



TITLE V AIR QUALITY

PERMIT PROGRAM

AIR FEE REVIEW

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1.0 Introduction

1.1 Background

The federal Clean Air Act of 1990 required the development of a national permit program for major sources of air pollution. This permit program is called the Title V air quality permit program. To pay for implementing the permit program, Congress required in the Clean Air Act that air pollution sources subject to the permitting program must pay a fee to cover the reasonable direct and indirect costs associated with administering the program.

Under the Clean Air Act, all states had to develop a permit program and a fee structure to pay for implementing the program and be approved by the U.S. Environmental Protection Agency (EPA). If a state decided not to develop a permit program, the EPA would develop and implement its own program for that state and charge the maximum fee allowed under the Clean Air Act. Currently EPA is charging \$45.33 per ton of regulated pollutants emitted into the air from each permitted source.

To decrease the cost of the program and to provide better customer service to businesses and industry in South Dakota, the South Dakota Department of Environment and Natural Resources (DENR) established a Title V air quality permit program and a fee structure to pay for implementing the program in 1994. In lieu of the maximum fee allowed under the Clean Air Act that would have been charged under an EPA administered program, DENR set the fee at \$6.10 per ton of regulated pollutants emitted from permitted sources. The air emission fees were established in Administrative Rules of South Dakota Chapter 74:37:01 – Air Emission Fees on July 1, 1994, and have been in effect since then.

1.2 State Authority

Under section 502(b)(3) of the Clean Air Act, the owner or operator of a source subject to the requirements to obtain a Title V air quality permit shall pay an annual fee sufficient to cover all reasonable direct and indirect costs required to develop and administer the Title V air quality permit program. South Dakota Codified Laws (SDCL) Sections 34A-1-57, 34A-1-58, 34A-1-59, and 34A-1-60 established South Dakota's state authority to establish and collect air fees that fund South Dakota's Title V air quality permit program.

In accordance with SDCL 34A-1-57, state legislators imposed a fee on certain air pollution point sources as provided in SDCL 34A-1-58. SDCL 34A-1-58 allows the Secretary of DENR to exclude any amount of regulated pollutant emitted by any source in excess of four thousand tons per year in determining the amount of fee required for any operating source. It further states that the Secretary shall develop a fee structure which equitably assesses an annual fee for the administration costs and an annual fee based on emissions, the sum of which covers the estimated total costs of administering a delegated state air quality program. The Secretary may adjust the fee, if necessary, on an annual basis.

SDCL 34A-1-59 establishes the air quality subfund that shall consist of money from public and private sources including legislative appropriations, federal grants, gifts, and fees collected under SDCL 34A-1-58. The air quality subfund shall be maintained separately and be administered by DENR in order to defray the expenses of all activities associated with administrating the air quality permit program.

SDCL 34A-1-60 obligates the owner or operator of a regulated air contaminant sources to pay the annual air fee imposed under SDCL 34A-1-58. The annual air fee shall accrue on July first and is due July 31 of each year.

1.3 Current Air Fees

Air fees became effective on July 1, 1993 and were established in the Administrative Rules of South Dakota (ARSD) Chapter 74:37:01 – Air Emission Fees. DENR began phasing in air fees in state fiscal year 1994 (July 1, 1993 through June 30, 1994) for expenditures related to the development of the Title V air quality permit program. The air fee was based on actual emissions from the previous calendar year. For example, air fees for state fiscal year 1994 were based on actual air emissions from calendar year 1992.

In state fiscal year 1995, the air fees were increased to cover the entire cost of implementing the Title V air quality permit program. The changes were effective on July 1, 1994. The premise of DENR's air fees is that the more you pollute the more you pay. DENR's air fees consisted of an administrative fee plus a dollar per ton fee for most stationary sources. The administrative fee is based on the following:

1. Actual air emissions less than 50 tons per year, \$100;
2. Actual air emissions at 50 tons per year but less than 100 tons per year, \$500; and
3. Actual air emissions at or greater than 100 tons per year, \$1,000.

The dollar per ton fee is \$6.10 per actual ton of air emissions. The air emissions charged a dollar per ton fee are total suspended particulate matter, sulfur dioxide, nitrogen oxide, volatile organic compounds, lead, and hazardous air pollutants. Carbon monoxide air emissions were exempt from air fees. If the air pollutant is both a volatile organic compound and a hazardous air pollutant, the dollar per ton fee is only charged once.

Sources operating a portable rock crusher or asphalt plant were given the option of paying a flat fee of \$350 and \$250 per permit, respectively, or the dollar per ton fee. The rock crushers and asphalt plant operators opted for the flat fee to avoid maintaining air emission records and are not required to pay the administrative fee or dollar per ton fee.

Applications for a new Title V air quality permit, including the rock crushers and asphalt plants, are required to pay a one time \$100 application fee.

1.4 Ethanol Production Plant Air Fees

In calendar year 2006, representatives from the ethanol industry approached DENR on increasing air fees paid by the ethanol industry to address quicker permitting actions by dedicating one air quality engineer to work on ethanol applications. In 2007, with the ethanol industry's support, legislatures passed SDCL 34A-1-58.1 with votes of 32 to 1 in the Senate and 67 to 0 in the House. Because the increase in the ethanol industry's air fees worked to address the needs of the ethanol industry, DENR does not plan on recommending an increase in the ethanol industry's air fees.

SDCL 34A-1-58.1 established a separate air fee for ethanol production plants and exempts ethanol production plants from the air fees required in SDCL 34A-1-58. This section establishes an air quality application fee of \$1,000 for ethanol production plants. In addition, ethanol production plants are required to pay an annual fee. The annual fee consists of an administrative fee of \$1,000 and an emission fee in the amount of \$40.00 per ton of total suspended particulate matter, sulfur dioxide, nitrogen oxide, volatile organic compounds and hazardous air pollutant emitted to the air by the ethanol production plant during the previous year. Again, if the air pollutant is both a volatile organic compound and a hazardous air pollutant, the dollar per ton fee is only charged once.

2.0 Review of Title V Program Workload

The Title V air quality permit program has been partially or fully funded by air fees for 17 years. Starting in state fiscal year 1994, the air fees were used exclusively to develop the Title V air quality permit program package. The package consisted of a memorandum of agreement, description of the program, fee determination and workload analysis, and the Attorney General's opinion. In addition, the state developed rules that were equivalent to the federal Title 40 of the Code of Federal Regulations, Part 70 regulations. DENR received interim approval from EPA in April 1995, and full approval in February 1996.

The Title V air quality permit program is implemented by the Air Quality Program with assistance from the Minerals and Mining Program and Surface Water Program. These programs are located within the Division of Environmental Services in DENR. The activities involved with the implementation of the Title V air quality permit program consist of the following:

1. Planning and development;
2. Reviewing air quality permit applications and drafting air quality permits;
3. Compliance and enforcement;
4. Ambient air monitoring;
5. Air emission inventories; and
6. Small business assistance program.

The Minerals and Mining Program is responsible for permitting, compliance, and enforcement of portable and stationary rock crushers and asphalt plants. The Air Quality Program is responsible for the permitting, compliance and enforcement of the stationary sources in the state such as

coal-fired electric power plants, quarries, boilers, painting operations, and concrete plants and the remaining portable sources. The Air Quality Program is also responsible for revising state rules, ambient air monitoring, air emission inventories, and the small business assistance program. The Surface Water Program is responsible for inspecting assigned sources to determine compliance with the Title V air quality permits.

2.1 Planning and Development

Planning and development consists of reviewing and commenting on new federal regulations when they are proposed, revising the state rules to stay consistent with the new federal regulations, and submitting the proper documentation to EPA for approval. All rule revisions are processed according to the state's required procedures for adopting rules. Each year the rules are reviewed to determine if any new federal regulations need to be adopted or if any changes are needed to the existing rules. If rule revisions are required, the proposed changes are drafted and reviewed by the appropriate staff in the Air Quality Program. The proposed rule revisions are then submitted to EPA, South Dakota trade associations, environmental interest groups, and representatives of the regulated community for comments. The comments are reviewed and the appropriate changes are made to the proposed rule revisions.

