



Department of
**Environment &
Conservation**

Proposed F2023 Title V Fee Rule

Stakeholder Webinar – October 6, 2021



Title V Fees Statutory and Regulatory Requirements



What Statutory Requirements Apply to Air Quality Fees?

Tennessee Environmental Protection Fund Act

TN Code § 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**.



What Statutory Requirements Apply to Air Quality Fees?

Tennessee Environmental Protection Fund Act

TN Code § 68-203-103 – Fees

(a) (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).



What Statutory Requirements Apply to Air Quality Fees?

Tennessee Environmental Protection Fund Act

TN Code § 68-203-103 – Fees

(a)(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.**



What Statutory Requirements Apply to Air Quality Fees?

Tennessee Environmental Protection Fund Act

TN Code § 68-203-103 – Fees

(a)(3) (continued) 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.

What regulatory requirements apply to air quality fees?

1200-03-26-.02 CONSTRUCTION AND ANNUAL EMISSION FEES

(1) Purpose

- (a) It is the purpose of this rule to establish construction fees, annual emission fees, and permit review fees for sources subject to permitting pursuant to Division 1200-03 sufficient to **supplement existing state and federal funding** that covers **reasonable costs (direct and indirect)** associated with the **development, processing, and administration** of the **air pollution control program**. This will provide for better quality evaluation of the impact of air emissions on the citizens of Tennessee, and timely permitting services for sources subject to permitting requirements.



What regulatory requirements apply to air quality fees?

1200-03-26-.02 CONSTRUCTION AND ANNUAL EMISSION FEES

(1) Purpose

(b) Such costs shall **include, but not be limited to**, costs associated with **review of applications** and **reports**, issuance of required **permits** and associated **inspections** of sources, **unit observation**, review and evaluation of **monitoring results (stack and/or ambient)**, **modeling**, and costs associated with any necessary **enforcement** actions (excluding penalties assessed).



What regulatory requirements apply to Title V fees?

1200-03-26-.02 CONSTRUCTION AND ANNUAL EMISSION FEES

(1) Purpose

- (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 C.F.R. 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;
 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;



What regulatory requirements apply to Title V fees?

1200-03-26-.02 CONSTRUCTION AND ANNUAL EMISSION FEES

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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**.



