



Department of
**Environment &
Conservation**

Title V Fee Workshop 2

April 14, 2016

Agenda

- Workload Analysis Update
- Options Discussion
- State Survey Update

Options Matrix

Option/Concept	Goal(s) Addressed	Notes	Owner (group)
Rate Increase	Budget shortfall; long term financial stability; administrative ease		
Cap removal/raise	Equitable responsibility for program costs; administrative ease		
Formula for rate in regulation; administratively adjusted/applied by board	Long term financial stability; administrative ease		Barry Stephens
CPI/inflation adjustment	Long term financial stability; administrative ease		Michelle Owenby; Wayne Cropp
One fee for all sources	Administrative ease	Retain actual & allowable	Don Houston; Barry Stephens
Adjust report and pay	Long term financial stability	Move to March annually	Don Houston; Mike Haverstick

Options Matrix Continued

Option/Concept	Goal(s) Addressed	Notes	Owner (group)
Graduated fee structure	Equitable responsibility for program costs		Steve Gossett; Don Houston; Jimmy Johnston
Re-establish base fee in lieu of minimum fee and/or establish both and/or raise either or both	Budget shortfall		Lacey Hardin
MACT Adder	Budget shortfall; equitable responsibility for program costs		Steve Gossett; Jimmy Johnston

Adjustment Using Consumer Price Index

- This option involves an adjustment to a fee and/or rate for inflation on a certain time period, generally annually.
- Southeastern states with this adjustment: South Carolina,* North Carolina, Virginia and West Virginia
- Most of the specifics are in regulation.
- For North Carolina, Virginia and West Virginia, the referenced statute provides general fee authority.
- For South Carolina, the statutory reference includes general fee authority, but also includes reference to adjustment.
- Examples shown: North Carolina and West Virginia

Example 1: North Carolina

15A NCAC 02Q .0204 INFLATION ADJUSTMENT

“Beginning in 2012, the **fees of Rule .0203** of this Section for Title V facilities shall be adjusted **as of January 1st of each year** for inflation. The inflation adjustment **shall be done by the method described in 40 CFR 70.9(b)(2)(iv)**. The tonnage factor shall be rounded to a whole cent and the other fees shall be rounded to a whole dollar, except that the ownership change application fee shall be rounded to the nearest ten-dollar (\$10.00) increment.”

- History Note: Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6; Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. March 1, 2008; July 1, 1996.
- <http://daq.state.nc.us/rules/rules/Q0204.pdf>.

Example 2: West Virginia

§45-30-8, Fees - 8.4. Consumer price index riser

“Fees calculated for **each fiscal year** under the **fee schedule in subdivision 8.1.b** shall be increased by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1993. For purposes of this clause:

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

8.4.b. The revision of the Consumer Price Index, if any, which is most **consistent with the Consumer Price Index for 1993 shall be used.**”

Title 45 Legislative Rule Department of Environmental Protection Air Quality, Series 30: Requirements for Operating Permits, §45-30-8.Fees, Pg 42, <http://www.dep.wv.gov/pio/Documents/2013%20Proposed%20Rules/45CSR30%202013.pdf>.

Adjustment Considerations

- Statutory or Regulatory
- Which CPI?
 - CPI for all urban consumers (all items)
 - Core CPI (all items less food and energy)
- Which permits will be applicable?
- Model language
- If a surplus exists, what happens?
- How would adjustment occur?
 - Automatic
 - Some trigger, like board approval
- When would adjustment go into effect?

