



Department of  
**Environment &  
Conservation**

# **Title V Fees**

## **Air Pollution Control Board Briefing**

September 13, 2017

# Topics Covered

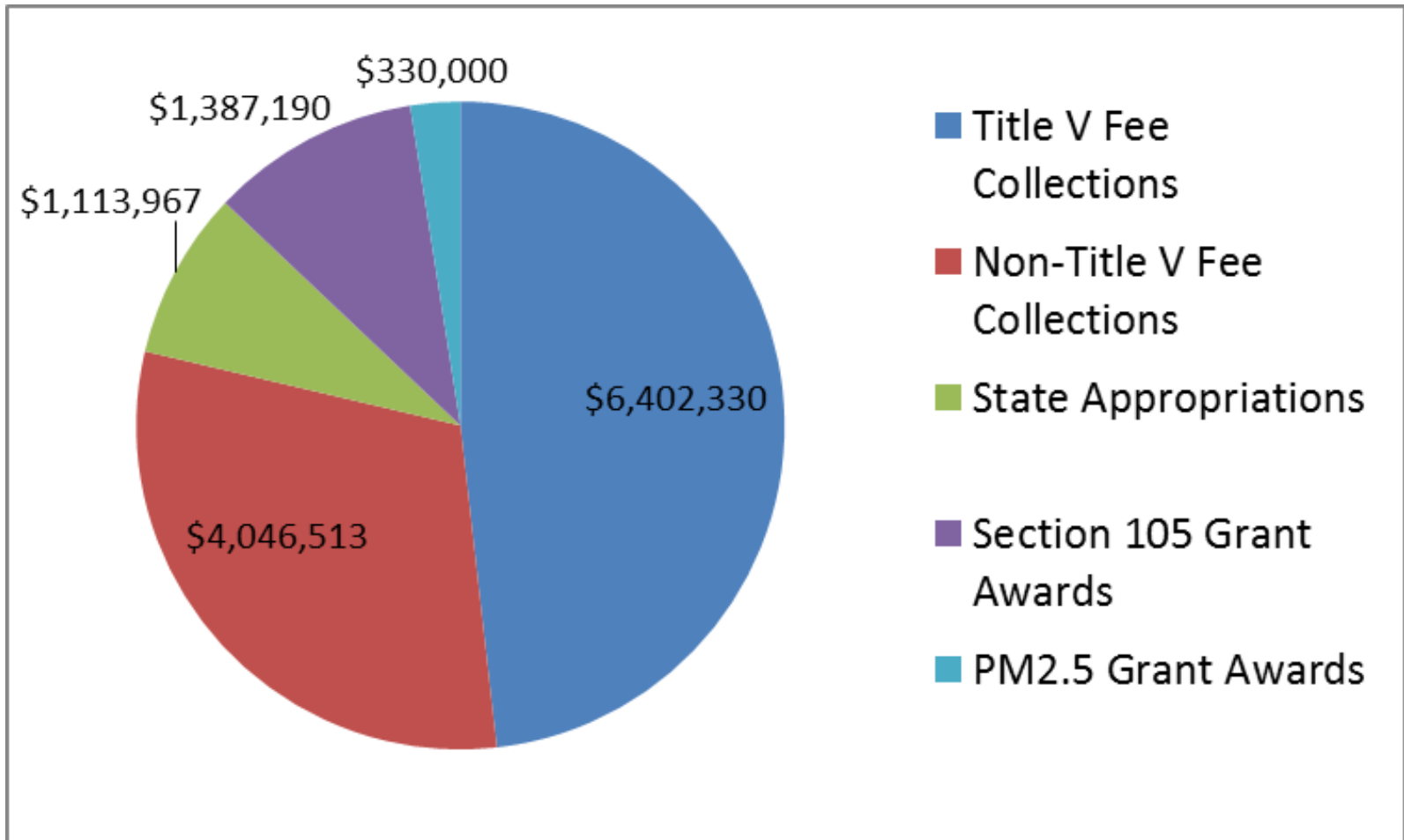
- Background
- Shortfall & Reasons for Shortfall
- Stakeholder Process
- Stakeholder Comments
- Proposed Rule
- Timeline



