



Department of  
**Environment &  
Conservation**

# Title V Fee Stakeholder Webinar

May 11 & May 15, 2017

# Topics Covered

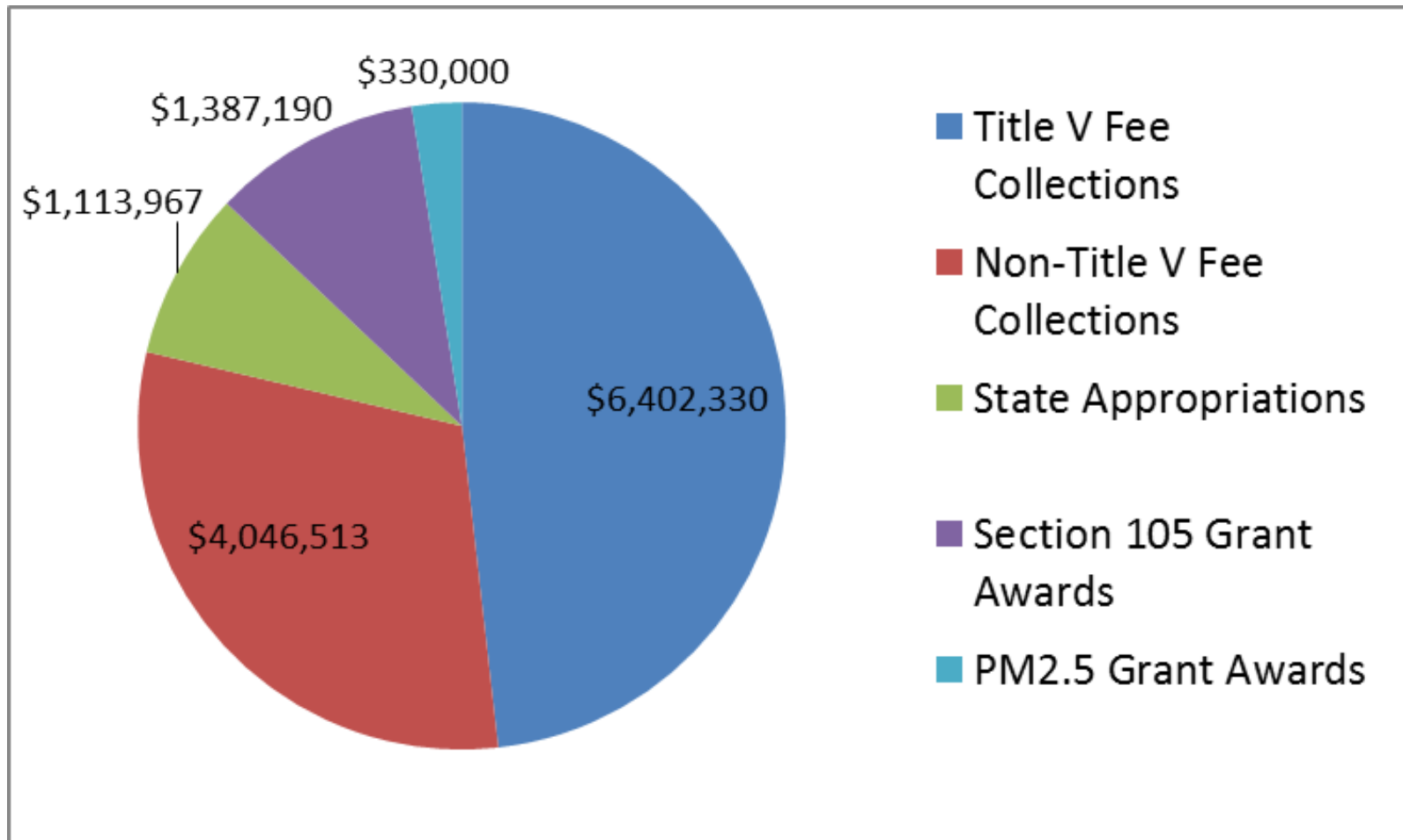
- Background
- FY2018 Fee Rule
- Projected FY2019 Expenses and Revenue
- Evaluating Fee Options
- Timeline
- Website and Additional Information



Background

# Division of Air Pollution Control Funding

## Average of FY2014 through FY2016



Note: This chart is a simplified representation of APC funding. Actual budgetary and accounting information is much more complicated.

# Statutory Title V Fee Requirement - 502(b)(3)(A) of Federal Clean Air Act

## (b) Regulations

The Administrator shall promulgate within 12 months after November 15, 1990, regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

...

(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this subchapter pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter, including section 507 of this title, including the reasonable costs of—

# Section 502(b)(3)(A) of Federal Clean Air Act (continued)

- (i) reviewing and acting upon any application for such a permit,
- (ii) if the owner or operator receives a permit for such source, whether before or after November 15, 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),
- (iii) emissions and ambient monitoring,
- (iv) preparing generally applicable regulations, or guidance,
- (v) modeling, analyses, and demonstrations, and
- (vi) preparing inventories and tracking emissions.

Similar Language in Federal and State Regulations (see end)

# Tennessee Environmental Protection Fund Act

## 68-203-103. Fees.

**(a) (1)** In order to facilitate the proper administration of each statute listed in § 68-203-101(b)\*, the department of environment and conservation shall charge fees for the various services and functions it performs under each of those statutes, including, but not limited to, permit processing fees, permit maintenance fees, license fees, registration fees, plans review fees, facility inspection fees and emission fees.

**(2)** The level of these fees shall be determined after careful consideration of the direct and indirect costs incurred by the department in performing its various functions and services under each of the statutes listed in § 68-203-101(b).

\*101(b) of the Tennessee Air Quality Act

# Tennessee Environmental Protection Fund Act

## (continued)

**(3)** It is the intention of the general assembly that the fees shall provide funding for additional staff of the environmental regulatory programs and an improvement of the salaries and benefits of the existing staff of the environmental regulatory programs, to continue to improve performance in carrying out its duties. Prior to promulgating any fee increase, the authorities listed in subsection (b)\* shall review the basis for the fee increase and make a determination that the fee increase is warranted. The factors in the determinations shall include, if relevant: staffing needs, ability to attract and retain quality staff, feasible cost containment measures, comparisons with salaries paid by other governments and the private sector, levels of federal grants and state appropriations, and the ability of the program to maintain or improve its performance in carrying out its duties.

