

**DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

**Air Quality Enterprise**

**REGULATION 1 - AIR QUALITY ENTERPRISE CASH FUND 6 CCR 1017-1**

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**1.1 AUTHORITY AND PURPOSE**

1.1.1 Authority

The Colorado Air Quality Enterprise operating within the Colorado Department of Public Health and Environment shall administer the air quality enterprise cash fund created under §25-7-103.5(4)(a), C.R.S. The fund consists of:

- 1.1.1.1 Fees established by the Air Quality Enterprise Board of Directors;
- 1.1.1.2 Gifts, grants, or donations from private or public sources to benefit the establishment and operation of the board;
- 1.1.1.3 Any other money that the general assembly may appropriate or transfer to the fund; and
- 1.1.1.4 Fees or other payments, including those negotiated to conduct emission mitigation projects and custom monitoring or technology development or evaluation projects, or other fees collected pursuant to §25-7-103.5(4), C.R.S.

1.1.2 Purpose

Pursuant to §25-7-103.5(4)(d), C.R.S., the enterprise shall dedicate a meaningful portion of its funds toward competitive grants to conduct highly qualified, peer-reviewed research related to research priorities identified by the board.

1.1.3 Definitions

- 1.1.3.1 'Annual emission fee' means a fee per ton of air pollutant emitted by a stationary source annually, established by the board in accordance with Section 1.2.
- 1.1.3.2 'Board' means the board of directors of the enterprise.

- 1.1.3.3 'Department' means the department of public health and environment.
- 1.1.3.4 'Division' means the air pollution control division of the department.
- 1.1.3.5 'Division fee' means the annual fee assessed by the division to stationary sources for emissions of criteria and hazardous air pollutants pursuant to Colorado Air Quality Control Commission Regulation Number 3, Part A, 5 C.C.R. §1001-5:A and §25-7-114.7, C.R.S.
- 1.1.3.6 'Enterprise' means the air quality enterprise created in §25-7-103.5(3), C.R.S.
- 1.1.3.7 'Enterprise fee' means money collected through fees authorized by §25-7-103.5(4), C.R.S.
- 1.1.3.8 'Fee payer' means any person or entity or group of persons or entities that pays all or part of an enterprise fee.
- 1.1.3.9 'Fund' means the air quality enterprise cash fund created in §25-7-103.5(4), C.R.S.

#### 1.1.4 Severability

Each provision of this regulation shall be deemed severable, and in the event that any provision of this regulation is held to be invalid, the remainder of this regulation shall continue in full force and effect.

## 1.2 ANNUAL EMISSION FEE

### 1.2.1 Annual Emission Fee

Owners or operators of stationary sources must pay annual emission fees as established by the board, which in the aggregate, reflect the cost of the services provided.

#### 1.2.1.1 Stakeholder Process

- (A) Before commencing a rulemaking to revise annual emission fees, the board will conduct a stakeholder process to solicit input from fee payers and other stakeholders on the appropriate fee structure.
- (B) The stakeholder process will include at least two public meetings.

### 1.2.2 Annual Emission Fee Calculation

1.2.2.1 Annual emission fees will be calculated based on the division fees charged to stationary sources of pollution by the division for the previous state fiscal year for which fee adjustments have been completed.

1.2.2.2 The annual emission fee will be assessed proportionally among the top 150 companies whose stationary sources emit the highest amount of all air pollutants for which a division fee is paid, sorted by customer number and the corresponding division fee. Other air pollution emission sources will not be charged an annual emission fee for that fiscal year.

1.2.2.3 The general equation for calculating the annual emission fee is:

Annual emission fee for fee payer = division fee paid by the fee payer x (SL / T150 Sum)

where,

SL = Statutory limit, as outlined in §25-7-103.5(4)(e)

T150 Sum = Sum of the division fees paid for the fiscal year by the Top 150 companies

1.2.2.4 The annual emission fee for the top 150 companies equals:

(A) For state fiscal year 2021-22:

Division fee for FY 2019-20 x (\$1,000,000 / T150 Sum for FY 2019-20)

(B) For state fiscal year 2022-23:

Division fee for FY 2020-21 x (\$3,000,000 / T150 Sum for FY 2021-22)

(C) For state fiscal year 2023-24 equals:

Division fee for FY 2021-22 x (\$4,000,000 / T150 Sum for FY 2022-23)