**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—

\*Small Business Environmental Assistance Program

# 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

# 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.

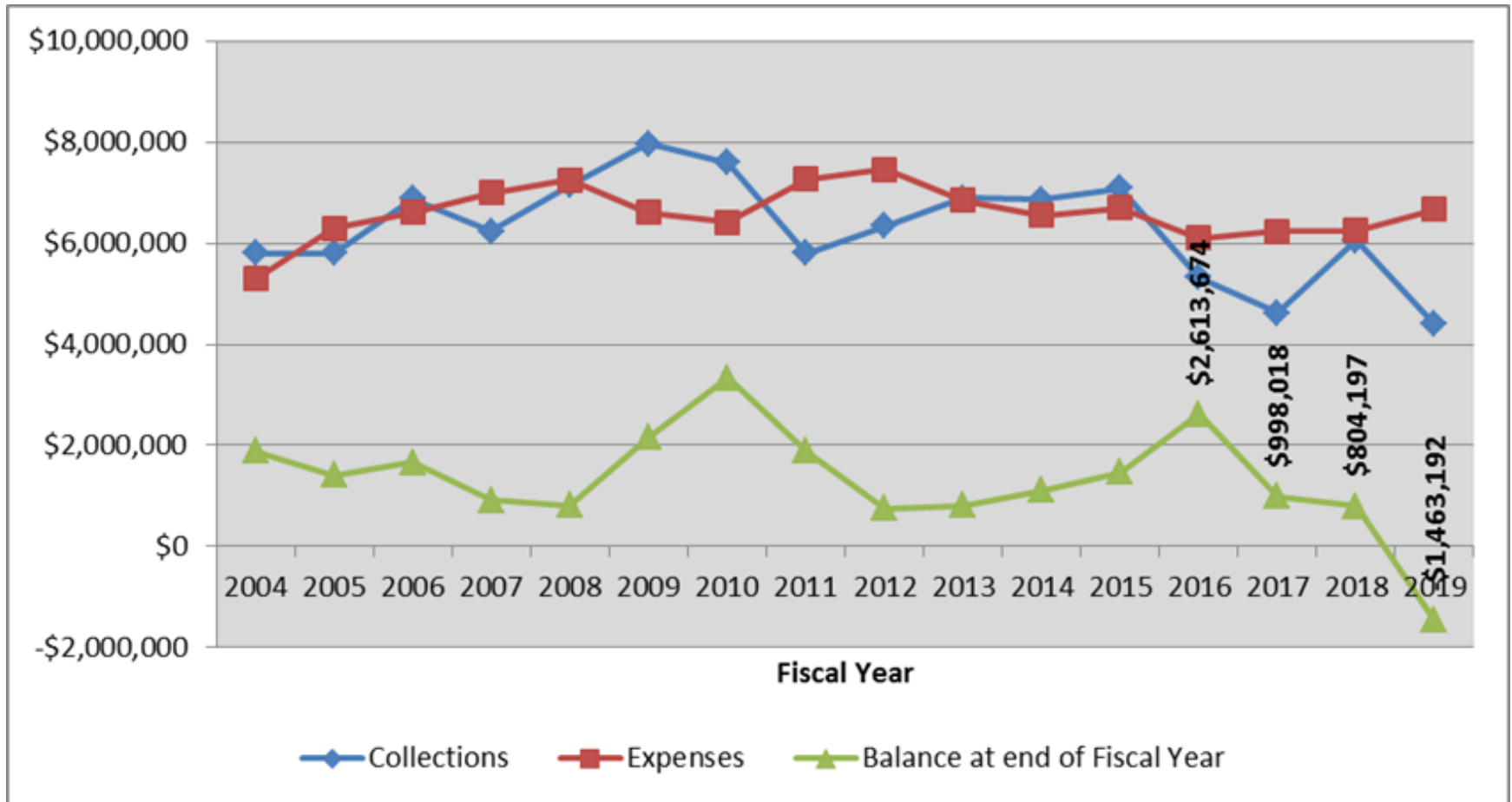
\*includes Tennessee Air Pollution Control Board





# Projected Shortfall

# Title V Revenue & Expenses



FY2017 figures are preliminary. FY18 and FY19 figures are estimates.

# Why will Fees Drop?

- APC is projecting a \$2.7 million reduction in fees from FY2015 Levels.
- Most of this has been identified.
  - Removal of the “base fee” starting with FY2016 Fees
    - ~\$670,000
  - Physical Changes at Large Emitting Sources that Will Significantly Reduce Emissions (and thus fees)
    - ~\$830,000
  - Changes in Fee Calculation Methods for Sources that were Large Fee Payers
    - ~\$740,000
- The rest of the reduction is due to lower collections in FY2017 that have yet to be identified.
  - See Phase II

# 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
Nyrstar	\$48,841	\$12,909
ASSUMED CHANGES		
Hood Container	\$75,774	\$31,831
Granges America (formerly Norandal)	\$85,618	\$31,721

# Projected FY2019 Emissions Used to Project FY2016 Fee Collections

- 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
  - Removed Sources that have shut down
  - Added New Title V sources
  - Projected FY2019 Emissions
    - Allowable non-EGU Emissions = 64,866 tons (84,075 in FY2016)
    - Allowable EGU Emissions = 8835 tons (36,635 in FY2016)
    - Actual non-EGU Emissions = 23,460 tons (21,002 in FY2016)
    - Actual EGU Emissions = 9016 tons (4616 in 2016)

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

# Projected Expenses

- Start with Preliminary FY2017 Actual Expenses
- 3%/yr Pay-for-Performance Pay Increase as authorized under the TEAM Act
- Filling certain key vacant positions (\$118k/yr in FY2018, \$281k/yr in FY2019)
- \$100k/yr for routine, on-going ambient monitoring equipment replacement
- 3.5% increase per year in overhead costs
- All other costs based on average of last four years
- More accurate projections will occur in Phase II