Questions





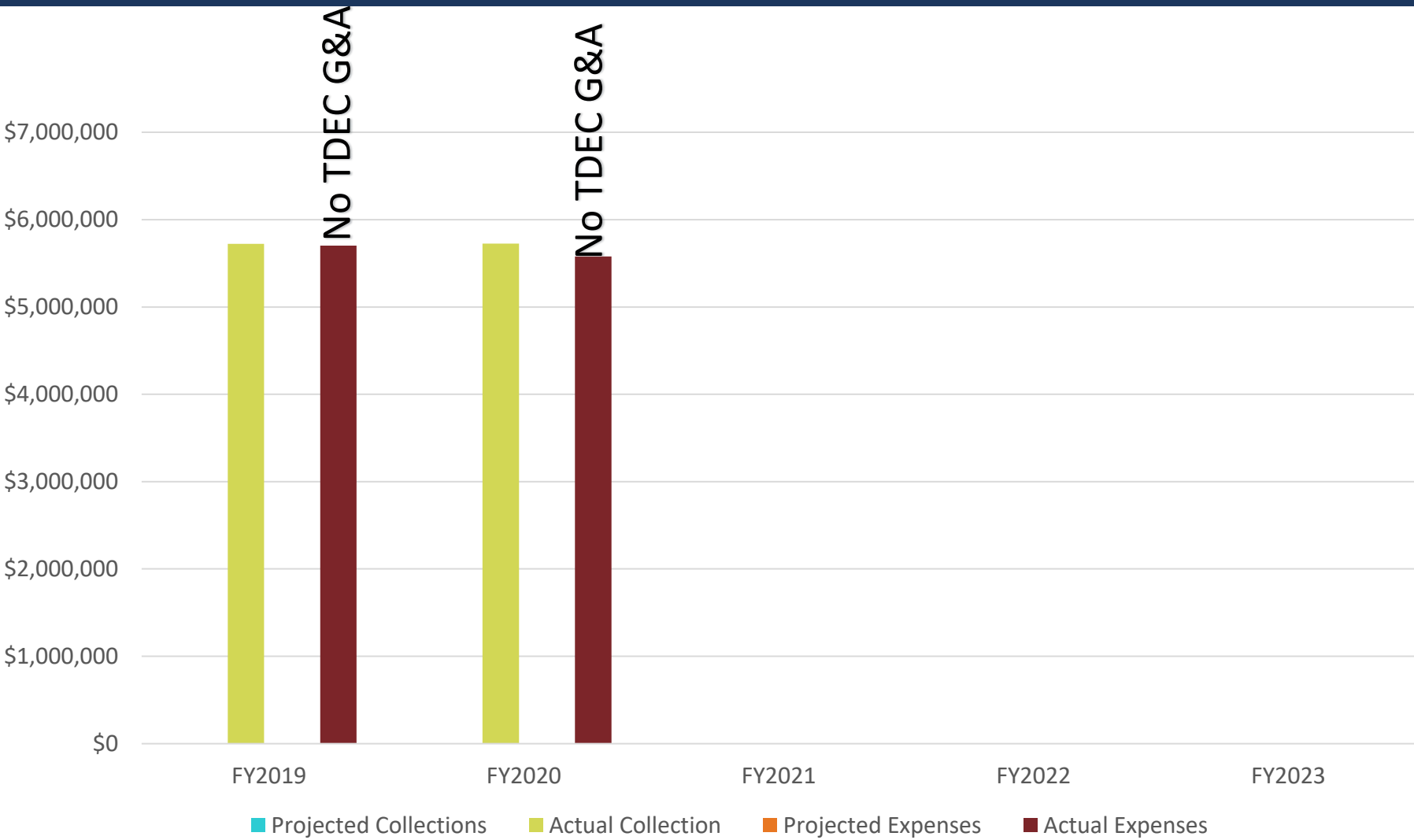
Recent History of Title V Fee Rules



Prior Rulemakings and Financial Results

- Fee Increase Adopted in 2017 following 2-Year Stakeholder Process
 - Went into Effect in 2019
- Phase II rulemaking 2018 discontinued by TDEC
 - Internal short term funding plan implemented
- FY2019 & FY2020 Expenses
 - Expenses Reduced by Funding Plan in Short Term
 - Limitations on Filling Vacancies
 - APC did not Pay TDEC G&A Expenses
 - Other Austerity Measures Put Into Place (e.g., Travel, Computer Replacements)
 - Some Expenses Covered by Project Restore
- Actual 2019 Fee Collection - \$5,722,729
- Actual 2020 Fee Collection - \$ 5,725,280

Title V Fee Collections & Expenses





Prior Rulemakings and Financial Results

- Fee increase adopted in 2019
 - Effective for 2021 Fees
- APC Proposal – Two Year Phase-In
 - Projected 2021 Fee Collection - \$7,810,839
 - Projected 2022 Fee Collection - \$8,045,164
- APC Recommendation after Public Hearings
 - One Year Only
 - Projected 2021 Fee Collection - \$7,066,366
- Board Adoption
 - One Year Only
 - Projected 2021 Fee Collection - \$6,819,868

Actual 2021 Title V Fees Collections

- Projected FY2021 Fee Collection - \$6,819,868
- Actual 2021 Fees Due - \$6,245,562
- 2019 fee rule, effective in 2021, collected over 500k less than projected
What Happened?*
 - Nine Facilities with Actual 2021 Fees \$10,000 or More Below than Projected 2021 Fee
 - Totaled \$653,405 Less than Projected
 - Due to:
 - Change in Method of Fee Calculation (3)
 - Permanent Physical Changes or Reduced Utilization (3)
 - Temporary Utilization/Production Changes (3)
 - Highlighted Changes are anticipated to be Permanent Changes
 - Five facilities did not pay Title V fees in 2020
 - Total 2021 Fees for Remaining Facilities Close to Projection

*Compared projected 2021 fees (based on 2020** emissions and allowable emissions) and actual 2021*** emissions, both using current fee rates.