The proposed rule revisions are presented to the Board of Minerals and Environment at a public hearing. If the Board of Minerals and Environment approves the proposed rule revisions, the approved rule revisions are presented to the Interim Rules Committee for their approval. When the rule revisions are final, a package of information demonstrating DENR followed the proper procedures for adopting rules in South Dakota is submitted to EPA. At that time, DENR would request changes to the State Implementation Plan (SIP), revisions to delegated federal programs such the New Source Performance Standards (NSPS) and Maximum Achievable Control Technology (MACT) standards, and approval of any rule changes that affect the Title V air quality permit program.

The Administrative Rules of South Dakota that pertain to the Title V air quality permit program are found in ARSD 74:36 – Air Pollution Control Program. The original workload analysis assumed that ARSD 74:36 would be revised every year. The Board of Minerals and Environment originally approved the state rules in April 1993. Since then the rules have been revised 14 times in 17 years. Although there were times when the rules were not revised each year; DENR will need to revise the rules on an annual basis to ensure DENR's rules stay equivalent to EPA's changes to the New Source Performance Standards and Maximum Achievable Control Technology Standards, and other applicable federal regulations.

2.2 Reviewing Title V Air Quality Permit Applications

The following types of sources are subject to obtaining a Title V air quality permit:

1. Major sources, which are defined as those sources with the potential to emit 100 tons per year or more of a criteria pollutant, 10 tons per year or more of a single hazardous air pollutant, or 25 tons per year or more of two or more hazardous air pollutants; or

2. Any source subject to a standard promulgated under Sections 111 (New Source Performance Standards) and 112 (Maximum Achievable Control Technology Standards) of the federal CAA, unless otherwise specified in the applicable standard.

Sources that fit under one or both of these types must submit a Title V air quality permit application. If a source is only subject to subsection one above and its actual emissions are below the major source thresholds under the Title V air quality permit program, the source may request operational restrictions and obtain a minor air quality permit.

DENR issued its first Title V air quality permit on October 16, 1995. On May 14, 2001, 100 percent of the original applications were processed and issued a Title V air quality permit, a minor air quality permit with operational restrictions that maintain actual emissions below the major source threshold under the Title V air quality permit program, or a minor air quality permit. These air quality permits are valid for five years. A source with a Title V air quality permit is required to submit an application to renew the permit within six months of the expiration date.

DENR reviews application for new sources, renewal of existing sources, and revisions to existing sources. The process for reviewing these applications goes through the same process. An engineer reviews the application to determine if it is complete and requests additional information if necessary. Once the application is considered complete, the engineer evaluates the application. The evaluation consists of writing a statement of basis which documents the operations that need to be permitted, applicable regulations, and the process for developing permit conditions. The permit is drafted and a public notice is submitted to affected states, to the local newspaper, and in the last few years, posted on DENR's website. At the same time, DENR submits the public notice, statement of basis, and draft permit to the applicant and EPA. The public, affected states, applicant, and EPA are given 30 days to provide input on the draft permit. If no one comments on or contests the draft permit, the proposed permit is submitted to EPA for their 45-day review period. The permit is issued at the end of the 45-day review period unless EPA approves or objects earlier to the issuance of the permit.

In addition to the above activities, modeling is used by DENR to support the issuance of a new Title V air quality permit or approval of a modification to an existing source. The main purpose of modeling is to ensure the emissions from a source, or sources, do not cause an exceedance of the national ambient air quality standards for criteria pollutants and of any Prevention of Significant Deterioration (PSD) increments. Normally, modeling is conducted by the source or their consultant and reviewed by DENR. DENR's review includes ensuring the correct model was used, determining if reasonable and correct assumptions were made, and reviewing the modeling results. In certain situations, DENR conducts the modeling.

The following permit activities occur each year:

1. DENR issues on average 30 new air quality permits per year;
2. Starting in state fiscal year 2001, Title V air quality permits began to expire and undergo a renewal process. Based on counting the general permits once, there is currently a total of 94 Title V air quality permits and assuming an equal number of permits expire each

year during the five year term of a Title V air quality permit, approximately 19 Title V air quality permits would be renewed each year; and

3. A Title V air quality permit can be revised by an administrative permit amendment, minor permit amendment, or a permit modification. Administrative and minor amendments take less time to process because the permit revision does not involve a public notice period. A permit modification undergoes the same procedure as a new permit. The number of permit revisions fluctuates each year.

In accordance with ARSD 74:36:05:18, any party may contest a draft permit during the public notice period. If the permit is contested, a hearing is held before the Board of Minerals and Environment. For DENR staff, this activity includes:

1. Preparation for the contested case hearing;
2. Coordinating with the Attorney General's Office on the contested case and its presentation at the hearing; and
3. Testifying at the contested case hearing before the Board of Minerals and Environment.

The permitting process is designed to allow comments from the public, applicant, and EPA on the draft permit without having to contest the permit before the draft permit is finalized. Comments received on the draft permit are worked out with the person that submitted comments and the applicant. Both the person that comments on the draft permit and the applicant have an opportunity to contest the permit once DENR makes its final decision. This process has worked well with only a handful of draft Title V air quality permits being contested and helped keep the cost of implementing the Title V air quality permit program down. However, more and more businesses are looking to build in South Dakota which could increase this activity.

In accordance with ARSD 74:36:05:23, any party may petition EPA to object to the issuance of a final permit issued by DENR. If a petition is submitted to EPA and EPA agrees to object to the permit due to the petition, DENR is required to respond to EPA's objection(s), which potentially includes an additional public notice and public hearing. In calendar year 2006, EPA received four petitions on air quality permits in South Dakota. Currently EPA has responded to two of the four petitions.

2.3 Compliance and Enforcement

Compliance and enforcement activities are necessary to ensure that Title V sources remain in compliance with all permit conditions. This includes inspections, review of source submittals (e.g., required reports, ambient monitoring data, compliance data, etc.), issuance of enforcement actions, development of mutually acceptable compliance schedules, and follow-up to each of these activities. DENR is responsible for bringing Title V sources that are out of compliance back into compliance in a timely and appropriate manner.

There are individuals within DENR's Sioux Falls, Vermillion and Rapid City offices that support the Air Quality Program in compliance and enforcement. Some of these individuals are part of the Surface Water Program. These individuals inspect Title V sources, investigate complaints, and witness performance tests and continuous emission monitoring audits in their region.

Individuals from the Air Quality Program and Minerals and Mining Program also perform similar tasks. Enforcement actions are centralized within the main office in Pierre.

The number of sources inspected each year is outlined in the Compliance Inspection and Monitoring Plan that is negotiated with EPA each federal fiscal year. DENR's commitment to EPA is to inspect all Title V stationary sources and all Title V portable sources that operate in South Dakota on an annual basis. Typically, DENR conducts approximately 170 Title V air quality inspections each year but that number will vary depending upon the number of Title V portable sources that operate in the state. Inspections consist of the following activities:

1. Prepare for the inspection which includes familiarization with compliance history, Title V air quality permit, emission limits, and permit restrictions;
2. Travel to and from the site;
3. Conduct an inspection of the facility which includes a visual emission evaluation of each unit, review of records and monitoring data, witness performance tests, and/or witness audits for continuous emission monitoring systems;
4. Provide technical assistance in response to questions raised by source personnel during the inspection and review compliance findings with source personnel;
5. Document the inspection;
6. Notify the inspected source of the inspection results and applicable recommendations;
7. Report inspection to EPA's AIRS/AFS database; and
8. Initiate enforcement action when necessary.

2.4 Ambient Air Monitoring

DENR maintains an air monitoring network to determine attainment status with the national ambient air quality standards. The ambient data is also used in control strategy development and assessment. DENR's monitoring network presently consists of particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide, ozone, meteorological and air toxic monitors. DENR monitors for particulate matter with a diameter less than 2.5 microns (PM_{2.5}) and 10 microns (PM₁₀).