Option Pros and Cons

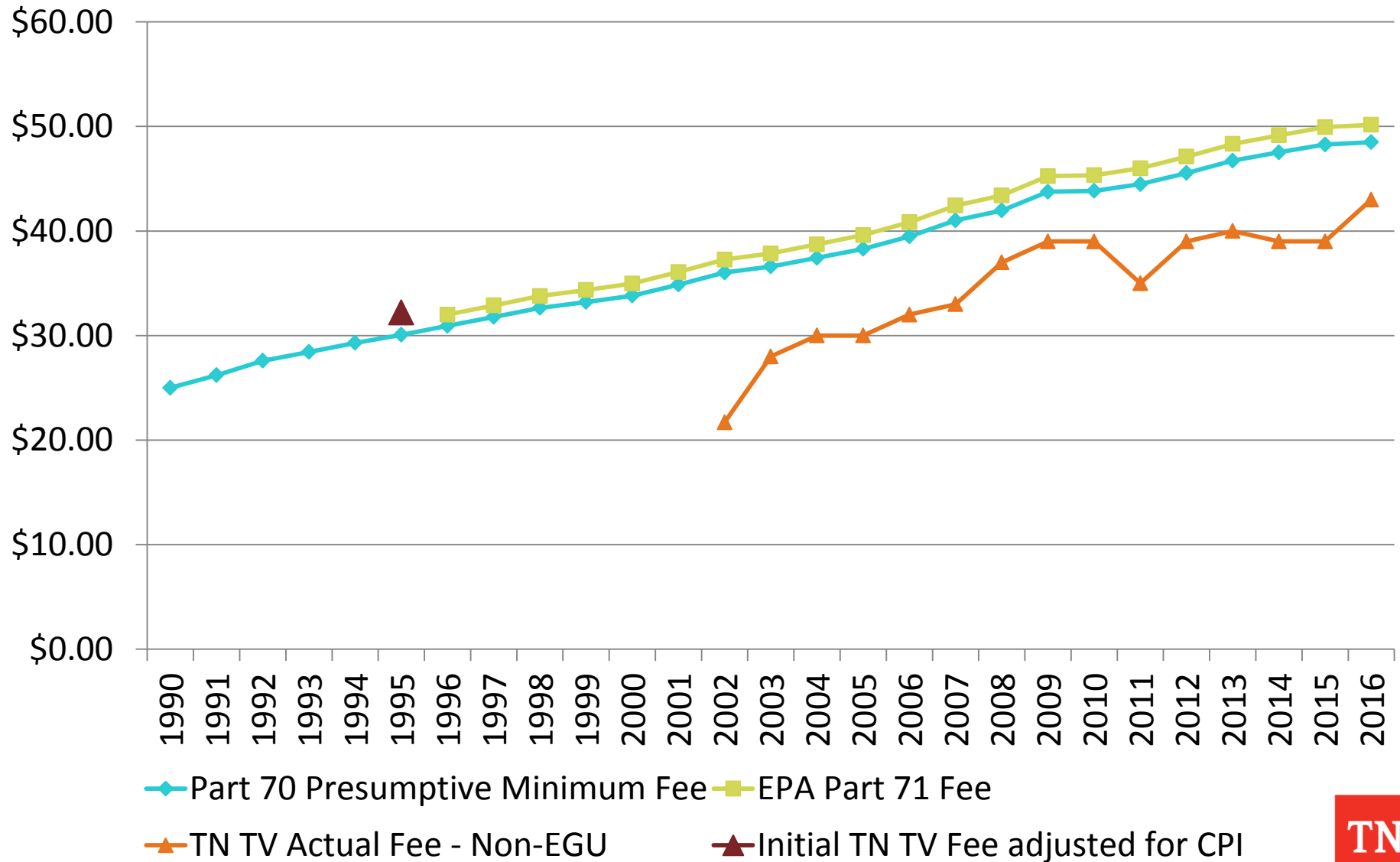
- Pros:

- Automatic adjustment allows fees charged to move with inflation without having to manually change rule each year. **Administrative Ease**
- As costs of all programs with large personnel costs are expected to increase in line with inflation annually, including automatic adjustment ensures program stability from common expense increases. **Long term financial stability**
- Small increases over time may allow for businesses to better plan for the costs of the Title V program vs. occasional, larger fee increases.

- Cons:

- Regular cost increase vs one fixed rate for potentially multiple years
- May require manual regulatory change if significant surplus is created

TN Rate, Federal Presumptive, and Part 71 Fee Rates



The background features a light gray gradient with several realistic water droplets of varying sizes scattered across the surface. A faint, circular logo is visible in the upper center, containing a stylized 'E' and the word 'Emissions' below it.

