State of Oregon

Department of Environmental Quality — Memorandum

Date: August 4, 2008

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda Item H, Rule Adoption: Oregon Title V Operating Permit Fee Increase
August 21-22, 2008 EQC Meeting

Why is this Important

Oregon's Title V Operating Permit Program contributes to the prevention of air pollution and helps reduce the number of unhealthy air days and the risks from toxic air pollutants. The federal Clean Air Act requires each state's Title V program to be funded entirely by permit fees.

The proposed increases to Oregon's Title V Operating Permit fees are necessary to cover the reasonable costs associated with the Department of Environmental Quality's operation of Oregon's Title V program. Failure to maintain sufficient funding could affect DEQ's ability to maintain federal approval of the state program.

Department Recommendation and Motion

DEQ recommends that the Environmental Quality Commission:

(1) Determine that increasing fees by the change in the Consumer Price Index, pursuant to the proposed rules presented in Attachment A, is necessary to cover the reasonable indirect and direct costs of implementing Oregon's Title V Operating Permit Program; and

(2) Adopt the rules as amended in Attachment A to increase Oregon's Title V Operating Permit fees by the amounts established in statute by Senate Bill (SB) 107 (2007) and by the change in the CPI pursuant to ORS 468A.315; and to make other changes in order to comply with SB 107.

Background and Need for Rulemaking

Title V of the CAA requires each state to administer a comprehensive operating permit program for major industrial sources of air pollution. The Environmental Protection Agency approved Oregon's Title V program in 1994.

In 2007, the Oregon Legislature passed SB 107 which increased Oregon's Title V Operating Permit fees in statute (ORS 468A.315) by 24 percent, to be phased in over three years starting in 2007. Federal and state laws require the Title V program to be funded entirely by permit fees. Title V fees pay for

permitting, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA. The fees also support a portion of air quality monitoring, air quality planning and air program management costs.

To help ensure that Oregon's program meets the funding requirement, the statute provides for annual increases in Title V fees based on increases in the CPI. Even with annual CPI fee increases, revenue has not kept up with increases in program costs because emissions subject to emission fees have declined and costs have increased by more than the CPI. Due to inadequate revenue, DEQ reduced staffing by three positions in the 2005-2007 biennium. Without a fee increase, DEQ would have reduced staffing by an additional one-and-a-half positions in the 2007-2009 biennium.

Because Title V fees are set in statute and rule, rule changes are necessary to implement the fee increases. The proposed rules make permanent a fee increase for 2007 that was already adopted in a temporary rulemaking and invoiced to permittees in August 2007. The proposed rules also increase fees for 2008 and 2009. Revenue from the proposed fees will fund the Title V program through fiscal year 2009 and allow DEQ to:

- Issue and renew Title V permits in a timely manner;
- Complete required Title V inspections;
- Monitor and enforce compliance with air quality regulations;
- Comply with federal requirements to maintain a federally approved and delegated Title V program; and
- Issue public notices and information on the Title V program.

Effect of Rule

Title V Fee Increases

The proposed rules increase fees for all Title V Operating Permit Program sources. Title V permit holders are generally the largest stationary emission sources, including power generation, wood and paper products, and fiberglass manufacturing facilities. The requirement to have a Title V permit is based on the quantity of emissions from a source rather than size of the business. Smaller sources, such as wood refinishing and fiberglass reinforced plastic facilities, are also subject to the Title V program if those sources have the potential to emit at or above major source emission thresholds. DEQ projects that approximately 123 sources will be subject to Oregon's Title V program in fiscal year 2009.

DEQ rules establish Title V permit fees in three categories:

- Annual base fee, assessed to all Title V sources regardless of emission quantities;
- Emission fee, assessed on emissions from the individual sources per calendar year; and
- Specific activity fees, assessed when a source owner or operator modifies a permit or installs ambient monitoring networks requiring DEQ's review.

This proposed rulemaking would increase the annual base fee and emission fee by the amounts established in statute for 2007, 2008 and 2009. In addition, it increases the fees for all three categories by the change in the CPI. The proposed fees for 2007 reflect the fees established in statute and the 2006 CPI increase authorized by statute. The proposed fees for 2008 and 2009 reflect the fees established in statute and the 2007 CPI increase authorized by statute. The table below illustrates the proposed fees.

Fee Category	2006 fees	2007 fees (already invoiced)	*Increase over 2006 fees*	2008 fees (to be invoiced)	*Increase over 2007 fees*	2009* fees (to be invoiced)	*Increase over 2008 fees*
Annual Base Fee	$3,379	$4,390	*$1,011 (29.9%)*	$4,849	*$459 (10.5%)*	$5,183	*$334 (6.9%)*
Emission Fee (per ton)	$39.38	$43.90	*$4.52 (11.5%)*	$48.49	*$4.59 (10.5%)*	$51.83	*$3.34 (6.9%)*
Specific Activity Fees:							
Administrative	$338	$406	*$68 (20.1%)*	$418	*$12 (3.0%)*	No change	*$0*
Simple	$1,352	$1,626	*$274 (20.3%)*	$1,672	*$46 (2.8%)*	No change	*$0*
Moderate	$10,137	$12,194	*$2,057 (20.3%)*	$12,540	*$346 (2.8%)*	No change	*$0*
Complex	$20,273	$24,387	*$4,114 (20.3%)*	$25,081	*$694 (2.8%)*	No change	*$0*
Ambient Review	$2,703	$3,252	*$549 (20.3%)*	$3,344	*$92 (2.8%)*	No change	*$0*

* The proposed 2009 fees do not include an increase by the 2008 CPI amount because the change in the 2008 CPI is not yet available from the federal government. DEQ may propose an increase based on the 2008 CPI in a future rulemaking.

Change to CPI Base Year Used in Fee Calculations

This proposed rulemaking would also implement a correction to the formula that DEQ uses to calculate the change in the CPI for the annual base fee and specific activity fees. The correction will align the CPI fee increases for all fee categories to the same base year (1989) set in statute. In the past, DEQ calculated the CPI increase to the emission fee using the 1989 CPI and the CPI increase to the annual base fee and specific activity fees using the 1993 CPI. To conform to the statute, DEQ will use the 1989 CPI as the baseline for the annual base fee and specific activity fees. Because of the correction, the percentage increase for 2007 fees (invoiced last year) is larger for the annual base fee and specific activity fees than it is for the emission fee.

Pollutant Categories Covered by Title V Fees

This proposed rulemaking would change the definition of regulated pollutants to comply with the revised statute. Regulated pollutants assessed emission fees would fall into four pollutant categories: particulates; sulfur dioxide; oxides of nitrogen; and volatile organic compounds. Previously, the Title V fee rules addressed additional pollutants such as fluoride, lead and toxic air pollutants, which were assessed emission fees but contributed a small amount to program revenue. For the most part, the additional pollutants are a subset of the four pollutant categories. DEQ believes that these amendments will result in a small reduction (about two percent) in emission fee revenue for the Title V program.

Emissions Fee Cap Adjusted

This proposed rulemaking would change the emissions fee cap to comply with the revised statute. It changes the emission fee cap in 2011 from a maximum of 4,000 tons per year on each regulated pollutant to a maximum of 7,000 tons per year of all regulated pollutants. In a future rulemaking, DEQ will propose that the annual base fee set in statute apply to Title V sources starting in 2010; SB 107 increased the annual base fee by $1,000 before CPI adjustment. These changes will make revenue more stable by reducing reliance on emission fees and increasing reliance on base fees. This will prevent a significant loss of revenue when new federal regulations significantly reduce emissions from the highest emitting Title V sources in the coming years.

Commission Authority

The commission has authority to take this action under ORS 468.020, 468A.025, 468.065, 468A.040, 468A.310, and 468A.315

Stakeholder Involvement

DEQ held air quality permit program information sessions in 2006 to describe the proposed Title V fee increases to permit holders. DEQ shared the proposal with its Small Business Compliance Advisory Panel in 2006 and with the Associated Oregon Industries Air Committee in 2007. As part of its 2007 legislative budget process, DEQ submitted detailed information about Title V program funding and the proposed fee increases to the Legislature.

DEQ convened an advisory committee to generate input and recommendations on the fiscal impact statement for the original public notice package. The committee membership and report is provided in Attachment C.

DEQ mailed or e-mailed copies of the original public notice package to all Title V businesses and interested parties in February 2008, and held a public hearing at DEQ headquarters in Portland in March 2008. Because DEQ revised the rulemaking based on public comment that it received during the original comment period, it mailed or e-mailed notice of these revisions to all Title V businesses and interested parties in May 2008, and reopened the public comment period.

Public Comment

A public comment period extended from February 27, 2008, to March 31, 2008, and from May 12, 2008, to June 2, 2008. DEQ received comments from three people

Key Issues

Because DEQ must cover all program costs using permit fee revenue, it will be difficult to maintain adequate staff levels needed to administer Oregon's Title V program without this proposed fee increase. Inadequate funding could jeopardize DEQ's ability to maintain federal approval of the program.

The statute authorizes a phased-in fee increase over the three-year period from 2007 to 2009. DEQ chose not to include the fees for 2009 in the original rulemaking proposal because the information needed to adjust the fees by inflation is not yet available. However, in response to public comment received during the original comment period, DEQ has included the full phase-in of the fees in this rulemaking (except the 2010 base fee increase).

Next Steps

If the EQC adopts these proposed rule amendments, the fee increases would become effective upon filing with the Secretary of State. This would make permanent the previously invoiced fees for 2007. The fees for 2008 would be reflected in invoices that DEQ will issue to Title V permittees in August 2008, with payment due in October 2008. The fees for 2009 would be reflected in invoices that DEQ will issue to Title V permittees in August 2009. DEQ would need to adjust the fees for 2009 for inflation through a separate rulemaking once economic data from 2008 is available. Because this is a

continuation of an existing program, no additional resources or training are needed for DEQ to implement the rule.

Attachments

A. Proposed Rule Changes
B. Summary of Public Comments and Agency Responses
C. Title V Fee Increase Advisory Committee Findings and Recommendations
D. Presiding Officer's Report for Rulemaking Hearing
E. Relationship to Federal Requirements
F. Statement of Need and Fiscal and Economic Impact
G. Land Use Evaluation Statement

Available Upon Request

1. Legal Notice of Hearing and Public Notice Package
2. Cover Memorandum from Public Notice
3. Written Comment Received

Approved:

Section: ________________________________

Division: _______________________________

Report Prepared By: Andrea Curtis
Phone: (503) 229-6866

Oregon Administrative Rules for Department of Environmental Quality
Chapter 340 Divisions 200, 218 and 220

Rule Caption:
Proposal to Increase Oregon's Title V Operating Permit Fees

Proposed Rule Changes

DIVISION 200

GENERAL AIR POLLUTION PROCEDURES AND DEFINITIONS

General

340-200-0020

General Air Quality Definitions

As used in divisions 200 through 268, unless specifically defined otherwise:

(1) "Act" or "FCAA" means the Federal Clean Air Act, 42 U.S.C.A. 7401 to 7671q.

(2) "Activity" means any process, operation, action, or reaction (e.g., chemical) at a source that emits a regulated pollutant.

(3) "Actual emissions" means the mass emissions of a pollutant from an emissions source during a specified time period.

(a) For determining actual emissions as of the baseline period:

(A) Except as provided in paragraph (B), actual emissions equal the average rate at which the source actually emitted the pollutant during a baseline period and that represents normal source operation;

(B) The Department presumes that the source-specific mass emissions limit included in a source's permit that was effective on September 8, 1981 is equivalent to the source's actual emissions during the baseline period if it is within 10% of the actual emissions calculated under paragraph (A).

(C) For any source that had not begun normal operation, actual emissions equal the potential to emit of the source.

(b) For determining actual emissions for Emission Statements under OAR 340-214-0200 through 340-214-0220 and Oregon Title V Operating Permit Fees under OAR 340 division 220, actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities, except categorically insignificant activities and secondary emissions.

(c) For Oregon Title V Operating Permit Fees under OAR 340 division 220, actual emissions must be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the specified time period.

(4) "Adjacent" means interdependent facilities that are nearby to each other.

(5) "Affected source" means a source that includes one or more affected units that are subject to emission reduction requirements or limitations under Title IV of the FCAA.

(6) "Affected states" means all states:

(a) Whose air quality may be affected by a proposed permit, permit modification, or permit renewal and that are contiguous to Oregon; or

(b) That are within 50 miles of the permitted source.

(7) "Aggregate insignificant emissions" means the annual actual emissions of any regulated air pollutant from one or more designated activities at a source that are less than or equal to the lowest applicable level specified in this section. The total emissions from each designated activity and the aggregate emissions from all designated activities must be less than or equal to the lowest applicable level specified.

(a) One ton for total reduced sulfur, hydrogen sulfide, sulfuric acid mist, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, and each criteria pollutant, except lead;

(b) 120 pounds for lead;

(c) 600 pounds for fluoride;

(d) 500 pounds for PM10 in a PM10 nonattainment area;

(e) The lesser of the amount established in OAR 340-244-0040, **Table 1** or 340-244-0230, **Table 3**, or 1,000 pounds;

(f) An aggregate of 5,000 pounds for all Hazardous Air Pollutants.

(8) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.

(9) "Air Contaminant Discharge Permit" or "ACDP" means a written permit issued, renewed, amended, or revised by the Department, pursuant to OAR 340 division 216.