The activities associated with ambient air sampling include operating and maintaining the monitors, quality assurance, developing and evaluating analytical methods, and providing technical assistance to industry, the public, and government agencies. In most cases, individuals under contract operate the monitoring stations and a laboratory under contract is used to analyze the samples collected by the monitors. Individuals in the Air Quality Program are responsible for the development and review of the air monitoring network, ensuring the ambient air monitoring equipment is operating properly, evaluating the data, and entering the data on to EPA's national database.

The air fee does not cover the entire cost of the ambient air monitoring program, only that portion directly related to Title V source emissions. This type of monitoring takes place to investigate citizen complaints regarding Title V sources, verify modeling results, or determine levels of criteria pollutants in a specific area.

2.5 Air Emission Inventories

DENR tracks the amount of air emissions from Title V sources each year. The air emissions consist of the criteria pollutants and the 188 hazardous air pollutants. The information collected and maintained through this activity can be used for a variety of activities including:

1. Assessing annual air fees;
2. Recording current emission levels for trend analysis;
3. Determining compliance with permitted limits;
4. Determining size of ambient air monitoring network, type of sampling, and distribution of sampling stations; and
5. Meeting federal emission inventory reporting requirements.

The emissions inventory is updated annually for all Title V sources except rock crushers and asphalt plants. Rock crushers and asphalt plants are presently charged an annual flat fee. By paying a flat fee, these types of sources are not required to maintain records to determine the amount of air emissions from the particular activity.

The first stage of developing an emissions inventory is sending Title V sources an operational report in January of each year. The operational report is completed by the Title V source and submitted to DENR by March 1 of each year. The operational information and the emission rates for each Title V source are used to determine the air emissions. The emission factors are based on performance tests, material balance, EPA developed emissions factors, or other methods approved by DENR. The last stage of developing the emission inventory is the quality assurance checks and entry of the data into an EPA database.

2.6 Small Business Assistance Program

DENR has always operated a small business assistance program. The main cost associated with the small business assistance program is outreach. Outreach consists primarily of informing small businesses about proposed federal regulations that may affect them so the small business has an opportunity to comment on the regulation before it is promulgated. Once the regulations are promulgated, DENR distributes the information on to the small business and assists the small businesses in understanding the requirements, deadlines, and in staying in compliance.

3.0 Title V Program Expenditures

3.1 Past Expenditures

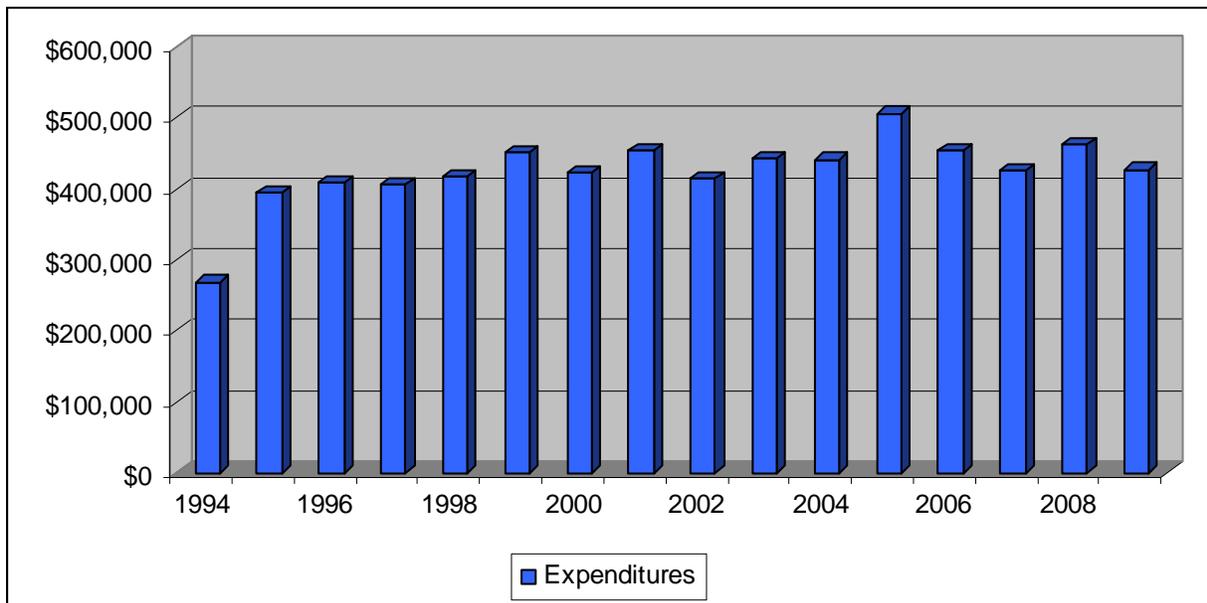
The original workload analysis and fee determination was based on assumptions because the Title V air quality permit program was new. Now that the Title V air quality permit program has been in existence for approximately 17 years, the fee determination can be more accurately based on actual expenditures. Table 3-1 and Figure 3-1 display the expenditures for state fiscal year 1994 through 2009, inclusive. State fiscal year 1994 was included even though the expenditures during that period just covered the development of the Title V air quality permit program and not the implementation.

Table 3-1 – Title V Air Quality Permit Program Expenditures

| State Fiscal Year | Expenditure |
|-------------------|-------------|
| 1994 | \$268,661 |
| 1995 | \$394,991 |
| 1996 | \$409,617 |
| 1997 | \$406,727 |
| 1998 | \$418,133 |
| 1999 | \$451,837 |
| 2000 | \$423,086 |
| 2001 | \$454,924 |
| 2002 | \$413,978 |
| 2003 | \$443,549 |
| 2004 | \$441,324 |
| 2005 | \$506,837 |
| 2006 | \$455,126 |
| 2007 | \$426,983 |
| 2008 | \$463,442 |
| 2009 | \$427,233 |

If you disregard state fiscal year 1994, the Title V program expenditures remained relatively consistent for the first four years then started to fluctuate. Title V program expenditures started to increase in state fiscal year 1999 and then began to fluctuate with annual expenditures ranging from \$413,978 in state fiscal year 2002 to as high as \$506,837 in state fiscal year 2005 (see Figure 3-1). For the last five years (e.g., state fiscal year 2005-2009), DENR on average spent approximately \$456,000 per year to implement the Title V program.

Figure 3-1 – State Fiscal Year Air Fee Expenditures



The fluctuations are typically based on several factors. For example, the ethanol industry started booming in South Dakota around 2002, which started to increase the number of new Title V air quality permits and modifications to existing Title V air quality permits per year. In calendar year 1999, South Dakota had three permitted ethanol plants with a maximum production capacity of 29 million gallons of denatured ethanol per year. By calendar year 2008, the number of permitted ethanol plants had grown to 19 with a maximum production capacity of 1,472 million gallons of denatured ethanol per year. Even though permitted, not all of those ethanol plants or expansions have become a reality. At the beginning of calendar year 2010, there were 18 ethanol plants permitted with a capacity of 1,360 million gallons of denatured ethanol per year.

The fluctuation is also contributed to the renewal of existing Title V air quality permits. A Title V air quality permit is issued for a five year period. Beginning in state fiscal year 2001, the first of the Title V air quality permits would have expired and the renewal process would have started on top of continuing to issue new Title V air quality permits and modifications to existing Title V air quality permits.

3.2 Projected Expenditures

3.2.1 New Federal Requirements for Small Businesses

In the last year EPA started to promulgate new federal Maximum Achievable Control Technology Standards and New Source Performance Standards that impact small businesses that are not typically regulated. Examples are the New Source Performance Standards for emergency generators and the Maximum Achievable Control Technology standards for gas stations and auto body repair shops which will impact approximately 300 or more small businesses. In addition to these existing federal rules, EPA is proposing federal requirements for small boilers which are typically exempt from permitting. Based on a list provided by the state's Fire Marshall; this rule could impact approximately 4,500 boilers in South Dakota. Implementing these requirements will increase the workload as we work with small businesses to educate them on the new requirements and help them comply. Although not many of these businesses will be required to obtain a Title V air quality permit, the assistance we provide them under the Small Business Program is federally required to be funded by the Title V program.