**CY2019 or FY2020

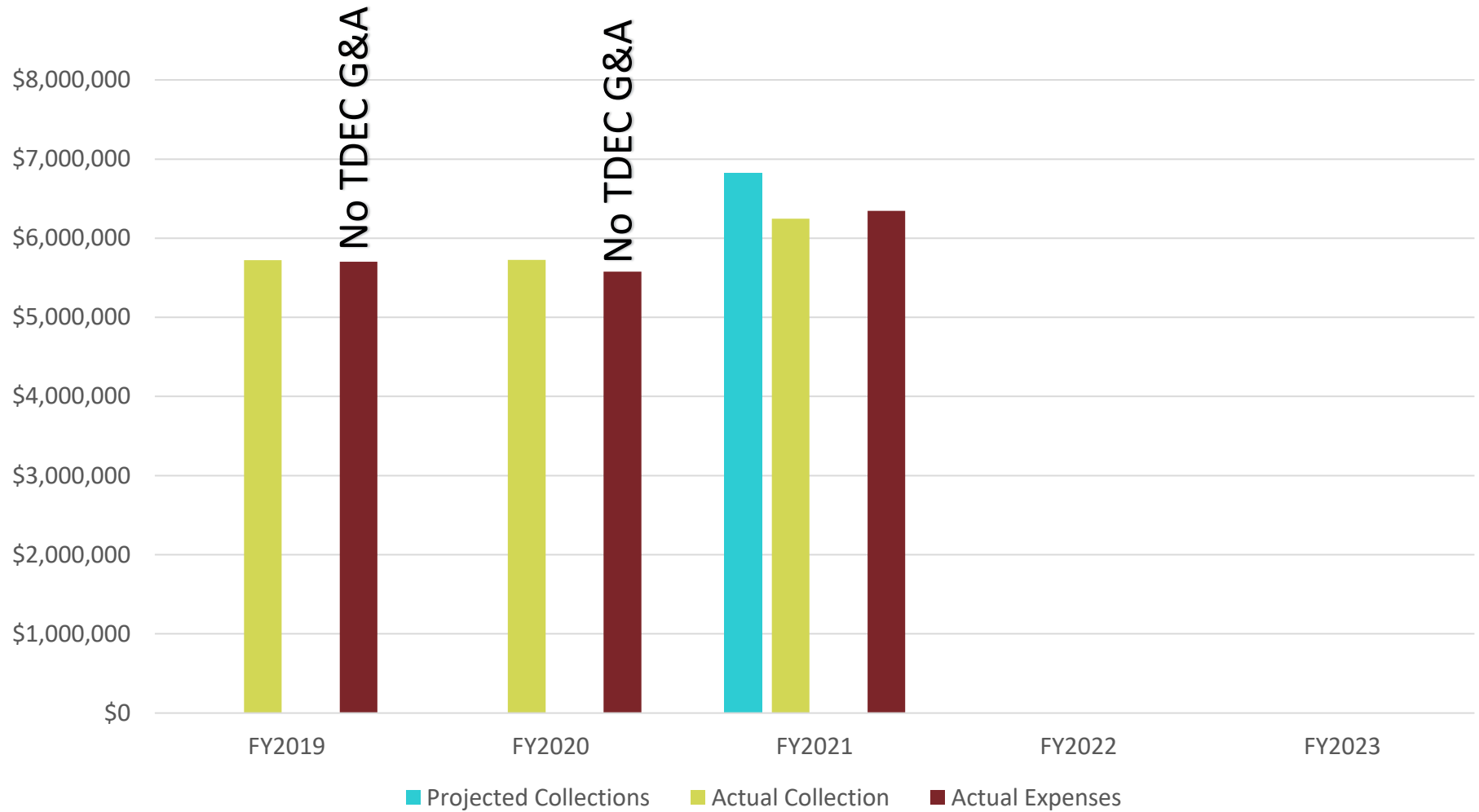
***CY2020 or FY2021



Actual 2021 Title V Expenses

- \$6,346,333
- FY2021 Expenses Reduced by
 - Delay in filling vacancies due to hiring freeze and unexpected retirements creating vacancies
 - COVID (e.g., travel restrictions)
 - Some Expenses Covered by Project Restore in order to spend full state appropriation to zero
 - Used Portion of Reserve to Cover Title V Expenses in FY2021