(10) "Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance. An alternative method used to meet an applicable federal requirement for which a reference method is specified must be approved by EPA unless EPA has delegated authority for the approval to the Department.

(11) "Ambient Air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(12) "Applicable requirement" means all of the following as they apply to emissions units in an Oregon Title V Operating Permit program source or ACDP program source, including requirements that have been promulgated or approved by the EPA through rule making at the time of issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;

(b) Any standard or other requirement adopted under OAR 340-200-0040 of the State of Oregon Clean Air Act Implementation Plan, that is more stringent than the federal standard or requirement which has not yet been approved by the EPA, and other state-only enforceable air pollution control requirements;

(c) Any term or condition in an ACDP, OAR 340 division 216, including any term or condition of any preconstruction permits issued pursuant to OAR 340 division 224, New Source Review, until or unless the Department revokes or modifies the term or condition by a permit modification;

(d) Any term or condition in a Notice of Construction and Approval of Plans, OAR 340-210-0205 through 340-210-0240, until or unless the Department revokes or modifies the term or condition by a Notice of Construction and Approval of Plans or a permit modification;

(e) Any term or condition in a Notice of Approval, OAR 340-218-0190, issued before July 1, 2001, until or unless the Department revokes or modifies the term or condition by a Notice of Approval or a permit modification;

(f) Any term or condition of a PSD permit issued by the EPA until or unless the EPA revokes or modifies the term or condition by a permit modification;

(g) Any standard or other requirement under section 111 of the Act, including section 111(d);

(h) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(i) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;

(j) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(k) Any standard or other requirement under section 126(a)(1) and(c) of the Act;

(l) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(m) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(n) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(o) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(p) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an Oregon Title V Operating Permit; and

(q) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

~~(13) "Assessable Emission" means a unit of emissions for which the major source owner or operator will be assessed a fee. It includes an emission of a pollutant as specified in OAR 340-220-0060 from one or more emissions devices or activities within a major source.~~

(1~~4~~3) "Baseline Emission Rate" means the actual emission rate during the baseline period. Baseline emission rate does not include increases due to voluntary fuel switches or increased hours of operation that occurred after the baseline period.

(1~~5~~4) "Baseline Period" means any consecutive 12 calendar month period during calendar years 1977 or 1978. The Department may allow the use of a prior time period upon a determination that it is more representative of normal source operation.

(1~~6~~5) "Best Available Control Technology" or "BACT" means an emission limitation, including, but not limited to, a visible emission standard, based on the maximum degree of reduction of each air contaminant subject to regulation under the Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event may the application of BACT result in emissions of any air contaminant that would exceed the emissions allowed by any applicable new source performance standard or any standard for hazardous air pollutant. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard must, to the degree possible, set forth the emission reduction achievable and provide for compliance by prescribing appropriate permit conditions.

(1~~7~~6) "Capacity" means the maximum regulated pollutant emissions from a stationary source under its physical and operational design.

(1~~8~~7) "Capture system" means the equipment (including but not limited to hoods, ducts, fans, and booths) used to contain, capture and transport a pollutant to a control device.

(1~~9~~8) "Categorically insignificant activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. Categorically insignificant activities must comply with all applicable requirements.

(a) Constituents of a chemical mixture present at less than 1% by weight of any chemical or compound regulated under divisions 200 through 268 excluding divisions 248 and 262 of this chapter, or less than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens when usage of the chemical mixture is less than 100,000 pounds/year;

(b) Evaporative and tail pipe emissions from on-site motor vehicle operation;

(c) Distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hr;

(d) Natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;

(e) Office activities;

(f) Food service activities;

(g) Janitorial activities;

(h) Personal care activities;

(i) Groundskeeping activities including, but not limited to building painting and road and parking lot maintenance;

(j) On-site laundry activities;

(k) On-site recreation facilities;

(l) Instrument calibration;

(m) Maintenance and repair shop;

(n) Automotive repair shops or storage garages;

(o) Air cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;

(p) Refrigeration systems with less than 50 pounds of charge of ozone depleting substances regulated under Title VI, including pressure tanks used in refrigeration systems but excluding any combustion equipment associated with such systems;

(q) Bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices but excluding research and development facilities;

(r) Temporary construction activities;

(s) Warehouse activities;

(t) Accidental fires;

(u) Air vents from air compressors;

(v) Air purification systems;

(w) Continuous emissions monitoring vent lines;

(x) Demineralized water tanks;

(y) Pre-treatment of municipal water, including use of deionized water purification systems;

(z) Electrical charging stations;

(aa) Fire brigade training;

(bb) Instrument air dryers and distribution;

(cc) Process raw water filtration systems;

(dd) Pharmaceutical packaging;

(ee) Fire suppression;

(ff) Blueprint making;

(gg) Routine maintenance, repair, and replacement such as anticipated activities most often associated with and performed during regularly scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking;

(hh) Electric motors;

(ii) Storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids;

(jj) On-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles;

(kk) Natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment;

(ll) Pressurized tanks containing gaseous compounds;

(mm) Vacuum sheet stacker vents;

(nn) Emissions from wastewater discharges to publicly owned treatment works (POTW) provided the source is authorized to discharge to the POTW, not including on-site wastewater treatment and/or holding facilities;

(oo) Log ponds;

(pp) Storm water settling basins;

(qq) Fire suppression and training;

(rr) Paved roads and paved parking lots within an urban growth boundary;

(ss) Hazardous air pollutant emissions of fugitive dust from paved and unpaved roads except for those sources that have processes or activities that contribute to the deposition and entrainment of hazardous air pollutants from surface soils;

(tt) Health, safety, and emergency response activities;

(uu) Emergency generators and pumps used only during loss of primary equipment or utility service due to circumstances beyond the reasonable control of the owner or operator, or to address a power emergency as determined by the Department;

(vv) Non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems;

(ww) Non-contact steam condensate flash tanks;

(xx) Non-contact steam vents on condensate receivers, deaerators and similar equipment;

(yy) Boiler blowdown tanks;

(zz) Industrial cooling towers that do not use chromium-based water treatment chemicals;

(aaa) Ash piles maintained in a wetted condition and associated handling systems and activities;

(bbb) Oil/water separators in effluent treatment systems;

(ccc) Combustion source flame safety purging on startup;

(ddd) Broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers;

(eee) Stock cleaning and pressurized pulp washing, excluding open stock washing systems; and

(fff) White water storage tanks.

(~~20~~19) "Certifying individual" means the responsible person or official authorized by the owner or operator of a source who certifies the accuracy of the emission statement.

(2~~1~~0) "CFR" means Code of Federal Regulations.

(2~~2~~1) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-204-0050.

(2~~3~~2) "Commence" or "commencement" means that the owner or operator has obtained all necessary preconstruction approvals required by the Act and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.

(2~~4~~3) "Commission" or "EQC" means Environmental Quality Commission.

(2~~5~~4) "Constant Process Rate" means the average variation in process rate for the calendar year is not greater than plus or minus ten percent of the average process rate.

(2~~6~~5) "Construction":

(a) Except as provided in subsection(b) of this section means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of a source or part of a source;

(b) As used in OAR 340 division 224 means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of an emissions unit, or change in the method of operation of a source which would result in a change in actual emissions.

(2~~7~~6) "Continuous compliance determination method" means a method, specified by the applicable standard or an applicable permit condition, which:

(a) Is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and

(b) Provides data either in units of the standard or correlated directly with the compliance limit.

(2~~8~~7) "Continuous Monitoring Systems" means sampling and analysis, in a timed sequence, using techniques which will adequately reflect actual emissions or concentrations on a continuing basis in accordance with the Department's Continuous Monitoring Manual, and includes continuous emission monitoring systems, continuous opacity monitoring system (COMS) and continuous parameter monitoring systems.

(2~~9~~8) "Control device" means equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices(such as carbon beds), condensers, scrubbers(such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems(such as water, steam, ammonia, sorbent or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit(e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters). For purposes of OAR 340-212-0200 through 340-212-0280, a

control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition will be binding for purposes of OAR 340-212-0200 through 340-212-0280.

(~~30~~29) "Criteria Pollutant" means nitrogen oxides, volatile organic compounds, particulate matter, PM10, sulfur dioxide, carbon monoxide, or lead.

(3~~1~~0) "Data" means the results of any type of monitoring or method, including the results of instrumental or non-instrumental monitoring, emission calculations, manual sampling procedures, recordkeeping procedures, or any other form of information collection procedure used in connection with any type of monitoring or method.

(3~~2~~1) "De minimis emission level" means: [Table not included. See ED. NOTE.]

NOTE: De minimis is compared to all increases that are not included in the PSEL.

(3~~3~~2) "Department":

(a) Means Department of Environmental Quality; except

(b) As used in OAR 340 divisions 218 and 220 means Department of Environmental Quality or in the case of Lane County, Lane Regional Air Protection Agency.

(3~~4~~3) "Device" means any machine, equipment, raw material, product, or byproduct at a source that produces or emits a regulated pollutant.

(3~~5~~4) "Director" means the Director of the Department or the Director's designee.

(3~~6~~5) "Draft permit" means the version of an Oregon Title V Operating Permit for which the Department or Lane Regional Air Protection Agency offers public participation under OAR 340-218-0210 or the EPA and affected State review under OAR 340-218-0230.

(3~~7~~6) "Effective date of the program" means the date that the EPA approves the Oregon Title V Operating Permit program submitted by the Department on a full or interim basis. In case of a partial approval, the "effective date of the program" for each portion of the program is the date of the EPA approval of that portion.

(3~~8~~7) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in

emissions attributable to the emergency. An emergency does not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(3~~9~~8) "Emission" means a release into the atmosphere of any regulated pollutant or any air contaminant.

(~~40~~39) "Emission Estimate Adjustment Factor" or "EEAF" means an adjustment applied to an emission factor to account for the relative inaccuracy of the emission factor.

(4~~1~~0) "Emission Factor" means an estimate of the rate at which a pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity (e.g., production or process rate). Where an emission factor is required sources must use an emission factor approved by EPA or the Department.

(4~~2~~1)(a) Except as provided in subsection (b) of this section, "Emission Limitation" and "Emission Standard" mean a requirement established by a State, local government, or the EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(b) As used in OAR 340-212-0200 through 340-212-0280, "Emission limitation or standard" means any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions (e.g., pounds of SO_2 per hour, pounds of SO_2 per million British thermal units of fuel input, kilograms of VOC per liter of applied coating solids, or parts per million by volume of SO_2) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of VOC or percentage reduction of SO_2). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement. For purposes of OAR 340-212-0200 through 340-212-0280, an emission limitation or standard does not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, to keep records, submit reports, or conduct monitoring.

(4~~3~~2) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of OAR 340 division 268, Emission Reduction Credits, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.

(4~~4~~3) "Emission Reporting Form" means a paper or electronic form developed by the Department that must be completed by the permittee to report calculated emissions, actual emissions, or permitted emissions for interim emission fee assessment purposes.

(4~~5~~4) "Emissions unit" means any part or activity of a source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a source is any machine, equipment, raw material, product, or byproduct that produces or emits regulated air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits regulated air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit if the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable.

(c) The term emissions unit is not meant to alter or affect the definition of the term "unit" under Title IV of the FCAA.

(d) Parts and activities cannot be grouped for determining emissions increases from an emissions unit under OAR 340-224-0050 through 340-224-0070, or 340 division 210, or for determining the applicability of any New Source Performance Standard (NSPS).

(4~~6~~5) "EPA" or "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(4~~7~~6) "Equivalent method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions. An equivalent method used to meet an applicable federal requirement for which a reference method is specified must be approved by EPA unless EPA has delegated authority for the approval to the Department.

(4~~8~~7) "Event" means excess emissions that arise from the same condition and occur during a single calendar day or continue into subsequent calendar days.

(4~~9~~8) "Exceedance" means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard(or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

(~~50~~49) "Excess emissions" means emissions in excess of a permit limit or any applicable air quality rule.

(5~~1~~0) "Excursion" means a departure from an indicator range established for monitoring under OAR 340-212-0200 through 340-212-0280 and 340-218-0050(3)(a), consistent with any averaging period specified for averaging the results of the monitoring.

(5~~2~~1) "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.

(5~~3~~2) Federal Major Source means a source with potential to emit any individual regulated pollutant, excluding hazardous air pollutants listed in OAR 340 division 244, greater than or equal to 100 tons per year if in a source category listed below, or 250 tons per year if not in a source category listed. Potential to emit calculations must include emission increases due to a new or modified source.

(a) Fossil fuel-fired steam electric plants of more than 250 million BTU/hour heat input;

(b) Coal cleaning plants with thermal dryers;

(c) Kraft pulp mills;

(d) Portland cement plants;

(e) Primary Zinc Smelters;

(f) Iron and Steel Mill Plants;

(g) Primary aluminum ore reduction plants;

(h) Primary copper smelters;

(i) Municipal Incinerators capable of charging more than 50 tons of refuse per day;

(j) Hydrofluoric acid plants;

(k) Sulfuric acid plants;

(l) Nitric acid plants;

(m) Petroleum Refineries;

(n) Lime plants;

(o) Phosphate rock processing plants;

(p) Coke oven batteries;

(q) Sulfur recovery plants;

(r) Carbon black plants, furnace process;

(s) Primary lead smelters;

(t) Fuel conversion plants;

(u) Sintering plants;

(v) Secondary metal production plants;

(w) Chemical process plants;

(x) Fossil fuel fired boilers, or combinations thereof, totaling more than 250 million BTU per hour heat input;

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(z) Taconite ore processing plants;

(aa) Glass fiber processing plants;

(bb) Charcoal production plants.

