SPONSOR: Sen. Paradee & Rep. Heffernan

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL NO. 249

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

WHEREAS, the federally implemented Title V and synthetic minor air quality permit program is required by federal law to be fully funded by the holders of those permits;

WHEREAS, the General Assembly has implemented a program to ensure that obligation is carried out, but to do so, updates to the permit fees must be made regularly;

NOW, THEREFORE:

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 strike through and insertions as shown by underline as follows:

§ 6097 Fees.

(c) The Department shall collect annual fees, payable annually or in ~~quarterly~~ 2 installments, as set forth in subsection (j) of this section, during calendar years ~~2018, 2019, and 2020~~ 2021, 2022, and 2023, from each source that is required to pay the annual fee as set forth in subsection (a) of this section. The annual fee for each subject source will be determined by the sum of ~~2~~ 3 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, and a program fee as set forth in subsection (g) of this section. For any source that becomes subject to the Program after December 31, ~~2017~~2020, the base fee, ~~and~~ user fee, and program fee shall be calculated as set forth in subsections (f) and (h) 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~~, 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 ~~2018, 2019, and 2020~~ 2021, 2022, and 2023, the Department will place each subject source into ~~1~~one of the following ~~10~~ categories:

Category A	Greater than 6,000 hours will pay ~~$ 277,020~~$277,020
Category B	from 5,001 to 6,000 hours will pay ~~$108,300~~$108,300
Category C	from 4,001 to 5,000 hours will pay ~~$ 93,480~~$93,480
Category D	from 3,001 to 4,000 hours will pay ~~$ 80,940~~$80,940
Category E	from 2,001 to 3,000 hours will pay ~~$ 57,000~~$57,000
Category F	from 1,501 to 2,000 hours will pay ~~$ 42,180~~$42,180
Category G	from 1,001 to 1,500 hours will pay ~~$ 28,500~~$28,500
Category H	from 667 to 1,000 hours will pay ~~$ 18,240~~$18,240
Category I	from 334 to 666 hours will pay ~~$ 9,120~~$9,120
Category J	up to 333 hours will pay ~~$ 5,700~~$5,700.

(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 ~~2012 to 2016~~ 2015 to 2019. 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, ~~2020~~ 2023.

(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~~ the 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, nitrogen oxides (NO_X); particulate matter less than 10 microns (PM_{10}); sulfur dioxides (SO_2); volatile organic compounds (VOC), in whole tons and in the aggregate, excluding carbon monoxide (CO) and particulate matter less than 2.5 microns ($PM_{2.5}$), as listed in the ~~2014~~ 2017 Delaware Point Source Emission Inventory of Estimated Actual Regulated Air Contaminants.

(2) In calendar years ~~2018, 2019, and 2020~~ 2021, 2022, and 2023, the Department will place each subject source into 1 of the following ~~9~~ categories:

Category 1	Greater than 2,000 tons will pay ~~$ 350,00~~$350,000

Category 2	from 1,001 to 2,000 tons will pay ~~$ 100,000~~$100,000
Category 3	from 501 to 1,000 tons will pay ~~$ 60,000~~$60,000
Category 4	from 201 to 500 tons will pay ~~$ 28,000~~$28,000
Category 5	from 101 to 200 tons will pay ~~$ 12,000~~$12,000
Category 6	from 51 to 100 tons will pay ~~$ 9,000~~$9,000
Category 7	from 26 to 50 tons will pay ~~$ 6,000~~$6,000
Category 8	from 6 to 25 tons will pay ~~$ 4,100~~$4,100
Category 9	~~from 0~~up to 5 tons will pay ~~$ 3,950~~$3,950.

(f) The Department shall assess a base fee that is consistent with the categories and amounts specified in subsection (d) of this section for any source that becomes subject to the Program after December 31, ~~2017~~2020. The estimated hours on which the base fee assessment is calculated shall include an evaluation of specific regulatory applicability to the source. This shall include, but is not limited to, the following: new source review; new source performance standards; toxic requirements, to include maximum achievable control technology and National Emission Standards for Hazardous Air Pollutants; and continuous emission monitoring requirements. The Department shall assess a user fee based upon allowable emissions specified in ~~its~~ the source's permit that is consistent with the categories and amounts specified in subsection (e) of this section for any source that becomes subject to the Program after December 31, ~~2017~~ 2020.

