

Comments of the Independent Regulatory Review Commission



Environmental Quality Board Regulation #7-478 (IRRC #2980)

Air Quality Title V Fee Amendment

May 8, 2013

We submit for your consideration the following comments on the proposed rulemaking published in the February 2, 2013 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

1. Legislative and public comments on the proposed regulation. – Economic impact; Protection of the Public Health, safety and welfare; Implementation procedures; Reasonableness.

We have reviewed a broad range of comment on this proposed regulation. A comment was submitted in full support of the increase. Another was submitted questioning whether the increase was large enough. Comments were also submitted by two parties, who are subject to the fees, stating the fee increase is unjustified. Even though their respective viewpoints on the fee increase differ, we believe all of the commentators have raised valid points that need to be further reviewed by the EQB. The following is a summary of the comments.

Comments of Democratic Chair Greg Vitali, House Environmental Resources and Energy Committee

Among several points raised in his comment letter dated April 8, 2013, Democratic Chair Vitali is concerned that the proposed increase will result in the air quality program operating at a loss again in just two fiscal years. He suggests that there are options for increasing revenue to avoid the negative consequences of an underfunded program.

Public comment in full support

A public commentator believes this increase will provide an adequate fee to cover the costs of administering the air permit program. This commentator states that adequate staffing will be needed to meet challenges posed by emissions in the Marcellus Shale region and to purchase testing equipment.

Public comments opposing the fee increase

Two commentators oppose the 48 percent fee increase describing it as unjustified and unreasonable. Their comments state that the EQB should offset all or a portion of the proposed increase through cost reductions. They are concerned that this large increase imposes a significant financial impact for their businesses and suggest delaying the increase or phasing it in would have a lesser impact. They also believe that the capping of fees skews the fee structure and different methods of capping should be used.

Conclusion

We recognize and appreciate that ultimately a balance needs to be achieved between sufficient protection of the environment and adequate revenues to support that goal. Specifically, the criteria in the Regulatory Review Act require consideration of both the economic impact of the regulation and protection of the public health, safety and welfare. (71 P.S. §§ 745.5b(1) and (2)) The public comments submitted on the proposed regulation raise valid concerns related to both criteria. In regard to all of the comments, we believe consideration and further explanation by the EQB of how it has achieved a proper balance of these competing interests is necessary. Specifically, the EQB should explain the following:

- Whether the EQB's proposed increase is only a temporary solution. Will this regulation result in the air quality program operating at a loss again in just two fiscal years? Should the 4,000 ton cap be maintained in its current form?
- Why hasn't the reduction in air emissions resulted in a commensurate reduction in the cost of enforcement? Did the EQB explore offsetting all or a portion of the proposed increase through cost reductions? If the reduction of air emissions does not result in a reduction of enforcement costs, how is the fee method put in place in 1994 viable today and into the future?
- How did the EQB consider the financial impact for businesses? Could the fee increases be a disincentive to build or expand within Pennsylvania? How will the fee increases affect employment? Could these factors result in a net loss of revenues if a business closes in Pennsylvania?
- Did the EQB consider a delay or phase-in of the increase to allow businesses to accommodate the full impact? Why is it reasonable to impose the fee increase on emissions that already occurred in 2013?
- Ultimately, the EQB should explain how the costs imposed by the fee increase are justifiable compared to the benefits the fees produce.