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**From:** jamcnelly1@arippa.org  
**Sent:** Monday, December 21, 2009 4:23 PM  
**To:** EP, RegComments  
**Cc:** Tate, Michele  
**Subject:** PADEP AIR QUALITY FEE STRUCTURE  
**Attachments:** PADEP FEES ARIPPA COMMENTS 2009 12 21 FINAL.doc

DEC 23 REC'D

INDEPENDENT REGULATORY  
REVIEW COMMISSION

ARIPPA HEREBY SUBMITS its Official COMMENTS Concerning: PADEP AIR QUALITY FEE STRUCTURE (see attached)

TO:  
Environmental Quality Board  
P. O. Box 8477, Harrisburg, PA 17105-8477  
16th Floor Rachael Carson State Office Bldg  
400 Market Street  
Harrisburg PA 17101-2301

Re: "PADEP AIR QUALITY FEE STRUCTURE"  
DATE: December 21, 2009  
Submitted via e-mail to: [RegComments@state.pa.us](mailto:RegComments@state.pa.us)

Dear EQB Board Members: (email copy to Michele Tate, Regulatory Coordinator EQB)

ARIPPA's comments represent 13 environmentally beneficial, waste coal to alternative energy generating plants, approximately 5000 Commonwealth citizens directly or indirectly employed by the industry, and 10% of the total electricity generated in PA (PA total 1449 MW's or an average of 97MGW per plant)

ARIPPA, on behalf of its member companies, hereby provides comments on the proposed PADEP AIR QUALITY FEE STRUCTURE. ARIPPA appreciates this opportunity to comment.

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**ARIPPA COMMENTS: PADEP AIR QUALITY FEE STRUCTURE**

Environmental Quality Board

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Dear EQB Board Members:

ARIPPA's comments represent 13 environmentally beneficial, waste coal to alternative energy generating plants, approximately 5000 Commonwealth citizens directly or indirectly employed by the industry, and 10% of the total electricity generated in PA (PA total 1449 MW's or an average of 97MGW per plant)

ARIPPA, on behalf of its member companies, hereby provides comments on the **proposed PADEP AIR QUALITY FEE STRUCTURE**. ARIPPA appreciates this opportunity to comment.

**I. Historical significance and background:**

For nearly two centuries coal has been mined in Pennsylvania. Coal mining operations continue today and will likely continue for at least another century in Pennsylvania. In the past, coal that was very low in heat content (BTU's) and accordingly undesirable in the marketplace was randomly discarded all across Pennsylvania's landscape. This "waste coal" accumulated and lay idle on thousands of acres of land...land that possessed a variety of aesthetic, useful, and beneficial qualities. Over time wind, rain, and other naturally occurring environmental conditions caused the piles of "waste coal" to alter and/or expand their negative "environmental footprint" on the Commonwealth's limited land resources.

A few decades ago a beneficial use of waste coal was developed with the aid of technological advancements and support from governmental agencies and private investors. This beneficial use was designed to convert large quantities of "waste coal" into alternative electricity ...electricity to meet the energy needs of hundreds of thousands of households and businesses. Removing waste coal discarded from past mining activities cleared thousands of acres of land, formerly hidden under tons of this "idle waste". Converting the waste coal into energy and utilizing the by-product ash residue to reclaim vacant and damaged abandoned mine lands and streams (back to their natural environmental state and usefulness) are some of the positive effects realized by the development of this new industry.

The waste coal to alternative energy Industry is truly unique...being one of the few environmentally beneficial alternative energy industries. Understanding the unique environmental advantages of the continued beneficial use of waste coal is not only pivotal to understanding the motives behind our comments listed below but also the true partnership our industry shares with the goals and ideals of various watershed groups and PADEP. Accordingly we ask and appreciate your special attention to our industry, its comments, and concerns for the future of Pennsylvania.

