

# **TITLE 7**

## **Conservation**

### **Natural Resources**

#### **CHAPTER 60. Environmental Control**

##### **Subchapter VIII. Clean Air Act Title V Operating Permit Program**

###### § 6095 Applicability.

This subchapter shall apply to all sources required to obtain a Title V Operating Permit pursuant to the federal Clean Air Act Amendments of 1990. Such sources shall include, but not be limited to, the following:

- (1) Sulfuric acid plants; municipal incinerators; fossil-fuel burners; petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; petroleum refineries; sulfur recovery plants; chemical process plants;
- (2) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control or common ownership consistent with the requirements of 40 C.F.R. Part 70, that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to Title I, § 112(b) of the Clean Air Act Amendments of 1990, Public Law 101-549, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Department may establish by regulation;
- (3) A source that directly emits or has the potential to emit, 100 tpy or more of any air pollutant, including any major source of fugitive emissions of any such pollutant, as the Department may establish by regulation;
- (4) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or “moderate,” 50 tpy or more in areas classified as “serious,” 25 tpy or more in areas classified as “severe,” and sources subject to the requirements for preconstruction review; except that the references in this paragraph to 100, 50, and 25 tpy of nitrogen oxides shall not apply with respect to any source for which the Department has made a finding, pursuant to regulations, that requirements under this section do not apply;
- (5) For areas within the northeast transport region, sources with the potential to emit 50 tpy or more of volatile organic compounds; or
- (6) Any other sources designated by the Department or mandated for designation by the United States Environmental Protection Agency.

69 Del. Laws, c. 121, § 1.;

###### § 6096 Title V account.

The Secretary shall establish a separate account entitled the “Clean Air Act Title V Operating Permit Program Account,” hereinafter the “Account.” All fees collected under this subchapter shall be deposited into this account and utilized solely to cover all direct and indirect costs required to support the Title V Operating Permit Program, hereinafter “Program.” Any civil or administrative penalties or costs recovered as a result of a

violation of a Title V permit shall be used to further the goals and purposes of the Department to promote clean air for the citizens of Delaware.

69 Del. Laws, c. 121, § 1.;

§ 6097 Fees.

(a) The Department shall collect an annual fee from sources that are required to obtain a Title V Operating Permit pursuant to the Title V Program and from sources who voluntarily limit their potential to emit to below Title V applicability thresholds as set forth in § 6095 of this title (i.e., a synthetic minor facility). The annual fees shall be utilized solely to pay for all direct and indirect costs required to develop, administer and implement the Program.

(b) The fee schedule must result in the collection and retention of revenues sufficient to cover the permit program costs. These costs include, but are not limited to, the costs of the following activities, as they relate to the operating permit program for stationary sources: preparing generally applicable regulations or guidance documents regarding the permit program or its implementation or enforcement; reviewing and acting on any application for a permit, permit revision or permit renewal, including the development of an applicable requirement as part of the processing of a permit or permit revision or renewal; general administrative costs of implementing the permit program, including the supporting and tracking of data; implementing and enforcing the terms of any Title V Operating Permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program; emissions and ambient monitoring; modeling; preparing inventories and tracking emissions; and supporting the ombudsman established pursuant to the Small Business Stationary Source Technical and Environmental Compliance Program (“SBTCP”) to assist sources covered by the SBTCP in determining and meeting their obligations under the Title V Operating Permit Program.

(c) The Department shall collect annual fees, payable annually or in quarterly installments, during calendar years ~~2018~~2021, ~~2019~~2022, and ~~2020~~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 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 any source that becomes subject to the Program after December 31, ~~2017~~2020, 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, 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~~2021, ~~2019~~2022, and ~~2020~~2023, the Department will place each subject source into 1 of the following 10 categories:

Category A	Greater than 6,000 hours will pay \$ 277,020
Category B	from 5,001 to 6,000 hours will pay \$ 108,300
Category C	from 4,001 to 5,000 hours will pay \$ 93,480
Category D	from 3,001 to 4,000 hours will pay \$ 80,940
Category E	from 2,001 to 3,000 hours will pay \$ 57,000
Category F	from 1,501 to 2,000 hours will pay \$ 42,180

Category G	from 1,001 to 1,500 hours will pay \$ 28,500
Category H	from 667 to 1,000 hours will pay \$ 18,240
Category I	from 334 to 666 hours will pay \$ 9,120
Category J	up to 333 hours will pay \$ 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 ~~2012-2015~~ to ~~2016~~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<sub>x</sub>]; particulate matter less than 10 microns [PM<sub>10</sub>]; sulfur dioxides [SO<sub>2</sub>]; volatile organic compounds [VOC]), in whole tons and in the aggregate, excluding carbon monoxide (CO) and particulate matter less than 2.5 microns (PM<sub>2.5</sub>), as listed in the ~~2014-2017~~ Delaware Point Source Emission Inventory of Estimated Actual Regulated Air Contaminants.

