

**Title 26**  
**DEPARTMENT OF**  
**THE ENVIRONMENT**

**Subtitle 11 AIR QUALITY**

**26.11.02 Permits, Approvals, and Registration**

Authority: Environment Article, §§1-101, 1-404, 2-101—2-103, 2-301—2-303, 2-401, 2-403, and 2-404,  
Annotated Code of Maryland

**Notice of Proposed Action**

[08-199-P]

The Secretary of the Environment proposes to amend Regulation .19 under **COMAR 26.11.02 Permits, Approvals, and Registration**.

**Statement of Purpose**

The purpose of this action is to implement the permit fee increases provided by SB 442, Clean Air Permit Fees, which was signed into law on April 24, 2008.

Specifically, the amendments:

(1) Increase the maximum air quality emissions-based permit fee from \$25 per ton, indexed to inflation, to \$50 per ton, indexed to inflation;

(2) Increase the maximum fee for a single source from \$200,000, indexed to inflation, to \$500,000 for calendar years 2008 and 2009 and repeals the facility cap beginning in 2010;

(3) Modify the definition of “regulated emissions” to clarify that carbon dioxide emissions will be excluded when calculating fees, and to remove the 4,000 tons per year limit on any single pollutant;

(4) Ensure that the intent of the legislation is followed by having the largest sources pay for their emissions in the same year they are generated starting in 2010; and

(5) Remove unnecessary language under Regulation .19B(6) that is out-of-date related to the increase in the annual fees by the percentage the Consumer Price Index increases by calendar year.

The proposed action will be submitted to the United States Environmental Protection Agency for approval as a revision to Maryland's Title V Program.

**Background.**

Currently, three principal revenue sources support Maryland's air pollution control program—federal funds, special funds (permit/emissions fees and penalties), and reimbursable funds from the Maryland Department of Transportation to undertake transportation-related air pollution reduction activities. Although program costs have been rising over the years, federal funds have declined in recent years, and special funds from permit emission-based fees have also decreased and are projected to decrease in the future as new and existing pollution control programs are implemented.

Permit fees must cover the reasonable cost of: (1) reviewing and acting on permit applications; (2) costs incurred in implementing and enforcing the terms and conditions of the permits (exclusive of any court costs or other costs associated with any enforcement actions); and (3) costs identified in §502(b)(3) of the federal Clean Air Act Amendments of 1990.

Maryland's current per-ton permit fee is approximately \$42 per ton (including the Consumer Price Index increase) whereas Pennsylvania's is \$55.50 per ton and New Jersey's is \$98.39 per ton.

**Sources Affected.**

Approximately 465 facilities are subject to the emissions-based fees. However, these amendments will have the greatest impact on the largest air pollution sources in Maryland. Currently only seven sources exceed the facility cap that will be repealed by the amendments starting in 2010. Emissions fees from these sources account for the majority of the emissions in the State and the majority of the emissions fees paid to the Department.

**Comparison to Federal Standards**

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The proposed action will have the greatest impact on the largest individual air pollution sources in Maryland. These sources account for the majority of the point source emissions in the State and the

majority of the emissions fees paid to the Department.

At this time only seven sources have fees that exceed the current facility cap. The current capped fee is \$335,559 (indexed to inflation) and will increase to \$500,000 for calendar years 2008 and 2009. One of the seven would have an annual fee less than the proposed increased cap. These amendments will repeal the cap starting in 2010. The Department expects three or four of the seven sources to have increased fees upon repeal of the facility cap. The capped sources are installing air pollution control equipment to reduce emissions. The final impact is difficult to predict at this time.

For sources whose fees do not approach the caps, or those that have minimal emissions, the annual fee will increase by about 19 percent over current amounts. Small Businesses.

The proposed amendments could affect a small business, such as a crematory or certain printing operations. The economic impact would be very small on such sources, as they generally have very small emissions (a ton or less) and would pay the minimum emissions per ton fee of \$50 (instead of \$41.96 in 2008 under the current fee structure). Local Governments.

Some local governments own and operate air pollution emission sources, such as large boilers, animal crematories, and landfills, which are subject to the Department's emission fees. Emissions from these sources are generally small and should cause a slight increase in the yearly emissions fees paid to the Department. About half of local governments would see a small increase in fee payments, generally on the order of \$200 per permit per year. The others would see no increase. The Department.

MDE projects a Special fund revenue increase of \$1,341,000 in fiscal year 2009 compared to fiscal year 2008 (\$5,388,000 versus \$4,047,000) due to the increase in the maximum fee and the facility cap. The increase in revenues for the first full year of the new structure being in place (October 1, 2008 through October 1, 2009) is estimated to be \$1,557,000).

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)	\$1,557,000 in first year
B. On other State agencies:	(E+)	\$2,540 in first year
C. On local governments:	(E+)	\$3,700 in first year
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	\$1,550,762 in first year
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(-)	Minimal

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

A. The current emissions base fee \$41.96. Under the proposed amendments, this will be raised to \$50, a 19.2 percent increase. This affects 460 sources. The increase from these 460 sources will be \$354,000. There are currently 7 sources that pay a maximum capped fee per facility of \$335,559 (indexed to inflation). Starting October 1, 2008, the proposed amendments raise the maximum facility cap fee to \$500,000, a \$164,441 increase. This affects 6 of the 7 sources so the increase from these 6 sources is \$986,646 over the course of the first full year of the regulation being in effect. The proposed amendments also eliminate a current emissions limit of 4,000 tons per pollutant for the purpose of calculating fees. This removal of the 4,000-ton limit affects the other currently capped fee source. This source's current fee will rise from the cap of \$335,559 to \$430,200, a \$94,641 increase. The total increase in fee revenues will be \$1,557,000 in the first year beginning October 1, 2008.

