

FACT SHEET
Division for Air Quality
Change to Air Quality Program Fees

Background

- During the 1980s, the Division for Air Quality (Division) charged application fees for construction and operating permits to fund the air permitting program. The Division's budget was also supplemented with General Funds from the Legislature, as well as grants from the federal government.
- In 1992, the Division changed from application fees to emissions fees based on a facility's actual emissions for the year. These changes were implemented in accordance with the requirements of the Title V permitting program. The Division's budget continued to be supplemented with (decreasing) General Funds from the Legislature, as well as grants from the federal government.
- Currently, fees are generated based on actual emissions in a calendar year. Sources are surveyed annually and charged a per-ton fee for emissions. The Division's budget is still supplemented by grants, but no longer receives General Funds from the Legislature.
- As it is currently structured, the current fee schedule is not sustainable. Air quality has improved and emissions have decreased, but the cost to maintain and continue to improve air quality has not decreased. In order to sustain the air quality program, the fee has increased over time.

Proposed change to Fee Structure

- The Division is proposing to change the current fee structure to more accurately reflect workload and create a sustainable funding mechanism.
- The proposed fee structure will include annual fees, emission fees, and registration fees.

Annual Fee

- An annual fee will be charged to each facility that has a final air permit issued by the Division.
- Registered sources will **not** be charged an annual fee.
- Facilities will be invoiced annually based on the type of permit the facility holds, as follows:

Permit Issued Under	Annual Fee
401 KAR 52:020	\$15,000
401 KAR 52:030	\$10,000
401 KAR 52:040	\$750

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Emission Fee

- All permitted sources with actual emissions will be assessed a dollar-per-ton fee.
- Emission fees are calculated based on actual emissions from sources.
- Sources **not** permitted to operate an electric generating unit (EGU) will be charged an emission fee for each ton of pollutants emitted. Sources permitted to operate an EGU, will be charged an emissions fee multiplied by 1.25 for each ton of pollutants emitted.
- An EGU is defined as a fossil fuel-fired combustion unit of more than 25 megawatts electric (MWe), which serves a generator that produces electricity for sale.

Type of Permitted Source	Emission Fee (“Dollar Per Ton Fee”)
Facilities not permitted to operate an Electric Generating Unit	Emissions Fee
Facilities permitted to operate an Electric Generating Unit	Emissions Fee x 1.25

Dollar Per Ton Emissions Fee Calculation:

(1) Facilities **not permitted to operate** an EGU:

$$\text{Emissions Fee} = \frac{\text{DAQ Budgeted Amount} - \text{Annual Fee}}{[(1.0) * (\text{Actual Emissions from nonEGU sources})] + [(1.25) * (\text{Actual Emissions from EGU sources})]}$$

(2) Facilities **permitted to operate** an EGU:

$$\text{EGU Fee} = \text{Emissions Fee} \times 1.25$$

Registration Fee

- Facilities required to register with the Division and whose applications are approved pursuant to 401 KAR 52:070 will be charged a Registration Fee.
- This regulation applies to registration applications received on and after July 1, 2020.
- This regulation does not apply retroactively.
- Registered sources will be invoiced upon review of the registration application.

Registration type	Registration fee
Initial registration	\$250
Registration revision	\$100

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What's next??

- The Division plans to file the proposed regulatory amendment in November 2019.
- Informational sessions will be held at the following times and locations:

September 19th

6 – 8 PM ET
EEC Training Room A
300 Sower Boulevard
Frankfort, KY 40601

September 24th

6 – 8 PM CT
Lake Cumberland ADD
2384 Lakeway Drive
Russell Springs, KY 42642

September 26th

6 – 8 PM CT
Madisonville Community College
750 Laffoon Street
Madisonville, KY 42431

October 1st

6 – 8 PM ET
Hazard City Hall
700 Main Street
Hazard, KY 41701

October 3rd

6 – 8 PM ET
Greenup Co. Extension Office
35 Wurtland Avenue
Greenup, KY 41144

October 10th

6 – 8 PM ET
Northern Kentucky ADD
22 Spiral Drive
Florence, KY 41042

- Contact - DAQregulations@ky.gov

1 ENERGY AND ENVIRONMENT CABINET
2 DEPARTMENT FOR ENVIRONMENTAL PROTECTION

3 Division for Air Quality
4 (Amendment)

5 401 KAR 50:038. Air quality program fees.