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

~~Category 1~~	~~Will receive a credit of 30.14% of $385,000~~
~~Category 2~~	~~Will receive a credit of 8.61% of $385,000~~
~~Category 3~~	~~Will receive a credit of 5.17% of $385,000~~
~~Category 4~~	~~Will receive a credit of 2.41% of $385,000~~

~~Category 5~~ ~~Will receive a credit of 1.03% of $385,000~~

~~Category 6~~ ~~Will receive a credit of 0.77% of $385,000~~

~~Category 7~~ ~~Will receive a credit of 0.52% of $385,000~~

~~Category 8~~ ~~Will receive a credit of 0.35% of $385,000~~

~~Category 9~~ ~~Will receive a credit of 0.34% of $385,000~~

~~(2) The fee reduction credit will be terminated on December 31, 2020~~ Repealed]

(g) The Department shall assess a program fee based on the source's combined base and user fees. In calendar years 2021, 2022, and 2023, the Department will place each subject source into one of the following categories:

Category PF1 Total Base and User Fees greater than $125,000 will pay $38,250

Category PF2 Total Base and User Fees $100,000 - $124,999 will pay $34,425

Category PF3 Total Base and User Fees $50,000 - $99,999 will pay $22,950

Category PF4 Total Base and User Fees $25,000 - $49,999 will pay $11,475

Category PF5 Total Base and User Fees $15,000 - $24,999 will pay $6,120

Category PF6 Total Base and User Fees $10,000 - $14,999 will pay $3,825

Category PF7 Total Base and User Fees < $10,000 will pay $3,060

(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, ~~2020~~2023, 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 2018, 2019, and 2020~~ June 30 of each calendar year 2021, 2022, and 2023. ~~Partial~~ Installment payments, due March 31 and June 30, are allowed upon written request and Department approval. A subject source is considered delinquent if payment is not received by the aforementioned due dates depending on the elected payment option. 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 or synthetic minor 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 or synthetic minor 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.

~~(j)~~(k) In determining the amount of tons of actual emissions, the Department shall not be required to include any amount of air contaminant emitted by any source in excess of 4,000 tons per year of that air contaminant. The determination of common control or common ownership shall be consistent with the requirements of 40 C.F.R. Part 70.

~~(k)~~(l) Any funds collected under this section shall be deposited in the account as described in § 6096 of this title, shall be interest earning, and shall be used solely to develop, administer and implement the Program. The Secretary shall cause an audit of the fiscal affairs to be made annually and shall furnish a copy of such audit report together with such additional information or data with respect to the affairs as the Secretary may deem desirable to the Title V Operating Permit Program Advisory Committee.

~~(l)~~(n) The Department will continue to track for each source the actual hours spent processing Title V permits and performing other related services under the Title V program and shall, as part of the annual fee assessment, provide each source with the number of said hours expended during the preceding year. The Division of Air Quality will develop, by May 1 of each year, the overall program costs, the fees collected, current staffing levels, program accomplishments, and each subject source's total hours for the preceding calendar year in report form and present this report at an annual meeting with the Title V Operating Permit Program Advisory Committee. The Division of Air Quality shall publish a notice announcing the availability of the report in a paper of general circulation throughout the State. ~~Additionally, the Division shall mail a copy of said notice to the personnel on the Division of Air Quality's mailing lists.~~

Section 3: This Act shall be effective January 1, 2021.

SYNOPSIS

This Act extends the Clean Air Act Title V Operating Permit Program annual fees for facilities in Delaware, which have historically expired and been reauthorized by the General Assembly every three years. Existing statutory authorization to collect fees sunsets December 31, 2020. This legislation updates the fee assessments based on the work of the Title V Operating Permit Program Advisory Committee and makes additional clarifying updates to the fee provisions. For 2021-2023, the total fee will be comprised of a base fee, user fee, and a program fee. Base fees are based on the number of staff hours spent on the source's permitting, compliance, and enforcement activities, while the user fee is based on the source's air emissions. The program fee will be assessed based on the total base and user fees. A fee credit implemented to reduce a prior fund balance is allowed to sunset as scheduled. This Act authorizes the Department of Natural Resources and

Environmental Control to collect Title V annual fees for calendar years 2021 through 2023 at which point the authority sunsets and would need to be reauthorized.

Author: Senator Paradee