



PO BOX 518 Upton Ma, 01568

By email to Joanne.O.Morin@mass.gov

June 20, 2024

Ms. Joanne O. Morin
Deputy Director, Air and Climate Division
Massachusetts Department of Environmental Protection
100 Cambridge Street, Suite 900
Boston, MA 02114

RE: Comments of Massachusetts Chemistry and Technology Alliance relative to Proposed Operating Permit Fees 310 CMR 4.00 *Timely Action Schedule and Fee Provisions*

Dear Ms. Morin:

On behalf of our members, the Massachusetts Chemistry & Technology Alliance (MCTA) would like to comment on recent discussions during the May 22, 2024, Air Quality Advisory Committee (AQAC) meeting concerning proposed Operating Permit fee increases.

MCTA is the professional organization representing manufacturers, users, and distributors of chemistry in the Commonwealth. Our membership ranges from small, multi-generational family-owned businesses operating with a handful of employees to large global companies employing thousands. More than 96% of all manufactured goods – including solar panels, turbine blades, energy efficiency products, microelectronics, and pharmaceutical devices – are touched by chemistry.

As discussed, MassDEP is considering an increase in Title V Operating Permit Program (“OP Program”) fees to meet revenue requirements under the Clean Air Act. At the presentation, MassDEP estimated the program needs 16 full-time equivalent employees (FTE’s) at a total cost of 3.1 million dollars (approximately \$200,000 per employee) a nearly 500% increase from current fee revenue.

MCTA is concerned that the magnitude of the proposed fee increase will have a negative impact on the remaining manufacturers subject to the OP Program and asks that MassDEP reevaluate its current approach, particularly with regards to manufacturers that are part of the program.

MCTA does not oppose a fee for service model, provided such fees are reasonable and bear a relationship to the staff needed to meet the needs of the regulated entities. However, like many other programs, including the Toxics Use Reduction Act (TURA), the law and fee schedule for the OP Program was established at a time when the notion that “polluters pay” was the preferred

method of establishing fee schedules. Under this notion the majority of fees were based on the emissions from a facility or, in the case of TURA, the use of listed chemicals.

That approach was destined to cause revenue shortfalls. As facilities left Massachusetts or otherwise reduced emissions, the OP Program, like TURA, has become financially unsustainable, with large, fixed costs now spread over a much smaller base. Currently, manufacturing facilities account for less than 30% of the current OP sources. Seventy five percent are now primarily power generation or waste-to-energy (WTE) facilities.

Clearly a downward spiral is occurring, as more manufacturers leave due to rising costs. This means that a business-as-usual approach – raising fees on a smaller base without a complete overhaul of costs associated with the program - is simply not acceptable.

With those general comments in mind we offer the following:

- **MassDEP must consider all options to reduce the cost of this program.**

MassDEP's initial estimate of 16 FTEs to operate the program, at a cost of 3.1 million dollars, seems excessive given the current list of OP Program sources. Since the last fee increase in 2000, the number of regulated facilities has declined 50% from 209 to 105 and emissions have declined 91% from 110,000 tons to 9300 tons. Only 14 sources emit over 100 tons and 40 emit less than 25 tons. By any measure, the OP universe is small.

We understand the program has fixed costs, but the notion that MassDEP needs 16 FTEs to run this program – at an average all-in cost of almost \$200,000 strains credibility. MassDEP has been operating with far less resources up until now. According to the presentation, MassDEP's spent a total of 2.255 million dollars in 2024 to run the program equivalent to about 12 FTEs. MassDEP has presented no evidence to show that the permit program cannot function in the future with the current number of FTEs, given the likelihood of a continued reduction in the number of sources.

Complex sources need experienced individuals as reviewers certainly, but smaller, less complex sources could be effectively handled by lower paid individuals, decreasing the total amount necessary to run the program. Additionally, MassDEP should prioritize automation for any applicable source.

With revenue down 82% since 2000 and likely to decline further, MassDEP needs to think “outside the box” and make sure that the costs of the program are commensurate with the effort needed for compliance, today and in the future.

- **MassDEP must understand the universe of OP sources.**

To develop an effective, sustainable program, MassDEP must confront the inevitable fact that the regulated universe is shrinking – and will likely shrink more in the coming years. Even a cursory look at the FY 24 Title V list shows that at least one major facility – Mystic Station – is already shut down and will only pay fees for the next year or so. Their fee alone represents 2% of the entire current program fees (\$8000 of \$486,000 invoiced).