\*includes Tennessee Air Pollution Control Board



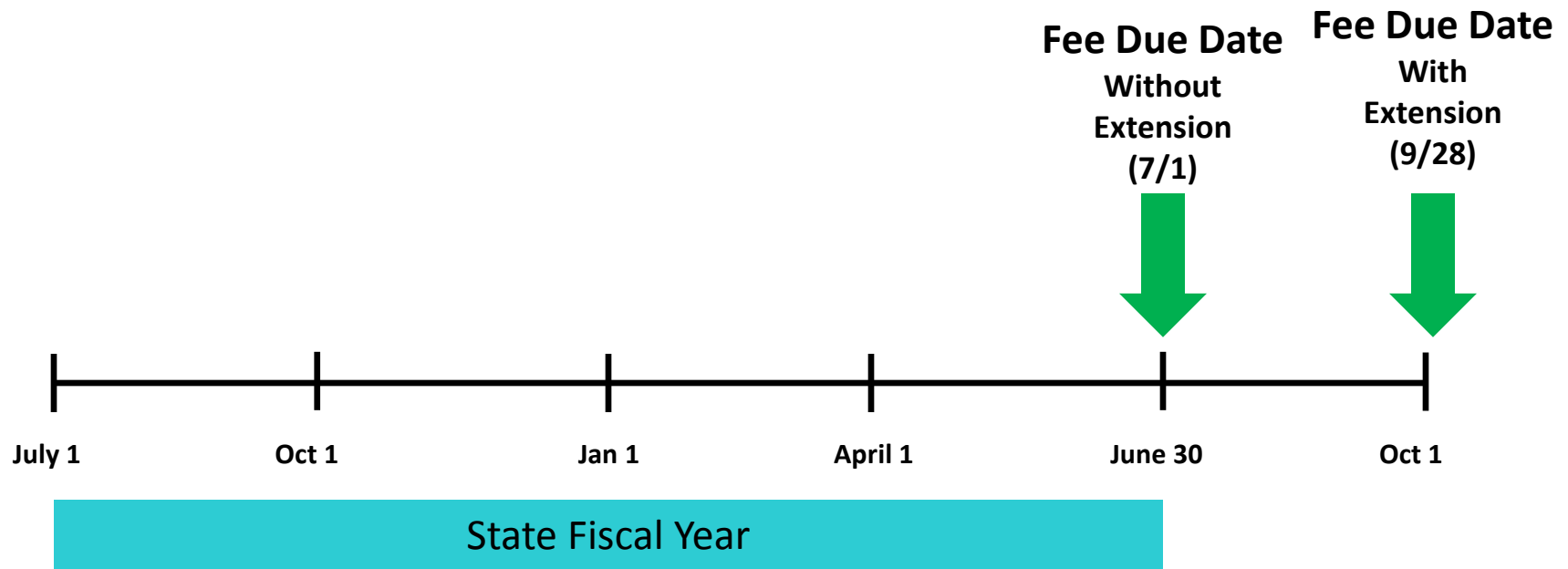
# 2016 Stakeholder Process

- Meeting Dates
  - January 6, 2016
  - February 18, 2016
  - March 9, 2016
  - April 14, 2016
  - May 5, 2016
  - May 20, 2016
- Resulted in Change to Fee Deadlines (see slides 12-14)
- Remainder of Issues Deferred
- Material Available at <http://tn.gov/environment/topic/permit-air-permit-fees>



**FY2018 Fee Rule  
adopted by Air Pollution  
Control Board on 5/10/2017**

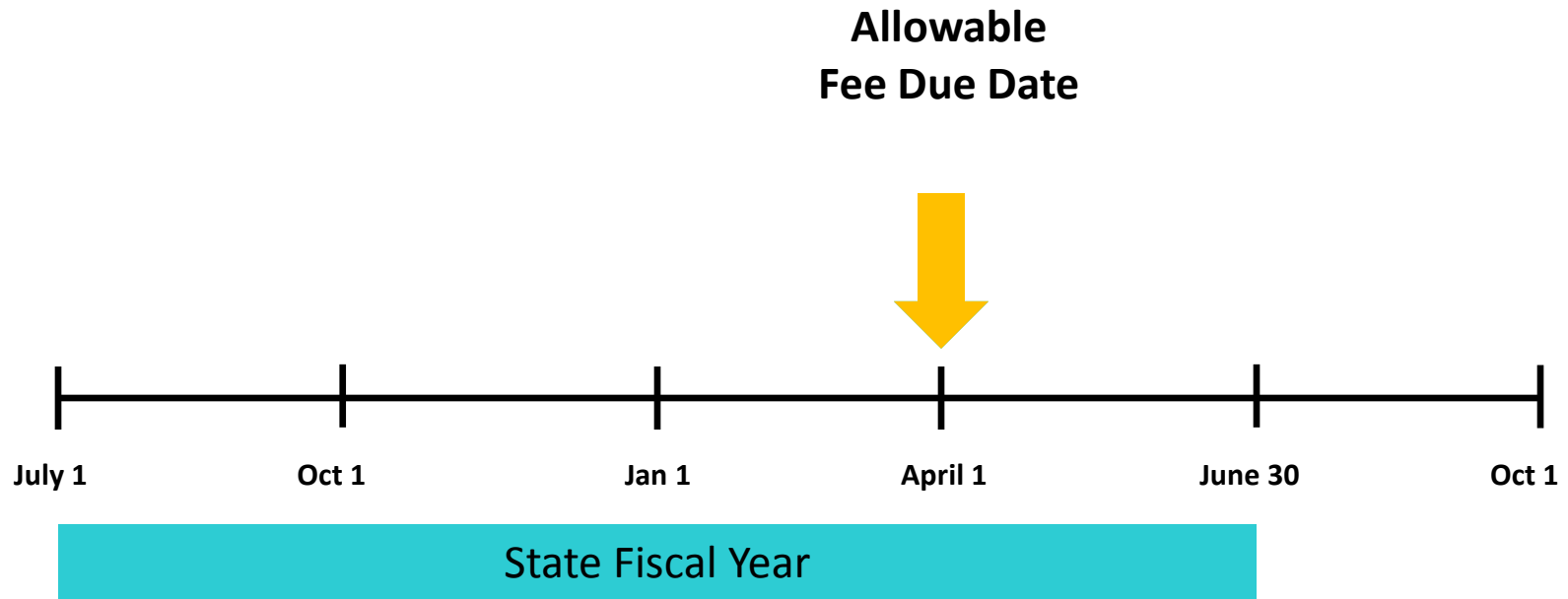
# Current Schedule



- Fees are Due AFTER Fiscal Year in Which They are Spent
  - Deadline is July 1; OR
  - Request Extension and pay Estimated 80% by 7/1 and Remainder by 9/28