(5~~4~~3) "Final permit" means the version of an Oregon Title V Operating Permit issued by the Department or Lane Regional Air Protection Agency that has completed all review procedures required by OAR 340-218-0120 through 340-218-0240.

(5~~5~~4) "Fugitive Emissions":

(a) Except as used in subsection (b) of this section, means emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

(b) As used to define a major Oregon Title V Operating Permit program source, means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(5~~6~~5) "General permit":

(a) Except as provided in subsection (b) of this section, means an Oregon Air Contaminant Discharge Permit established under OAR 340-216-0060;

(b) As used in OAR 340 division 218 means an Oregon Title V Operating Permit established under OAR 340-218-0090.

(5~~7~~6) "Generic PSEL" means: [Table not included. See ED. NOTE.]

NOTE: Sources are eligible for a generic PSEL if expected emissions are less than or equal to the levels listed in the table above. Baseline emission rate and netting basis do not apply to pollutants at sources using generic PSELs.

(5~~8~~7) "Growth Allowance" means an allocation of some part of an airshed's capacity to accommodate future proposed major sources and major modifications of sources.

(5~~9~~8) "Immediately" means as soon as possible but in no case more than one hour after a source knew or should have known of an excess emission period.

(~~60~~59) "Inherent process equipment" means equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of OAR 340-212-0200 through 340-212-0280, inherent process equipment is not considered a control device.

(6~~1~~0) "Insignificant Activity" means an activity or emission that the Department has designated as categorically insignificant, or that meets the criteria of aggregate insignificant emissions.

(6~~2~~1) "Insignificant Change" means an off-permit change defined under OAR 340-218-0140(2)(a) to either a significant or an insignificant activity which:

(a) Does not result in a re-designation from an insignificant to a significant activity;

(b) Does not invoke an applicable requirement not included in the permit; and

(c) Does not result in emission of regulated air pollutants not regulated by the source's permit.

(6~~3~~2) "Late Payment" means a fee payment which is postmarked after the due date.

(6~~4~~3) "Lowest Achievable Emission Rate" or "LAER" means that rate of emissions which reflects: the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. The application of this term cannot permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable New Source Performance Standards (NSPS) or standards for hazardous air pollutants.

(6~~5~~4) "Maintenance Area" means a geographical area of the State that was designated as a nonattainment area, redesignated as an attainment area by EPA, and redesignated as a maintenance area by the Environmental Quality Commission in OAR 340, division 204.

(6~~6~~5) "Maintenance Pollutant" means a pollutant for which a maintenance area was formerly designated a nonattainment area.

(6~~7~~6) "Major Modification" means any physical change or change of operation of a source that results in the following for any regulated air pollutant:

(a) An increase in the PSEL by an amount equal to or more than the significant emission rate over the netting basis; and

(b) The accumulation of physical changes and changes of operation since baseline would result in a significant emission rate increase.

(A) Calculations of emission increases in(b) must account for all accumulated increases in actual emissions due to physical changes and changes of operation occurring at the source since the baseline period, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations in OAR 340 division 224 for that pollutant, whichever time is more recent. These include emissions from insignificant activities.

(B) Emission increases due solely to increased use of equipment or facilities that existed during the baseline period are not included, if that increased use was possible during the baseline period under the baseline configuration of the source, and the increased use of baseline equipment capacity is not to support a physical change or change in operation.

(c) For new or modified major sources that were permitted to construct and operate after the baseline period and were not subject to New Source Review, a major modification means:

(A) Any change at a source, including production increases, that would result in a Plant Site Emission Limit increase of 1 ton or more for any regulated pollutant for which the source is a major source; or

(B) The addition or modification of any stationary source or sources after the initial construction that have cumulative potential emissions greater than or equal to the significant emission rate, excluding any emission decreases.

(C) Changes to the PSEL solely due to the availability of better emissions information are exempt from being considered an increase.

(d) The following are not considered major modifications:

(A) Except as provided in(c), proposed increases in hours of operation or production rates that would cause emission increases above the levels allowed in a permit and would not involve a physical change or change in method of operation in the source;

(B) Pollution control projects that are determined by the Department to be environmentally beneficial;

(C) Routine maintenance, repair, and replacement of components;

(D) Temporary equipment installed for maintenance of the permanent equipment if the temporary equipment is in place for less than six months and operated within the permanent equipment's existing PSEL;

(E) Use of alternate fuel or raw materials, that were available and the source was capable of accommodating in the baseline period.

(6~~8~~7) "Major Source":

(a) Except as provided in subsection (b), means a source that emits, or has the potential to emit, any regulated air pollutant at a Significant Emission Rate. This includes emissions from insignificant activities.

(b) As used in OAR 340 division 210, Stationary Source Notification Requirements, OAR 340 division 218, rules applicable to sources required to have Oregon Title V Operating Permits, OAR 340 division 220, Oregon Title V Operating Permit Fees, and OAR 340-216-0066 Standard ACDPs, means any stationary source(or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person(or persons under common control)) belonging to a single major industrial grouping or supporting the major industrial group and that is described in paragraphs (A),(B) or (C) of this subsection. For the purposes of this subsection, a stationary source or group of stationary sources is considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual (U.S. Office of Management and Budget, 1987) or support the major industrial group.

(A) A major source of hazardous air pollutants, which means:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutants that has been listed pursuant to OAR 340-244-0040; 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Emissions from any oil or gas exploration or production well, along with its associated equipment, and emissions from any pipeline compressor or pump station will not be aggregated

with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" will have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit 100 tpy or more of any regulated air pollutant, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source are not considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants(furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) Any other stationary source category, that as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

(C) A major stationary source as defined in part D of Title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOCs or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides do not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of VOCs;

(iii) For carbon monoxide nonattainment areas:

(I) That are classified as "serious"; and

(II) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide.

(iv) For particulate matter(PM10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM10.

(6~~9~~8) "Material Balance" means a procedure for determining emissions based on the difference in the amount of material added to a process and the amount consumed and/or recovered from a process.

(~~70~~69) "Modification," except as used in the term "major modification," means any physical change to, or change in the method of operation of, a stationary source that results in an increase in the stationary source's potential to emit any regulated air pollutant on an hourly basis. Modifications do not include the following:

(a) Increases in hours of operation or production rates that do not involve a physical change or change in the method of operation;

(b) Changes in the method of operation due to using an alternative fuel or raw material that the stationary source was physically capable of accommodating during the baseline period; and

(c) Routine maintenance, repair and like-for-like replacement of components unless they increase the expected life of the stationary source by using component upgrades that would not otherwise be necessary for the stationary source to function.

(7~~1~~0) "Monitoring" means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Monitoring may include record keeping if the records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). Monitoring may include conducting compliance method tests, such as the procedures in appendix A to 40 CFR part 60, on a routine periodic basis. Requirements to conduct such tests on a one-time basis, or at such times as a regulatory authority may require on a non-regular basis, are not considered monitoring requirements for purposes of this definition. Monitoring may include one or more than one of the following data collection techniques as appropriate for a particular circumstance:

(a) Continuous emission or opacity monitoring systems.

(b) Continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.

(c) Emission estimation and calculation procedures (e.g., mass balance or stoichiometric calculations).

(d) Maintaining and analyzing records of fuel or raw materials usage.

(e) Recording results of a program or protocol to conduct specific operation and maintenance procedures.

(f) Verifying emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.

(g) Visible emission observations and recording.

(h) Any other form of measuring, recording, or verifying on a routine basis emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

(7~~2~~1) "Netting Basis" means the baseline emission rate MINUS any emission reductions required by rule, orders, or permit conditions required by the SIP or used to avoid SIP requirements, MINUS any unassigned emissions that are reduced from allowable under OAR 340-222-0045, MINUS any emission reduction credits transferred off site, PLUS any emission increases approved through the New Source Review regulations.

(a) With the first permitting action for a source after July 1, 2002, the baseline emissions rate will be frozen and recalculated only if:

(A) A better emission factor is established for the baseline period and approved by the Department;

(B) A currently operating emissions unit that the Department formerly thought had negligible emissions, is determined to have non-de minimis emissions and needs to be added to the baseline emission rate; or

(C) A new pollutant is added to the regulated pollutant list (e.g., PM2.5). For a pollutant that is newly regulated after 11/15/90, the initial netting basis is the actual emissions during any 12 consecutive month period within the 24 months immediately preceding its designation as a regulated pollutant. The Department may allow a prior 12 consecutive month time period to be used if it is shown to be more representative of normal source operation.

(b) Netting basis is zero for:

(A) any source constructed after the baseline period and has not undergone New Source Review;

(B) Any pollutant that has a generic PSEL in a permit;

(C) Any source permitted as portable; and

(D) Any source with a netting basis calculation resulting in a negative number.

(c) If a source relocates to an adjacent site, and the time between operation at the old and new sites is less than six months, the source may retain the netting basis from the old site.

(d) Emission reductions required by rule, order, or permit condition affect the netting basis if the source currently has devices or emissions units that are subject to the rules, order, or permit condition. The baseline emission rate is not affected.

(e) Netting basis for a pollutant with a revised definition will be adjusted if the source is emitting the pollutant at the time of redefining and the pollutant is included in the permit's netting basis.

(f) Where EPA requires an attainment demonstration based on dispersion modeling, the netting basis will be established at no more than the level used in the dispersion modeling to demonstrate attainment with the ambient air quality standard(i.e., the attainment demonstration is an emission reduction required by rule).

(7~~3~~2) "Nitrogen Oxides" or "NOx" means all oxides of nitrogen except nitrous oxide.

(7~~4~~3) "Nonattainment Area" means a geographical area of the State, as designated by the Environmental Quality Commission or the EPA, that exceeds any state or federal primary or secondary ambient air quality standard.

(7~~5~~4) "Nonattainment Pollutant" means a pollutant for which an area is designated a nonattainment area.

(7~~6~~5) "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.

(7~~7~~6) "Offset" means an equivalent or greater emission reduction that is required before allowing an emission increase from a proposed major source or major modification of an existing source.

(7~~8~~7) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background as measured in accordance with OAR 340-212-0120 and 212-0140. Unless otherwise specified by rule, opacity shall be measured in accordance with EPA Method 9 or a continuous opacity monitoring system (COMS) installed and operated in accordance with the Department's Continuous Monitoring Manual. For all standards, the minimum observation period shall be six minutes, though longer periods may be required by a specific rule or permit condition. Aggregate times (e.g. 3 minutes in any one hour) consist of the total duration of all readings during the observation period that equal or exceed the opacity percentage in the standard, whether or not the readings are consecutive.

(7~~9~~8) "Oregon Title V Operating Permit" means any permit covering an Oregon Title V Operating Permit source that is issued, renewed, amended, or revised pursuant to division 218.

(~~80~~79) "Oregon Title V Operating Permit program" means a program approved by the Administrator under 40 CFR Part 70.

(8~~1~~0) "Oregon Title V Operating Permit program source" means any source subject to the permitting requirements, OAR 340 division 218.

(8~~2~~1) "Ozone Season" means the contiguous 3 month period during which ozone exceedances typically occur (i.e., June, July, and August).

(8~~3~~2) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air. When used in emission standards, particulate matter is defined by the method specified within the standard or by an applicable reference method in accordance with OAR 340-212-0120 and 340-212-0140. Unless otherwise specified, sources with exhaust gases at or near ambient conditions may be tested with DEQ Method 5 or DEQ Method 8, as approved by the Department. Direct heat transfer sources shall be tested with DEQ Method 7; indirect heat transfer combustion sources and all other non-fugitive emissions sources not listed above shall be tested with DEQ Method 5.

(8~~4~~3) "Permit" means an Air Contaminant Discharge Permit or an Oregon Title V Operating Permit.

(8~~5~~4) "Permit modification" means a permit revision that meets the applicable requirements of OAR 340 division 216, 340 division 224, or 340-218-0160 through 340-218-0180.

(8~~6~~5) "Permit revision" means any permit modification or administrative permit amendment.

(8~~7~~6) "Permitted Emissions" as used in OAR division 220 means each ~~assessable emission~~regulated pollutant portion of the PSEL, as identified in an ACDP, Oregon Title V Operating Permit, review report, or by the Department pursuant to OAR 340-220-0090.

(8~~8~~7) "Permittee" means the owner or operator of the facility, authorized by the ACDP or the Oregon Title V Operating Permit to operate the source.

(8~~9~~8) "Person" means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the State of Oregon and any agencies thereof, and the federal government and any agencies thereof.

(~~90~~89) "Plant Site Emission Limit" or "PSEL" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL for a major source may consist of more than one ~~assessable~~permitted emission.

(90~~1~~) "PM10":

(a) When used in the context of emissions, means finely divided solid or liquid material, including condensable particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual(January, 1992);

(b) When used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in accordance with 40 CFR Part 50, Appendix J.

(91) "PM2.5":

(a) When used in the context of emissions, means finely divided solid or liquid material, including condensable particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, emitted to the ambient air as measured by conditional test method CTM-040 (EPA Emission Measurement Center) and a reference method based on 40 CFR Part 52, Appendix M.