PROPOSAL TO ADJUST EMISSION FEE SCHEDULE

70% Fee Payment due **March 31**

Proposal to be Considered

- Sources paying on an allowable emissions basis will pay the entire fee due on **March 31** of the TDEC Annual Accounting Period (AAP).
- Sources paying on an **actual emissions basis** will pay an estimated 70% Emission fee payment for each TDEC Annual Accounting Period (from July 1 through June 30) on **March 31 of each year**
- Calculations of emission fees will be based on the **previous calendar year's data**, January through December **or the TDEC AAP** as allowed in the current regulation effective April 5, 2016
- With this proposal, you are still paying for the AAP which runs from July 1 through June 30, **only the addition of an estimated initial 70% March payment is changing**

Other Considerations for the Proposal

- **90 day extension** in TAPCR 1200-03-26-.02(9)(g)5 will still be available, pay 70% by March 31 remainder by July 1, or remainder by September 28 with extension. No extension available for 70% March 31 payment

If Approved, When Will Change Occur

- Currently we are in the 2015-2016 AAP, **No Change**
- Next year will be the 2016-2017 AAP, **option to pay on CY or AAP. Must declare by December 31, 2016** if using CY 2016 data option for fees due July 1st, 2017
- The **proposed change to the due date** will occur in the **2017-2018 AAP**
- First new **70%** payment due date will be **March 31, 2018** for the 2017-2018 AAP

Pros and Cons

Pros

- The dollar amount you are paying is not changing
- Provides TDEC with earlier funding to support annual planning
- Some “actual” basis sources may not need to use extension
- Sources retain both CY and AAP emission basis options

Cons

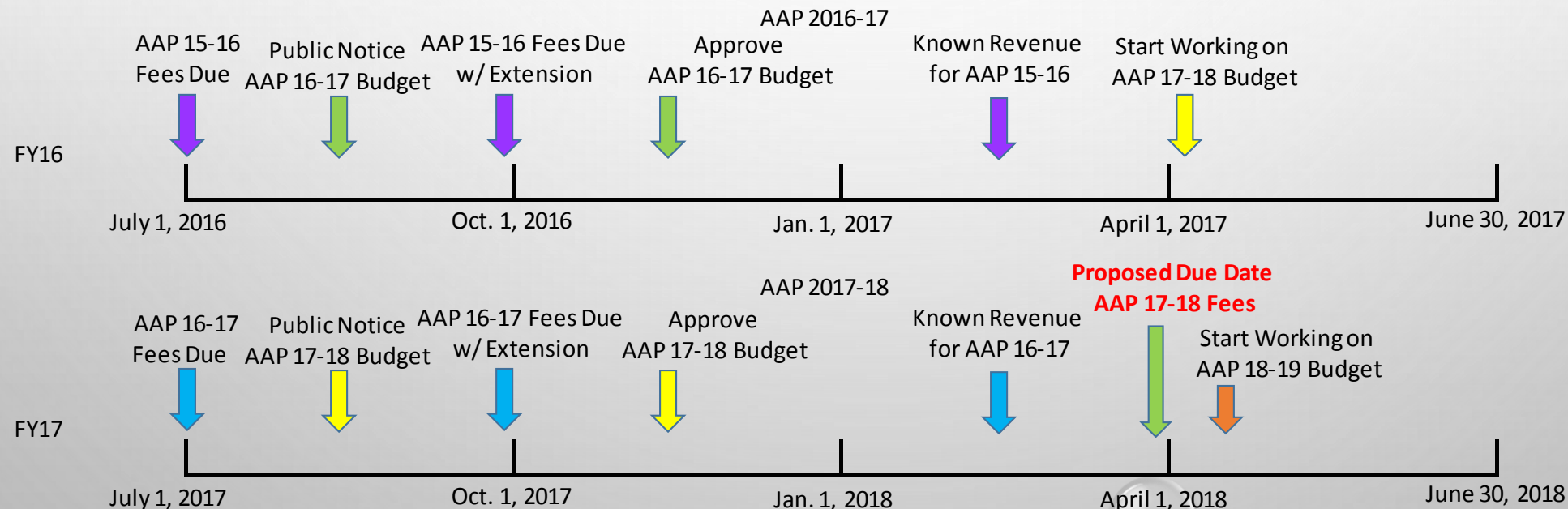
- The revised annual emissions fees will not be state effective until July 1
- Depending on a company’s fiscal year may need to pay Emission Fees twice in initial fiscal year
- Some companies may over-estimate the March 31 payment and be due a refund