The cost associated with implementing these new federal regulations will involve permitting, when necessary, providing outreach to inform small business of the requirements, and inspecting the small businesses to ensure they are complying with the requirements. In most cases, small businesses subject to these new federal rules will not need to be permitted unless they already need a permit for some other reason. The biggest cost for implementing the new federal regulations will be the outreach necessary to educate small business on the emission limit, monitoring, recordkeeping and reporting requirements and inspecting the small businesses to ensure they are complying with the requirements.

Besides developing fact sheets, sending out notices to the small businesses, etc., the outreach will typically occur at the same time as the inspection. Assuming we are working with 4,800 small businesses and inspect approximately 10% of the impacted small businesses, the implementation

of these new federal regulations would increase the number of inspections by 480 inspections per year. Typically inspections are conducted by a certain area so more time is spent inspecting than traveling. Therefore, DENR anticipates each inspection will take approximately 2.5 hours or 1,200 hours per year. A Natural Resources Project Engineer typically conducts the inspection and the average hourly cost of this individual is approximately \$24 per hour. The cost for inspecting the small businesses will be approximately \$28,800 per year.

3.2.2 Demonstrating Compliance with NAAQS

EPA has lowered and is in the process of lowering the National Ambient Air Quality Standards for a majority of the criteria air pollutants. Once a standard is lowered, we are required to demonstrate that we are attaining the standard by monitoring throughout the state. The cost associated with this is partially funded by the Title V program. On average, the five individuals working on monitoring spend approximately 30 percent of their time on monitoring charged to the Title V program funds. DENR anticipates the cost of operating the monitors subject to Title V program funding will increase by approximately 5 percent or 104 hours per year per individual since more of the federal monitoring is geared toward stationary sources. The average hourly cost of these individuals is approximately \$24 per hour. The cost of monitoring to ensure South Dakota is attaining the National Ambient Air Quality Standards will increase by approximately \$12,480.

3.2.3 Future Title V Program Expenditures

As stated earlier, DENR spent on average approximately \$456,000 per year to run the Title V program. DENR anticipates the expenditures will increase by approximately \$41,280 as DENR complies with the new federal regulations and ensures businesses throughout the state are in compliance. Therefore, DENR anticipates the annual expenditures will be approximately \$497,000 (e.g., by rounding to the nearest \$100).

4.0 Title V Program Revenues

The air fees for the Title V air quality permit program have remained the same since state fiscal year 1995, except for ethanol plants. As stated earlier, DENR's air fees consist of an administrative fee, a dollar per ton fee, a flat fee, and an application fee.

The one source of funding that was not included in the original workload analysis and fee determination was the interest earned on the air fees. In the last five years, the interest earned on the air fee funding has averaged \$13,900 per year. DENR believes the amount of interest will fluctuate each year depending on the economy and will not be reliable for basing Title V air quality fees. Therefore, the interest earned on Title V air quality fees will not be used in this analysis.

Table 4-1 compares the amount of air fees collected and the expenditures for state fiscal year 1994 through 2010, inclusive. The main reason for leaving state fiscal year 1994 in Table 4-1 is to display the amount of money carried over into state fiscal year 1995.

Table 4-1 – Air Fees and Expenditures

| State Fiscal Year | Annual Air Fees | Interest | Air Fee Total ¹ | Expenditure | Remaining Air Fees |
|--------------------------|------------------------|-----------------|-----------------------------------|--------------------|---------------------------|
| 1994 | \$269,421 | \$5,589 | \$275,010 | \$268,661 | \$6,349 |
| 1995 | \$453,214 | \$12,032 | \$471,595 | \$394,991 | \$76,604 |
| 1996 | \$488,842 | \$20,419 | \$585,865 | \$409,617 | \$176,248 |
| 1997 | \$425,782 | \$22,932 | \$624,962 | \$406,727 | \$218,235 |
| 1998 | \$320,001 | \$20,659 | \$558,895 | \$418,133 | \$140,762 |
| 1999 | \$414,261 | \$17,919 | \$572,942 | \$451,837 | \$121,105 |
| 2000 | \$419,543 | \$17,094 | \$557,742 | \$423,086 | \$134,656 |
| 2001 | \$448,724 | \$22,393 | \$605,773 | \$454,924 | \$150,849 |
| 2002 | \$340,255 | \$14,855 | \$505,959 | \$413,978 | \$91,981 |
| 2003 | \$337,977 | \$8,350 | \$438,308 | \$443,549 | (\$5,241) |
| 2004 | \$896,187 ² | \$14,508 | \$905,454 | \$441,324 | \$464,130 |
| 2005 | \$342,267 | \$14,239 | \$820,636 | \$506,837 | \$313,799 |
| 2006 | \$365,490 | \$13,128 | \$692,417 | \$455,126 | \$237,291 |
| 2007 | \$330,462 | \$14,696 | \$582,449 | \$426,983 | \$155,466 |
| 2008 | \$397,925 | \$15,535 | \$568,926 | \$463,442 | \$105,484 |
| 2009 | \$357,247 | \$11,901 | \$474,632 | \$427,233 | \$47,399 |

¹ – “Air Fee Total” is the sum of “Annual Air Fees,” “Interest,” and “Remaining Air Fees” from the previous year. For example, for state fiscal year 1995, the “Remaining Air Fees” would be \$6,349; and

² – The annual air fee includes the addition of \$570,059, from an enforcement case.

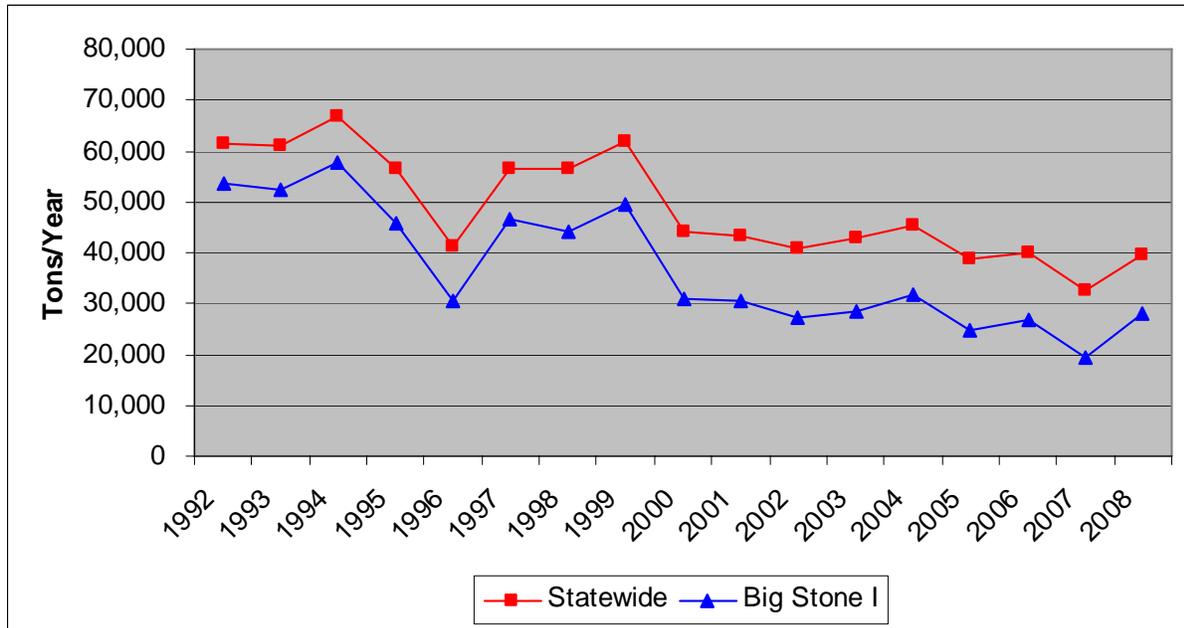
In state fiscal year 1995 through 2010, the amount of air fees collected each year ranged from \$320,000 to \$489,000 with the last five years (e.g., state fiscal year 2006-2010) averaging \$376,199 per year. Since the method of calculating air fees has remained unchanged during that time period, except for ethanol production plants, the fluctuation in air fees can be attributed to two variables.