(b) When used in the context of ambient concentration, means particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix L, or an equivalent method designated in accordance with 40 CFR Part 53.

(92) "Pollutant-specific emissions unit" means an emissions unit considered separately with respect to each regulated air pollutant.

(93) "Potential to emit" or "PTE" means the lesser of:

(a) The capacity of a stationary source; or

(b) The maximum allowable emissions taking into consideration any physical or operational limitation, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, if the limitation is enforceable by the Administrator.

(c) This definition does not alter or affect the use of this term for any other purposes under the Act or the term "capacity factor" as used in Title IV of the Act and the regulations promulgated thereunder. Secondary emissions are not considered in determining the potential to emit.

(94) "Predictive emission monitoring system (PEMS)" means a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(95) "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.

(96) "Proposed permit" means the version of an Oregon Title V Operating Permit that the Department or a Regional Agency proposes to issue and forwards to the Administrator for review in compliance with OAR 340-218-0230.

(97) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60, 61 or 63.

(98) "Regional Agency" means Lane Regional Air Protection Agency.

(99) "Regulated air pollutant" or "Regulated Pollutant":

(a) Except as provided in subsections (b) and(c) of this rule, means:

(A) Nitrogen oxides or any VOCs;

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

(E) Any pollutant listed under OAR 340-244-0040 or 340-244-0230.

(b) As used in OAR 340 division 220, regulated pollutant means particulates, volatile organic compounds, oxides of nitrogen and sulfur dioxide.~~, means any air pollutant as included in subsection(a) of this rule, except the following:~~

~~(A) Carbon monoxide;~~

~~(B) Any pollutant that is a regulated pollutant solely because it is a Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Federal Clean Air Act; or~~

~~(C) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.~~

(c) As used in OAR 340 division 224 any pollutant listed under OAR 340-244-0040 or 340-244-0230 is not a regulated pollutant.

(100) "Renewal" means the process by which a permit is reissued at the end of its term.

(101) "Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(B) The delegation of authority to such representative is approved in advance by the Department or Lane Regional Air Protection Agency.

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

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Division, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency(e.g., a Regional Administrator of the EPA); or

(d) For affected sources:

(A) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated there under are concerned; and

(B) The designated representative for any other purposes under the Oregon Title V Operating Permit program.

(102) "Secondary Emissions" means emissions that are a result of the construction and/or operation of a source or modification, but that do not come from the source itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from off-site support facilities that would be constructed or would otherwise increase emissions as a result of the construction or modification of a source.

(103) "Section 111" means section 111 of the FCAA which includes Standards of Performance for New Stationary Sources (NSPS).

(104) "Section 111(d)" means subsection 111(d) of the FCAA which requires states to submit to the EPA plans that establish standards of performance for existing sources and provides for implementing and enforcing such standards.

(105) "Section 112" means section 112 of the FCAA which contains regulations for Hazardous Air Pollutants (HAP).

(106) "Section 112(b)" means subsection 112(b) of the FCAA which includes the list of hazardous air pollutants to be regulated.

(107) "Section 112(d)" means subsection 112(d) of the FCAA which directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by the EPA when establishing the emission standards.

(108) "Section 112(e)" means subsection 112(e) of the FCAA which directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(109) "Section 112(r)(7)" means subsection 112(r)(7) of the FCAA which requires the EPA to promulgate regulations for the prevention of accidental releases and requires owners or operators to prepare risk management plans.

(110) "Section 114(a)(3)" means subsection 114(a)(3) of the FCAA which requires enhanced monitoring and submission of compliance certifications for major sources.

(111) "Section 129" means section 129 of the FCAA which requires the EPA to establish emission standards and other requirements for solid waste incineration units.

(112) "Section 129(e)" means subsection 129(e) of the FCAA which requires solid waste incineration units to obtain Oregon Title V Operating Permits.

(113) "Section 182(f)" means subsection 182(f) of the FCAA which requires states to include plan provisions in the State Implementation Plan for NOx in ozone nonattainment areas.

(114) "Section 182(f)(1)" means subsection 182(f)(1) of the FCAA which requires states to apply those plan provisions developed for major VOC sources and major NOx sources in ozone nonattainment areas.

(115) "Section 183(e)" means subsection 183(e) of the FCAA which requires the EPA to study and develop regulations for the control of certain VOC sources under federal ozone measures.

(116) "Section 183(f)" means subsection 182(f) of the FCAA which requires the EPA to develop regulations pertaining to tank vessels under federal ozone measures.

(117) "Section 184" means section 184 of the FCAA which contains regulations for the control of interstate ozone air pollution.

(118) "Section 302" means section 302 of the FCAA which contains definitions for general and administrative purposes in the Act.

(119) "Section 302(j)" means subsection 302(j) of the FCAA which contains definitions of "major stationary source" and "major emitting facility."

(120) "Section 328" means section 328 of the FCAA which contains regulations for air pollution from outer continental shelf activities.

(121) "Section 408(a)" means subsection 408(a) of the FCAA which contains regulations for the Title IV permit program.

(122) "Section 502(b)(10) change" means a change which contravenes an express permit term but is not a change that:

(a) Would violate applicable requirements;

(b) Would contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements; or

(c) Is a Title I modification.

(123) "Section 504(b)" means subsection 504(b) of the FCAA which states that the EPA can prescribe by rule procedures and methods for determining compliance and for monitoring.

(124) "Section 504(e)" means subsection 504(e) of the FCAA which contains regulations for permit requirements for temporary sources.

(125) "Significant Air Quality Impact" means an additional ambient air quality concentration equal to or greater than in the concentrations listed in Table 1. The threshold concentrations listed in Table 1 are used for comparison against the ambient air quality standard and do not apply for protecting PSD Class I increments or air quality related values (including visibility). For sources of VOC or NOx, a major source or major modification has a significant impact if it is located within the Ozone Precursor Distance defined in OAR 340-225-0020.

(126) "Significant Emission Rate" or "SER," except as provided in subsections(a) through(c) of this section, means an emission rate equal to or greater than the rates specified in Table 2.

(a) For the Medford-Ashland Air Quality Maintenance Area, the Significant Emission Rate for PM10 is defined in Table 3.

(b) For regulated air pollutants not listed in Table 2 or 3, the significant emission rate is zero unless the Department determines the rate that constitutes a significant emission rate.

(c) Any new source or modification with an emissions increase less than the rates specified in Table 2 or 3 associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m3 (24 hour average) is emitting at a significant emission rate.

(127) "Significant Impairment" occurs when the Department determines that visibility impairment interferes with the management, protection, preservation, or enjoyment of the visual experience within a Class I area. The Department will make this determination on a case-by-case basis after considering the recommendations of the Federal Land Manager and the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be

considered along with visitor use of the Class I areas, and the frequency and occurrence of natural conditions that reduce visibility.

(128) "Source" means any building, structure, facility, installation or combination thereof that emits or is capable of emitting air contaminants to the atmosphere, is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control. The term includes all pollutant emitting activities that belong to a single major industrial group (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual,(U.S. Office of Management and Budget, 1987) or that support the major industrial group.

(129) "Source category":

(a) Except as provided in subsection(b) of this section, means all the pollutant emitting activities that belong to the same industrial grouping(i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual,(U.S. Office of Management and Budget, 1987).

(b) As used in OAR 340 division 220, Oregon Title V Operating Permit Fees, means a group of major sources that the Department determines are using similar raw materials and have equivalent process controls and pollution control equipment.

(130) "Source Test" means the average of at least three test runs conducted in accordance with the Department's Source Sampling Manual.

(131) "Startup" and "shutdown" means that time during which an air contaminant source or emission-control equipment is brought into normal operation or normal operation is terminated, respectively.

(132) "State Implementation Plan" or "SIP" means the State of Oregon Clean Air Act Implementation Plan as adopted by the Commission under OAR 340-200-0040 and approved by EPA.

(133) "Stationary source" means any building, structure, facility, or installation at a source that emits or may emit any regulated air pollutant.

(134) "Substantial Underpayment" means the lesser of ten percent (10%) of the total interim emission fee for the major source or five hundred dollars.

(135) "Synthetic minor source" means a source that would be classified as a major source under OAR 340-200-0020, but for limits on its potential to emit air pollutants contained in a permit issued by the Department under OAR 340 division 216 or 218.

(136) "Title I modification" means one of the following modifications pursuant to Title I of the FCAA:

(a) A major modification subject to OAR 340-224-0050, Requirements for Sources in Nonattainment Areas;

(b) A major modification subject to OAR 340-224-0060, Requirements for Sources in Maintenance Areas;

(c) A major modification subject to OAR 340-224-0070, Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas;

(d) A modification that is subject to a New Source Performance Standard under Section 111 of the FCAA; or

(e) A modification under Section 112 of the FCAA.

(137) "Total Reduced Sulfur" or "TRS" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present expressed as hydrogen sulfide(H2S).

(138) "Typically Achievable Control Technology" or "TACT" means the emission limit established on a case-by-case basis for a criteria pollutant from a particular emissions unit in accordance with OAR 340-226-0130. For existing sources, the emission limit established will be typical of the emission level achieved by emissions units similar in type and size. For new and modified sources, the emission limit established will be typical of the emission level achieved by well controlled new or modified emissions units similar in type and size that were recently installed. TACT determinations will be based on information known to the Department while considering pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness, and the age and remaining economic life of existing emission control equipment. The Department may consider emission control technologies typically applied to other types of emissions units where such technologies could be readily applied to the emissions unit. If an emission limitation is not feasible, a design, equipment, work practice, operational standard, or combination thereof, may be required.

(139) "Unassigned Emissions" means the amount of emissions that are in excess of the PSEL but less than the Netting Basis.

(140) "Unavoidable" or "could not be avoided" means events that are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment.

(141) "Upset" or "Breakdown" means any failure or malfunction of any pollution control equipment or operating equipment that may cause excess emissions.

(142) "Visibility Impairment" means any humanly perceptible change in visual range, contrast or coloration from that which existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.

(143) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions.

(a) This includes any such organic compound except the following, which have been determined to have negligible photochemical reactivity in the formation of tropospheric ozone: methane; ethane; methylene chloride(dichloromethane); 1,1,1-trichloroethane(methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane(CFC-113); trichlorofluoromethane(CFC-11); dichlorodifluoromethane(CFC-12); chlorodifluoromethane(HCFC-22); trifluoromethane(HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane(CFC-114); chloropentafluoroethane(CFC-115); 1,1,1-trifluoro 2,2-dichloroethane(HCFC-123); 1,1,1,2-tetrafluoroethane(HFC-134a); 1,1-dichloro 1-fluoroethane(HCFC-141b); 1-chloro 1,1-difluoroethane(HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane(HCFC-124); pentafluoroethane(HFC-125); 1,1,2,2-tetrafluoroethane(HFC-134); 1,1,1-trifluoroethane(HFC-143a); 1,1-difluoroethane(HFC-152a); parachlorobenzotrifluoride(PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene(tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane(HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane(HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane HFC 43-10mee); difluoromethane(HFC-32); ethylfluoride(HFC-161); 1,1,1,3,3,3-hexafluoropropane(HFC-236fa); 1,1,2,2,3-pentafluoropropane(HFC-245ca); 1,1,2,3,3-pentafluoropropane(HFC-245ea); 1,1,1,2,3-pentafluoropropane(HFC-245eb); 1,1,1,3,3-pentafluoropropane(HFC-245fa); 1,1,1,2,3,3-hexafluoropropane(HFC-236ea); 1,1,1,3,3-pentafluorobutane(HFC-365mfc); chlorofluoromethane(HCFC-31); 1 chloro-1-fluoroethane(HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane(HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane(C4F9OCH3 or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane((CF3)2CFCF2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane(C4F9OC2H5 or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane((CF3)2CFCF2OC2H5); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane(n-C3F7OCH3, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane(HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane(HFC 227ea); methyl formate(HCOOCH3); (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane(HFE-7300); and perfluorocarbon compounds that fall into these classes:

(A) Cyclic, branched, or linear, completely fluorinated alkanes;

(B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by an applicable reference method in accordance with the Department's Source Sampling Manual, January, 1992. Where such a method also measures compounds with negligible photochemical

reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and the Department approves the exclusion.

(c) The Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the Department's satisfaction, the amount of negligibly-reactive compounds in the source's emissions.

(d) The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and must be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

(144) "Year" means any consecutive 12 month period of time.

NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.

[ED. NOTE: Tables referenced are available from the agency.]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025

DIVISION 218

OREGON TITLE V OPERATING PERMITS

340-218-0050

Standard Permit Requirements

Each permit issued under this division must include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance:

(a) The permit must specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(b) For sources regulated under the national acid rain program, the permit must state that, where an applicable requirement of the FCAA or state rules is more stringent than an applicable requirement of regulations promulgated under Title IV of the FCAA, both provisions must be incorporated into the permit and will be enforceable by the EPA;

(c) For any alternative emission limit established in accordance with OAR 340-226-0400, the permit must contain an equivalency determination and provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. The Department will issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources.

(3) Monitoring and related recordkeeping and reporting requirements:

(a) Each permit must contain the following requirements with respect to monitoring:

(A) A monitoring protocol to provide accurate and reliable data that:

(i) Is representative of actual source operation;

(ii) Is consistent with the averaging time in the permit emission limits;

(iii) Is consistent with monitoring requirements of other applicable requirements; and

(iv) Can be used for compliance certification and enforcement.

