



June 17, 2019

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

**Re: Proposed Rulemaking – Air Quality Fee Schedule Amendments (#7-536)
via electronic submission to eComment@pa.gov**

Dear Sir or Madam:

The Marcellus Shale Coalition (MSC), a regional trade association with a national membership, hereby submits the following comments to the Pennsylvania Department of Protection (PADEP or Department) regarding PADEP's proposed Air Quality Fee Schedule Amendments. The MSC was formed in 2008 and is currently comprised of approximately 150 producing, midstream, transmission and supply chain members who are fully committed to working with local, county, state and federal government officials and regulators to facilitate the development of the natural gas resources in the Marcellus, Utica and related geological formations. Our members represent many of the largest and most active companies in the nation in natural gas production, gathering, processing and transmission, as well as the suppliers and contractors who service the industry.

On April 13, 2019 PADEP published proposed rulemaking in the Pennsylvania Bulletin to amend Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees) as set forth in Annex A. This proposed rulemaking amends existing Chapter 127 requirements in Subchapter F and existing air quality plan approval and operating permit fee schedules in Subchapter I. It also proposes new fees in Subchapter I to address the disparity between revenue and expenses for the Department's Air Quality Program.

PADEP proposed these increased fees and new fees to provide a sound fiscal basis for continued air quality assessments and planning that are fundamental to protecting the public health and welfare and the environment. Increased funding for the Air Quality Program also will continue to allow for timely and complete review of plan approval and operating permit applications that provides the certainty businesses need to expand or locate in this Commonwealth.

MSC agrees with the need for a properly funded and functionally sound Bureau of Air Quality to provide a responsible proper framework for industry to operate in Pennsylvania and provide assurance to the citizens of Pennsylvania that industry operates in an environmentally responsible manner.

MSC recognizes this need is heightened as there have been no increases to these fees since 2004, and timely processing of applications through the permitting process is critical to the demanding time schedules of the natural gas industry. The MSC offers the following overarching suggestions and recommendations as the Department evaluates this proposed rulemaking:

- 1) The Department and the Environmental Quality Board (EQB) need to consider carefully whether all activities funded by the proposed fee schedule are necessary to fulfill the Department's core roles and responsibilities in air quality protection.

It is MSC's understanding that PADEP is implementing the tools of Lean Six Sigma as a means to examine their review processes. The Lean program is an excellent tool to examine the permit review process, to encourage efficiency and eliminate replication and natural creep into the process of actions not mandated by state or federal regulations.

Many of MSC's members employ the Lean process and MSC applauds PADEP for moving in this direction to eliminate repetitive or unnecessary processes.

Please note that MSC and its membership understand the customer relationship that is key to the Lean program and are always willing to participate in the process.

- 2) MSC recommends that PADEP commit to timeframes for issuance of permits in conjunction with the increased fees. Timing is critical for most projects related to the gas industry and Pennsylvania is one of the most restrictive states as it relates to allowing construction prior to receiving the final permit. Project delays due to a prolonged permitting process will continue to increase the probability of projects being canceled or redirection of the capital investment to other states where the permitting schedule is more predictable.

The additional revenue proposed by this regulation should provide the needed manpower and resources for PADEP to formally commit to a highly defined schedule for permit reviews and issuance.

- 3) Businesses operating in Pennsylvania must remain competitive in the regional market. The proposed application and operating permit fees are competitive with those neighboring gas producing states. However, the proposal includes increases to 2031. MSC encourages PADEP to remain observant to ensure these fees remain competitive.
- 4) It is MSC's understanding that the cost of obtaining coverage under a general permit will increase from a range of \$1,375-\$2075 to \$4,500-\$5,000 for the application and initial operating permit fee. The fee range may be appropriate for use with a facility-wide type general permit such as the General Permit 5 (GP-5) or General Permit 5A (GP-5A). However, MSC is concerned that the fees may be significant and could discourage some projects involving other general permits which are equipment-specific in nature, such as small storage tanks or Petroleum Dry Cleaning.
- 5) MSC recommends that fees for Plan Approval Extensions only be required until an application for an Operating Permit is submitted. Currently a request for extension for temporary operation under a Plan Approval must be requested and a fee of \$300 paid every 180 days until

an operating permit is received. This process may require applicants to request extensions for several years until an operating permit is received.