6 RELATES TO: KRS 224.10-100, 224.10-230, 224.20-050, 224.20-100, 224.20-130, 40
7 C.F.R. Part 70, 42 U.S.C. 7401-7671q, et seq.

8 STATUTORY AUTHORITY: KRS 224.10-100, 224.10-230, 224.20-050, 224.20-100,
9 224.20-130, 40 C.F.R. Part 70, 42 U.S.C. 7401-7671q, et seq.

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes the cabinet
11 to promulgate administrative regulations for the prevention, abatement, and control of air pollution.
12 This administrative regulation provides for the assessment of fees necessary to fund the state air
13 quality program.

14 Section 1. Definitions. All terms not defined in this section shall have the meaning given
15 them in 401 KAR 50:010.

16 (1) "Act," "Clean Air Act," or "CAA" means 42 USC 7401 through 7671q.

17 (2) "Actual emissions" means the amount of a pollutant actually emitted in the calendar year
18 immediately preceding the fiscal year during which an emissions fee is assessed, as recorded by the
19 Kentucky Emissions Inventory System (KyEIS).

20 (3) "Annual fee" means the amount of money assessed by the cabinet in accordance with
21 Section 3 of this administrative regulation.

1 (4) "Designated representative" is defined by 40 C.F.R. 72.2, 97.402, 97.602, and 97.802, as
2 applicable.

3 (5) "Division" means the Division for Air Quality.

4 (6) "Electric generating unit" or "EGU" means a fossil fuel-fired combustion unit of more
5 than twenty-five (25) megawatts electric (MWe), which serves a generator that produces electricity
6 for sale.

7 (7) "Emissions fee" means the amount of money assessed by the cabinet in accordance with
8 Section 4 of this administrative regulation.

9 (8) "Fee" means emissions fee, annual fee, and registration fee assessed by the cabinet to
10 fund the air quality program.

11 (9) "Fiscal year" means the period beginning July 1 and ending the following June 30.

12 (10) "Hazardous air pollutant" means a pollutant listed in 401 KAR 63:060.

13 (11) "Kentucky emissions inventory system" or "KyEIS" means a database used by the cab-
14 inet to record, among other information, emissions of air pollutants from Kentucky sources.

15 (12) "Registration fee" means the amount of money assessed by the cabinet in accordance
16 with Section 5 of this administrative regulation.

17 (13) "Responsible official" means one (1) of the following:

18 (a) For a corporation:

19 1. A president;

20 2. A secretary;

21 3. A treasurer;

22 4. A vice-president of the corporation in charge of a principal business function;

1 5. Another person who performs similar policy or decision-making functions for the corpo-
2 ration; or

3 6. A duly authorized representative of a person identified in subparagraphs 1 – 5, if the rep-
4 resentative is responsible for the overall operation of one (1) or more manufacturing, production, or
5 operating facilities applying for or subject to a permit or registration and either:

6 a. The facility employs more than 250 persons or has gross annual sales or expenditures
7 exceeding \$25 million (in second quarter 1980 dollars); or

8 b. The delegation of authority to the representative is approved in advance by the cabinet;

9 (b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

10 (c) For a municipality, state, federal, or other public agency: a principal executive officer or
11 ranking elected official. For this administrative regulation, the principal executive officer of a federal
12 agency includes the chief executive officer having responsibility for the overall operation of a prin-
13 cipal geographic unit of the agency;

14 (d) For sources subject to the Acid Rain Program, as defined in 401 KAR 52:010, Section
15 1(1), and sources subject to 401 KAR 51:240, 51:250, or 51:260, if requested by the source, the
16 designated representative; or

17 (e) For any source not listed in subsections (a) – (d) of this section, the individual identified
18 on DEP7007AI, as incorporated by reference in 401 KAR 52:050.