(B) All emissions monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including OAR 340-212-0200 through 340-212-0280 and any other procedures and methods that may be promulgated pursuant to sections 504(b) or 114(a)(3) of the FCAA. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(C) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to OAR 340-218-0050(3)(c). Such monitoring requirements must assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Continuous monitoring and source testing must be conducted in accordance with the **Department's Continuous Monitoring Manual** (January, 1992) and the **Source Sampling Manual** (January, 1992), respectively. Other monitoring must be conducted in accordance with

Department approved procedures. The monitoring requirements may include but are not limited to any combination of the following:

(i) Continuous emissions monitoring systems (CEMS);

(ii) Continuous opacity monitoring systems (COMS);

(iii) Continuous parameter monitoring systems (CPMS);

(iv) Continuous flow rate monitoring systems (CFRMS);

(v) Source testing;

(vi) Material balance;

(vii) Engineering calculations;

(viii) Recordkeeping; or

(ix) Fuel analysis; and

(D) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods;

(E) A condition that prohibits any person from knowingly rendering inaccurate any required monitoring device or method;

(F) Methods used in accordance with Division 220 to determine actual emissions for fee purposes must also be used for compliance determination and can be no less rigorous than the requirements of OAR 340-218-0080. ~~For any assessable emission for which fees are paid on actual emissions, t~~The compliance monitoring protocol must include the method used to determine the amount of actual emissions;

(G) Monitoring requirements must commence on the date of permit issuance unless otherwise specified in the permit.

(b) With respect to recordkeeping, the permit must incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(A) Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements;

(ii) The date(s) analyses were performed;

(iii) The company or entity that performed the analyses;

(iv) The analytical techniques or methods used;

(v) The results of such analyses;

(vi) The operating conditions as existing at the time of sampling or measurement; and

(vii) The records of quality assurance for continuous monitoring systems (including but not limited to quality control activities, audits, calibrations drifts).

(B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit;

(C) Recordkeeping requirements must commence on the date of permit issuance unless otherwise specified in the permit.

(c) With respect to reporting, the permit must incorporate all applicable reporting requirements and require the following:

(A) Submittal of three (3) copies of reports of any required monitoring at least every 6 months, completed on forms approved by the Department. Unless otherwise approved in writing by the Department, six month periods are January 1 to June 30, and July 1 to December 31. The reports required by this rule must be submitted within 30 days after the end of each reporting period, unless otherwise approved in writing by the Department. One copy of the report must be submitted to the EPA, and two copies to the Department's regional office identified in the permit. All instances of deviations from permit requirements must be clearly identified in such reports:

(i) The semi-annual report will be due on July 30, unless otherwise approved in writing by the Department, and must include the semi-annual compliance certification, OAR 340-218-0080;

(ii) The annual report will be due on February 15, unless otherwise approved in writing by the Department, but may not be due later than March 15, and must consist of the annual reporting requirements as specified in the permit; the emission fee report; the emission statement, if applicable, OAR 340-214-0220; the annual certification that the risk management plan is being properly implemented, OAR 340-218-0050; and the semi-annual compliance certification, OAR 340-218-0080.

(B) Prompt reporting of deviations from permit requirements that do not cause excess emissions, including those attributable to upset conditions, as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. "Prompt" means within

fifteen (15) days of the deviation. Deviations that cause excess emissions, as specified in OAR 340-214-0300 through 340-214-0360 must be reported in accordance with OAR 340-214-0340;

(C) Submittal of any required source test report within 30 days after the source test unless otherwise approved in writing by the Department or specified in a permit;

(D) All required reports must be certified by a responsible official consistent with OAR 340-218-0040(5);

(E) Reporting requirements must commence on the date of permit issuance unless otherwise specified in the permit.

(d) The Department may incorporate more rigorous monitoring, recordkeeping, or reporting methods than required by applicable requirements in an Oregon Title V Operating Permit if they are contained in the permit application, are determined by the Department to be necessary to determine compliance with applicable requirements, or are needed to protect human health or the environment.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the FCAA or the regulations promulgated there under:

(a) No permit revision will be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement;

(b) No limit may be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement;

(c) Any such allowance must be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(a) The permittee must comply with all conditions of the Oregon Title V Operating Permit. Any permit condition noncompliance constitutes a violation of the FCAA and state rules and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;

(b) The need to halt or reduce activity will not be a defense. It will not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit;

(c) The permit may be modified, revoked, reopened and reissued, or terminated for cause as determined by the Department. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;

(d) The permit does not convey any property rights of any sort, or any exclusive privilege;

(e) The permittee must furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee must also furnish to the Department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the EPA along with a claim of confidentiality.

(7) A provision to ensure that an Oregon Title V Operating Permit program source pays fees to the Department consistent with the fee schedule.

(8) Terms and conditions for reasonably anticipated alternative operating scenarios identified by the owner or operator in its application as approved by the Department. Such terms and conditions:

(a) Must require the owner or operator, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Must extend the permit shield described in OAR 340-218-0110 to all terms and conditions under each such alternative operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative operating scenario meet all applicable requirements and the requirements of this division.

(9) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with the PSELs. Such terms and conditions:

(a) Must include all terms required under OAR 340-218-0050 and 340-218-0080 to determine compliance;

(b) Must extend the permit shield described in OAR 340-218-0110 to all terms and conditions that allow such increases and decreases in emissions;

(c) Must ensure that the trades are quantifiable and enforceable;

(d) Must ensure that the trades are not Title I modifications;

(e) Must require a minimum 7-day advance, written notification to the Department and the EPA of the trade that must be attached to the Department's and the source's copy of the permit. The written notification must state when the change will occur and must describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit; and

(f) Must meet all applicable requirements and requirements of this division.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emission trade. Such terms and conditions:

(a) Must include all terms required under OAR 340-218-0050 and 340-218-0080 to determine compliance;

(b) Must extend the permit shield described in OAR 340-218-0110 to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of this division.

(11) Terms and conditions allowing for off-permit changes, OAR 340-218-0140(2).

(12) Terms and conditions allowing for section 502(b)(10) changes, OAR 340-218-0140(3).

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468.020 & 468A.310

DIVISION 220

OREGON TITLE V OPERATING PERMIT FEES

340-220-0010

Purpose, Scope ~~A~~and Applicability

(1) The purpose of this division is to provide owners and operators of Oregon Title V Operating Permit program sources and the Department with the criteria and procedures to determine emissions and fees based on air emissions and specific activities.

(2) This division applies to Oregon Title V Operating Permit program sources as defined in OAR 340-200-0020.

(3) The owner or operator may elect to pay emission fees for each ~~assessable emission~~regulated pollutant on either actual emissions or permitted emissions.

~~(4) If the assessable emission is of a regulated air pollutant listed in OAR 340-244-0040 and there are no applicable methods to demonstrate actual emissions, the owner or operator may propose that the Department approve an emission factor based on the best representative data to demonstrate actual emissions for fee purposes.~~

(~~5~~4) Sources subject to the Oregon Title V Operating Permit program defined in OAR 340-200-0020, are subject to both an annual base fee established under OAR 340-220-0030 and an emission fee calculated pursuant to OAR 340-220-0040.

(~~6~~5) Sources subject to the Oregon Title V Operating Permit program may also be subject to user fees (OAR 340-220-0050 and 340-216-0090).

(~~7~~6) The Department will credit owners and operators of new Oregon Title V Operating Permit program sources for the unused portion of paid Annual Fees. The credit will begin from the date the Department receives the Title V permit application.

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468 & ORS 468A

340-220-0020

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) Particulates. For purposes of this division, particulates mean PM10; or if a source's permit specifies Particulate Matter (PM) and not PM10, then PM; or if a source's permit specifies PM2.5 and neither PM10 nor PM, then PM2.5.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025

340-220-0030

Annual Base Fee

(1) The Department will assess an annual base fee of $ ~~3,379~~4,390 for each source subject to the Oregon Title V Operating Permit program~~. The fee covers~~ for the period ~~from~~of November 15, 2007 ~~of the current calendar year~~ to November 14, 2008 ~~of the following year~~.

(2) The Department will assess an annual base fee of $ 4,849 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2008 to November 14, 2009.

(3) The Department will assess an annual base fee of $ 5,183 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2009 to November 14, 2010, and for each annual period thereafter.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468 & 468A

340-220-0040

Emission Fee

(1) The Department will assess an emission fee of $ ~~39.38~~43.90 per ton of each regulated pollutant emitted during calendar year 2006 to each source subject to the Oregon Title V Operating Permit Program.

(2) The Department will assess an emission fee of $ 48.49 per ton of each regulated pollutant emitted during calendar year 2007 to each source subject to the Oregon Title V Operating Permit Program.

(3) The Department will assess an emission fee of $ 51.83 per ton of each regulated pollutant emitted during calendar year 2008 and for each calendar year thereafter to each source subject to the Oregon Title V Operating Permit Program.

(~~2~~4) The emission fee will be applied to emissions ~~from the previous calendar year~~ based on the elections made according to OAR 340-220-0090.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468 & 468A

340-220-0050

Specific Activity Fees

(1) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of August 21, 2007 to August 25, 2008 as follows:

(~~1~~a) Existing Source Permit Revisions:

(~~a~~A) Administrative* -- $ ~~338~~406;

(~~b~~B) Simple -- $ ~~1,352~~1,626;

(~~c~~C) Moderate -- $ ~~10,137~~12,194;

(~~d~~D) Complex -- $ ~~20,273~~24,387.

(~~2~~b) Ambient Air Monitoring Review -- $ ~~2,703~~3,252.

(2) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source as of August 26, 2008 as follows:

(a) Existing Source Permit Revisions:

(A) Administrative* -- $ 418;

(B) Simple -- $ 1,672;

(C) Moderate -- $ 12,540;

(D) Complex -- $ 25,081.

(b) Ambient Air Monitoring Review -- $ 3,344.

*includes revisions specified in OAR 340-218-0150(1) (a) through (g). Other revisions specified in OAR 340-218-0150 are subject to simple, moderate or complex revision fees.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468 & 468A

340-220-0060

Pollutants Subject to Emission Fees

(1) The Department will assess emission fees on ~~assessable~~ emissions of regulated pollutants up to and including 4,000 tons per year for each regulated pollutant for each source through calendar year 2010, and up to and including 7,000 tons per year of all regulated pollutants for each source each calendar year thereafter.

~~(2) If the emission fee on PM_{10} emissions is based on the permitted emissions for a source that does not have a PSEL for PM_{10}, the Department will assess the emission fee on the permitted emissions for particulate matter (PM).~~

(~~3~~2) The owner or operator must pay emission fees for all regulated pollutants emitted from the source, except as limited in section (1)~~on all assessable emissions~~.

~~(4) The Department will assess emission fees only once for a regulated pollutant that the permitee can demonstrate, using procedures approved by the Department, is accounted for in more than one category of assessable emissions (e.g., a Hazardous Air Pollutant that is also demonstrated to be a Criteria Pollutant).~~

~~(5) Fees for newly regulated pollutants are effective on the date the pollutant becomes regulated. During the first year that the pollutant is regulated, the fee may be prorated according the number of months that the pollutant is regulated.~~

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025

340-220-0070

Exclusions

(1) The Department will not assess emission fees on newly permitted major sources that have not begun initial operation.

(2) The Department will not assess emission fees on carbon monoxide. However, sources that emit or are permitted to emit 100 tons or more per year of carbon monoxide are subject to the emission fees on all other regulated air pollutants pursuant to OAR 340-220-0010.

(3) The Department will not assess emission fees on any device or activity that did not operate at any time during the calendar year.

(4) If an owner or operator of an Oregon Title V Operating Permit program source operates a device or activity for less than 5% of the permitted operating schedule, the owner or operator may elect to report emissions based on a proration of the permitted emissions for the actual operating time.

(5) The Department will not assess emission fees on emissions categorized as credits or unassigned ~~PSELs~~ emissions within an Oregon Title V Operating Permit.

(6) The Department will not assess emission fees on categorically insignificant emissions as defined in OAR 340-200-0020.

~~(7) The Department will not assess emission fees on Hazardous Air Pollutants that are also Criteria Pollutants.~~

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025

340-220-0090

Election for Each Regulated Pollutant~~Assessable Emission~~

(1) The owner or operator must elect to pay emission fees on either actual emissions, permitted emissions, or a combination of both for the previous calendar year for each ~~assessable emission~~regulated pollutant and notify the Department in accordance with OAR 340-220-0110.

~~(2) The owner or operator may elect to pay emission fees on permitted emissions for hazardous air pollutants. An owner or operator may elect a Hazardous Air Pollutant PSEL in accordance with OAR 340-222-0060. The HAP PSEL will only be used for fee purposes.~~

(~~3~~2) If an owner or operator fails to notify the Department of the election for ~~an assessable emission~~a regulated pollutant, the Department will assess emission fees~~ for the assessable emission~~ based on permitted emissions.

(~~4~~3) If the permit or review report does not identify permitted emissions for ~~an assessable emission~~a regulated pollutant, the Department will develop representative permitted emissions ~~representative of the assessable emissions~~.

