Revision to the Washington Severe SIP: Implementation of Section 185 Fee Structure

SIP Revision 04-06

(Proposed)

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Prepared for:

U.S. Environmental Protection Agency

Prepared by:

Maryland Department of the Environment
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Executive Summary

Fee Requirement (Section 185) for Failure to Attain
Section 185 of the Clean Air Act requires severe nonattainment areas to adopt a penalty fee for major stationary sources if the area fails to attain the National Ambient Air Quality Standards (NAAQS) for ozone by the attainment deadline. The required fee penalty is $5,000 per ton of VOC or NOx emitted in excess of 80 percent of the stationary source's permitted level of emissions. All three jurisdictions included in the Washington D.C. severe nonattainment area are committed to fulfilling the requirements of Section 185.

State Activities
Maryland, Virginia and the District of Columbia have committed to EPA to meet the fee requirement of Section 185 of the Clean Air Act for major stationary sources of VOCs and NOx. In the current state legislative session beginning in January 2004, Maryland has submitted legislation that would provide the authority to implement the Section 185 program (Appendix A).
Description of Proposed Legislation

Summary
The legislation will implement a penalty fee collection system should the Washington, DC nonattainment area fail to meet the November 15, 2005 deadline for attainment of the 1-hour ozone NAAQS. The fee amounts will be calculated by MDE for emissions in excess of 80% of the baseline amount, calculated in accordance with 42 U.S.C. § 7511d of the federal Clean Air Act (CAA), taking into consideration any guidance issued by the United States EPA; and be adjusted annually for inflation in accordance with 42 U.S.C. § 7661a(b)(3)(b)(v) of CAA.

The fees would be collected and put into an Ozone Standard Attainment Fund that will be used for air quality control purposes. The fees collected will be invested and re-invested in the same manner as other State funds with investment earnings credited to the fund.

If emissions rise to penalty levels fees will be enacted and MDE will issue annual fee notices with payment due no less than 30 days after receipt of notice. The fee collection program will take effect on October 1, 2004. Please see Appendix A for an unofficial copy of the most current legislation.
Appendix A: Copy of House Bill 1441

HOUSE BILL 1441

Unofficial Copy 2004 Regular Session
M3 4lr0164

By: Chairman, Environmental Matters Committee (By Request - Departmental - Environment)
Introduced and read first time: February 25, 2004
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 Air Quality - Emissions Fees

3 FOR the purpose of requiring certain major stationary sources of air pollution in the State to pay certain annual fees to the Department of the Environment for certain emissions under certain circumstances; establishing the manner of calculating the fees; authorizing an exemption from the fees under certain circumstances; requiring the Department to issue certain fee notices; requiring payment of the fees at a certain time; authorizing the Department to reimburse certain fees under certain circumstances; establishing the Ozone Standard Attainment Fund; requiring certain fees to be deposited into the Fund; authorizing the use of the Fund for certain purposes; defining certain terms; providing for the termination of this Act under certain circumstances; and generally relating to the establishment and use of fees for air quality control.

14 BY adding to
15 Article - Environment
16 Section 2-403.1 and 2-403.2
17 Annotated Code of Maryland
18 (1996 Replacement Volume and 2003 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
MARYLAND, That the Laws of Maryland read as follows:

**Article - Environment**

2-403.1.

(A) IN THIS SECTION, "ATTAINMENT YEAR" MEANS:

(1) THE YEAR THAT THE WASHINGTON, D.C. NONATTAINMENT AREA IS REQUIRED TO ATTAIN THE FEDERAL ONE-HOUR AMBIENT AIR QUALITY STANDARD FOR OZONE; OR

(2) IN THE EVENT OF AN EXTENSION OF THE ATTAINMENT DEADLINE GRANTED IN ACCORDANCE WITH 42 U.S.C. § 7511(A)(5) OR OTHER APPLICABLE PROVISION OF THE CLEAN AIR ACT OR FEDERAL LAW, ANY EXTENSION YEAR.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, ON A FINDING BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY THAT THE WASHINGTON, D.C. NONATTAINMENT AREA HAS FAILED TO ATTAIN THE FEDERAL ONE-HOUR AMBIENT AIR QUALITY STANDARD FOR OZONE BY THE ATTAINMENT DATE, EACH MAJOR STATIONARY SOURCE OF VOLATILE ORGANIC COMPOUNDS OR NITROGEN OXIDES LOCATED IN THIS STATE WITHIN THE WASHINGTON, D.C. NONATTAINMENT AREA SHALL PAY AN ANNUAL FEE TO THE DEPARTMENT FOR NITROGEN OXIDE EMISSIONS IF:

(I) THE STATIONARY SOURCE QUALIFIES AS MAJOR WITH RESPECT TO NITROGEN OXIDE EMISSIONS; OR

(II) FOR VOLATILE ORGANIC COMPOUND EMISSIONS IF THE
15 STATIONARY SOURCE QUALIFIES AS MAJOR WITH RESPECT TO VOLATILE ORGANIC COMPOUND EMISSIONS.