19 (14) "Subject emissions" means actual emissions, as recorded in the Kentucky emissions
20 inventory system, of sulfur dioxide, oxides of nitrogen, PM_{2.5}, PM₁₀, lead, volatile organic com-
21 pounds, hazardous air pollutants listed in 401 KAR 63:060 for which a standard applies, or a pollu-
22 tant subject to a standard contained in Section 111 of the Act, from an air pollution source subject to

1 this administrative regulation, except that actual emissions in excess of 4,000 tons of a single pollu-
2 tant from a source shall not be subject emissions. Pollutants subject only to 42 U.S.C. 7412r (Section
3 112(r) of the Act), and pollutants that are class I or class II substances under 42 U.S.C. 7671 through
4 7671q and which are not otherwise regulated shall not be subject emissions.

5 Section 2. Applicability. (1)(a) The requirements of Sections 3, 4, 6, and 7 of this adminis-
6 trative regulation shall apply to all sources issued a permit pursuant to 401 KAR 52:020, 52:030, or
7 52:040.

8 (b) The requirements of Sections 5, 6, and 7 of this administrative regulation shall apply to
9 all sources issued a registration pursuant to 401 KAR 52:070.

10 (2) This administrative regulation shall not apply to:

11 (a) Mobile sources; or

12 (b) Sources located in an air pollution control district granted concurrent jurisdiction by the
13 cabinet under KRS 224.20-130.

14 Section 3. Annual fee assessment. On or about July 1 of each year, the division shall assess
15 an annual fee based on the type of permit a source holds on the date the annual fee is assessed and
16 shall provide written notification to the source of the amount of the annual fee due:

17 (1) For a source issued a permit pursuant to 401 KAR 52:020, \$15,000;

18 (2) For a source issued a permit pursuant to 401 KAR 52:030, \$10,000; and

19 (3) For a source issued a permit pursuant to 401 KAR 52:040, \$750.

20 Section 4. Emissions fee assessment.

21 (1) On or about July 1 of each year, the division shall calculate and assess an emissions fee
22 based on subject emissions for each air pollution source subject to this section and shall provide
23 written notification to the source of the amount of the emissions fee due. If a pollutant qualifies as

1 more than one (1) of the subject emissions listed in Section 1(14) of this administrative regulation,
2 it shall be assessed as a single subject emission.

3 (2) Determining subject emissions. At least four (4) months but not more than twelve (12)
4 months prior to assessing the emissions fee, the cabinet shall provide each source subject to the
5 emissions fee a written copy of the KyEIS containing the most recent information appropriate to that
6 source. Within thirty (30) days of the date this information is mailed, each source shall provide the
7 cabinet with all information necessary to determine its subject emissions. The information shall be
8 accompanied by a statement signed by a responsible official or by a designated representative, as
9 appropriate, certifying the accuracy of the information. Each day past the deadline for submitting
10 information that the source fails to submit the information shall be a separate violation of this ad-
11 ministrative regulation. If no response is received by the deadline, the cabinet shall estimate the
12 subject emissions for the source based on previous actual emissions and on other information con-
13 sidered pertinent by the cabinet.

14 (3) Assessment. At least sixty (60) days prior to assessing the emissions fee, the cabinet shall
15 determine the subject emissions for each source, based on the information provided by the source
16 and on other information available to the cabinet. The cabinet shall notify the source of its determi-
17 nation for subject emissions at least forty-five (45) days prior to assessing the emissions fee. Assess-
18 ment of the subject emissions shall be a final determination by the cabinet. If the source fails to notify
19 the cabinet of an error in the determination of subject emissions within thirty (30) days after the date
20 the determination is mailed by the cabinet, the source shall be assessed an emissions fee based on
21 the cabinet's determination. If the source notifies the cabinet in a timely manner that there is an error
22 in the determination of its subject emissions, and the cabinet disagrees with the assessment by the
23 source, the cabinet shall notify the source, in writing, specifying the reasons for rejecting the error

1 notification.