(~~5~~4) An owner or operator may elect to pay emission fees on the aggregate limit for insignificant emissions that are not categorically exempt insignificant emissions.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025

340-220-0100

Emission Reporting

(1) Using a form(s) developed by the Department the owner or operator must report the following ~~for each assessable emission or group of assessable~~ emissions:

(a) ~~PM_{10}, or if a permit specifies Particulate Matter (PM), then PM~~Particulates;

(b) Sulfur Dioxide as SO_2;

(c) Oxides of Nitrogen (NO_x) as Nitrogen Dioxide (NO_2);

~~(d) Total Reduced Sulfur (TRS) as H_2S in accordance with OAR 340-234-0010;~~

(~~e~~d) Volatile Organic Compounds as:

(A) VOC for material balance emission reporting; or

(B) Propane (C_3H_8), unless otherwise specified by permit, OAR Chapter 340, or a method approved by the Department, for emissions verified by source testing.

~~(f) Fluoride as F;~~

~~(g) Lead as Pb;~~

~~(h) Hydrogen Chloride as HCl;~~

~~(i) Estimate of Hazardous Air Pollutants as specified in a Department approved method.~~

(2) The owner or operator must report emissions in tons per year and as follows:

(a) Round up to the nearest whole ton for emission values 0.5 and greater; and

(b) Round down to the nearest whole ton for emission values less than 0.5.

(3) The owner or operator electing to pay emission fees on actual emissions for a regulated pollutant must ~~:~~

~~(a) Submit complete information on the forms including all assessable emissions; and~~

~~(b) S~~submit documentation necessary to support the actual emissions ~~calculations~~in accordance with OAR 340-220-0120.

(4) The owner or operator electing to pay on actual emissions must report total emissions, including those emissions in excess of 4,000 tons for each ~~assessable emission~~regulated pollutant and in excess of 7,000 tons for all regulated pollutants.

(5) The owner or operator electing to pay on permitted emissions for ~~an assessable emission~~a regulated pollutant must identify such an election on the form(s) developed by the Department.

(6) If more than one permit is in effect for a calendar year for an Oregon Title V Operating Permit program source, the owner or operator electing to pay on permitted emissions must pay on the most current permitted or actual emissions.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025

340-220-0110

Emission Reporting and Fee Procedures

(1) The owner or operator must submit the required form(s), including the election ~~for~~to pay on permitted or actual emissions for each regulated pollutant~~assessable emission~~, to the Department with the annual permit report in accordance with annual reporting procedures.

(2) The owner or operator may request that information, other than emission information, submitted pursuant to this division be exempt from disclosure in accordance with OAR 340-214-0130.

(3) Records developed in accordance with these rules are subject to inspection and entry requirements in OAR 340-218-0080. The owner or operator must retain records for at least five years in accordance with OAR 340-218-0050(3)(b)(B).

(4) The Department may accept the information submitted or request additional information from the owner or operator. The owner or operator must submit additional actual emission information requested by the Department within 30 days of the date of the request. The Department may approve a request for additional time, up to 30 days, to submit the requested information.

(5) If the Department determines the actual emission information submitted for any ~~assessable emission~~regulated pollutant does not meet the criteria in this division, the Department will assess the emission fee on the permitted emission for that ~~assessable emission~~regulated pollutant.

(6) The owner or operator must submit emission fees payable to the Department by the later of:

(a) August 1 for emission fees from the previous calendar year; or

(b) Thirty days after the Department mails the fee invoice.

(7) Department acceptance of emission fees does not indicate approval of data collection methods, calculation methods, or information reported on Emission Reporting Forms. If the Department determines initial emission fee assessments were inaccurate or inconsistent with this division, the Department may assess or refund emission fees up to two years after emission fees are received by the Department.

(8) The Department will not revise a PSEL solely due to an emission fee payment.

(9) Owners or operators operating sources pursuant to OAR 340 division 218 must submit the emission reporting information with the annual permit report.

Stat. Auth.: ORS 468 & ORS 468A
Stats. Implemented: ORS 468A.025

340-220-0120

Actual Emissions

An owner or operator electing to pay on actual emissions must obtain emission data and determine ~~assessable~~regulated pollutant emissions using one of the following methods:

(1) Continuous monitoring systems used in accordance with OAR 340-220-0130;

(2) Verified emission factors developed for a~~that~~ particular source or a combination of sources venting to a common stack in accordance with OAR 340-220-0170;~~ for:~~

~~(a) Each assessable emission; or~~

~~(b) A combination of assessable emissions if there are multiple devices or activities venting to the atmosphere through one common emission point (e.g., stack). The owner or operator must have a verified emission factor plan approved by the Department before conducting the source testing in accordance with OAR 340-220-0170.~~

(3) Material balances determined in accordance with OAR 340-220-0140, OAR 340-220-0150, or OAR 340-220-0160; or

(4) Verified emission factors for source categories developed in accordance with OAR 340-220-0170(11).

~~(5) For specific assessable emissions of regulated air pollutants listed under OAR 340-244-0040 but not subject by permit to a Plant Site Emission Limit, and where the Department determines there are not applicable methods to demonstrate actual emissions, the owner or operator must use the best representative data to develop an emission factor, subject to Department approval.~~

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025

340-220-0150

Determining VOC Emissions Using Material Balance

The owner or operator may determine the amount of VOC emissions for emissions of a regulated pollutant~~an assessable emission~~ by using material balance. The owner or operator using material balance to calculate VOC emissions must determine the amount of VOC added to the process, the amount of VOC consumed in the process, and the amount of VOC recovered in the process, if any, by testing in accordance with **40 Code of Federal Regulations (CFR) Part 60 Appendix A EPA Method 18, 24, 25**, a material balance method, or an equivalent plant specific method specified in the Oregon Title V Operating Permit using the following equation: [Equation not included. See ED. NOTE.]

[ED. NOTE: The equation referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

[Publications: The publication(s) referenced in this rule is available from the agency.]

Stat. Auth.: ORS 468 & ORS 468A
Stats Implemented: ORS 468.020, ORS 468A.025, and ORS 468A.315

340-220-0170

Verified Emission Factors

(1) The owner or operator must verify emission factors before using them to determine ~~assessable~~ emissions of regulated pollutants. To verify emission factors, the owner or operator must perform either source testing in accordance with the Department's Source Sampling Manual or use other methods approved by the Department for source tests. Source tests must be conducted in accordance with testing procedures on file at the Department and the Department approved pretest plan which must be submitted at least 15 days before the testing. All test data and results must be submitted for review to the Department within 30 days after testing, unless the Department approves otherwise or a different time period is specified in a permit.

[**NOTE:** DEQ recommends that the owner or operator notify the Department and obtain pre-approval of the emission factor source testing program before or as part of the first source test notification.]

(2) The owner or operator must conduct or have conducted at least three compliance source tests. Each test must consist of at least three individual test runs for a total of at least nine test runs.

(3) The owner or operator must monitor and record applicable process and control device operating data.

(4) The owner or operator must perform a source test either:

(a) In each of three quarters of the year with no two successive source tests performed any closer than 30 days apart; or

(b) At equal intervals over the operating period if the owner or operator demonstrates and the Department agrees that the device or activity operates or has operated for part of the year; or

(c) At any time during the year if the owner or operator demonstrates, and the Department agrees, that the process is or was not subject to seasonal variations.

(5) The owner or operator must conduct the source tests to test the entire range of operating levels. At least one test must be conducted at minimum operating conditions, at normal or average operating levels, and at anticipated maximum operating levels. If the process rate is constant, all tests must be conducted at that rate. The owner or operator must submit documentation to the Department demonstrating a constant process rate.

(6) The owner or operator must determine an emission factor for each source test by dividing each test run, in pounds of emission per hour, by the applicable process rate during the source test run. At least nine emission factors must be plotted against the respective process rates and a regression analysis performed to determine the best fit equation and the correlation coefficient. If the correlation coefficient is less than 0.50, which indicates that there is a relatively weak relationship between emissions and process rates, the arithmetic average and standard deviation of at least nine emission factors must be determined.

(7) The owner or operator must determine the Emissions Estimate Adjustment Factor (EEAF) as follows:

(a) If the correlation coefficient (R^2) of the regression analysis is greater than 0.50, the EEAF will be $1+(1-R^2)$.

(b) If the correlation coefficient (R^2) is less than 0.50, the EEAF will be: [Equation not included. See ED. NOTE.]

(8) The owner or operator must determine actual emissions for emission fee purposes using one of the following methods:

(a) If the regression analysis correlation coefficient is less than 0.50, the actual emissions is the average emission factor determined from at least nine test runs multiplied by the EEAF multiplied by the total production for the entire year; or [Equation not included. See ED. NOTE.]

(b) If the regression analysis correlation coefficient is greater than 0.50, perform the following calculations :

(A) Determine the average emission factor (EF) for each production rate category (maximum = EF_{max}, normal = EF_{norm}, and minimum = EF_{min});

(B) Determine the total annual production and operating hours, production time (PT_{tot}), for the calendar year;

(C) Determine the total hours operating within the maximum production rate category (PT_{max}). The maximum production rate category is any operation rate greater than the average of at least three maximum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by 2;

(D) Determine the total hours while operating within the normal production rate category (PT_{norm}). The normal production rate category is defined as any operating rate less than the average of at least three maximum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by 2 and any operating rate greater than the average of at least three minimum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by 2;

(E) Determine the total hours while operating within the minimum production rate category (PT_{min}). The minimum production rate category is defined as any operating rate less than the average of at least three minimum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by 2;

(F) Actual emissions equals EEAF x ((PT_{max}/PT_{tot}) x EF_{max} + (PT_{norm}/PT_{tot}) x EF_{norm} + (PT_{min}/PT_{tot}) x EF_{min}.)

(9) The owner or operator must determine emissions during startup and shutdown, and for emissions greater than normal, during conditions that are not accounted for in the procedure(s) otherwise used to document actual emissions. The owner or operator must apply 340-220-0170(9)(a) or 340-220-0170(9)(b), (c) and (d) in developing emission factors. The owner or operator must apply the emission factor obtained to the total time the device or activity operated under these conditions.

(a) All emissions during startup and shutdown, and emissions greater than normal are assumed equivalent to operation without an air pollution control device, unless the owner or operator accurately demonstrates otherwise in accordance with OAR 340-220-0170(9)(b), (9)(c), (9)(d), and (9)(e), and approved by the Department. The emission factor plus the EEAF must be adjusted by the air pollution control device collection efficiency as follows: [Equation not included. See ED. NOTE.]

(b) During process startups a Department approved source test may be performed to determine an average startup factor. The average of at least three tests runs plus the standard deviation will be used to determine actual emissions during startups.

(c) During process shutdowns a Department approved source test may be performed to determine an emission factor for shutdowns. The average of at least three test runs plus the standard deviation will be used to determine actual emissions during shutdowns.

(d) During routine maintenance activity the owner or operator may:

(A) Perform routine maintenance activity during source testing for verified emission factors; or

(B) Determine emissions in accordance with Section (a) of this rule.

(e) The emission factor need not be adjusted if the owner or operator demonstrates to the Department that the pollutant emissions do not increase during startup and shutdown, and for conditions that are not accounted for in the procedure(s) otherwise used to document actual emissions (e.g. NO_x emissions during an ESP failure).

(10) A verified emission factor developed pursuant to this division and approved by the Department can not be used if a process change occurs that would affect the accuracy of the verified emission factor.

(11) The owner or operator may elect to use verified emission factors for source categories if the Department determines the following criteria are met:

(a) The verified emission factor for a source category must be based on verified emission factors from at least three individual sources within the source category;

(b) Verified emission factors from sources within a source category must be developed in accordance with this rule;

(c) The verified emission factors from the sources must not differ from the mean by more than twenty percent; and

(d) The source category verified emission factor must be the mean of the source verified emission factors plus the average of the source emission estimate adjustment factors.

[Publications: The publication(s) referenced in this rule is available from the agency.]

[ED. NOTE: The equation(s) referenced in this rule is not printed in the OAR Compilation. Copies are available from the agency.]