17 (2) THE FEE SHALL BE:

18 (I) DETERMINED IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION; AND

19 (II) DEPOSITED INTO THE OZONE STANDARD ATTAINMENT FUND ESTABLISHED IN ACCORDANCE WITH § 2-403.2 OF THIS SUBTITLE.

22 (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A PERSON MAY NOT BE REQUIRED TO PAY ANY FEE UNDER THIS SECTION:

24 (I) WITH RESPECT TO ANY EMISSIONS FOR ANY YEAR THAT IS TREATED AS AN EXTENSION YEAR UNDER 42 U.S.C. § 7511(A)(5) OF THE FEDERAL CLEAN AIR ACT; OR


29 (C) (1) THE FEE SHALL:

30 (I) EQUAL $5,000 FOR EACH TON OF VOLATILE ORGANIC COMPOUNDS OR NITROGEN OXIDES EMITTED EACH YEAR AFTER THE ATTAINMENT YEAR, IN EXCESS OF 80% OF THE BASELINE AMOUNT, CALCULATED IN ACCORDANCE WITH 42 U.S.C. § 7511D OF THE FEDERAL CLEAN AIR ACT, TAKING INTO CONSIDERATION ANY GUIDANCE ISSUED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; AND

(2) A fee assessed in accordance with this subsection shall be paid for each calendar year starting the year after the attainment year, and each calendar year thereafter, until:

(I) the area is designated as in attainment of the one-hour ozone standard; or

(II) the fees are not required by the federal clean air act or regulations promulgated thereunder.

(D) (1) The department shall issue annual fee notices.

(2) Payment shall be due no later than 30 days after receipt of notice.

2-403.2.

(A) (1) In this section the following words have the meanings indicated.

(2) "Air pollution control device or other pollution prevention or reduction measure" means:

(I) a project that resulted in the reduction or elimination of volatile organic compounds or nitrogen oxides in a manner that contributed to attainment of the federal one-hour ambient air quality standard for ozone; or

(II) any other air pollution control device or other pollution prevention measure implemented after January 1, 2004.
"FUND" MEANS THE OZONE STANDARD ATTAINMENT FUND.

THERE IS AN OZONE STANDARD ATTAINMENT FUND.

ALL FEES COLLECTED BY THE DEPARTMENT UNDER THE PROVISIONS OF § 2-403.1 SHALL BE DEPOSITED INTO THE FUND.

ALL FEES PAID INTO THE FUND SHALL BE DEPOSITED WITH THE STATE TREASURER TO THE CREDIT OF THE FUND AND SHALL BE INVESTED AND REINVESTED IN THE SAME MANNER AS OTHER STATE FUNDS.

ANY INVESTMENT EARNINGS SHALL BE CREDITED TO THE FUND.

THE COMPTROLLER SHALL ACCOUNT FOR THE FUND.

THE FUND SHALL BE A CONTINUING NONLAPSING SPECIAL FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

THE DEPARTMENT SHALL HOLD THE FEES COLLECTED FROM EACH PERSON IN SEPARATE ACCOUNTS UNDER THE FUND ONLY FOR DISBURSEMENT IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION.

ANY PERSON THAT HAS PAID FEES INTO THE FUND IN ACCORDANCE WITH § 2-403.1 OF THIS SUBTITLE SHALL BE REIMBURSED FROM THAT PERSON'S ACCOUNT WITHIN THE FUND FOR COSTS INCURRED IN CONNECTION WITH THE INSTALLATION OF AIR POLLUTION CONTROL DEVICES OR OTHER POLLUTION PREVENTION OR REDUCTION MEASURES, APPROVED BY THE DEPARTMENT.

IN THE EVENT THAT THE FEES REQUIRED BY § 2-403.1 OF THIS
10 SUBTITLE ARE NOT REQUIRED BY THE FEDERAL CLEAN AIR ACT OR REGULATIONS
11 ADOPTED UNDER THE CLEAN AIR ACT, ANY BALANCE REMAINING IN THE ACCOUNTS
12 AT THAT TIME SHALL BE RETURNED, WITH ACCRUED INTEREST, TO EACH PERSON
13 THAT HAS PAID INTO THE FUND, IN ACCORDANCE WITH THE PERSON’S UNREIMBURSED CONTRIBUTION.

15 (H) ASSETS AND PROCEEDS OF THE FUND AND ITS SEPARATE ACCOUNTS MAY
16 ONLY BE USED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION AND MAY
17 NOT BE BUDGETED OR APPROPRIATED FOR ANY OTHER PURPOSE.

18 (I) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

20 (2) ANY REGULATIONS SHALL INCLUDE CRITERIA FOR APPROVAL OF POLLUTION CONTROL PROJECTS ELIGIBLE FOR REIMBURSEMENT AND PROCEDURES FOR APPLICATION AND REIMBURSEMENT.

23 SECTION 2. AND BE IT FURTHER ENACTED, That in the event the fees required by this Act are no longer required by the federal Clean Air Act or regulations adopted under the Clean Air Act, following return of any balance in the accounts to each person, the provisions of this Act and any rule or regulation adopted under this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2004.