2 (4) Computation of emissions fee. (a) The division shall calculate the emissions fee as fol-
3 lows:

$$4 \quad \text{Emissions fee } \left(\frac{\text{dollar}}{\text{ton}} \right) = \frac{A - B \text{ (dollars)}}{[C + (1.25 * D)] \text{ (tons)}}$$

5 Where,

6 A = DAQ budgeted amount;

7 B = Annual fees assessed pursuant to Section 3 of this administrative regulation;

8 C = Actual emissions from sources not permitted to operate an EGU; and

9 D = Actual emissions from sources permitted to operate an EGU.

10 1. For a source permitted to operate an electric generating unit, the emissions fee shall be
11 calculated as one and twenty-five hundredths (1.25) multiplied by the emissions fee calculated in
12 paragraph (a) of this subsection; and

13 2. For a source not permitted to operate an electric generating unit, the emissions fee shall be
14 as calculated in paragraph (a) of this subsection.

15 (b) Except as provided in paragraph (c) of this subsection, the emissions fee for each suc-
16 ceeding fiscal year shall be adjusted annually using the method provided in 40 C.F.R. 70.9(b)(2)(iv).
17 The cost per ton of subject emissions shall be determined as prescribed in paragraph (a) of this sub-
18 section.

19 (c) The emissions fee for a fiscal year may be increased by an amount greater than that cal-
20 culated pursuant to 40 C.F.R. 70.9(b)(2)(iv), may be left unchanged from the previous fiscal year, or
21 may be decreased from the previous fiscal year if the cabinet determines after public hearing that the
22 change is necessary, or the same or lesser amount is adequate, to cover all reasonable costs of ad-
23 ministering the air quality program.

1 Section 5. Registration fee. Beginning July 1, 2020, a source registered pursuant to 401 KAR
2 52:070 shall pay a fee of:

3 (a) \$250 for an initial registration, which shall be submitted upon receipt of an invoice, after
4 approval by the cabinet pursuant to 401 KAR 52:070, Section 4(1)(b)2.; or

5 (b) \$100 for a revision to a registration, which shall be submitted upon receipt of an invoice,
6 after approval by the cabinet pursuant to 401 KAR 52:070, Section 4(2)(a).

7 Section 6. Payment of fees.

8 (a) A source shall pay a fee by check or money order, made payable to the Kentucky State
9 Treasurer, or electronic payment on the cabinet's website, within sixty (60) days after the date on
10 which a fee invoice is mailed. A source may pay multiple invoices with one (1) payment.

11 (b) A fee invoice shall be mailed to the permit or registration holder of record as of the date
12 the invoice is mailed, and the permit or registration holder shall be responsible for payment.

13 Section 7. Enforcement.

14 (a) Each day after the deadline for payment of the source's fee during which the source fails
15 to pay the fee shall be a separate violation of this administrative regulation.

16 (b) Failure to pay a fee within ninety (90) days after the date on which the cabinet notifies
17 the source of the amount of fee due shall result in:

18 1. An increase in the fee of an additional fifty (50) percent of the original amount due, plus
19 interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue
20 Code of 1986 (relating to computation of interest on underpayment of federal taxes); and

21 2. Suspension of the source's permit or registration until the fee is paid or until the cabinet
22 has approved a schedule of payment.

23 Section 8. Fees collected. (1) All fees collected pursuant to this administrative regulation

1 shall be deposited in a trust and agency account and shall be used solely for funding the air quality
2 program.

3 (2) Pursuant to KRS 224.20-050(2), the cabinet shall not collect fees pursuant to this admin-
4 istrative regulation that exceed the amount of money authorized in the currently enacted budget bill.

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