Why is Changing the Fee Due Date Needed?

- T5 Annual Emission Fees are collected at the end of each fiscal year, but TDEC must predict collections for the next year without knowing how much was collected for the previous year
- TDEC can't easily predict how much money will be collected until after the fees for the following year have been proposed
- TDEC does not have the information needed to plan and prepare for the upcoming year
- By knowing how much money was collected sooner, the Board will have a better idea of where to set the emissions fees for the next year
- TDEC must currently borrow money from the state to fund the program until fees are collected. Revising the fee due date will reduce the amount they are required to borrow.

Why is Changing the Fee Due Date Needed?

- Example:
 - AAP 2015-16 collections are due 7/1/2016, with some sources receiving extensions until 9/30/2016.
 - Work on the needed revenues for AAP 2017-18 began in April 2016 and had to be approved by the Board no later than November 2016.
 - Final AAP 2015-16 collections information was not available until early 2017.
 - Because changes to chapter 1200-03-26 are required to revise fees, the rulemaking hearing notice was sent to the Secretary of State in early September so the hearing could be held prior to the November Board meeting.



Why is Changing the Fee Due Date Needed?

- Although TDEC can revise a proposed rule in response to comments or new information presented at the hearing, TDEC prefers not to significantly revise proposed fees without providing the opportunity for public comment, which would mean another public hearing. The timing would not work out if revisions were needed. The Board would likely not approve a significantly revised rule without another hearing.



OPEN DISCUSSION



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Title 5 Fees Established by Board Order

- (d) 1. The Board shall establish fee requirements as needed to collect sufficient funds to pay for the expenditures related to the activities identified in subparagraph (1)(c) of this rule.

Title 5 Fees Established by Board Order

2. Every source subject to this paragraph shall pay the fees as established by the Board as follows:
 - (i) The Board may choose to establish a different fee rate for EGU sources and non-EGU sources. The EGU fee rate(s) shall not exceed the non-EGU fee rates by more than 20 percent. The fee rate may be the same for the EGUs and non-EGUs.

Title 5 Fees Established by Board Order

(ii) The Board shall set the rate(s) at which major source actual-based annual emission fees are assessed for non-EGU sources and EGU sources. The rate shall be expressed as dollars per ton of emissions.

Title 5 Fees Established by Board Order

- (iii) The Board shall set the rate(s) at which major source allowable-based annual emission fees are assessed for non-EGU sources and EGU sources. The rate shall be expressed as dollars per ton of emissions.

Title 5 Fees Established by Board Order

- (iv) The Board shall establish an annual maintenance fee for every source subject to this paragraph. The annual maintenance fee shall only be paid once per fiscal year.
- (v) The Board may establish other fees as determined to be necessary to meet the Title V provisions of the Federal Act, the implementing Federal regulations at 40 CFR Part 70 or any Division rules promulgated thereunder.

Title 5 Fees Established by Board Order

3. The fees required by part 2 of this subparagraph remain in effect until the Board adopts revisions to those fees. These fees shall be supported by the Division's annual workload analysis that is approved by the Board. The fees proposed by the Board shall be subject to a 30 day public comment period and a public hearing may be requested by any source subject to this paragraph.



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NESHAP Fee Options

Jimmy Johnston, TDEC

Presented to Title V Fee Workgroup

April 14, 2016

NESHAP Fee - What is It?