The emissions based fee is subject to increases annually by the Consumer Price Index. This index to inflation has not changed from the current regulation. Future year permit fees will increase based on the Consumer Price Index.

Under the proposed amendments, the \$500,000 facility cap is for calendar years 2008 and 2009. Beginning in 2010 the six capped sources will pay on their actual emissions in the year that the emissions are generated. These capped facilities are installing air pollution control equipment that will begin to reduce emissions significantly in calendar years 2010 through calendar year 2013. The exact emissions reductions are not known at this time. Annual permit fees are expected to rise above \$500,000 for at least three of the six sources.

B. There are 13 state facilities that currently pay annual permit to operate fees. The increased fees that result from the proposed amendments for this group of sources is \$2,542. This represents a 19.2 percent increase over current fees.

C. There are 25 facilities that are owned by local government that pay annual permit-to-operate fees. The increased fees that result from the proposed amendments is \$3,700. This represents a 19.2 percent increase over current fees.

D. There are currently 429 regulated industries that pay annual permit-to-operate fees. The increased fees that result from the proposed amendments is \$1,550,762. The basis for the increases is explained under the assumptions for revenues.

F. These proposed amendments will raise the annual permit fees for electric generating plants in Maryland. Five of the capped sources are generating plants. The increased fees are not large enough to significantly raise the cost of generating electricity.

#### **Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

#### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

#### **Opportunity for Public Comment**

The Department of the Environment will hold a public hearing on the proposed action on August 13, 2008 at 10 a.m. at the Department of the Environment, 1800 Washington Boulevard, 1st Floor Terra Conference Room, Baltimore, Maryland 21230-1720. Interested persons are invited to attend and express their views. Comments may be sent to Deborah Rabin, Regulations Coordinator, Air and Radiation Management Administration, Department of the Environment, 1800 Washington Boulevard, Suite 730, Baltimore, Maryland 21230-1720, or emailed to [drabin@mde.state.md.us](mailto:drabin@mde.state.md.us). Comments must be received not later than August 13, 2008, or be submitted at the hearing. For more information, call Deborah Rabin at (410) 537-3240.

Copies of the proposed action and supporting documents are available for review at the following locations: The Air and Radiation Management Administration; regional offices of the Department in Cumberland and Salisburly; all local air quality control offices; and local health departments in those counties not having separate air quality control offices.

Anyone needing special accommodations at the public hearing should contact the Department's Fair Practices Office at (410) 537-3964. TTY users may contact the Department through the Maryland Relay Service at 1-800-735-2258.

#### **.19 Fee Schedule: Title V Permit or a State Permit to Operate.**

A. (text unchanged)

B. Method of Calculating Fees.

(1) The emission-based fee prescribed in §A of this regulation shall be calculated by multiplying the total weight of actual annual emissions in tons of regulated emissions times an amount in dollars per ton as prescribed below:

[a) From January 1, 1996, to December 31, 1996: \$25 per ton;]

[b)] (a) [Beginning] *From January 1, 1997 through September 30, 2008: \$25 per ton as increased pursuant to §B(6) of this regulation[.];*

*(b) From October 1, 2008 through December 31, 2008: \$50 per ton; and*

*(c) Beginning January 1, 2009: \$50 per ton as increased pursuant to §B(6) of this regulation.*

(2) For the purposes of this regulation, "regulated emissions" means the actual rate of emissions, in tons per year, of a regulated air pollutant except for carbon monoxide *and carbon dioxide* emitted by a source, [subject to a limit of 4,000 tons per year of any single pollutant] *to be calculated using criteria consistent with 40 CFR 70 (operating permit program).*

(3) [The] *Effective October 1, 2008 through December 31, 2009, the maximum annual permit to operate fee for each plant or facility is [\$200,000 as increased pursuant to §B(6) of this regulation] \$500,000.*

(4) (text unchanged)

(5) Basis for Annual Emissions. The annual emissions to be used to calculate the fee in §§A and B of this regulation shall be *as prescribed below:*

*(a) For sources that certify emissions of less than 10,000 tons for calendar year 2008, the annual emissions shall be based on the emissions certification required under §D of this regulation which was submitted the previous calendar year[.]; and*

*(b) For sources that certify emissions of 10,000 tons or greater for calendar year 2008, the annual emissions shall be based on the actual emissions of the same calendar year as the annual fee.*

(6) Consumer Price Index.

(a) [Beginning January 1, 1997, the] *The* annual fee prescribed in this section shall be increased each year, *except for the years 2008 and 2009*, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year [ending before the beginning of the year] exceeds the Consumer Price Index [for the calendar year 1989] *of the previous calendar year*.

(b) The Consumer Price Index for [a] *any* calendar year is the *12-month* average of the Consumer Price Index for all urban consumers published by the *U.S.* Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

[(c) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.]

C.—E. (text unchanged)

SHARI T. WILSON  
Secretary of the Environment