# Revised Schedule – Starts in 2018

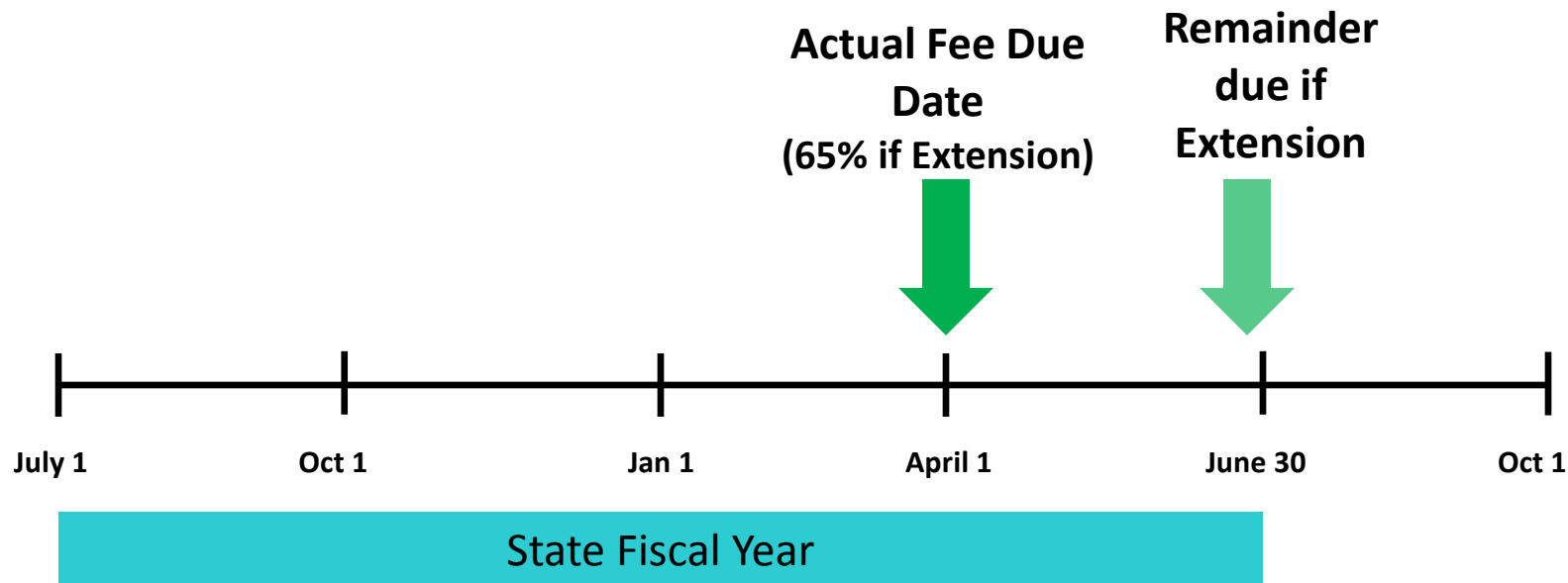
## Sources with Fees Based on **Allowable** Emissions



- Sources with Fees based on Allowable Emissions – 100% due 4/1
  - About 50% of facilities currently pay based on allowable emissions

# Revised Schedule – Starts in 2018

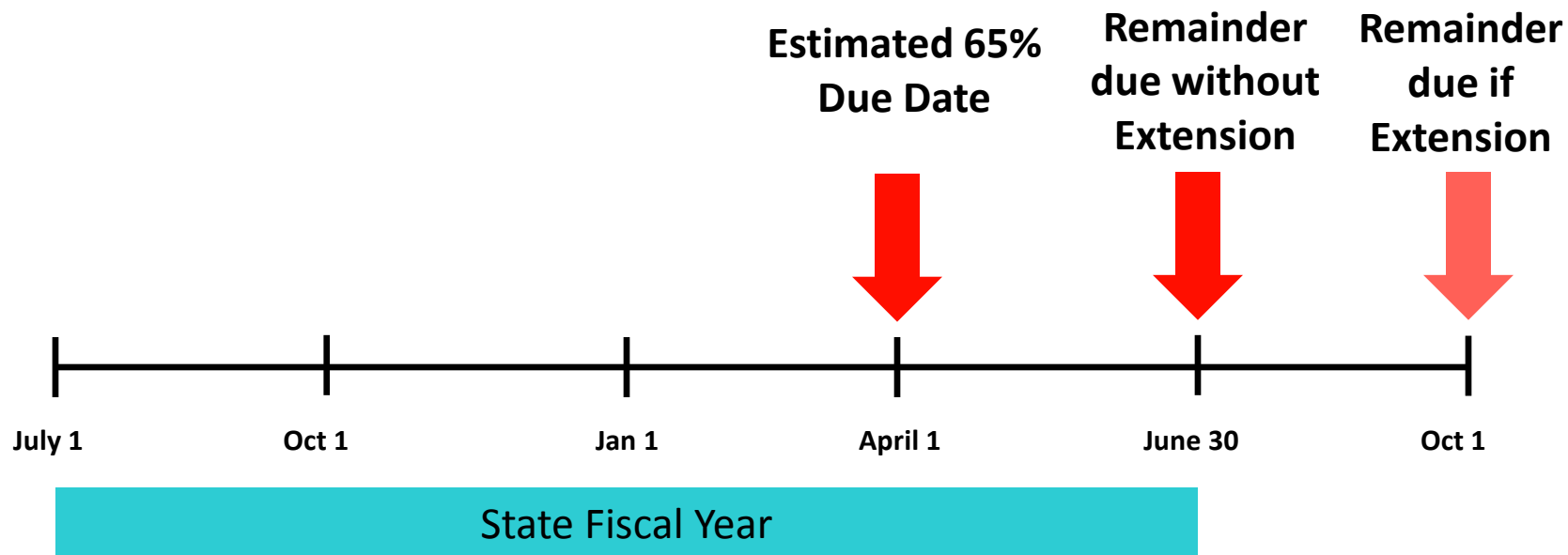
Sources with Fees Based on **Calendar Year Actual** Emissions