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025

Oregon Department of Environmental Quality

Proposal to Increase Oregon's Title V Operating Permit Fees

Summary of Public Comments and Agency Responses

Prepared by: Andrea Curtis Date: June 9, 2008

Comment period	The public comment period opened February 27, 2008 and closed March 31, 2008. It reopened May 12, 2008 and closed June 2, 2008. DEQ received written comments from three people: one by mail and two by e-mail.
Organization of comments and responses	Summaries of individual comments and DEQ's responses are provided below. Comments are summarized in categories. The person who provided each comment is referenced by number in parenthesis at the end of the comment. A list of commenters and their reference numbers follows the summary of comments and responses.
Explanation of acronyms used in this document	CAA: Clean Air Act DEQ: Oregon Department of Environmental Quality EQC: Environmental Quality Commission EPA: Environmental Protection Agency MACT: Maximum Achievable Control Technology PM: Particulate Matter ORS: Oregon Revised Statute SB: Senate Bill

Comments and Agency Responses	
1. Consider other options	Comment: Pursuant to ORS 183.335(2)(b)(G), DEQ should have considered other options for achieving the rule's substantive goals. The options we are suggesting (return program to EPA or contract out services) would reduce the negative economic impact on Oregon business and still meet program requirements. DEQ should consider these options before moving forward with a rule that would increase our Title V fees any further. (1)
	Response: *The alternative options suggested are addressed in the next two sections of this document.* *The proposed fee increases are necessary for DEQ to administer an effective Title V program that is fully funded by permit fees, as required by federal law. In 2007, the Oregon Legislature adopted SB 107, which authorized the fee increases that DEQ is proposing in this rulemaking.* *DEQ convened an advisory committee to generate input and recommendations on the fiscal impact statement for the proposed fee increases for 2007 and 2008. The committee concluded that the benefits of an effective Title V program, such as adequate service to businesses and continued protection of public health, outweigh the potential fiscal burdens of the fee increases on small business. Although the committee evaluated the statement before DEQ added the fee increase for 2009 to this proposal, DEQ believes that the committee would still make this conclusion.*

2. Return program to EPA	Comment: DEQ did not consider returning the program to EPA. This option is attractive because of the increasing complexity and volume of regulation promulgated by the federal government. The EPA does not provide resources or sufficient guidance to Oregon to allow DEQ to properly administer the program. In fact, we would prefer to deal with the EPA directly rather than have DEQ try to infer meaning of the complex and poorly written regulations that are increasingly forced upon industry. (1) The Plywood and Composite Wood Products MACT is a recent example of DEQ's failure to interpret the CAA properly. DEQ advised Title V sources that they could "risk out" of provisions of the MACT standard that would have required them to control their Hazardous Air Pollutant emissions. The MACT standard is a technology based standard and the CAA does not allow sources to risk out of the standard's control requirements. The courts overturned the risk out option and wood products manufacturers were forced to install control devices at their facilities on an accelerated schedule. Giving the program back to EPA would allow DEQ to focus on things it does well (e.g. air monitoring, air shed planning and emission inventories). (1)
	Response: *The federal CAA does not allow DEQ to return the program to EPA. The act requires states to administer the Title V program or face severe sanctions.* *DEQ believes that the majority of Title V permit holders including the stakeholders who supported the fee increases in SB 107 prefer to deal with DEQ instead of EPA.* *The Plywood MACT was a rule adopted by EPA over the objections of many state air quality agencies including DEQ. When the courts overturned parts of EPA's rule, DEQ worked hard to address the concerns of the public and the permittees in implementing the remaining requirements. The business community consistently supports DEQ maintaining delegation of the federal program because of DEQ's responsiveness to Oregon's needs.*
3. Hire subcontractors	Comment: DEQ did not consider hiring a subcontractor to perform the tasks that DEQ is currently not performing because of the claimed lack of resources. This option is employed by several states. Arizona uses contractors to write initial permits, permit renewals and permit modifications. The state handles inspections and enforcement actions. (1) Hiring contractors would help DEQ: Manage workload better and eliminate the need to hire more staff to meet short-term periods when workload is high (e.g. when several permit renewals or permit modifications come in at the same time). Maintain a smaller, more manageable workforce and prevent DEQ from hiring staff that remain idle except for short periods when workload increases temporarily. The overhead costs for contract workers are much lower than for full time government workers. Arizona is able to offer faster permit turnaround while maintaining a lower cost structure. (1) DEQ is already using contractors in areas where they lack expertise such as the Columbia Gorge Commission study and for determining the proper level of emission control and reduction for the PGE Boardman coal fired power plant. It wouldn't be a stretch to ask the consulting industry to provide competitive bids for the permitting portion of the Title V program. (1)

	Response: DEQ disagrees that contracting permitting work would result in cost savings and believes that this could actually increase costs and reduce quality. DEQ's regional office staff does both the permitting and the inspections of Title V sources. These two activities are intimately connected; the permit is the basis for the inspections, and the inspections provide staff with the familiarity and expertise needed to prepare the permits. Contracting out the permitting work would cause a duplication of these activities. DEQ would incur additional costs because it would be responsible for contract oversight and quality assurance; and DEQ would still be responsible for deficiencies in the permits. The public comment and public hearing process is a key part of the Title V program, and many members of the public participate in this when Title V permits are issued or renewed. Many of the questions raised by the public have to do with issues that go beyond the actual permit, including the accuracy of emission estimates from the facilities, the stringency of underlying regulations that result in permit conditions, and the ambient air quality in neighborhoods near Title V facilities. A contractor would not be able to address these concerns, nor would the public likely be satisfied commenting to a contractor rather than the agency. Finally, there would be potential conflicts of interest since many of the contractors that would be qualified to develop Title V permits also provide engineering consulting to Title V facilities. This could lead to increased oversight costs, a lack of available contractors to conduct the work and lowered public confidence in the program.
4. Implementation of SB 107	Comment: Although SB 107 authorized the fee increase phase-in through 2009, the current rulemaking only covers the years 2007 and 2008. Why does the rulemaking not cover the entire period authorized by SB 107? (2)
	Response: *DEQ added the fee increase for 2009 to the proposed rulemaking. DEQ renoticed the rulemaking with the revised language for an additional 22 days to allow for public comment on this revision.* *DEQ chose not to include the fee increase for 2009 in the original rulemaking proposal because the information needed to adjust the fees by inflation is not yet available. DEQ will propose a CPI adjustment by the amount of the 2008 CPI at a later date.*
5. Particulate Matter	Comment: The definition of particulates in 340-220-0020(1) of the rule does not include PM2.5. Why is PM2.5 not included along with PM and PM10? (2)
	Response: *DEQ added PM2.5 to the definition of particulates in the proposed rulemaking. DEQ renoticed the rulemaking with the revised language for an additional 22 days to allow for public comment on these revisions.* *The statute requires the EQC to establish the size fraction of particulates subject to emission fees. Including PM2.5 in the proposed rules will provide for DEQ to assess fees on PM2.5 if a permit specifies PM2.5 and not PM or PM10.*
6. Support for regulation	Comment: As an industrial manufacturer in the urban core, you might expect our perspective on pollution and the cost of permits to be against regulation. Quite the opposite, we want

	to see permits become rarer and more expensive, penalties become so high as to actually change corporations' behavior, and we want to see Oregon's precious environment preserved for future generations. Our company is proof that it can be done sustainably and in a way that the economy is strengthened at the same time. (3) Our child goes to preschool about six blocks from the ESCO foundry in Northwest Portland. Not only are the fumes from the factory unpleasant to breathe, our background in the metal casting industry informs us that those fumes are potentially dangerous. We can smell them at our home and business in North Portland when the wind blows in that direction. We are baffled as to why the Oregon DEQ doesn't do something about this travesty of our environment and public safety as well as many others. (3)
	Response: *Thank you for your comments and the sustainable practices you employ at your business.* *Oregon establishes Title V permit fees based on the reasonable costs of implementing the Title V program, as required by federal law; the state is not authorized to increase fees beyond what is needed to fund the program.* *All major sources are required to obtain a Title V permit from DEQ. DEQ uses its authority to issue administrative penalties and has enforcement provisions where knowing endangerment from the release of air toxics can carry imprisonment of up to 15 years and fines up to $1 million.* *DEQ makes periodic compliance determinations of facilities like ESCO through inspections and review of emission reports and records. Some facilities may have odorous emissions, but still comply with state and federal emissions standards.* *DEQ's air toxics program continues to work on better assessment on health risks from air emissions, and is working on a Portland air toxics plan that will further improve Portland's air quality.*

List of People Submitting Comments (by Commenter Number)			
Commenter Number	**Name**	**Organization**	**Submittal date**
1	Rick Colgan	Calpine Corp.	March 17, 2008
2	Dona Hippert		March 31, 2008*
3	Sattie Clark	Eleek Inc.	May 12, 2008*

*Comments submitted via e-mail.

Oregon Department of Environmental Quality

Proposal to Increase Oregon's Title V Operating Permit Fees

Title V Fee Increase Advisory Committee

Findings and Recommendations

Overview and purpose

The Oregon Department of Environmental Quality established the Title V Fee Increase Rulemaking Advisory Committee to review the fiscal and economic impacts of DEQ's proposed rulemaking to increase Oregon's Title V Operating Permit Fees. DEQ requested that each of the committee members provide comments and recommendations on DEQ's draft Statement of Need and Fiscal and Economic Impact and answer three questions derived from the Administrative Procedures Act requirements for fiscal impact analysis (ORS 183.333) as follows:

- Do the rules have a fiscal and economic impact?
- What is the extent of that fiscal and economic impact?
- Will the rules have a significant adverse impact on small businesses?

Committee members

Bob Anderson, Northwest Automotive Trades Association
Dona Hippert, Oregon Toxics Alliance and Northwest Environmental Defense Center
Chris Rich, Oregon Business Association
Tom Wood, Stoel Rives

DEQ staff: Uri Papish and Andrea Curtis

Proposed rule background

Oregon's Title V Operating Permit program requires additional funding to continue protecting Oregon's air quality. The federal Clean Air Act requires that each state's Title V program be fully funded through permit fees. To address the problem of inadequate funding, DEQ proposed and the 2007 Oregon Legislature passed Senate Bill (SB) 107. This increases Oregon's Title V Operating Permit fees in statute (ORS 468A.315). This rulemaking proposal would increase Oregon's Title V fees in rule by the amounts authorized in statute for 2007 and 2008, increase fees by the consumer price index, and comply with other requirements of SB 107. The revenue from the proposed fees would fund the Title V program in the 2007-2009 biennium and help DEQ:

- Issue and renew Title V permits in a timely manner
- Complete required Title V inspections
- Monitor and enforce compliance with air quality regulations
- Comply with federal requirements to maintain a federally approved and delegated Title V program
- Issue public notices and information on the Title V program

Meeting summary

This meeting took place November 16, 2007 from 1 p.m. to 2:30 p.m. at DEQ Headquarters and was audio recorded. DEQ provided the committee DEQ's draft Statement of Need and Fiscal and Economic Impact for the proposed rules, the Administrative Procedures Act requirements for fiscal impact analysis, Senate Bill 107, and a handout that describes the direct effect of the proposed fees on businesses holding Title V permits. These materials are available upon request.

DEQ staff explained the need for the Title V Fee Increase Rulemaking Advisory Committee and gave an overview of the proposed rules, the Administrative Procedures Act requirements, and the draft Statement

of Need and Fiscal and Economic Impact. The committee provided comments and recommendations on the statement and answered the three questions derived from ORS 183.333. DEQ modified the fiscal statement as recommended by the committee.

Committee recommendations
The three questions derived from ORS 183.333 as well as the committee's answers are summarized as follows:

1. Do the rules have a fiscal and economic impact?

Yes

2. What is the extent of that fiscal and economic impact?

The extent of the impact is outlined adequately in DEQ's Statement of Need and Fiscal and Economic Impact and in the handout that describes the direct effect of the proposed fees on businesses holding Title V permits. The committee recommends adding a statement that revenue from the proposed fees will help DEQ issue public notices and information on the Title V program.

3. Will the rules have a significant adverse impact on small businesses?

The committee concluded that the rules could have a significant adverse impact on the six small businesses that DEQ indicated would be directly effected by the fee increase, but it does not have enough information to conclusively make a finding to that effect. However, the committee stated that despite any possible adverse impact on small business they did not believe there is a need at this time for additional mitigation steps as outlined in ORS 183.540. The benefits of an effective Title V program, such as adequate service to businesses and continued protection of public health, outweigh the potential fiscal burdens on small business.

State of Oregon

Department of Environmental Quality — Memorandum

Date: March 28, 2008

To: Environmental Quality Commission

From: Gregg Dahmen, Air Quality Division

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: March 27, 2008, 6:00 p.m.
Hearing Location: Department of Environmental Quality
Conference Room EQC-A, Floor 10
811 SW Sixth Avenue
Portland, Oregon 97204

Rule Caption: Proposal to Increase Oregon's Title V Operating Permit Fees

DEQ convened the public hearing on the rulemaking proposal referenced above at 6:00 p.m. and closed it at 6:30 p.m. No members of the public attended the hearing. No written or oral comments were received.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

RULE CAPTION

Proposal to Increase Oregon's Title V Operating Permit Fees

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and potential justification for differing from, or adding to, federal requirements. This statement is required by OAR 340-011-0029(1).

1. Is the proposed rulemaking different from, or in addition to, applicable federal requirements? If so, what are the differences or additions?

No. The proposed rules are not different from, or in addition to, applicable federal requirements. This rulemaking implements the federal requirements of the Clean Air Act and EPA rules (40 CFR Part 70) that Oregon's Title V Operating Permit program be fully funded through permit fees.

2. If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).

Not applicable.

3. If the proposal differs from, or is in addition to, applicable federal requirements, did the Department consider alternatives to the difference or addition? If so, describe the alternatives and the reason(s) they were not pursued.