# Stakeholder Process



# 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 starting in 2018
  - For most facilities, deadline will change from July 1 to April 1
- Remainder of Issues Deferred
- Material Available at <http://www.tennessee.gov/environment/topic/permit-air-permit-fees>

# 2017 Stakeholder Process

- 2017 Stakeholder Process
  - Email to All Title V Sources in Early May & Prior to Each Webinar
  - Kickoff Webinars May 11<sup>th</sup> & 15<sup>th</sup>
  - Face-to-Face Meetings in Nashville & Chattanooga May 24<sup>th</sup> & June 1<sup>st</sup>, Respectively
  - Meeting with Tennessee Chamber of Commerce & Industry (TCCI) on June 14<sup>th</sup> at their Request
  - June 16<sup>th</sup> Webinar in which Strawmen were Presented
    - Comments on Strawmen Requested by June 30<sup>th</sup>
  - Presentations at TCCI Permitting Workshops
    - July 13<sup>th</sup> In Nashville
    - August 10<sup>th</sup> in Knoxville
  - Other Presentations Throughout 2016 & 2017
- Material Available at <http://www.tennessee.gov/environment/topic/permit-air-permit-fees>

# 2017 Stakeholder Comments

- From meetings & webinars:
  - The current minimum fee of \$7500 is already burdensome on some small companies.
  - Any increase in fees should be relatively consistent across all facilities.
  - Facilities that emit more should pay more.
  - Stakeholders want to see the Title V workload analysis.
    - Draft workload analysis with proposal redacted made available 9/6/2017
  - There was no widespread support for a “bracket” type fee system .

# Strawmen

- Developed Using Statistical Analysis of 800+ Scenarios
- Scenarios Selected that Best Addressed Stakeholder Comments
- Strawmen included:
  - Non-Bracketed System:
    - Non-EGU Allowable \$/ton
    - EGU Allowable \$/ton
    - Non-EGU Actual \$/ton
    - EGU Actual \$/ton
  - Bracketed System:
    - Marginal \$/ton rates increase for each 500 tons of emissions
  - Base Fee of \$4000
  - Two Different Minimum Fees
  - Lower Fee for sources subject to Title V solely due to EPA's "once in, always in" policy that have reduced emissions through pollution prevention

# Stakeholder Comments on Strawmen

- Two written Comments Received
  - TCCI
  - Catamaran Cruisers
- Summary of Comments
  - No Support for Fee Brackets
  - EGU to non-EGU \$/ton ratio of 1.4 to 1 (APC Strawman used 1.2 to 1)
  - Actual to Allowable \$/ton ratio of 1.6 to 1 (APC Strawman used 1.3 to 1)
  - Retain Minimum Fee of \$7500
  - Reinstate Base Fee that applies to all sources
  - Add Provision for “once in, always in” sources but without pollution prevention requirement
  - Assumed Following:
    - Reserve at beginning of FY2019 = \$950,000
    - FY2019 expenses = \$6,900,000
    - Reserve at end of FY2019 = \$700,000
    - Projected FY2019 Emissions



# Proposed Title V Fee Rule Changes

# Assumptions Used in Setting \$/ton Rates

- Reserve at beginning of FY2019 = \$800,000
- FY2019 expenses = \$6,700,000
- Reserve at end of FY2019 = \$1,000,000
- Projected FY2019 Emissions – Same as Strawmen

# Proposed Fee Rule

- Effective for FY2019 Fees
- Base Fee of \$4000/year paid by all sources (currently no base fee)
  - Applies toward minimum fee
- Dollar Per Ton Rates
  - Non-EGU Allowable = \$49.00/ton (currently \$32.50/ton)
  - EGU Allowable = \$69.00/ton (currently \$39.00/ton)
  - Non-EGU Actual = \$65.00/ton (currently \$43.00/ton)
  - EGU Actual = \$91.00/ton (currently \$49.50/ton)
  - Based on:
    - EGU to non-EGU ratio of 1.4 to 1
    - Actual to Allowable ratio of 1.325 to 1
- Minimum Fee = \$7500 (same as current minimum fee)
- Reduced Minimum Fee for “once in, always in” sources = \$5500
  - Very few eligible sources



# Proposed Fee Rule – Taking Comments on

- Alternate Dollar Per Ton Rates
  - Non-EGU Allowable = \$45.00/ton (currently \$32.50/ton)
  - EGU Allowable = \$64.00/ton (currently \$39.00/ton)
  - Non-EGU Actual = \$73.00/ton (currently \$43.00/ton)
  - EGU Actual = \$102.00/ton (currently \$49.50/ton)
  - Based on:
    - EGU to non-EGU ratio of 1.4 to 1
    - Actual to Allowable ratio of 1.6 to 1
- Appropriate Reduced Minimum Fee for “once in, always in” sources as low as \$4000, as high as \$5500



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# Timeline

# Timeline – 2017 Stakeholder Process & Rulemaking

- Brief APC Board – 9/13/2017
- Public Notice Filed with Secretary of State – 9/15/2017
- Webinar on Proposed Rule – 10/26/2017 (tentative)
- Public Hearing – 11/9/2017
- APC Board Adoption – 12/13/2017
- 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