- Sources with Fees based on Calendar Year Actual Emissions
  - 100% due 4/1; or
  - Request Extension with estimated 65% due 4/1, remainder due 6/30
- Option to base fees on Calendar Year Emissions new in 2017

# Revised Schedule – Starts in 2018

## Sources with Fees Based on **Fiscal Year Actual** Emissions

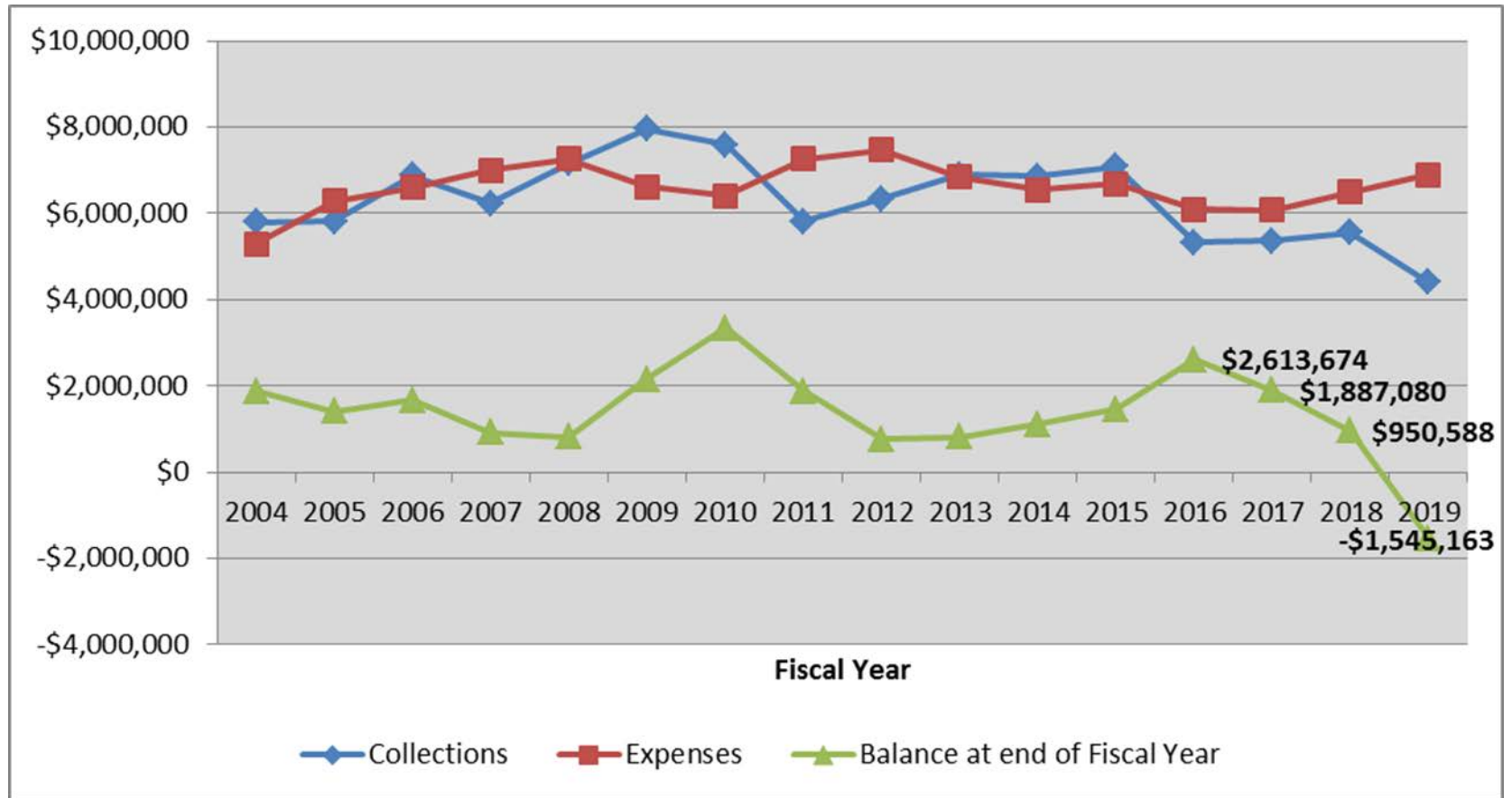


- Sources with Fees based on Fiscal Year Actual Emissions
  - Estimated 65% due 4/1 with remainder due 7/1; or
  - Request Extension with estimated 65% due 4/1, remainder due 9/28
- About 50% of facilities currently pay based on actual



# Projected FY2019 Expenses and Revenue

# Title V Revenue & Expenses





# Projected Emissions

- Method
  - QA'd 2016 AEAR\* reports
  - Estimated 2017, 2018, 2019 emissions for 20 facilities based on historical trends and known changes
    - These 20 Facilities Accounted for 64% of FY2016 Fees

\*Actual Emissions Analysis Required reports are submitted by facilities that pay on actual emissions basis or combination of actual and actual emissions basis

# Projected Emissions – Significant Changes

## Physical Changes (w. changes in calculation methods)

| Change   | 2016 Fees | Projected 2019 Fees |
|--|-----------|---------------------|
| TVA Johnsonville – retirement of coal units                              | \$382,247 | \$12,378            |
| TVA Gallatin – NO <sub>x</sub> & SO <sub>2</sub> controls                | \$483,538 | \$140,929           |
| Eastman Chemical – complete conversion of five coal-fired boilers to gas | \$488,275 | \$474,739           |
| Tate & Lyle - Cogen project  | \$111,215 | \$23,618            |
| Viskase – Replace coal-fired boilers with gas-fired boilers              | \$68,000  | \$49,432            |

# Projected Emissions – Significant Changes

## Calculation Method Changes

| Change                              | 2016 Fees | Projected 2019 Fees |
|-------------------------------------|-----------|---------------------|
| KNOWN CHANGES                       |           |                     |
| Holston Army Ammunition Plant       | \$334,003 | \$101,330           |
| Resolute FP                         | \$398,957 | \$165,656           |
| TVA Kingston                        | \$330,298 | \$193,218           |
| ASSUMED CHANGES                     |           |                     |
| Hood Container                      | \$75,774  | \$31,831            |
| Granges America (formerly Norandal) | \$85,618  | \$31,721            |
| Nyrstar                             | \$48,841  | \$12,909            |

# Projected Emissions

- Other Minor Changes
  - Sources that have Closed
    - Cumberland Charcoal
    - Cosmolab Incorporated
    - Darling Ingredients
    - LS Communications
  - Sources Paying 60% Maintenance Fee
    - Huber Engineered Wood