## **II. Description of ARIPPA Member Facilities:**

ARIPPA is a trade association comprised of thirteen (13) waste coal-fired electric generating plants located in both the anthracite and bituminous regions of Pennsylvania. ARIPPA's member facilities constitute the overwhelming majority of the waste coal power production industry in the world and generate 10% of the total electricity generated in PA. Approximately 5000 Commonwealth citizens are directly or indirectly employed by the industry. Each of the ARIPPA member facilities uses a stationary circulating fluidized bed ("CFB") waste coal-fired boiler that generates electricity for sale at a minimum capacity of more than 25 MWe. More than half of the member plants operate under a long term "Power Purchase Agreement", supplying alternative energy to utility companies at a fixed price with no ability to "pass on" increased operational or environmental compliance costs on to rate payers or consumers.

The ARIPPA facilities provide a unique environmental benefit by converting waste coal as fuel and utilizing state-of-the-art circulating fluidized bed ("CFB") technology. ARIPPA facilities utilize coal refuse (waste) from both past and current mining activities, and thereby reclaim abandoned strip mines and abate acid mine drainage from waste coal piles at no cost to Pennsylvania taxpayers. By converting waste coal into alternative energy, ARIPPA members are removing one of the principal sources of contamination to surface water and groundwater in Pennsylvania.

The industry provides a zero cost option for removing waste coal piles from the environment. Should that option discontinue the entire responsibility for removal and clean up would fall on the tax payers and government, a task the PADEP has testified would cost billions of dollars and take over 500 years to accomplish. ARIPPA plants work closely with various local watershed groups such as EPCAMR and WPCAMR as well as Earth Conservancy to reclaim abandoned mine lands and convert polluted streams to clean and usable.

In addition to the environmental benefits resulting from the removal and conversion of waste coal, ARIPPA facilities have minimized potential emission pollutants traditionally associated with using a fossil fuel by incorporating state-of-the-art technology...true CLEAN COAL technology utilizing CFB boilers.

ARIPPA requests that EQB, PADEP (Bureau of Mining and Reclamation) consider the following factors as they review our comments on the proposed regulations:

- The unique nature of the CFB CLEAN COAL technology employed by the ARIPPA member plants
- The direct and indirect employment of thousands of citizens
- The generation of alternative energy collectively exceeding 10% of the Commonwealths generation
- The conversion of one of the principal sources of environmental contamination in the Commonwealth into a needed alternative energy... at no cost to Pennsylvania taxpayers.
- The environmental benefits provided to the Commonwealth...reclaiming abandoned strip mines (through the beneficial use of ash) and minimizing acid mine drainage from waste coal piles

### **III. GENERAL COMMENTS:** (see attached document also)

- **The Commonwealth Budget and correlating taxes paid by all citizens and businesses should properly pay for basic PADEP overhead and services as determined by the legislative process**

PADEP as a government department is funded through the state budget process...accordingly ARIPPA is very concerned when additional fees are being proposed to administer programs and services designed to be directly handled by such department. While ARIPPA can accept and understand the charging of fees for services that are truly unique or having time/labor excessiveness or stand outside the normal duties and services of PADEP...certainly the basic general overhead of offices/manpower/supplies should be part of the general Commonwealth budget and taken into consideration (serve as a base) before any fees charged in addition to those monies provided by the Commonwealth budget. We recognize however that certain fees specifically: Title V emission fees are mandated by the Clean Air Act to cover the costs of administering the Title V permit program...these fees are legitimate and fall outside of what I have referred to as "basic PADEP overhead and services". Of course, that doesn't mean that the proposed Title V emission fee increase is justified, just that the collection of Title V emission fees is not controversial.

- **Fees charged citizens or industry without publishing supporting rationale or basis potentially usurps the duties and responsibilities given to PA Legislators' and the Commonwealth Budget process**

It is extremely difficult to respond to the proposed new and expanded fee structure without, at a minimum, the Department provides a program analysis and resource evaluation regarding its existing program and comparing the existing program to the program as presented in the 1993, Apogee Research Inc. Report entitled "Resource Need and Analysis and Financial Plan". This report served as the basis for the regulatory changes at that time, including the establishment of emission fees and permit fees under which the Department was to fund a large percentage of the Air Quality Program (especially the Title V Program).