It would not be surprising to see other reductions soon, particularly in the manufacturing sector as The Gillette Company has also indicated they will be downsizing their Boston operations. Although this sector equates to about 30% of total sources, they are only responsible for 15% of the total emissions, indicating they are mostly small sources, vulnerable to any fee shock.

- **MassDEP needs to present a multitude of options for fee increases.**

In their proposal, MassDEP suggested that a two-tier fee – a base fee and an emissions fee – would be a viable option. Although there was no definitive proposal at the AQAC meeting it was suggested that 25% of the revenues needed to staff the program would be a base fee, while 75% would be emissions based.

The base fee as proposed is unfair and MassDEP should consider a large base fee for the largest sources. Based on the 3.1 million dollar suggested cost of the program divided by the current 105 sources, means a base fee of approximately 7500 dollars per facility.

This base fee calculation is unfair, particularly to manufacturers. With this “base fee,” large sources (generally power generators and WTE) would not see their base fee increased at all, while smaller sources would see their base fee double or triple. The largest sources are complex and subject to varying and changing rules - even if, in some cases, their emissions are small. Their base fee should reflect that complexity.

As such, we urge MassDEP to consider much larger base fees for large sources, while keeping the current base fee for the other sources the same. All of the large sources are power generators or WTE facilities, both of which have revenue streams from captive customers, including subsidies from electric ratepayers. In the case of WTE facilities particularly, RPS Class II Waste to Energy credits are available to help defray costs. Given their size and revenue model they could afford to pass increased cost along to their customers easier than manufacturers.

The emissions fee should recognize that manufacturers have no way to reduce emissions. As to the emissions fee, MassDEP has suggested an approximate fee of 250 dollars per ton of emissions, consistent with other New England states. However, MassDEP should not use other New England states as a guide as their industrial mix may be quite different. With 40 sources under 25 tons, the notion of pushing the “polluter pay” model to encourage reductions in emissions is not likely to result in further reductions.

As a result, we urge MassDEP to consider two different fee prices: one for large sources and one for everyone else. Penalizing a manufacturing source (none of which are large sources) is counterproductive, as manufacturers in particular have little opportunity to reduce emissions, making that emissions fee punitive. The manufactures on the list are what remains of a once vibrant manufacturing sector that over time left the state due to the high costs of doing business here. Increasing fees will not help the remaining manufacturers compete globally and will have an outsized impact on their Massachusetts operations.

Further, manufacturers often have many more employees than some of the largest facilities – meaning their local economic impact is far higher. They need to be protected from excessive fees due to their local economic impact in direct and local spending.

- **Municipal and state agencies must pay their fair share.**

MCTA supports removing the fee exemption for municipal and state agencies. As with many other programs, an increasing amount of MassDEP's time is being spent on sources that are exempt from fee payment.

In the case of the OP Program, 13 of 105 sources (nearly 15%) are fee exempt. Most of the fee exempt sources are power related, either from schools (UMASS) or from municipal light plants. These facilities are no different than private facilities. In the case of light plants they are exactly like private facilities. In these cases, fees are not paid by taxpayers, but by users of the facilities services, and OP Program fees are a legitimate cost of doing business for them and will have no impact on their economic viability. They should be treated like any other facility.

- **MassDEP should open discussion with EPA about changes to the program.**

While this suggestion is longer term, MassDEP must be more aggressive with EPA on the future of this program. It is likely other states – particularly those in New England - are experiencing the same revenue shortfalls as Massachusetts. As companies, including power sources, reduce emissions, the outlook for this program will get worse. EPA Region 1 needs to be realistic about this program.

In the end, MassDEP must consider what message they want to send to the dwindling universe of manufacturers in Massachusetts. There are not many left and any increase in costs makes Massachusetts an even more expensive place to do business. Combined with high energy costs and a stringent regulatory environment, many manufacturers are already re-evaluating their expansion and relocation plans to grow in regions that have fewer operating costs. We urge MassDEP to work with MCTA and our members to help reduce the costs of this program so that the program is sustainable and that it is economically feasible for manufacturers to operate and grow in Massachusetts.

Thank you for your consideration of the concerns raised by MCTA and our members. If you have any questions, please do not hesitate to contact me at 508-572-9113 or via email at katherine@masscta.org.

Respectfully,



Katherine Robertson
Executive Director
Massachusetts Chemistry & Technology Alliance