# Projected Expenses

- 3%/yr Pay-for-Performance Pay Increase as authorized under the TEAM Act
- Filling certain key vacant positions (\$372k/yr starting in mid-FY2018)
- \$100k/yr for routine, on-going ambient monitoring equipment replacement
- All other costs based on average of last three years
- More accurate projections will occur in Phase II (see slide 34)



# Evaluating Fee Options

# Fixed Assumptions

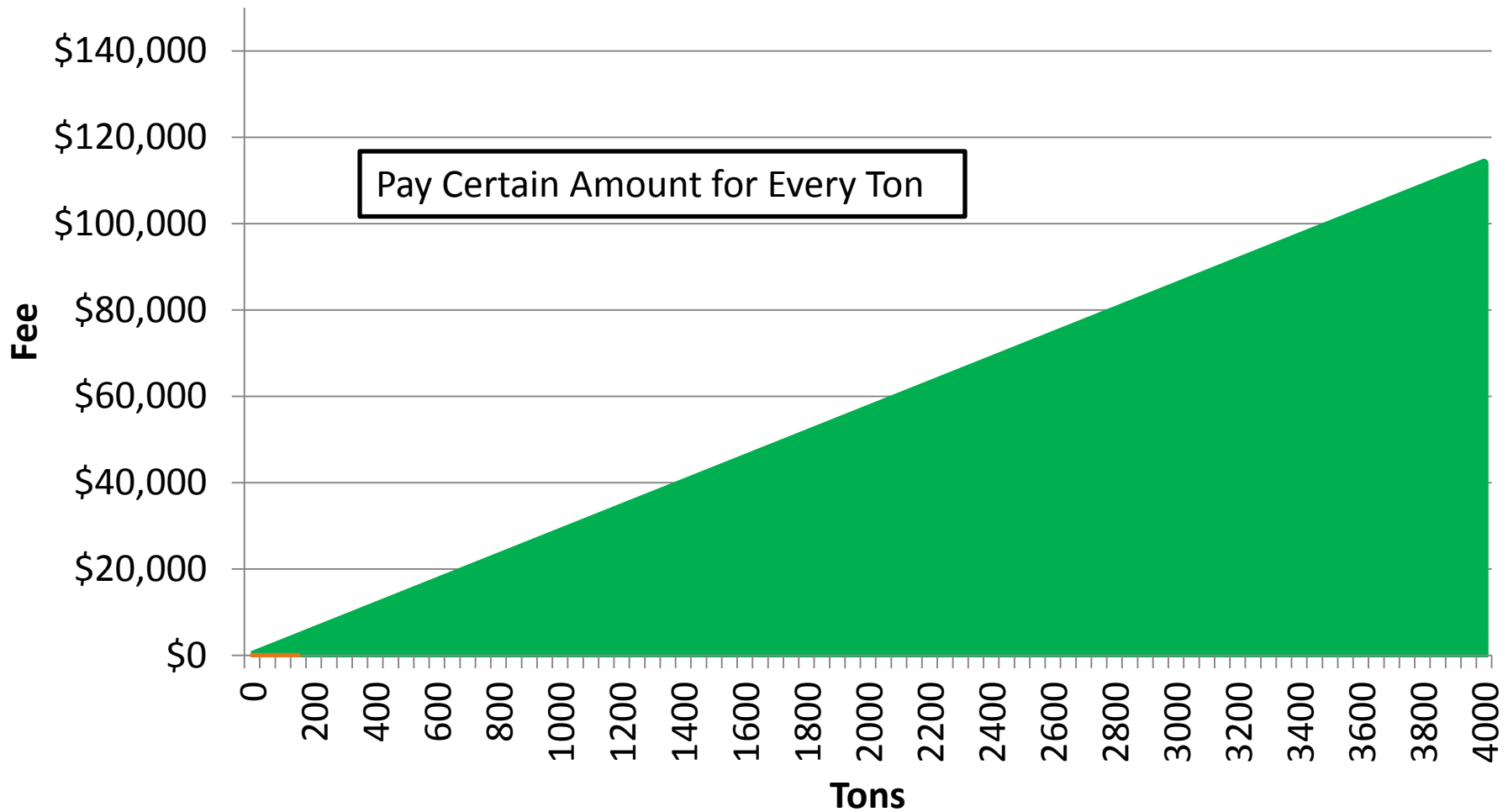
- Reserve at beginning of FY2019 = \$950,000
- FY2019 expenses = \$6,900,000
- Reserve at end of FY2019 = \$700,000
- For each facility
  - EGU or non-EGU
  - Allowable, Actual, or Mixed fee basis
  - Allowable and/or Actual tons for each pollutant
    - PM
    - SO<sub>2</sub>
    - VOC
    - NO<sub>x</sub>
    - Non VOC/PM HAPs with a Standard
    - Non VOC/PM HAPs without a Standard
    - Non VOC/PM/HAP NSPS Pollutants