The first variable would be a drop or increase in the number of facilities permitted under the Title V program. The number of stationary facilities paying Title V air quality fees in 1995 and 2009 was approximately 38 and 94, respectively. This represents a growth in South Dakota of 56 facilities during that time period which should represent a steady increase in Title V air quality fees.

The second variable would be an increase or decrease in actual air emissions. Figure 4-1 provides the annual air emissions since air fees were first collected. As a reminder, state fiscal year 1994 air fees were based on calendar year 1992 air emissions, state fiscal year 1995 air fees were based on calendar year 1993 air emissions, and so forth. From Figure 4-1, annual air emissions have fluctuated up and down over the years but have steadily declined since we began collecting air fees in state fiscal year 1994. Figure 4-1 displays a strong correlation between the increases and decreases of statewide emissions to emissions from Otter Tail Power Company’s Big Stone I coal-fired power plant. Even with the increase in the number of facilities in the Title

V air quality permit program, the decreases in emissions from the Big Stone I coal-fired power plant are greater resulting in a decline in Title V air quality fees.

Figure 4-1 – Annual Air Emissions



With the increase in Title V air quality fees from ethanol production plants in state fiscal year 2008, the total Title V air quality fee revenue can be broken into three categories. The three categories are Big Stone I, ethanol production plants, and others. Figure 4-2 provides the revenue generated from each category from state fiscal year 1994 through 2010. Figure 4-2 indicates that although the Title V air quality fee revenue from Big Stone I has been decreasing, the decrease in revenues has been somewhat offset by the increase in fees from ethanol production plants starting in state fiscal year 2008.

Figure 4-2 – Title V Air Quality Fee Revenues

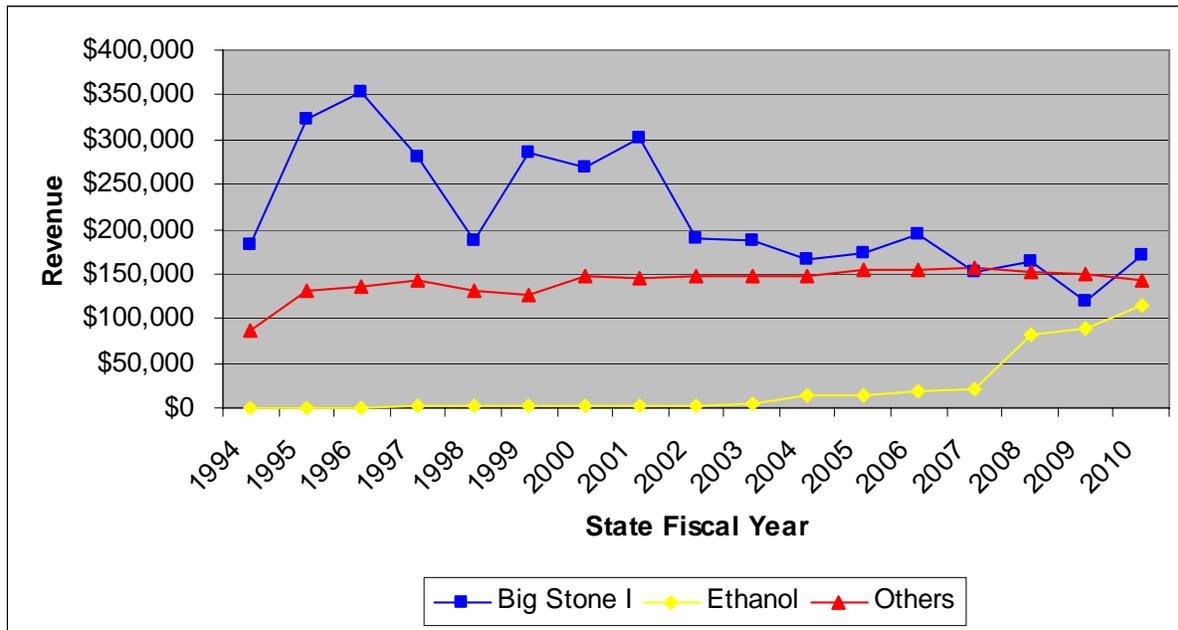


Table 4-2 provides a comparison of the Title V air quality fee revenues from state fiscal year 1995 through 2010 from Big Stone I, ethanol plant production, and other facilities paying Title V air quality fees.

Table 4-2 – Comparison of Title V Air Quality Fees

| State Fiscal Year | Big Stone I | Ethanol | Others | Total |
|-------------------|-------------|-----------|-----------|-----------|
| 1995 | \$321,656 | \$425 | \$131,132 | \$453,214 |
| 1996 | \$352,305 | \$518 | \$136,019 | \$488,842 |
| 1997 | \$280,233 | \$1,855 | \$143,694 | \$425,782 |
| 1998 | \$187,808 | \$1,940 | \$130,253 | \$320,001 |
| 1999 | \$286,027 | \$1,971 | \$126,263 | \$414,261 |
| 2000 | \$269,519 | \$2,209 | \$147,816 | \$419,543 |
| 2001 | \$302,388 | \$2,209 | \$144,127 | \$448,724 |
| 2002 | \$189,552 | \$2,543 | \$148,159 | \$340,255 |
| 2003 | \$187,056 | \$3,955 | \$146,965 | \$337,977 |
| 2004 | \$165,802 | \$13,150 | \$147,176 | \$326,128 |
| 2005 | \$173,834 | \$14,074 | \$154,359 | \$342,267 |
| 2006 | \$193,451 | \$18,542 | \$153,497 | \$365,490 |
| 2007 | \$151,314 | \$21,715 | \$157,433 | \$330,462 |
| 2008 | \$164,901 | \$81,295 | \$151,729 | \$397,925 |
| 2009 | \$119,457 | \$88,012 | \$149,778 | \$357,247 |
| 2010 | \$170,854 | \$115,110 | \$143,806 | \$429,770 |

4.1 Otter Tail Power Company

Figure 4-2 displays the up and down Title V air quality fee revenue from Big Stone I from state fiscal year 1995 to 2002 and then a gradual decrease from 2002 through 2010. In calendar year 2000 (state fiscal year 2002), reductions in Big Stone I's air emission occur as it complies with the federal acid rain requirements. The reductions are carried over into calendar year 2001. The air emission reductions from the Big Stone I coal-fired power plant attributed to the acid rain program and other improvements in reducing air emissions at the power plant have reduced their Title V air quality fees by a little over \$100,000 per year.

Even during the gradual decrease in air emissions, the Title V air quality fee revenue from Big Stone I has jumped up and down but not as dramatic as in state fiscal year 1998. The main reason for the drop in Title V air quality fees in state fiscal year 1998 was due to an extended annual maintenance shutdown period. In fact, the up and down movement in revenue is due mainly to Big Stone I's annual maintenance shutdown period. The fluctuation of the Otter Tail Power Company's Big Stone I coal-fired power plant's Title V air quality fees makes it difficult to ensure there is enough money being collected to implement the Title V air quality permit program.

4.2 Ethanol Plants

In 2007, with the help of the ethanol industry, the state legislators established a Title V air quality fee for ethanol production plants in SDCL 34A-1-58.1, which exempted ethanol production plants from Title V air quality fees established in ARSD 74:37:01. An ethanol production plant is required to submit a \$1,000 application fee for a new facility and pay an annual air fee. The annual air fee consists of an administrative air fee of \$1,000 plus a \$40 per ton fee per actual air emissions.

The new Title V air quality fees for ethanol production plants increased the Title V air quality fee revenue in state fiscal year 2008 (see Figure 4-2) from approximately \$15,000 per year before the legislative change to \$85,000 per year afterwards. In state fiscal year 2008 through 2010, Title V air quality fees from ethanol production increased each year to a high in 2010 of approximately \$115,000. The reason for the increase from state fiscal year 2008 to 2010 is the addition of several ethanol production plants coming on line each year and the completion of modifications that increase ethanol production at existing ethanol production plants.