(D) For state fiscal year 2024-25 and each subsequent year:

Division fee for FY 2022-23 (or the previous year if later) x (\$5,000,000 / T150 Sum for FY 2022-23 (or the previous year if later))

### 1.2.3 Annual Emission Fee Invoicing and Payment

1.2.3.1 Annual emission fees must be paid in accordance with the invoice issued by enterprise staff.

1.2.3.2 Annual emission fee payments are due no later than thirty (30) days after the issuance of the invoice.

## 1.3 OTHER REVENUES, PAYMENTS, GRANTS, GIFTS AND DONATIONS

1.3.1 Nothing in this rule limits or precludes the enterprise fund from receiving other revenues, payments, grants, gifts and donations as allowed by the Air Pollution Prevention and Control Act or other statute.

## 2.1 STATEMENT OF BASIS AND PURPOSE

### 2.1.1 June 1, 2021 - DRAFT

#### *Basis and Purpose*

Pursuant to §25-7-103.5, C.R.S. the Air Quality Enterprise Board is charged with conducting science-based, unbiased air quality modeling, monitoring, assessment, data analysis, and research, which may include obtaining, analyzing, and reporting permitting and enforcement data; data regarding potential health risks from emissions; emission data; ambient air quality, visibility, and meteorological sampling data; and similar data, as well as other specified activities as listed in §25-7-103.5(1)(j)(I)-(V) and (4)(c)(I)-(IV), C.R.S. The enterprise must, in its discretion, prioritize these activities based on a research project's ability to provide information that will: support tangible progress toward aiding fee payers' obligations and commitments to reducing air pollutants emitted by the fee payers; support fee payers in attaining standards and health-based or environmental guidelines; and assess public health that may be affected by fee payer emissions.

Fee payers participated in several stakeholder meetings between November 2020 and March 2021, and the board administrator solicited input in the establishment of this fee rule from fee payers and the Air Pollution Control Division as required by §25-7-103.5(4)(e), C.R.S.

The board intends to minimize the administrative costs associated with the fee rule to further the purposes and mission of the enterprise. The board believes it is critical to first address the annual emission fees, and intends to address, in the near-term, the process for proposing projects for custom monitoring or technology development or evaluation projects, or for emission mitigation projects. The board directs enterprise staff to bring a recommendation to the board on how best to address those additional services.

#### *Statutory Authority*

To fund its activities, the board must establish annual emission fees, as authorized in §25-7-103.5(4)(b)(I). This rule sets up fees that will be paid into the fund: the annual emission fees set by the board and charged to the top 150 highest-emitting companies.

#### *Annual Emission Fees: Section 1.2*

The board intends that the annual emission fee will be calculated from the fee payer's division fee for the previous state fiscal year for which fee adjustments have been completed. The annual emission fee is based on the emissions of criteria air pollutants and hazardous air pollutants. The division fee per ton of hazardous air pollutants is higher than the per ton fee for criteria air pollutants.

The state fiscal year is July 1 through June 30, and fee adjustments are completed into the next fiscal year. Therefore, the state fiscal year of July 1, 2021 through June 30, 2022 will be based on the division fees from the state fiscal year 2019-20 for purposes of calculating the annual emissions fee. This process prevents the duplicative administrative effort of making fee adjustments for both the division and the enterprise, and instead relies on the completed adjustments.

Not all emission sources will be required to pay an annual emission fee to the enterprise. Instead, the board determined to focus on those companies owning or operating the stationary sources with the highest amount of total emissions of air pollutants for which division fees are paid. Taking into account the statutory limits upon the collection of annual emission fees by the enterprise, the board determined to assess annual emission fees against the “top 150” companies. These top 150 companies account for 87% of the total annual air pollutant division fees paid to the Air Pollution Control Division, and they represent a broad range of facility types across the state. As the board is still determining the extent of mitigation or research needs for specific pollutants, this annual emission fee calculation methodology allows for a broad range of research proposals and emission mitigation projects to be conducted throughout the State and to be funded by the highest-emitting companies in Colorado.

*Other revenues, payments, grants, gifts and donations, Section 1.3*

Payment into the fund may also occur through the receipt of other revenues, payments, gifts, grants, and donations.

*Future fee revisions*

The board intends to revisit this fee rule within the next three years to confirm and/or revise this fee process in light of information learned and services rendered.