# Variables

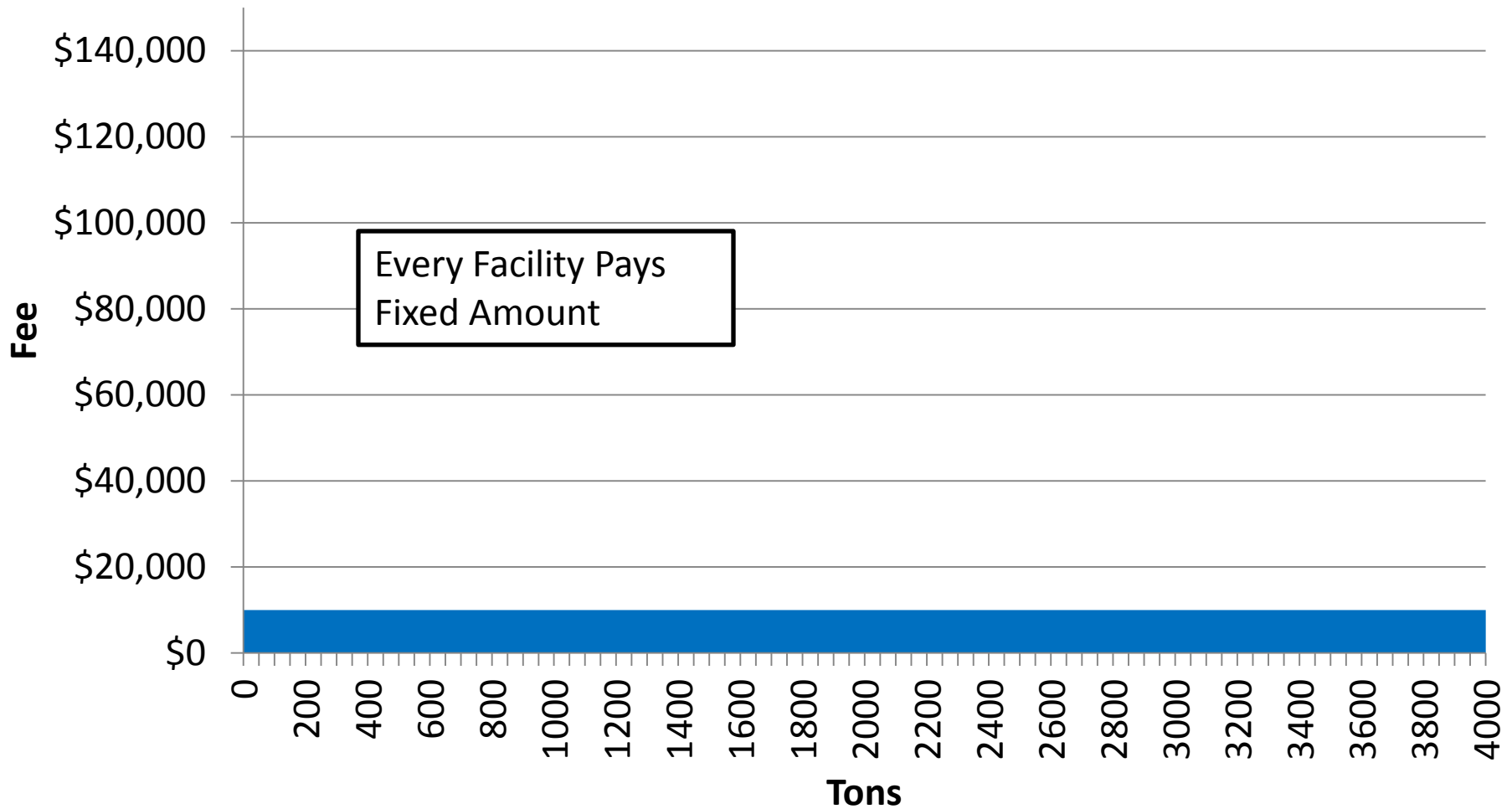
- Base Fee
  - Yes or No
  - Amount
- Minimum Fee Amount
- Actual to Allowable Rate Ratio
- EGU to non-EGU Ratio
- Brackets
  - Yes or No
  - Number of brackets
  - Size of brackets
  - \$/ton increase per bracket
- Other Ideas