A majority of the permitted ethanol plants have completed their modifications or have constructed and started operating their ethanol plants. However, some of them have not operated for a full year or operated at the permitted levels. Therefore, DENR believes that the annual Title V air quality fees generated from ethanol plants will average approximately \$125,000 per year.

4.3 Other Facilities

For the last 16 years, Title V air quality fees collected from other facilities has been steady with a plus or minus \$10,000 of the average of \$144,000 per year (see Figure 4-2 and Table 4-2).

4.4 Air Fee Revenue Compared to Expenditures

As discussed early, DENR projects that it needs to collect approximately \$497,000 each year to continue to implement the Title V program; but only received approximately \$376,000 on average for the last five years. DENR has not raised its Title V air quality fees since they were first established in state fiscal year 1994 to develop the Title V air quality permit program and raised in state fiscal year 1995 to implement the program. Since then, the costs to implement the program have increased and the existing fee structure is no longer sufficient to cover the cost of the program.

5.0 Air Fee Adjustment

The Title V air quality fees were originally established based on actual air emissions with no cap. DENR decided not to establish a cap on the amount of Title V air quality fees a facility would have to pay to promote a decrease in air emissions. By placing a cap on the amount of air emissions a fee is charged to or on the amount the Title V source pays, you remove an incentive to decrease air emissions. This philosophy has helped reduce air emissions in South Dakota over the years. When DENR first started charging Title V air quality fees, there were 38 stationary facilities issued a Title V air quality permit and they emitted approximately 61,000 tons of air pollution per year. By state fiscal year 2010, there are 94 stationary facilities with Title V air quality permits and they emit approximately 40,000 tons of air pollution per year. A majority of the decrease in emissions is contributed to Otter Tail Power Company reducing air emissions from Big Stone I's coal-fired power plant.

To collect enough Title V air fees to run the Title V program, DENR projects it will need to collect approximately \$497,000 per year to continue permitting Title V sources and implement new federal regulations. Based on the 5-year average DENR collected in air fees, a revenue short fall of approximately \$121,000 per year will occur unless the existing fee structure is changed. Presently, South Dakota's Title V air fees are a combination of administrative, a dollar per ton, flat fees, and a one time application fee. The Title V air fees collected by each category for state fiscal year 2010 are displayed in Table 5-1 and are based on the \$6.10 per ton of actual emissions and approximately 39,773 tons of air pollutants emitted in calendar year 2008.

Table 5-1 – Title V Air Quality Fee Breakdown for State Fiscal Year 2010

| Category | | Amount (\$) | |
|-----------------------------|-------------------------------------|-------------|------------------------------|
| Administrative Fee | 43 sources @ \$100 | \$4,300 | |
| | 11 sources @ \$500 | \$5,500 | |
| | 22 sources @ \$1,000 | \$22,000 | |
| | Big Stone I @ \$1,000 | \$1,000 | |
| | 18 ethanol plants @ \$1,000 | \$18,000 | |
| Subtotal = | | | \$50,800 |
| Dollar per Ton Fee = | Ethanol plants - 2,428 tons @ \$40 | \$97,120 | |
| | Big Stone I – 27,845 tons @ \$6.10 | \$169,855 | |
| | Other Sources - 9,500 tons @ \$6.10 | \$57,950 | |
| Subtotal = | | | \$324,925 |
| Flat Fee | 48 asphalt plants @ \$250 | \$12,000 | |
| | 107 rock crushers @ \$350 | \$37,450 | |
| Subtotal = | | | \$49,450 |
| Application Fee = | 46 @ \$100 | | \$4,600 |
| Total = | | | \$429,775¹ |

¹ – The total amount does not match exactly with what was collected due to rounding.

DENR reviewed the Title V air quality fees the states surrounding South Dakota charge their businesses to determine if we are reasonable and gather ideas on if there are better ways to charge air fees in South Dakota. Table 5-2 represents the information gathered from the neighboring states starting with North Dakota and rotating clockwise to Montana.

Table 5-2 – Neighboring State Title V Air Quality Fees

| State | Dollar per Ton | Application Fee | Other Fees |
|---------------------|--|--|---|
| North Dakota | \$12.00 per ton (criteria pollutants) and \$25.00 per ton (hazardous air pollutants). Minimum fee of \$500. Cap fees at 4,000 tons per year. | \$150 plus an hourly charge if processing costs exceed \$150 | Facilities with minor permits (synthetic minors, new source performance standards, and maximum achievable control technology standards) on inspection schedule charged a flat fee of \$300. Other minor permits not on inspection schedule charged a flat fee of \$100. |
| Minnesota | \$43.33 per ton (2010) – air fees adjusted every year based on the budget divided by the amount of tons expected for the year. | Not applicable | Also charge fees to minor sources. |
| Iowa | \$52.00 per ton with a cap of 4,000 tons per year per pollutant. The \$ per ton fee is adjusted each year to cover costs. | Not applicable | Looking to add a construction permit fee |

| State | Dollar per Ton | Application Fee | Other Fees |
|-----------------|--|--|---|
| Nebraska | \$62.00 per ton (2008) with a cap of 4,000 tons per year per pollutant. | Not applicable | Not applicable |
| Wyoming | \$28.16 per ton – cap fees at 4,000 tons per facility and each facility pays a minimum of \$500 per year. The \$ per ton fee is adjusted each year to cover costs. | Charge an hourly fee and the cost for other processes (e.g., public notices, public hearing). | Portable sources with a general permit are charged a \$100 fee per location. Portable sources with an individual permit is charge \$250 per location. |
| Montana | \$600 administrative fee plus \$31.29 per ton, excluding portable facilities and oil and gas well facilities. \$600 for portable facilities and oil and gas well facilities. | \$3,000 for a PSD permit; \$500 for all others (e.g., new, renewals and significant modifications) | Not applicable |

The closest state to charging a \$ per ton fee to South Dakota’s current \$6.10 per ton is North Dakota at \$12.00 per ton. The remaining state range from \$28.16 per ton to as high as \$62.00 per ton. Some of the states have minimum fees and others also have maximum fees based on the amount of tons emitted by facility or by pollutant. Based on air fees from other states and other options, the following methods will be reviewed to determine the best method of increasing the air fees in South Dakota to eliminate the \$121,000 projected deficit:

1. Increase present fees proportionately;
2. Maximum and minimum fees; and
3. Combination of options.

5.1 Increase Present Fees Proportionately

The first option DENR evaluated would be to increase the present fees proportionately. As stated earlier, the Title V air quality fees for ethanol production plants is set. Based on the number of sources listed in Table 5-1, an average air emission for the last five years (37,479 tons per year, which excludes ethanol plant emissions), and an average of 30 new facilities for the last five years, DENR anticipates an increase of 38% in each category (see Table 5-3) based on state fiscal year 2010 revenue. For administrative, flat, and application fees, the end result was rounded up to the nearest \$5 increment. The dollar per ton fee was rounded up to the nearest nickel increment.

Table 5-3 – Increase Present Fees Proportionately

| Category | Increase ¹ | \$ Increase | Actual Fee |
|-----------------------------|------------------------------|--------------------|-------------------|
| Administrative Fee | 43 sources @ \$40 | \$1,720 | \$140 |
| | 11 sources @ \$190 | \$2,090 | \$690 |
| | 23 sources @ \$380 | \$8,740 | \$1,380 |
| Dollar per Ton Fee = | 37,479 tons @ \$2.35 | \$88,076 | \$8.45 |
| Flat Fee | 48 asphalt plants @ \$95 | \$4,560 | \$345 |
| | 107 rock crushers @ \$135 | \$14,445 | \$485 |
| Application Fee = | 30 @ \$40 | \$1,200 | \$140 |
| Total = | | \$117,201 | |

¹ – Only the increase is represented. For example, the administrative fee for the 43 sources would be increased by \$40 per facility for a total administrative fee of \$140 per facility.

