

Memorandum in Strong Opposition to Fee Increase for Air Permit Program

March 06, 2008

Part EE of A.9809-A / S.6809-A - Article VII Budget Bill - AN ACT to amend the environmental conservation law, in relation to operating permit program fees

The Independent Power Producers of New York, Inc. (IPPNY) is a trade association representing companies involved in the development of electric generating facilities, the generation, sale, and marketing of electric power, and the development of natural gas facilities in the State of New York. IPPNY represents almost 75 percent of the electric generating capacity in New York.

IPPNY strongly opposes the passage of Part EE of A.9809-A / S.6809-A. These budget bill provisions would increase Title V Operating Permit Air Program fees from \$45 per ton of regulated emissions to as much as \$80 per ton (a 78 percent increase) and would establish a minimum fee of \$5,000 per operating facility. The bill also would delete the 6,000 ton emissions cap, allowing the fee to apply to all emissions. According to the NYS Division of the Budget (DOB), this fee increase will cost \$19 million across all business permit holders, including the electricity generation and gas pipeline community.

DOB argues that this fee increase is needed in accordance with the Federal Clean Air Act. However, the Federal Clean Air Act specifies a minimum fee of \$25 per ton, and the NYS Department of Environmental Conservation (DEC) already receives \$45 per ton. In addition, the Federal Clean Air Act states that the fee is not required to apply to emissions in excess of 4,000 tons per year for each emissions category; however, existing NYS Environmental Conservation Law includes an emissions cap of 6,000 tons annually per emission type (which already is 2,000 tons above the amount in federal law), and DEC further proposes to remove the emissions cap entirely.

The Executive Budget previously had proposed to increase fees from the current \$45 per ton to up to \$67 per ton, with a minimum fee of \$1,250 per operating facility. Amazingly, this year, the Executive Budget proposes a fee increase that is \$13 per ton more expensive than the amount that the Legislature decided last year was too costly and that is \$3,750 above the minimum fee that DEC had hoped to receive last year, in addition to the large cost of having the fee apply to all emissions without a cap.

At a time when New York State has committed to reducing business costs and energy prices, the governor's proposal would do the opposite. This fee increase would exacerbate competitive disadvantages, such as high property taxes, faced by the impacted companies. For example, one upstate company would be forced to pay approximately \$1.4 million per year in incremental costs above and beyond what they pay today. Furthermore, many companies own multiple affected facilities.

The financial impact especially is harmful when coupled with the large costs that will result from requirements such as the DEC's Clean Air Interstate Rules, the Regional Greenhouse Gas Initiative, the Renewable Portfolio Standard Program, and the System Benefits Charge Program (related to the New York State Public Service Commission's ongoing Energy Efficiency Portfolio Standard Proceeding). The ultimate impact of these cost increases is higher electricity bills for the state's businesses and residents, at the same time that the state is struggling to control its energy costs in order to be able to grow its economy. It is essential that the Legislative and Executive (including associated rulemakings) Branches of government continue to balance better the environmental, energy and economic needs of our state.

The Legislature correctly decided against the Executive Budget proposal to increase Title V operating permit fees in the past, concluding that DEC has sufficient ability and resources to review these permits. Indeed, DEC's proposed budget includes a re-appropriation of prior funds, indicating that DEC has not used all of the monies that it already is authorized to collect.

As current permits expire, DEC should have enough resources to renew these permits, since they were able to issue them in the first place. IPPNY urges the Legislature to reject this costly fee proposal again this year, in order to avoid increasing costs for energy production and the associated bills of energy consumers.

For the reasons stated above, IPPNY opposes Part EE of A.9809-A / S.6809-A.