- A Flat-Rate Title V Fee that is paid in addition to any other Title V fee due.
- For Facilities Subject to Part 63, and Perhaps Part 61, NESHAPs.
- How would it Be Applied – Two Options:
 1. Per Facility – Fixed amount per Title V facility that is subject to one or more NESHAP
 2. Per NESHAP – Fixed amount per NESHAP that a facility is subject to

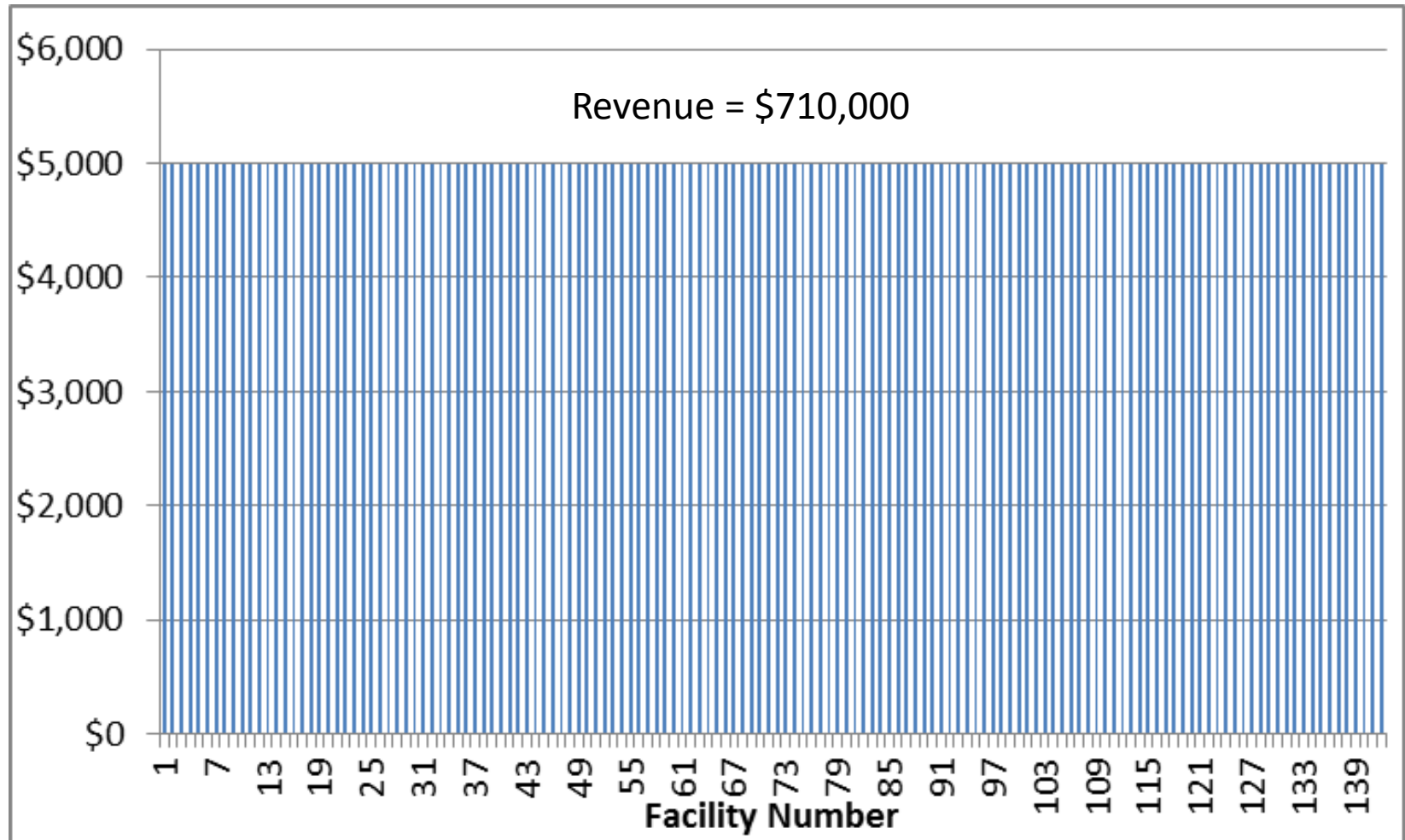
NESHAP Applicability (non-QA'd data)