Although this method provides enough funding to cover the projected increase in expenditures, it does not resolve the fluctuation issues experienced with Otter Tail Power Company’s Big Stone I coal-fired power plant. Therefore, DENR does not consider this a viable and equitable method for increasing the Title V air quality fees.

5.2 Expand Title V Air Quality Fee Base

5.2.1 Application Fee for New, Renewals and Modifications

North Dakota and Wyoming charge a flat fee plus hourly fee and an hourly fee to process permit applications, respectively. In Montana, they charge a flat fee for an application (e.g., \$3,000 for a PSD application and \$500 for all others) for a new facility, renewal permit, and modification to an existing permit. DENR anticipates it will issue 30 permit renewals or revisions each year to Title V sources that are not an ethanol plant.

DENR is considering an application fee of \$125 for new, renewals and modifications to existing sources for facilities that are subject to the Title V program and a \$125 application fee for a construction permit for a source subject to the Title V air quality permit program.

5.2.2 Maximum Fee

North Dakota, Iowa, Nebraska, and Wyoming each have a maximum amount a facility has to pay per year based on capping the amount of air pollutants they charge fees to. In North Dakota, it would range from \$48,000 to \$100,000 per facility depending on what type of pollutant the facility emitted (e.g., North Dakota charges \$12 per ton for criteria air pollutants and \$25 per ton for hazardous air pollutants). In Wyoming the maximum air fee would be \$112,640. In Iowa and Nebraska, the maximum air pollution required to pay a fee is set at 4,000 tons per pollutant. Assuming a facility emits 4,000 tons in each of these state, the facility would pay \$208,000 and \$248,000 in Iowa and Nebraska, respectively.

DENR has been against capping the amount of tons a fee will be charged because it takes away from the incentive to reduce air emissions. In South Dakota’s case, Otter Tail Power Company’s

Big Stone I coal-fired power plant would be the only facility that would pay a maximum fee. On average for the first five years of collecting Title V air quality fees, the Big Stone I coal-fired power plant represented approximately 68% of the Title V air quality fee revenues. Since the ethanol production plant fee was established in state fiscal year 2008, the Big Stone I coal-fired power plant on average represents 39%.

As seen for the last five years, Big Stone I coal-fired power plant's Title V air quality fees ranged from \$119,457 to \$193,451 per year. In 2009, Otter Tail Power Company again experienced a shutdown for maintenance longer than usual which resulted in a Title V air quality fee of \$119,457. DENR is considering establishing a flat fee for the Big Stone I coal-fired power plant of \$220,000 per year in an attempt to stabilize the air fees from this facility.

5.2.3 Minimum Fee

Wyoming and North Dakota each charge a minimum fee of \$500 per year. DENR is considering a minimum fee and could base it on the average a source would pay in the \$100 administrative range. For example, a source within the \$100 administrative fee would pay between \$100 (0 tons) and \$399 (49 tons) per year. The average would be \$250 per year. Based on state fiscal year 2010, 35 out of the 43 stationary facilities that emit less than 50 tons per year paid less than \$250.

6.0 Conclusion

DENR needs to generate approximately \$497,000 to implement the Title V program. DENR believes the only way to equitably fund the Title V program would be a combination of the options mentioned above. Therefore, DENR is proposing the following changes:

1. Annual administrative fees for sources emitting less than 50 tons per year of pollutants will increase from \$100 to \$125. For sources emitting more than 50 tons but less than 100 tons, the annual fee will increase from \$500 to \$600. For sources emitting 100 tons or more of pollution each year, the fee will increase from \$1,000 to \$1,250;
2. The fee for the actual amount of pollution emitted from each permitted air pollution source will increase from \$6.10 per ton to \$7.50 per ton;
3. The annual minimum fee paid by any permitted source for items number 1 and 2 above is \$250;
4. The application fee for a new permit will increase from \$100 to \$125 and the application fee will also be subject to an application for renewing an existing permit, modifying an existing permit, and a construction permit for a source required to obtain a Title V air quality permit;
5. The annual fee for rock crushers subject to the Title V permit program will increase from \$350 to \$400. Rock crushers are not subject to the emissions fee in item 1 and 2 above.

6. The annual fee for asphalt plants subject to the Title V permit program will increase from \$250 to \$300. Asphalt plants are not subject to the emissions fee in item 1 and 2 above.
7. The annual fee for Otter Tail Power Company's Big Stone I coal-fired power plant will be set at \$220,000. The Big Stone I coal-fired power plant will not be subject to emissions fees in item 1 and 2 above. As emissions change yearly at this plant, revenues to the program change drastically. This flat fee is being proposed to ensure the program has a consistent revenue source from this large source.

Table 6-1 provides a comparison of the current Title V air fees to the proposed Title V air fees.

Table 6-1 – Comparison of Current and Proposed Title V Air Fees

| Fee | | Air Fees | | |
|-----------------------|-------------------------|------------------------|----------|-----------------------|
| | | Current | Proposal | Difference |
| Administrative | Actual < 50 tpy | \$100 | \$125 | \$25 |
| | Actual 50 but < 100 tpy | \$500 | \$600 | \$100 |
| | Actual => 100 tpy | \$1,000 | \$1,250 | \$250 |
| \$ per Ton | Actual Emissions | \$6.10 | \$7.50 | \$1.40 |
| | | | | |
| Flat Fees | Asphalt plants | \$250 | \$300 | \$50 |
| | Rock crushers | \$350 | \$400 | \$50 |
| | Big Stone I | \$193,451 ¹ | 220,000 | \$49,145 |
| | Minimum Fee | \$0 | \$250 | Variable ² |
| Application | New permits | \$100 | \$125 | \$25 |
| | Renewals/Modifications | \$0 | \$125 | \$125 |
| | Construction permits | \$0 | \$125 | \$125 |

¹ – Represents the Title V air quality fee the Big Stone I coal-fired power plant paid in state fiscal year 2006; and

² – DENR is proposing a minimum fee of \$250. This impacts businesses with a combine administrative fee and \$ per ton fee of less than \$250.

Table 6-2 provides the projected air fees generated from the proposed air fees and compares it to what the facility categories would pay under the existing air fees in state fiscal year 2011.

Table 6-2 – Comparison of Existing and Proposed Air Fees for State Fiscal Year 2011

| Fee | | Number | Air Fees | | |
|-----------------------|-------------------------|---------------|------------------|------------------|------------|
| | | | Current | Proposal | Difference |
| Administrative | Actual < 50 tpy | 12 | \$1,200 | \$1,500 | \$300 |
| | Actual 50 but < 100 tpy | 8 | \$4,000 | \$4,800 | \$800 |
| | Actual => 100 tpy | 19 | \$19,000 | \$23,750 | \$4,750 |
| | Ethanol plants | 16 | \$16,000 | \$16,000 | \$0 |
| \$ per Ton | Ethanol plants | 2,376.91 tons | \$95,076 | \$95,076 | \$0 |
| | Other Sources | 7,734.47 tons | \$47,180 | \$58,008 | \$10,828 |
| Flat Fees | Asphalt plants | 48 | \$12,000 | \$14,400 | \$2,400 |
| | Rock crushers | 107 | \$37,450 | \$42,800 | \$5,350 |
| | Big Stone I | 1 | \$146,491 | 220,000 | \$73,509 |
| | Minimum Fee | 35 | \$4,536 | \$8,750 | \$4,214 |
| Application | New permits | 30 | \$3,000 | \$3,750 | \$750 |
| | Renewals/Modifications | 30 | \$0 | \$3,750 | \$3,750 |
| Total = | | | \$385,933 | \$492,584 | |

As stated earlier, DENR projects annual expenditures for implementing the Title V air quality permit program will be approximately \$497,000. Without the proposed increases, there would be a deficit of approximately \$111,000 in state fiscal year 2011. The proposed increases will generate approximately \$493,000 which is just under the projected revenue needed to implement the Title V air quality permit program.