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

Category 1	Greater than 2,000 tons will pay \$ 350,000
Category 2	from 1,001 to 2,000 tons will pay \$ 100,000
Category 3	from 501 to 1,000 tons will pay \$ 60,000
Category 4	from 201 to 500 tons will pay \$ 28,000
Category 5	from 101 to 200 tons will pay \$ 12,000
Category 6	from 51 to 100 tons will pay \$ 9,000
Category 7	from 26 to 50 tons will pay \$ 6,000
Category 8	from 6 to 25 tons will pay \$ 4,100
Category 9	from 0 to 5 tons will pay \$ 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) ~~[Repealed.]~~ (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.~~

(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~~June 30 of each calendar year 2021, 20192022, and ~~2020~~2023. Partial 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 a subject source's 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 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.

(j) 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) 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. The Secretary shall report the results of internal reviews to the Title V Operating Permit Program Advisory Committee within the annual report set forth in § 6097(l).~~

(l) 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.~~

(m) [Repealed.]69 Del. Laws, c. 121, § 1; 70 Del. Laws, c. 8, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 214, § 1; 73 Del. Laws, c. 318, § 1; 73 Del. Laws, c. 381, § 1; 75 Del. Laws, c. 172, §§ 1-5; 76 Del. Laws, c. 73, § 1; 76 Del. Laws, c. 312, § 1-7; 77 Del. Laws, c. 430, §§ 54, 55; 78 Del. Laws, c. 110, §§ 1-15; 79 Del. Laws, c. 430, § 1; 81 Del. Laws, c. 75, § 1;

#### § 6098 Application shield.

Except for sources required to have a permit before construction or modification under the applicable requirements of this subchapter, if an applicant has submitted a timely and complete application for a permit required by this title (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this subchapter, unless the delay in final action was due to the failure of the applicant to timely submit information required or requested to process the application.

72 Del. Laws, c. 214, § 3; 79 Del. Laws, c. 430, § 2.;

#### § 6099 Title V Operating Permit Program Advisory Committee.

There shall be established a "Title V Operating Permit Program Advisory Committee," hereinafter referred to as "TV Committee." ~~The TV Committee members shall be appointed by the Governor~~Secretary of the Department of Natural Resources and Environmental Control ("Secretary") and shall include, but not be limited to, the ~~Secretary of the Department of Natural Resources and Environmental Control~~, or the Secretary's duly appointed designee; the Director of the Division of Air Quality, or the Director's duly appointed designee; 2 members, 1 to be a member of the Chemical Industry Council, who will represent stationary sources; ~~1 to be a member of the Chemical Industry Council~~; a member of the Delaware State Chamber of Commerce; a member representing a public-utility provider; 2 members of a nationally affiliated or state environmental advocacy group; and the chairpersons of the House and the Senate Natural Resource Committees. ~~The Secretary of the Department of Natural Resources and Environmental Control shall serve as the Chair of this Committee. The Committee shall provide the Governor and the General Assembly with a report on or before February 1 of each year, for the previous calendar year, identifying the amounts and sources of fees collected pursuant to § 6097 of this title, the expenditures made by the Department to implement the Program, information regarding the performance of the Program, whether the fees collected by § 6097 of this title are adequate to ensure the effective implementation of the Program, and recommendations to remedy or improve any deficiencies or elements of the Program. The TV Committee should collectively develop and provide recommendations to the Department for legislative renewals on a three year cycle, that include fee levels and distribution, and suggested improvements to any deficiencies or elements of the Program.~~

69 Del. Laws, c. 121, § 1; 70 Del. Laws, c. 8, § 3; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 214, §§ 2, 4; 73 Del. Laws, c. 381, § 2; 76 Del. Laws, c. 312, § 8; 77 Del. Laws, c. 430, § 56; 78 Del. Laws, c. 110, § 16.;

### Synopsis

This bill extends the Clean Air Act Title V Operating Permit Program annual fees for facilities in Delaware. This bill was developed through the Title V Operating Permit Program Advisory Committee. Existing statutory authorization sunsets December 31, 2020. 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 bill authorizes the Department of Natural Resources and Environmental Control to collect annual fees for calendar years 2021 through 2023 at which point the authority sunsets.

Additionally, this bill terminates the fee credit program (2015-2020) established to reduce the Title V account carryover balance. Finally, this bill revises language from initial program development (1991), to language appropriate for a well-established program.