Program Advisory Committee shall be assembled by the Division of Air Quality to aid in the development of a management system review performed by an independent third party of the Title V air permitting scope, funding, and revenue generation process. The goal of this review will be to enhance the Division of Air Quality's existing performance initiatives to ensure that the Division of Air Quality is properly focused on the efficient and effective use of annual fees collected from affected facilities in order to sustain the requirements of the Title V Program, as well as by deploying manpower resources and technologies to optimize services, and to ensure the development of a fair, balanced, and sustainable Title V revenue generation program. The Title V Operating Permit~~

Program Advisory Committee shall also review the proposal and scope of work and participate in the selection of the independent third party performing the review.

(2) In performing the management system review, the independent third party will:

- a. Seek input from affected stakeholders;
- b. Review the Department's Title V requirements and funding allocation processes;
- c. Review and adhere to EPA guidance and memoranda related to annual fees;
- d. Ensure that the Title V Program has the necessary resources and procedures to fulfill its mission; and
- e. Recommend any technological adaptations to ensure that the Department's Title V process is "right-sized" for the future.

(3) The independent third party shall issue a report, objectives of which shall include:

- a. How the Division of Air Quality can build upon the strength of the value stream mapping process, which is presently incorporated into the non-Title V construction and operating permit processes.
- b. How the Division of Air Quality can optimize the Title V permit processing, public hearing, regulation development, air monitoring, and reporting processes.
- c. How the Division of Air Quality can optimize staff levels to ensure that a viable and responsive work force is adequately trained and utilized considering employee turnover and new employee replacement hiring.
- d. How the Division of Air Quality can improve the emissions inventory process to help develop a timely, sustainable, and just annual fee collection system for future years.

(4) The Division of Air Quality will begin the process to hire the independent third party to conduct the management system review by September 1, 2014. The management system review shall be targeted for completion by December 31, 2015. Study results and recommendations shall be incorporated into the next cycle of annual fee legislation development. This 1-time management system review is to be funded by the existing annual fee balance with a total cost not to exceed \$100,000. [Repealed.]

Section 2. This Act takes effect on January 1, 2018.

#### SYNOPSIS

This Act extends the Clean Air Act Title V Operating Permit Program annual fees for facilities in Delaware. This Act was developed through the Title V Operating Permit Program Advisory Committee. The existing statutory authorization for the fees sunsets December 31, 2017. The fees are based on the number of staff hours spent on permitting, compliance, and enforcement for each facility and the facility's air emissions. This Act authorizes the Department of Natural Resources and Environmental Control to collect annual fees for calendar years 2018 through 2020 at which point the authority sunsets.

This Act also removes previous language and requirements to complete a Title V Operating Permit Program Management Review. The program management review was completed and a final report was issued in April 2017.

This Act also makes a technical correction to conform existing law to the standards of the Delaware Legislative Drafting Manual.

Author: Senator McDowell