In addition, the proposed increases will stabilize the amount of air fees collected each year and increase the air fees for the existing facilities by approximately 22% on average. The Clean Air Act notes that the air fees should be increased on an annual basis based on the Consumer Price Index. The Consumer Price Index is based on all urban consumers published by the Department of Labor. The United States Department of Labor notes on its webpage that the U.S. City Average, Midwest, and West for all items for all urban consumers has increased by 67%, 60%, and 70%, respectively between August 1994 and August 2009. The proposed increase is less than the consumer price index that would be allowed by the Clean Air Act. DENR believes the above proposals are equitable for providing enough funds to implement the Title V program.

Appendix A provides the proposed revisions to Article 74:37 – Air Pollution Control Program Fees of the Administrative Rules of South Dakota.

Appendix A

Proposed Revisions to

Chapter 74:37:01

Air Emission Fees

ARTICLE 74:37

AIR POLLUTION CONTROL PROGRAM FEES

Chapter
74:37:01 Air emission fees.

CHAPTER 74:37:01

AIR EMISSION FEES

Section
74:37:01:01 Applicability.
74:37:01:02 Regulated air pollutant defined.
74:37:01:03 Rock crusher defined.
[74:37:01:03.01 Application fee.](#)
74:37:01:04 Administrative fee.
74:37:01:05 Annual air emission fee.
74:37:01:06 Annual operational report.
74:37:01:07 Flat fee for rock crushers.
74:37:01:07.01 Flat fee for asphalt plants.
[74:37:01:07.02 Flat fee for Otter Tail Power Company's Big Stone I.](#)
74:37:01:08 Notification of source.
74:37:01:09 Notification of error.

74:37:01:01. Applicability. The provisions of article 74:36 apply to this chapter unless otherwise stated. This chapter applies to Part 70 sources as defined in § 74:36:01:01.

Source: 19 SDR 199, effective July 1, 1993.

General Authority: SDCL 34A-1-58.

Law Implemented: SDCL 34A-1-58.

74:37:01:02. Regulated air pollutant defined. A regulated air pollutant is one of the following:

- (1) Nitrogen oxides or any volatile organic compounds;
- (2) Particulate matter;
- (3) Nitrogen dioxide, sulfur dioxide, lead, ozone, or any pollutant, excluding carbon monoxide, for which a national ambient air quality standard has been promulgated;
- (4) Any pollutant that is subject to any standard promulgated under section 111 of the Clean Air Act; and

(5) Any pollutant that is subject to any standard promulgated under section 112 of the Clean Air Act.

Source: 19 SDR 199, effective July 1, 1993.

General Authority: SDCL 34A-1-6.

Law Implemented: SDCL 34A-1-6.

Cross-Reference: Regulated air pollutant defined, § 74:36:01:15.

74:37:01:03. Rock crusher defined. A rock crusher is a unit that is used to crush any mineral or rock, such as jaw, gyratory, cone, roll, rod mill, hammermill, and impactor types.

Source: 19 SDR 199, effective July 1, 1993.

General Authority: SDCL 34A-1-58.

Law Implemented: SDCL 34A-1-58.

74:37:01:03.01. Application fee. An applicant for a construction permit for a source that is considered a major source as defined in § 74:36:01:08, an initial Part 70 operating permit, a general permit for a Part 70 source, a permit renewal for a Part 70 operating permit, and a permit modification for a Part 70 operating permit shall submit an application fee of \$125.

Source:

General Authority: SDCL 34A-1-58.

Law Implemented: SDCL 34A-1-58.

74:37:01:04. Administrative fee. ~~An applicant for an initial permit, except single rock crushers or single asphalt plants with their own permits, shall submit with the application an administrative fee of \$100.~~ Existing sources with a Part 70 operating permit, except single rock crushers or single asphalt plants with ~~their own permits~~ a general permit, shall pay an annual administrative fee based on actual emissions by the source during the previous calendar year according to the following tier system:

- (1) Less than 50 tons per year, ~~\$100~~ \$125;
- (2) Fifty to less than 100 tons per year, ~~\$500~~ \$600; and
- (3) Equal to or greater than 100 tons per year, ~~\$1,000~~ \$1,250.

Source: 19 SDR 199, effective July 1, 1993; 20 SDR 218, effective July 1, 1994.

General Authority: SDCL 34A-1-58.

Law Implemented: SDCL 34A-1-58.

Cross-Reference: Notification of source, § 74:37:01:08.

74:37:01:05. Annual air emission fee. In addition to the fee established in § 74:37:01:04, the owner or operator of a Part 70 source, except single rock crushers or single asphalt plants with ~~their own permits~~ a general permit, shall pay an annual air emission fee for each ton of a regulated air pollutant emitted to the air by the source during the previous calendar year. The

annual air emission fee is ~~\$6.10~~ \$7.50 per ton of each regulated pollutant. In the case where the combined administrative fee and annual air emission fee is less than \$250, the Part 70 source shall pay a minimum fee of \$250.

Source: 19 SDR 199, effective July 1, 1993; 20 SDR 218, effective July 1, 1994.

General Authority: SDCL 34A-1-58.

Law Implemented: SDCL 34A-1-58.

74:37:01:06. Annual operational report. An owner or operator of a Part 70 source, except single rock crushers or single asphalt plants with ~~their own permits~~ a general permit, shall submit an annual operational report to the department by March 1 of each year. The operational report must be signed by the owner or operator under oath in the presence of a notary public. The operational report must be in a format provided by the department and contain the necessary information to quantify actual emissions of all regulated pollutants that were emitted by the source to the ambient air during the previous calendar year.

Source: 19 SDR 199, effective July 1, 1993; 20 SDR 218, effective July 1, 1994.

General Authority: SDCL 34A-1-58.

Law Implemented: SDCL 34A-1-58.

74:37:01:07. Flat fee for rock crushers. ~~An applicant for an initial permit for a single rock crusher with its own permit shall submit with the application an administrative fee of \$100.~~ The annual flat fee for an existing single rock crusher with ~~its own~~ a general permit is ~~\$350~~ \$400. The administrative fee in § 74:37:01:04, the annual air emission fee in § 74:37:01:05, and the annual operational report in § 74:37:01:06 do not apply to single rock crushers with ~~their own permits~~ a general permit.

Source: 19 SDR 199, effective July 1, 1993; 20 SDR 218, effective July 1, 1994.

General Authority: SDCL 34A-1-58.

Law Implemented: SDCL 34A-1-58.

74:37:01:07.01. Flat fee for asphalt plants. ~~An applicant for an initial permit for a single asphalt plant with its own permit shall submit with the application an administrative fee of \$100.~~ The annual flat fee for an existing single asphalt plant with ~~its own~~ a general permit is ~~\$250~~ \$300. The administrative fee in § 74:37:01:04, the annual air emission fee in § 74:37:01:05, and the annual operational report in § 74:37:01:06 do not apply to single asphalt plants with ~~their own permits~~ a general permit.

Source: 20 SDR 218, effective July 1, 1994.

General Authority: SDCL 34A-1-58.

Law Implemented: SDCL 34A-1-58.

74:37:01:07.02. Flat fee for Otter Tail Power Company's Big Stone I. The annual flat fee for Otter Tail Power Company's Big Stone I coal-fired power plant is \$220,000. The administrative fee in § 74:37:01:04 and the annual air emission fee in § 74:37:01:05 do not apply.

Source:

General Authority: SDCL 34A-1-58.

Law Implemented: SDCL 34A-1-58.

74:37:01:08. Notification of source. The department shall notify the owner or operator of the source of the amount of the required annual air emission fee and administrative fee or flat fee by June 1 of each calendar year. The fees shall accrue on July 1 and are payable to the department of revenue by July 31 of each year.

Source: 19 SDR 199, effective July 1, 1993.

General Authority: SDCL 34A-1-58, 34A-1-60.

Law Implemented: SDCL 34A-1-60.

74:37:01:09. Notification of error. An owner or operator of a source who believes that the assessed fee is in error may submit a written explanation and supporting documentation substantiating the error to the department. The submittal must be postmarked by June 20. The department shall review the submittal and respond to the owner or operator within 15 days after receiving the submittal.

Source: 19 SDR 199, effective July 1, 1993.

General Authority: SDCL 34A-1-58.

Law Implemented: SDCL 34A-1-58.