The public and industry is entitled to know, if the existing fee structure is adequate, needs adjustment, and if so to what level. There is no report provided that allows one to review whether or not the increase program costs are "BASED ON SOUND ACCOUNTING PRINCIPLES" and are necessary.

With the massive changes being proposed, both in terms of increase emission fees, permitting fees, and a major expansion of fees to cover aspect of both Title V and Non-Title V reviews, it is ARIPPA's opinion that the Department should have updated the Apogee Research Inc. Study first, sought public input/comments, and then publish proposed increases in fees...In doing so, they could properly demonstrate fee increases that were justified and reasonable. By utilizing sound accounting practices and providing internal audit of the program activities along with any justification needed to support fee increases including discussions of alternatives to lower costs would be more appropriate than just a proposal to raise fees and expand the number of items that a fee is charged for.

Therefore, PADEP should be mindful of the potential perception and interpretation that charging fees that may be in excess of transparent and independent accounting/time studies may be considered as an attempt to undermine the legislative budget process. The proposed fee increases do not offer the ability to review the basis for any such increases especially those that fall well outside the realm of Consumer Price Index or Cost of Living Adjustments.

These changes to Chapter 92 would result in increasing NPDES water quality permit fee revenue from about \$750,000 annually to about \$5 million. In addition to increasing permit review fees, PADEP is also proposing an annual permit administration fee for the first time.

The new NPDES fees will have an impact on 5,000 industrial and public wastewater treatment systems across the state as well as about 5,000 applicants applying for NPDES General Permits.

These latest proposals come on top of EQB action in July when it finalized changes to permit fees for Marcellus Shale natural gas drilling applications to increase revenue from about \$935,000 a year to \$8.4 million for FY 2009-10. In June changes were proposed to Chapter 102 Erosion and Sedimentation regulations to increase application fees to yield about \$7.3 million annually instead of about \$635,000. Much of the increase-- about \$5 million- would go to county conservation districts which perform this permit review work.

Add these fees to the other fee changes proposed this year which include: Proposed Laboratory Accreditation fees increased from \$500,000 to \$1.3 million; Proposed Air Quality fee increases from \$20.2 million to \$24.4 million; and PADEP's Mining and Reclamation Advisory Board considering substantial fee increases for mining permits and it is easy to conclude that PADEP is usurping the duties and responsibilities given to PA Legislators' and the Commonwealth Budget process.

- **Without transparent controls or caps or the utilization of industry data on "affordability" governmental departments could in essence eliminate industries**

ARIPPA has had experience with other proposed regulations from various departments (state and federal) that request or determine the "affordability" (or current health of the overall economy) of such proposals by affected parties. As a government by the people for the people this seems to ARIPPA to be a logical and fair approach to regulations that may serve as an undue economic burden on any entity. The lack of transparent methods, controls or caps to determine fair and equitable fees (and the ability to comment/vote on such methods, controls or caps) charged (in addition to normal taxation) by regulators is in need of immediate corrective action before the potential power of elimination of any industry through excessive charges is realized.

Specifically and especially concerning to ARIPPA is:

1. The appearance (our interpretation) that any type of "plan change" will remove it from a 'minor' event by current rules to a 'significant' event. (Since every review generally includes an assessment of existing control features at a facility in relation to the change requested).
2. Request for determination, (which is a 'cursory review' at best, to determine if a plan change is required and if so what type) is currently an administrative action with no fee. (Since this is primarily an 'administrative exercise' to decide what type of action a facility is required to take and has little 'technical' action involved) Accordingly it is difficult to understand how the fee structure proposed is equitable or applicable. Essentially a "Request for determination" is a check to make sure the facility and the bureau read current regulations in the same way, not an intensive review of any proposed change. A charge for this activity by a government funded department is not justified.