Title V Fee Collections & Expenses





Questions





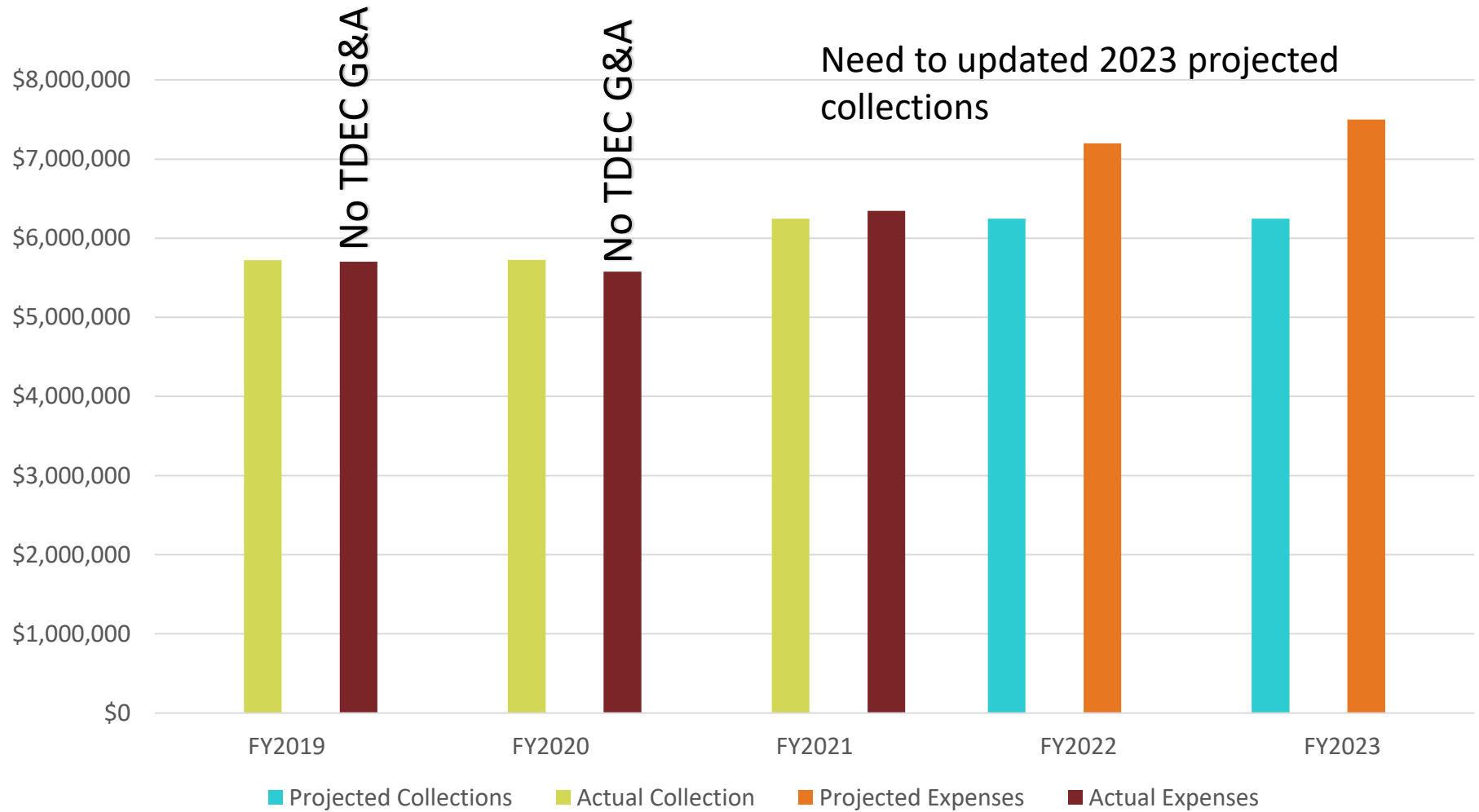
Proposed Changes to Title V Fee Rule



Projected Income & Expenses

- Projected 2022 and 2023 Income without Fee Increase
 - Based on reported 2021 emissions
 - Projected 2022 TV Income = \$6,245,562
 - Projected 2023 TV Income = \$6,245,562
- Projected Expenses
 - FY2022 - \$7,200,000
 - FY2023 - \$7,500,000
- Expected to use significant amount of reserve to cover FY2022 expense
- Exhaust reserve in FY2023