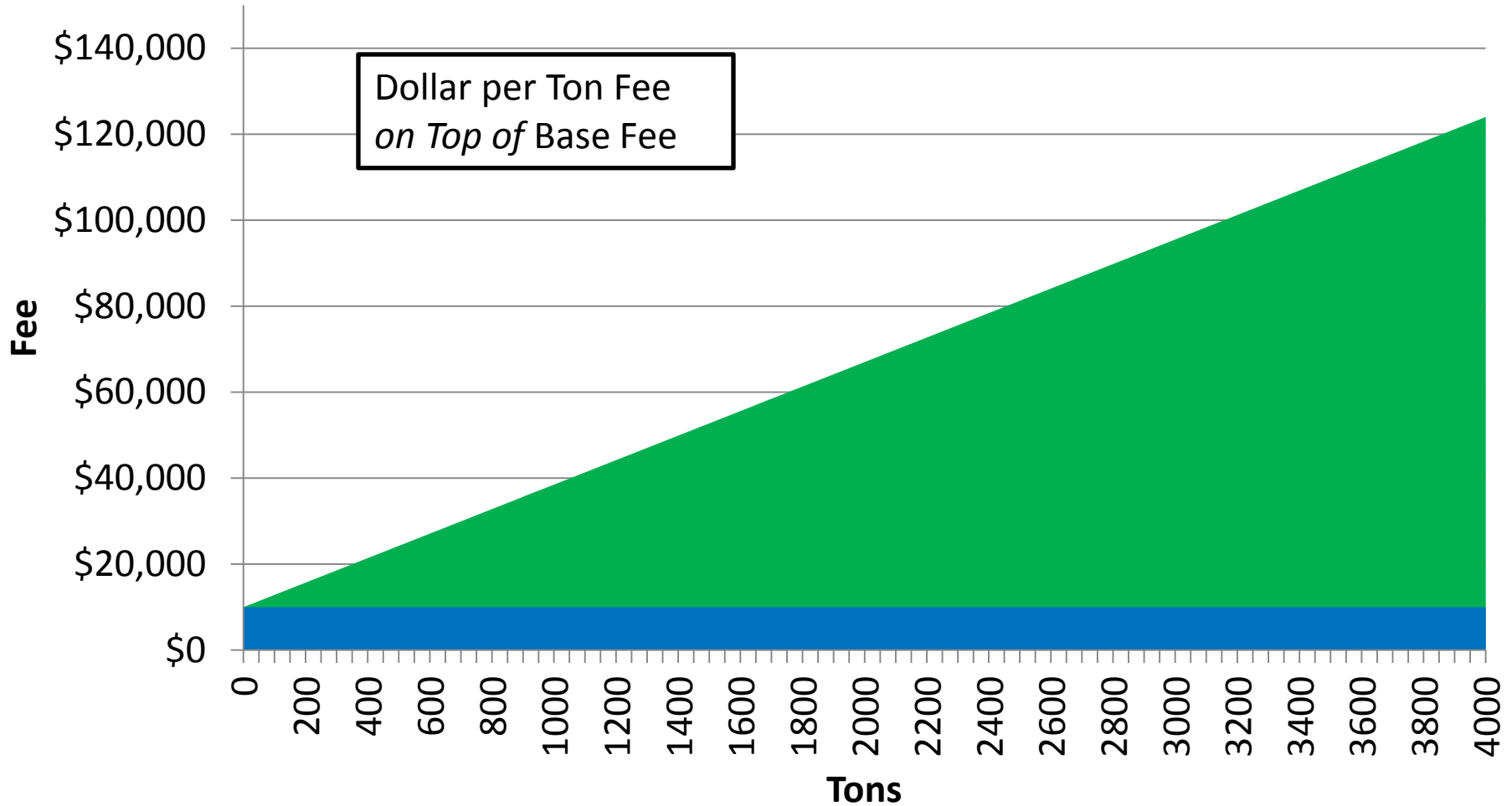
# \$/ton Fee



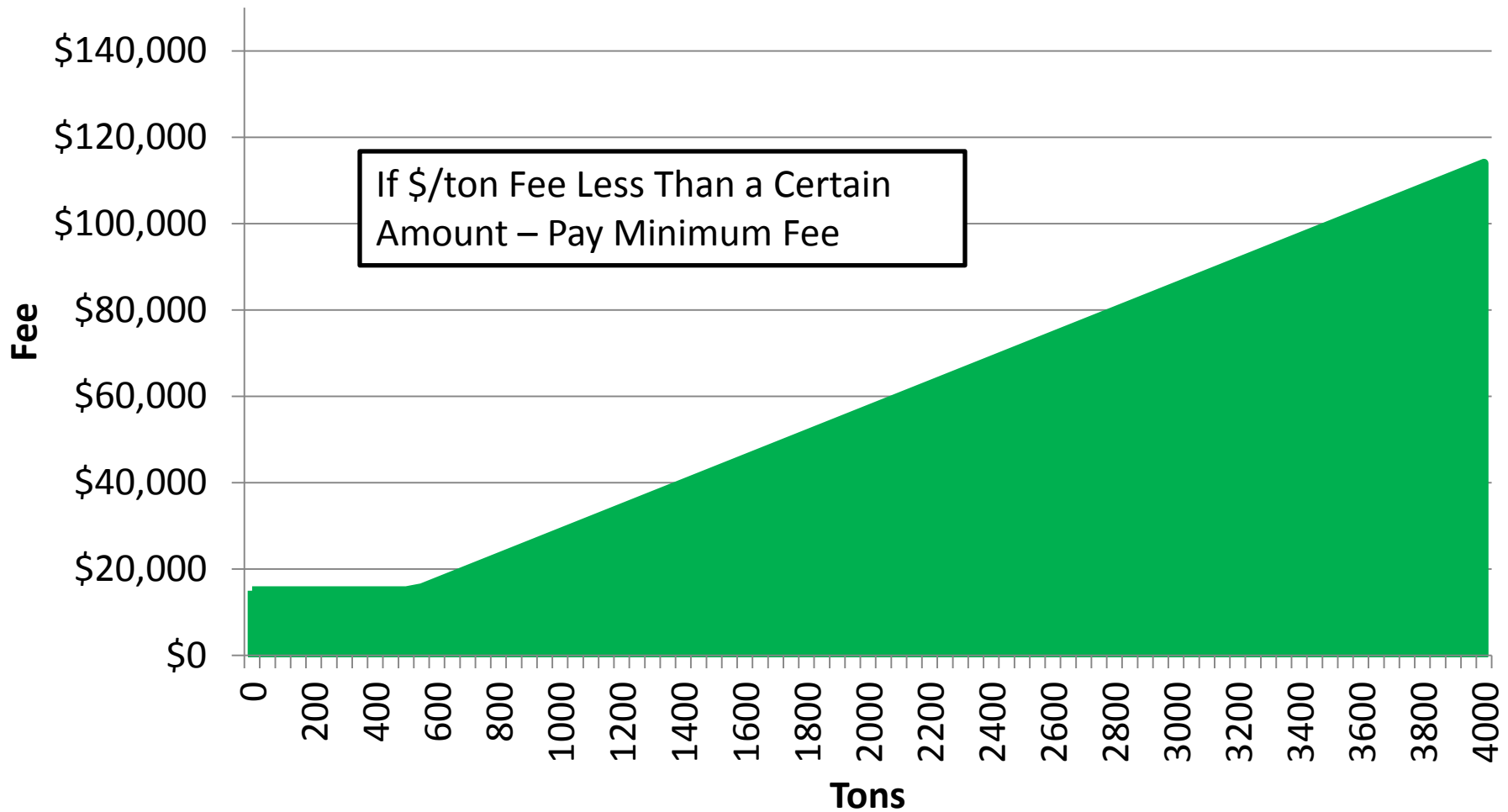
# Base Fee



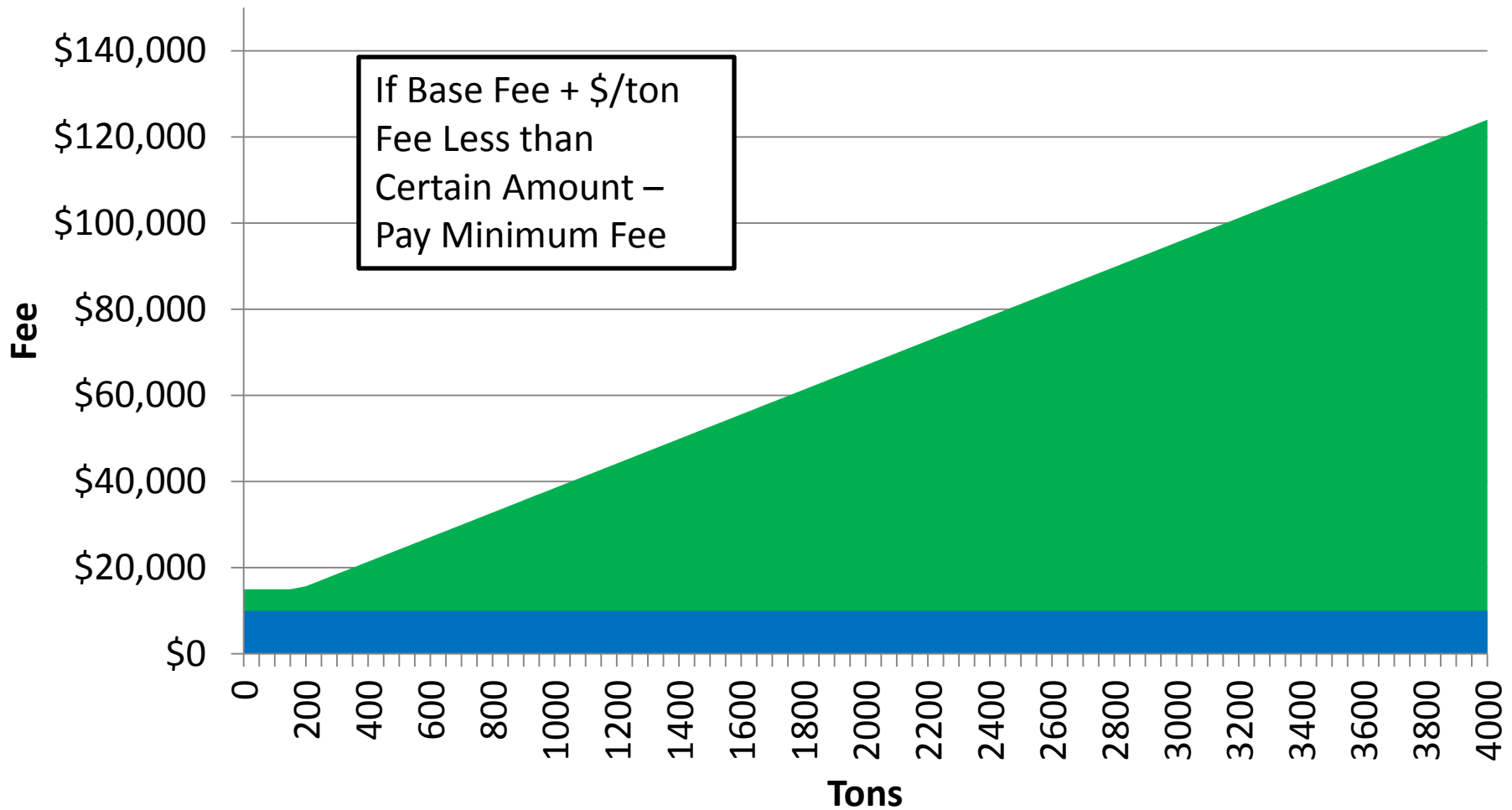
# Base + \$/ton Fee



# Minimum Fee



# Base + Minimum Fee



# Scenarios

| Scenario | Base fee | Min Fee  | ACT to ALW ratio | EGU to non-EGU ratio | Number of Brackets | Size of Brackets | Bracket \$/Ton Increase |
|----------|----------|----------|------------------|----------------------|--------------------|------------------|-------------------------|
| 1        | None     | \$7500   | 1.323            | 1.2                  | None               | n/a              | n/a                     |
| 2        | \$10,000 | None     | 1.6              | 1.2                  | None               | n/a              | n/a                     |
| 3        | \$5000   | \$10,000 | 1.6              | 1.2                  | None               | n/a              | n/a                     |
| 4        | \$5000   | \$10,000 | 1.6              | 1.2                  | 5                  | 500              | \$2                     |

## Other Scenarios as Proposed by Stakeholders

- Scenario 1 is similar to current fee structure
- Scenarios 2 through 4 were are generally based on input from 2016 Stakeholder Meetings

# Fee Scenario Analysis Tool

- Demonstration
- Excel Workbook available at <http://tn.gov/environment/topic/permit-air-permit-fees>



# Timeline



# Timeline – 2017 Stakeholder Process & Rulemaking

- 1<sup>st</sup> Webinars – May 11<sup>th</sup> and May 15<sup>th</sup>, 2:00 pm Central
- Stakeholder Meetings – to receive feedback from Stakeholders
  - May 24<sup>th</sup> – 1:00 PM at TBI, 901 R.S. Gass Blvd., Nashville
  - June 1<sup>st</sup> – 1:00 PM at Chattanooga Field Office, 1301 Riverfront Parkway, Chattanooga
- 2<sup>nd</sup> Webinar – APC Proposed Approach - Friday, June 16<sup>th</sup>, 1:00 pm Central
  - Deadline for Stakeholder Comments (via writing or email) on Proposed APC approach – June 30<sup>th</sup>
- Brief APC Board – 8/9/2017
- Public Notice Filed with Secretary of State – 8/25/2017
- Public Hearing – 10/17/2017
- APC Board Adoption – 11/8/2017
- File with Secretary of State – 1/16/2018
- Effective Date – 4/16/2018

# Phase II

- Refine expense projections needs using improved expense tracking mechanism
- Analyze Non-Title V expenses
- Revise FY2018 & FY2019 estimated revenue and FY2019 reserve based on FY2017 AEAR reports (first year in which change in calculation method allowed)
- Adjust \$/ton rates starting in FY2020
- Consider Adding CPI adjustment (with board approval)
- Rulemaking in 2018
  - May involve both Title V Fees and non-Title V Fees