- The following is based on preliminary non-quality assured data:
 - Number of Title V facilities subject to at least one Part 61 or Part 63 NESHAP – 142
 - Number of Applicable Subparts:
 - Part 61 - 11
 - Part 63 – 253
 - All of the facilities subject to a Part 61 NESHAP are also subject to one or more Part 63 NESHAPs
 - NESHAP Applicability by 2014 Fee Range
 - \$7500 minimum = 41 of 78 (53%)
 - \$7501-\$15,000 = 28 of 39 (72%)
 - \$15,001-\$99,999 = 60 of 82 (73%)
 - \$100,000 & up = 11 of 12 (92%)

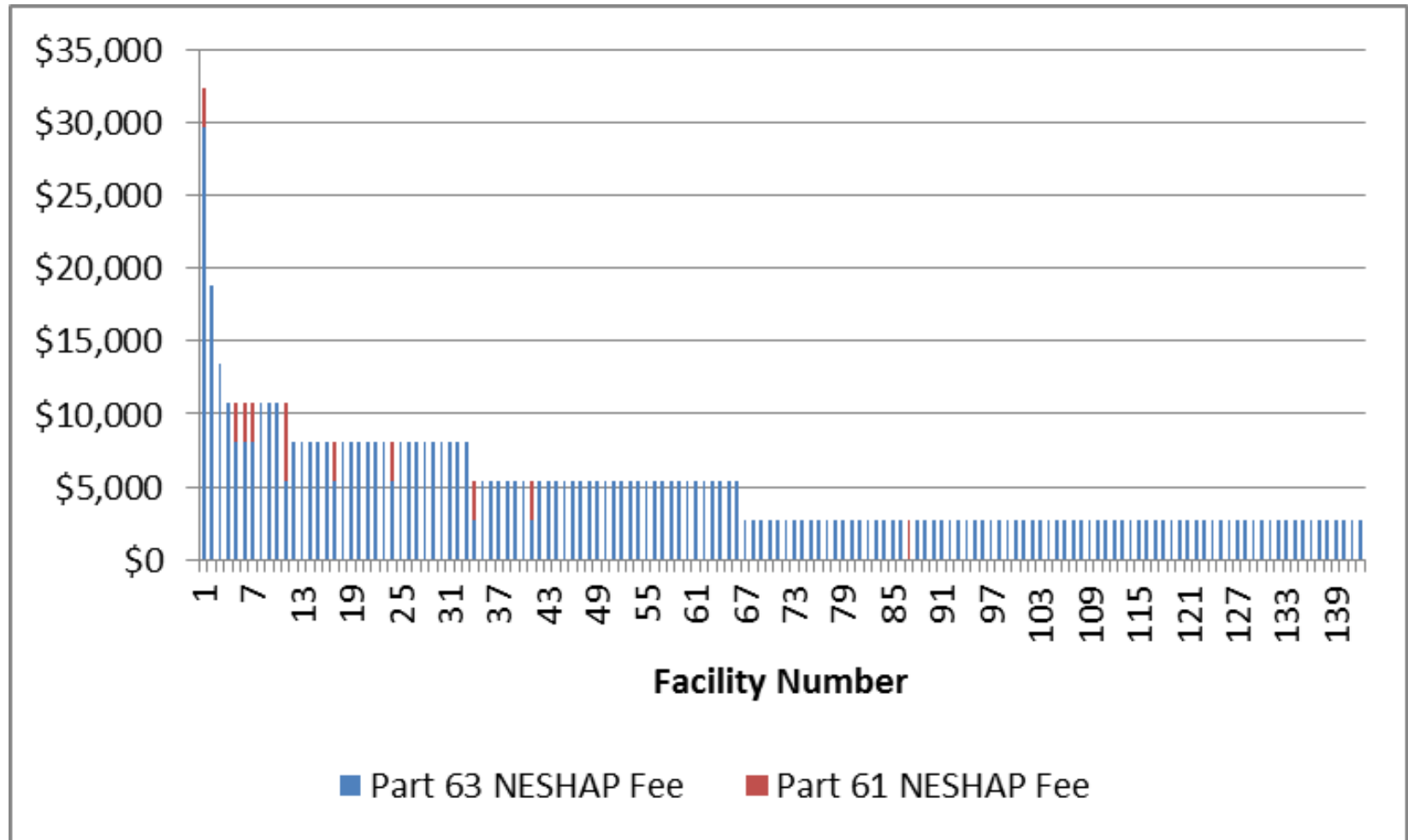
NESHAP Fee Estimates

- Estimated Revenue:
 - Option 1) per Facility NESHAP Fee @ \$5000/facility = \$710,000
 - Option 2) set per NESHAP to collect \$710,000 = \$2690/NESHAP