Title V Fee Collections & Expenses



TV Fee Data (without fee increase)

Reported Emissions and Fee Data Reported in 2021

Billable Non-EGU Actual Tons ¹	20,235
Billable EGU Actual Tons ¹	6298
Billable Non-EGU Allowable Tons ¹	66,363
Billable EGU Allowable Tons ¹	8015
Number of Sources Paying Minimum Fee	55
Total Number of Sources ²	207
Total Fee (Estimated)	\$6,245,562

¹does not include tons for sources paying minimum fee or emissions over 4000 tpy cap

²all sources pay base fee, includes sources paying minimum fee

- Data Provided for Stakeholders use for Commenting on Proposed Fee Rule
- APC Cannot Project if Future Emissions Data will Reflect 2021 Data
- Using historical data for projecting future revenue has proven to be unreliable and doing so comes with high level of risk



Fee Calculation Basics

- Total Fee = Actual Tons x Actual \$/ton Rate + Allowable Tons x Allowable \$/ton Rate + Base Fee
 - Different \$/ton rates for non-EGUs and EGUs
- If Total Fee < Minimum Fee – Pay Minimum Fee



Proposed Title V Fee Rule

- Need for Fee Increase
 - **Starting from Behind** (current rule collected ~\$600,000 less than projected)
 - **Fee Rule Adopted in 2019 Did Not Fully Fund Title V Program**
- Amount of Increase
 - Projected FY2023 Income = \$6,245,562
 - Projected FY2023 Expenses = \$7,500,000
 - Shortfall = \$1,254,438

Proposed Title V Fee Rule

- Changes to 1200-26-.02(d)(9)
- Proposed \$/ton rate represents Actual-to-Allowable Ratio of 1.45 to 1

	Current Rule	Proposed Rule
Base Fee	\$5000	\$6000
Minimum Fee	\$9000	\$10,000
Non-EGU Allowable \$/ton	\$40.20	\$48.50
Non-EGU Actual \$/ton	\$64.20	\$70.50
EGU Allowable \$/ton	\$57.00	\$68.00
EGU Actual \$/ton	\$90.00	\$98.50

- Projected Income with Fee Increase = \$7,186,971

TV Fee Data (with fee increase)

Reported Emissions and Fee Data Reported in 2021

Billable Non-EGU Actual Tons ¹	20,415
Billable EGU Actual Tons ¹	6298
Billable Non-EGU Allowable Tons ¹	66,814
Billable EGU Allowable Tons ¹	8015
Number of Sources Paying Minimum Fee	47
Total Number of Sources ²	207
Total Fee (Estimated)	\$7,186,971

¹does not include tons for sources paying minimum fee or emissions over 4000 tpy cap

²all sources pay base fee, includes sources paying minimum fee

- Data Provided for Stakeholders use for Commenting on Proposed Fee Rule
- APC Cannot Project if Future Emissions Data will Reflect 2021 Data
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Proposed Title V Fee Rule

- Remove Construction Permit Fee Exemption for Existing Title V facilities
 - 1200-03-26-.02(5)(a) and 1200-03-26-.02(9)(a)
- APC Issues ~ 300 Construction Permits per Year
 - ~15% Issued to Title V Facilities
- Estimated Income from Title V facilities < \$10,000/yr
- Effective 7/1/2022



Tentative Schedule

- Listening Session – 6/9/2021
- Present Draft Title V Workload Analysis to Board – 8/11/2021
- Present Proposed Title V Fee Rule to Board – 8/11/2021
- Stakeholder Webinar – 10/6/2021
- Division will meet with stakeholders as requested through end of comment period
- Public Hearing & Close of Comment Period – 10/18/2021
- Board Consideration of Final Approval of Final Title V Workload Analysis – 11/10/2021
- Board Consideration of Final Approval of Title V Fee Rule- 11/10/2021



Submitting Comments on Proposed Rule

- Via mail to:
Technical Secretary
Tennessee Air Pollution Control Board
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, TN 37243
- Via email to:
Air.Pollution.Control@tn.gov
- Comment deadline = October 18, 2021



Questions