# Website and Additional Regulatory Citations

# Permit Fee Stakeholder Website

- To be Posted at:

<http://tn.gov/environment/topic/permit-air-permit-fees>

- Presentations
- Documents
- Comments
- Other Information

# 40 CFR 70.9(a)

## **§70.9 Fee determination and certification.**

(a) *Fee requirement.* The State program shall require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and shall ensure that any fee required by this section will be used solely for permit program costs.

(b) *Fee schedule adequacy.* (1) The State program shall establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. These costs include, but are not limited to, the costs of the following activities as they relate to the operating permit program for stationary sources:

## 40 CFR 70.9(a) (continued)

- (i) Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;
- (ii) Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
- (iii) General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;

## 40 CFR 70.9(a) (continued)

- (iv) Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
- (v) Emissions and ambient monitoring;
- (vi) Modeling, analyses, or demonstrations;
- (vii) Preparing inventories and tracking emissions; and
- (viii) Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Program contained in section 507 of the Act in determining and meeting their obligations under this part.

# Tennessee Air Quality Rule 1200-03-26-.02(1)(c)

(c) Annual emission fees collected from sources named by the Board in the Division's Workload Analysis as being major sources pursuant to the provisions of Title V of the federal Clean Air Act and the federal regulations at 40 CFR Part 70 [FR Vol 57, No. 140, Tuesday, July 21, 1992 p32295-32312] and the definition of a major source in subparagraph 1200-03-26-.02(2)(g) shall be used to pay for the direct and indirect costs of:

1. Preparing generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;



# Tennessee Air Quality Rule 1200-03-26-.02(1)(c)

## (continued)

2. Reviewing and acting on any application for a permit, permit revision, or permit renewal, including the development of an applicable requirement as part of the processing of a permit, or permit revision or renewal;
3. General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification and related data entry;
4. Implementing and enforcing the terms of any part 70 permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program;
5. Emissions and ambient monitoring;
6. Modeling, analyses, or demonstrations;
7. Preparing inventories and tracking emissions; and
8. Providing direct and indirect support to sources under the Small Business Environmental Assistance Program.