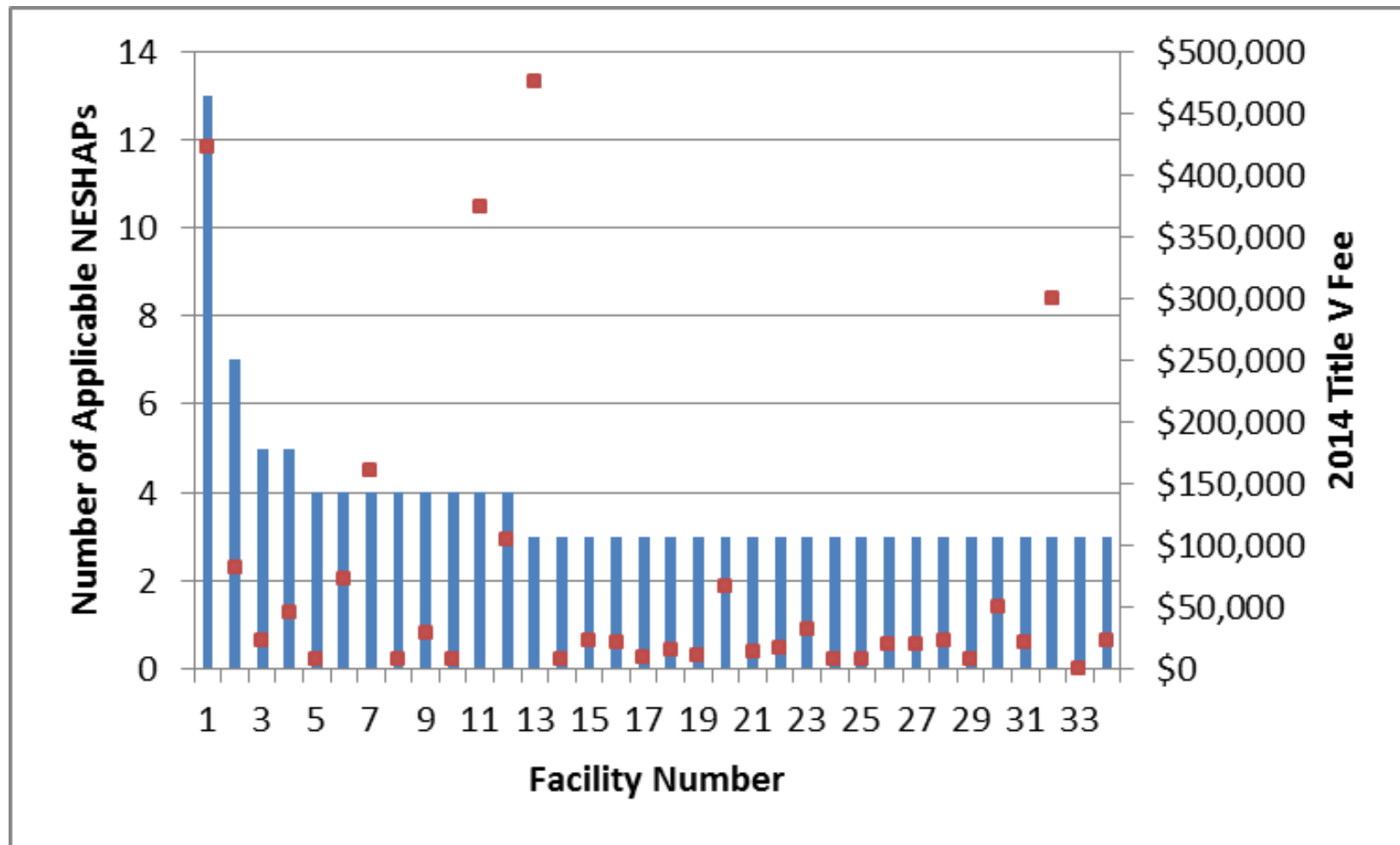
Per Facility NESHAP Fee



Per NESHAP Fee



Title V Fee for Sources with 3 or More Applicable NESHAPs



Policy Issues - Pro's and Con's

Issue	Pro's	Con's
NESHAP Fee Concept	<ul style="list-style-type: none">• Distributes fee more equitably, especially for those at lower end of fee scales	<ul style="list-style-type: none">• Significant increase for some low-paying sources
Per-Facility NESHAP Fee	<ul style="list-style-type: none">• Easy to Implement• More reflective of workload for small fee-payers with vs. without NESHAP	<ul style="list-style-type: none">• Does not reflect increased workload due to multiple MACTs
Per-NESHAP Fee	<ul style="list-style-type: none">• More representative of workload	<ul style="list-style-type: none">• Have to keep track of applicable NESHAPs – more difficult to implement• Many sources with multiple NESHAPs already pay high \$/ton fee

Implementation Issues

- Implementation Issues
 - NESHAPs or Subcategories of facilities with no substantive ongoing obligations – should they be exempt?
 - Example: 40 CFR 63 Subpart I at facilities that do not have the designated organic hazardous air pollutants present in the process as specified in §63.190(c). (The only requirement is for the facility to retain records that process does not use the designated organic HAP.)
 - Facilities that become subject to a NESHAP or cease applicability to a NESHAP during accounting period. Two proposed options
 1. Based on what's in permit
 2. Put obligation on facility to report
- These can be addressed after policy issues decided
- **NEED TO QUALITY ASSURE NESHAP DATA**

From: [Gossett, Stephen R](#)