Although it may be a facilities choice to alter their permit with a Request for Determination and subsequent 'Plan' change submission for permit changes, a currently permitted Title V facility will be paying in excess of \$100,000/year to operate completely within or below their current permit limits. Such expense is hardly conducive to the business of operating a 'legal' facility within the state of Pennsylvania, and has produced no larger economic burden on the state than when originally permitted. The original 'application' or 'renewal' charge was inflated previously to cover costs of permit term quality assurance. It appears the facility will now be charged twice for this activity.

- **Fees should be based on transparent independent time/labor studies and reviews.**

ARIPPA suggests that the Department should be required to submit any fees or increases to fees (including those currently proposed) to an independent time/labor review body that would equitably and openly determine the fairness of such charges.

- **Fees should be based on transparent published independent CPI or COLA indexes specifically for the Commonwealth of PA geographic area**

The entire 'structure' of proposed fee increase for review seems to have no rational basis and appears to be just a new 'tax' on electric generating/current operating facilities. Cost of living adjustments might justify existing fee increases, but there is no connection to same for any increases noted only changes in fees periodically that vary over a four year span from 13% to 30% depending on the span in question. These proposed fees accordingly far exceed recent COLA figures for the Commonwealth.

The 'unknown' charges for future inclusion under a General Permit are not justified. The whole purpose of application for this inclusion is to minimize PADEP required review and action for standard practices situations that have already been technically approved, not an income vehicle for operation of a program designed to reduce PADEP administrative workload.

- **While ARIPPA wholeheartedly dismisses the perception, PADEP and EQB must be cognizant that certain "environmental issue" based associations have voiced openly a perception that (some comments published in the media) PADEP is unduly economically influenced by industry. Assessing and collecting fees that are not based on or are in excess of transparent published independent CPI or COLA indexes likely will increase this perception.**

PADEP and EQB should be mindful of the potential increased perception and interpretation (**wholeheartedly dismissed by ARIPPA**) that collecting industry fees that may be in excess of transparent and independent accounting/time/labor studies and or CPI or COLA indexes may be considered by some as a basis for the arguments as quoted above.

- **PADEP and its employees should serve as separate independent judges of fillings/permits and not be unduly influenced by PADEP's need to "make budget" through fees charged and collected.**

PADEP should be mindful of the potential perception and interpretation by employees and others that collecting industry fees may be needed to meet its operating and or personnel salaries/budgets. Such perceptions may possibly erode the application-permit judgment process and or employee morale. Government regulators and employees of same should serve the Commonwealths interest with an ability to act in an independent atmosphere that is fair to all citizens. (Without regard to Department economics or current political correctness)

- **PADEP needs to publish/demonstrate the rationale utilized to justify the proposed substantial increase in Title V emission fees...and allow open debate-comments on such rationale**

In 1994 the initial Title V emission fee was set at \$37/ton of emissions per 25 Pa. Code 127.705 with the provision that in future years the fee be increased by the ratio of the Consumer Price Index for All-Urban Consumers (CPI-U) for that year to the CPI-U for the previous year. The Clean Air Act requires Title V programs to be fully funded by these fees. Over the years, PADEP has increased these fees in accordance with 25 Pa. Code 127.705(e) to the point where in 2008 the emission fees were \$54/ton. Now the Department has proposed that these fees be raised to \$70/ton. Since 1994, the CPI-U has increased by 45.7 percent. The Title V fee proposed by the Department represents an 89.2 percent increase in emission fees over the same period. What are the specific costs of the Title V program that have increased at a rate that is essentially twice that of inflation?

For comparison sake, the following list is a sampling of Title V emission fees that are currently being assessed in other states. All but one of these states has an emission fee that is lower than Pennsylvania currently charges and many states have fees that are substantially lower. Presumably these fees are adequate to cover the Title V program costs of these states:

**Pennsylvania \$54-\$70.00**

Michigan: \$45.25  
 Illinois: \$18.00  
 Ohio: \$43.75  
 Missouri: \$40.00  
 Nebraska: \$62.00

Oklahoma: \$34.04  
 Texas: \$33.71  
 Iowa: \$52.00  
 Wisconsin: \$35.71  
 Oregon: \$48.49  
 Maryland: \$52.13