The fee for requesting an extension is proposed to increase to the equivalent of \$1,500 per year. The same cost of an application fee for a modification of a minor source plan approval, even though the level of review and approval is much less.

The proposed increase in application and operating fees should provide PADEP the resources needed to issue Operating Permits in a timely manner and eliminate the need for the extensions and reduce unnecessary paperwork and effort for both industry and PADEP.

- 6) MSC understands the need for increased revenue for the Title V permitting program and the need for fees to remain in a competitive range with neighboring states. However, MSC would like to note some issues worthy of further discussion. MSC understands PADEP has addressed this issue by increasing the annual maintenance fee from \$750 to \$10,000.
 - a. The higher maintenance fee seems counterintuitive to the 1990 Clean Air Act Amendments goal of providing an incentive for reducing emissions by charging the per ton fees.
 - b. The increase in the annual fee may almost double the annual cost for those facilities whose potential emissions are just above the Title V major source thresholds, while being a 10% or less increase for the largest facilities.
 - c. If a company operates multiple small Title V facilities, such as interstate transmission systems, the increase in maintenance fee may escalate to approximately \$100,000 per year in total for those facilities.

A graduated annual maintenance fee system based on total emissions, a clear path for smaller facilities to become synthetic minor sources or a not to exceed annual limitation per company are possible options which should be considered.

- 7) MSC believes the increase in annual maintenance fee should cover most normal or incidental costs involving the permit. This fee should include or cover most of the cost of typical administrative fees and filing. For example:
 - a. The \$1,500 cost for the administrative amendment fee, used typically to change a contact or an address is almost equivalent to the annual minor source operating permit fee of \$2,000 to \$2,500.
 - b. The Request for Determination (RFD) process is a mechanism for PADEP to determine other sources of minor significance not listed in 25 PA Code § 127.14 or PADEP's list of Air Quality Permit Exemptions (Technical Guidance Document 275-2101-003). It is MSC's understanding that an RFD should not be required for listed exemptions. Documentation of de minimis increases, or installation of listed exempt sources at a facility, should be documented by other means. When an RFD review and

possible approval is required for a potential exempt source, the proposed fee is reasonable. If it is used for other administrative purposes, those costs should be absorbed by the annual maintenance fee.

- 8) The PA Bulletin Announcement in Section F. notes that the fees will allow the Department to "...expand its air monitoring network in shale gas areas", however no other discussion could be found in the notice concerning this item. This clearly is of interest to MSC and our members, and additional information should be provided if it is used as justification for the increase in fees. The MSC is also unclear why the department will focus its efforts exclusively on "shale gas areas", how the Department defines such areas, and why the Department is not simply focused upon overall ambient air quality for the citizens of Pennsylvania. Explicit reference to one industry, without any justification, and particularly given conclusions of both department and industry-initiated air quality studies that shale gas development does not negatively impact air quality, does not seem prudent or appropriate.
- 9) MSC suggests that language be included in § 127.465 to allow the submission of permit applications and other documents via "reputable express services," such as Federal Express and UPS, which are commonplace and effective for this purpose.
- 10) MSC has and will continue to work cooperatively on the Department's ePermitting initiative and understands the mutual benefits that can be recognized with a successful electronic permitting platform. MSC has provided extensive comments and recommendations to PADEP for consideration with respect to the launch of ePermitting in August 2018 and encourages the Department to continue to work through remaining technical issues.

At the same time, MSC believes it is important to emphasize the need for a predictable permit review and issuance timeframe for industry. Under the Air Pollution Control Act, air quality general permits and permit renewals are required to either be issued or denied within 30 calendar days. Too often, applicants are experiencing significant delays – in some cases of over 100 days – with respect to the issuance of a general permit. Prior to the finalization of the revised GP-5 and new GP-5A permit, both industry and the public were assured by Department leadership that these permits would not be initiated until there was confidence in meeting the mandated statutory review timeframe. It is imperative that this commitment be renewed, and tangible steps taken – beyond simply raising permit fees – to ensure this legal obligation is fulfilled.

The MSC remains committed to working with the Department to ensure a reasonable and predictable permitting process is in place that meets the needs of both the industry and the Department, while ensuring protection of the Commonwealth's air resources.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any questions or desire additional clarification.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick Henderson". The signature is fluid and cursive, with a large initial "P" and "H".

Patrick Henderson
Director of Regulatory Affairs