To: [Michelle B. Walker](#); [Barry Stephens](#); [James Johnston](#); [Lacey Hardin](#)
Cc: [Amy Martin <amy.martin@tnchamber.org>](#) ([amy.martin@tnchamber.org](#))
Subject: Graduated Scale Option
Date: Thursday, March 10, 2016 11:47:37 AM
Attachments: [Copy of Title V fee data for stakeholders-srq with MACT.xlsx](#)

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

Here is the spreadsheet that shows the option I described yesterday.

This option includes:

- the current 4000 ton cap per pollutant
- incorporates all TDEC's assumptions re: 2019 emissions
- sets the ratio of actual to allowable fee rate to 1.6 which is the ratio that was used in the beginning of Title V (this ratio has degraded over time as equal fee rate increases have been made both to actuals and allowables)
- both EGUs and non-EGUs are subject to the scale
- the rate for the first 500 tons of emissions is unchanged
- following first 500 tons, increments are applied to the 2nd, 3rd, and 4th 500 ton of emissions and then to all emissions over 2000 tons (after capping all pollutants at 4000 tons). \$2 is used as the increment for non-EGUs and \$4 for the EGUs

Scenario 5 is all of the above with a &7500 minimum. It comes up about \$1.5 M short to bring 2019 revenues up to 2014 actual levels.

Scenario 6 is all of the above but adding a \$5,000 base fee. This one is about \$800,000 short.

Scenario 7 is Scenario 6 plus a MACT adder. Any facility with any MACT pays a \$5,000 adder.

This brought revenues up to very close to 2014 levels.

Amy, would you forward this to the members as you see fit?

Steve Gossett
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