In the April 2009 published report issued by the Department regarding "An Evaluation of the Pennsylvania Air Quality Program (2002-2007) the following figures are presented"

FY	Revenues	Expenditures	Balance
2001/2002	35,669,711	30,497,851	5,201,859
2002/2003	34,646,728	34,578,209	368,519
2003/2004	36,986,110	35,068,752	1,917,358
2004/2005	38,277,575	33,917,786	4,359,789
2005/2006	40,108,639	32,266,114	7,842,525
2006/2007	37,236,657	35,162,966	2,073,691
			<b>\$21,763,741 TOTAL EXCESS</b>

The report shows a combined net positive balance over the period from 2001-2007 of \$21,763,741. Are such excess funds being utilized by the Department and were they factored into the proposed fee increases? ARIPPA must question the need to have a \$4.9 million increase in fees in light of such information.

Accordingly ARIPPA feels PADEP needs to publish/demonstrate the rationale utilized to justify the proposed substantial increase in Title V emission fees...salaries, administrative costs, equipment costs, and/or other factors. It remains unexplained why the cost of administering a Title V program should be so much higher in Pennsylvania.

#### IV. Final Summary

1. The basic general overhead of PADEP offices/manpower/supplies should be part of the general Commonwealth budget and taken into consideration (serve as a base) before any fees are assessed or considered in addition to those monies provided by the Commonwealth budget process.
2. The lack of transparent methods, reports, controls, or caps to determine fair and equitable fees (and the ability to comment/vote on such methods, controls or caps) charged (in addition to normal taxation) by regulators is in need of immediate corrective action before the potential power of elimination of any industry through excessive fees/charges is realized.
3. The Department should be required to updated the Apogee Research Inc. Study first, seek public input/comments, and then publish proposed increases in fees...In doing so, they could properly demonstrate fee increases that were justified and reasonable...accordingly these proposed regulations should be sent back to PADEP for supporting information.
4. ARIPPA suggests that the Department should be required to submit any fees or increases to fees (including those currently proposed) to an independent time/labor review body that would equitably and openly determine the fairness of such charges
5. Several proposed fees that affect the waste coal to energy industry far exceed recent COLA and or CPI figures for the Commonwealth and accordingly appear to be unfair and unjustified. For example the Department has proposed that Title V fees be raised to \$70/ton from a current level of \$54 (the current level already exceeds Title V emission fees assessed in other states) an increase that represents almost TWICE the rate of inflation for that same time period. The April 2009 published report issued by the Department regarding "An Evaluation of the Pennsylvania Air Quality Program (2002-2007) shows a combined net positive balance over the period from 2001-2007 of \$21,763,741. Are such excess funds being utilized by the Department and were they factored into the proposed fee increases? ARIPPA must question the need to have a \$4.9 million increase in fees in light of such information.
6. PADEP should be mindful of the potential perception and interpretation (justified or not) of collecting industry fees that may be in excess of transparent and independent accounting/time/labor studies and or CPI or COLA indexes. Such fees may be considered by some as a basis for a political argument that PADEP is "bought by industry"
7. PADEP should be mindful of the potential perception and interpretation by employees (and others on advisory committees) that collecting industry fees may be needed to meet the department's operating and or personnel salary needs. Such perceptions may possibly erode the fairness of the application-permit judgment process and or employee morale.

ARIPPA wishes to thank the EQB/PADEP for allowing our industry to offer comments and suggested changes to the proposed packet of regulations and we hope our comments will be accepted in a constructive and cooperative spirit.

The unique nature of the CFB CLEAN COAL technology employed by the ARIPPA member plants and the environmental benefits provided to the Commonwealth...reclaiming abandoned strip and deep mines (through the beneficial use of a unique ash) while minimizing acid mine drainage from waste coal piles... **and** the conversion of one of the principal sources of environmental contamination in the NE USA into a needed alternative energy... at no cost to taxpayers... symbolizes our ongoing effort to continually improve the environmental landscape of the Commonwealth and the USA.

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