Not applicable.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 340
Proposed Rule Change:
Oregon Title V Operating Permit Fee Increase

Statement of Need and Fiscal and Economic Impact

Rule Caption	Proposal to increase Oregon's Title V Operating Permit fees
Need for the Rules	Oregon's Title V Operating Permit program requires additional funding to continue protecting Oregon's air quality. Due to inadequate revenue, DEQ reduced staffing by three positions in the 2005-2007 biennium. Without a fee increase, DEQ would have had to reduce staffing by an additional one-and-a-half positions in the 2007-2009 biennium. Failure to maintain adequate staff levels needed to operate Oregon's Title V program could affect DEQ's ability to maintain federal approval and delegation of the state program. The federal Clean Air Act requires each state's Title V program to be fully funded through permit fees. To address the problem of inadequate funding, DEQ proposed and the 2007 Oregon Legislature passed Senate Bill (SB) 107. This increased Oregon's Title V Operating Permit fees in statute (ORS 468A.315) by 24 percent, to be phased in over three years: 2007, 2008 and 2009. The statute also allows annual increases in Title V fees based on increases in the Consumer Price Index . DEQ proposed and the Legislature approved DEQ's budget package for the Title V program that restores Title V positions through a phase-in process based on the timing of the fee increase. This is the first fee increase beyond the CPI increase since the Environmental Protection Agency authorized Oregon's Title V program in 1994. The objective of this rulemaking is to align fees in rule with fees in statute and comply with other requirements of SB 107. This rulemaking would make permanent a fee increase for 2007 that was already adopted in a temporary rule and invoiced to permittees in August 2007. It would also increase Title V fees for 2008 and 2009. The fees for 2007 include the 2006 CPI increase and the fees for 2008 and 2009 include the 2007 CPI increase. The revenue from the proposed fees will fund the Title V program through fiscal year 2009 and help DEQ: • Issue and renew Title V permits in a timely manner • Complete required Title V inspections • Monitor and enforce compliance with air quality regulations • Comply with federal requirements to maintain a federally approved and delegated Title V program • Issue public notices and information on the Title V program
Documents Relied Upon for Rulemaking	Documents relied upon to provide the basis for this proposal include: 2007-2009 Legislatively Approved Budget 2007-2009 Title V Revenue Forecast Federal Clean Air Act Amendments of 1990 Senate Bill 107 Oregon Statutes (ORS 468.020, 468.065, 468A.025, 468A.040, 468A.310, and 468A.315) US Department of Labor, Bureau of Statistics, Consumer Price Index through December 2007 Title V Fee Increase Rulemaking Advisory Committee Findings and Recommendations Copies of these documents may be reviewed at the Department of Environmental Quality's office at

	811 SW 6th Avenue, Portland, Oregon 97204.

Fiscal and Economic Impact

Overview

Title V of the federal Clean Air Act requires each state to develop and implement a comprehensive operating permit program for major industrial sources of air pollution. Through permitting, inspections, and technical assistance, Oregon's Title V program contributes to the prevention of air pollution and helps reduce the number of unhealthy air days and the risks from toxic air pollutants.

The Oregon Legislature established Oregon's Title V fees in three categories: an annual base fee (assessed to all Title V permittees), emission fee (per ton on regulated emissions), and specific activity fees (assessed when a source owner or operator modifies a permit). Title V fees pay for permitting, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to the EPA. Title V fees also support a portion of air quality monitoring, air quality planning and air program management costs.

SB 107 increased the annual base fee and emission fee in statute by 24 percent over a three year period. In 1989 dollars, it increased the annual base fee by $200 each year, from $2,500 in 2006 to $2,700 in 2007, $2,900 in 2008 and $3,100 in 2009. It increased the emission fee by $2.00 per ton each year, from $25 in 2006 to $27 in 2007, $29 in 2008 and $31 in 2009. The fees in statute do not reflect the annual increases, which are adopted by rule to reflect the change in the CPI since 1989.

This rulemaking would increase Title V fees for 2008 and 2009 and reinstate a fee increase already adopted and invoiced for 2007. Until this rulemaking, the fee increase for 2007 had been temporary. This rulemaking will not require retroactive collection of fees. In August 2007, the Environmental Quality Commission adopted temporary rule amendments that increased fees for 2007 by the amounts proposed in this rulemaking. This allowed DEQ to issue invoices to Title V permittees in accordance with the normal billing schedule and avoid the need for a supplemental billing.

The proposed annual base fee and emission fee are provided in the table below. The annual base fee is small in comparison to the emission fees paid by most sources. DEQ is proposing specific activity fees, described in Attachment A, based on changes in the 2006 and 2007 CPIs. Specific activity fees contribute a small portion of Title V program revenue.

Proposed Title V Fees for 2007, 2008 and 2009 by Fee Category

Fee Category	From 2006 fees	To 2007 fees (already invoiced)	*Increase over 2006 fees*	To 2008 fees (to be invoiced)	*Increase over 2007 fees*	To 2009 fees* (to be invoiced)	*Increase over 2008 fees*
Annual Base Fee	$3,379	$4,390	*$1,011 (29.9%)*	$4,849	*$459 (10.5%)*	$5,183	*$334 (6.9%)*
emission fee (per ton)	$39.38	$43.90	*$4.52 (11.5%)*	$48.49	*$4.59 (10.5%)*	$51.83	*$3.34 (6.9%)*

* This does not include an increase by the 2008 CPI amount. DEQ may propose a CPI increase in a future rulemaking.

This rulemaking implements a correction to the formula that DEQ uses to calculate the change in the CPI for the annual base fee and emission fees. The correction will align the CPI fee increases for all fee categories to the same base year, set in statute (ORS 468A.315). In the past, DEQ calculated the CPI increase to the emission fee using the 1989 CPI and the CPI increase to the annual base fee and specific

activity fees using the 1993 CPI. To conform to the statute, DEQ will use the 1989 CPI as the baseline for the annual base fee and specific activity fees. Because of the correction, the percentage increase for last year's previously invoiced fee increase is larger for the annual base fees and specific activity fees than it is for the emission fee.

This rulemaking will affect all 123 businesses required to maintain Title V permits. The requirement for a Title V permit is based on quantity of emissions from a facility. In general, lower emitting sources with less complex permits would experience a smaller annual dollar impact from the proposed fee increases. The table below shows the effect of the proposed fees on invoices issued to sources emitting 50, 500, or 5,000 tons per year. About 15 percent of Title V permittees emit below 50 tons/year, 62 percent emit between 50 and 500 tons/year, 21 percent emit between 500 and 5,000 tons/year and 2 percent emit above 5,000 tons/year.

Proposed Title V Fees for 2007, 2008 and 2009 by Tons of Source Emissions:

Emissions (per calendar year)	From 2006 Fees	To 2007 Fees	*Increase over 2006 Fees*	To 2008 Fees	*Increase over 2007 Fees*	To 2009 Fees	*Increase over 2008 Fees*
50 tons	$5,348	$6,585	*$1,237 (23.1%)*	$7,273	*$688 (10.5%)*	$7,774	*$501 (6.9%)*
500 tons	$23,069	$26,340	*$3,271 (14.2%)*	$29,094	*$2,754 (10.5%)*	$31,098	*$2,004 (6.9%)*
5,000 tons	$200,279	$223,890	*$23,611 (11.8%)*	$247,299	*$23,409 (10.5%)*	$264,333	*$17,034 (6.9%)*

This rulemaking changes the regulated pollutants assessed emission fees and changes the emissions fee cap to comply with requirements of SB 107:

- It changes the regulated pollutants assessed emission fees to four pollutant categories: particulates, sulfur dioxide, oxides of nitrogen, and volatile organic compounds. Previously, there were additional pollutants in the Title V fee rules, such as fluoride, lead, and toxic air pollutants, that were assessed emission fees but contributed a small amount to program revenue. For the most part, the additional pollutants are a subset of the four pollutant categories. However, DEQ believes that these amendments will result in a small reduction (about 2 percent) in emission fee revenue for the Title V program.

- It changes the emission fee cap in 2011 from a maximum of 4,000 tons per year on each regulated pollutant to a maximum of 7,000 tons per year of all regulated pollutants. In a future rulemaking, DEQ will propose the annual base fee set by SB 107 in 2010. In 2010, SB 107 increases the annual base fee by $1,000 before CPI adjustment. These changes will make revenue more stable by reducing reliance on emission fees and increasing reliance on base fees. This will prevent a significant loss of revenue when new federal regulations significantly reduce emissions from the highest emitting Title V sources in the coming years.

Requests for Other Options

Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

<table>
<tr><td>Impacts on the General Public</td><td colspan="2">DEQ does not anticipate any fiscal or economic impacts from the proposed fee increases on the general public. The proposed fee increases could indirectly affect the general public because the fee increases could be passed through by Title V permit holders, resulting in a slight increase in the costs of products or services provided by businesses with Title V permits.

Air pollution creates public health problems that can have negative economic impacts. The proposed fee increases could create positive economic benefits and improvements in public health and welfare resulting from an adequately funded Title V program. A fee increase that provides sufficient resources for compliance and technical assistance may help avoid public health costs associated with lower compliance and increased air pollution.</td></tr>
<tr><td>Impacts on Small Business (50 or fewer employees – ORS183.310(10))</td><td colspan="2">The proposed fee increases would directly impact all 123 businesses with Title V permits in Oregon. DEQ estimates that approximately 5 percent, or 6, are small businesses with 50 or fewer employees. According to DEQ’s understanding, none of the small businesses holding Title V permits emitted more than 125 tons in the 2006 calendar year. A source emitting 125 tons per year would pay:
• $9,877 in 2007, an increase of $1,576 over 2006 fees
• $10,910 in 2008, an increase of $1,033 over 2007 fees
• $11,661 in 2009, an increase of $751 over 2008 fees

The proposed fee increases could also indirectly affect small businesses because the fee increases could be passed through by Title V permit holders, resulting in a slight increase in the costs of products or services provided by businesses with Title V permits.</td></tr>
<tr><td rowspan="5">Cost of Compliance on Small Business (50 or fewer employees - ORS183.310(10))</td><td>a) The estimated number of small businesses subject to the proposed fee increases</td><td>Typically, Title V permits apply to large businesses, but applicability is dependent on potential emission levels rather than business size. Approximately 6 small businesses, such as fiberglass reinforced plastic facilities and smaller wood refinishing operations, are required to hold Title V permits because their potential emissions exceed Title V applicability thresholds.</td></tr>
<tr><td>b) The types of businesses and industries with small businesses subject to the proposed fee increases</td><td>See answer to (a) above.</td></tr>
<tr><td>c) The projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed fee increases</td><td>The proposed rule amendments do not establish any additional reporting, recordkeeping or other administrative activities.</td></tr>
<tr><td>d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed fee increases</td><td>The proposed rule amendments do not require any additional equipment, supplies, labor or increased administration.</td></tr>
<tr><td>e) A description of the manner in which DEQ involved small businesses in the development of the proposed fee increases</td><td>In fall 2006, DEQ described the proposed Title V fee increases at air quality permit program information sessions held in Medford, Bend, Pendleton and Portland. DEQ also communicated the proposed fee increases to its Small Business Compliance Advisory Panel in fall 2006 and to the Associated Oregon Industries Air Committee in early 2007. In December 2006, DEQ posted a fact sheet describing the proposed fee increases on its website. As part of its 2007 legislative budget process, DEQ submitted to the legislature detailed information about Title V program funding and the</td></tr>
</table>

proposed fee increases.

In July 2007, DEQ mailed a letter to Title V permit holders describing SB 107, the temporary rule amendments adopted by the EQC, and DEQ's intention to propose this rulemaking. DEQ sent a Notice of Proposed Rulemaking by mail or electronically to Title V permit holders and interested parties on February 27, 2008. The notice described the proposed fees for 2007 and 2008. The March 27, 2008 public hearing provided a forum for both large and small Title V permit holders and interested parties to comment on the rule.

DEQ revised the proposed rulemaking in response to public comment received during the original comment period. DEQ re-noticed this rulemaking with the revised language for an additional 22 days to allow for public comment on these revisions. DEQ revised the rule to add the fees authorized by SB 107 for 2009, instead of relying on a future rulemaking. DEQ sent the re-notice by mail or electronically to Title V permit holders and interested parties on May 12, 2008.

Impacts on Large Business

The proposed fee increases would directly impact large businesses required to have Title V permits. DEQ estimates that approximately 95 percent, or 117, of Title V permit holders are large businesses with more than 50 employees. The table below shows the effect of the proposed fees on invoices issued to sources emitting 50, 500, or 5,000 tons per year. According to DEQ's understanding, 11 percent of large businesses required to have Title V permits emit below 50 tons/year, 64 percent emit between 50 and 500 tons/year, 22 percent emit between 500 and 5,000 tons/year and 3 percent emit above 5,000 tons/year.

Proposed Title V Fees for 2007, 2008 and 2009 by Tons of Source Emissions

Emissions (per calendar year)	From 2006 Fees	To 2007 Fees	*Increase over 2006 Fees*	To 2008 Fees	*Increase over 2007 Fees*	To 2009 Fees	*Increase over 2008 Fees*
50 tons	$5,348	$6,585	*$1,237 (23.1%)*	$7,273	*$688 (10.5%)*	$7,774	*$501 (6.9%)*
500 tons	$23,069	$26,340	*$3,271 (14.2%)*	$29,094	*$2,754 (10.5%)*	$31,098	*$2,004 (6.9%)*
5,000 tons	$200,279	$223,890	*$23,611 (11.8%)*	$247,299	*$23,409 (10.5%)*	$264,333	*$17,034 (6.9%)*

The proposed fee increases could also indirectly affect large businesses because the fee increases could be passed through by Title V permit holders, resulting in a slight increase in the costs of products or services provided by businesses with Title V permits.

Impacts on Local Government

The proposed fee increases would impact local governments required to have Title V permits. According to DEQ's understanding, the Coos County Solid Waste Department and Metro's St. Johns Landfill are the only local government agencies required to have Title V permits. DEQ estimates that the proposed fee increases would result in the following impacts on local government facilities. These projections are based on 2006 emissions and assume that emissions will be the same in 2007 and 2008.

	(table below)

Local Government Agency	From 2006 Fees	To 2007 Fees	*Increase over 2006 Fees*	To 2008 Fees	*Increase over 2007 Fees*	To 2009 Fees	*Increase over 2008 Fees*
Coos County Solid Waste Department	$9,167	$10,843	*$1,676*	$11,977	*$1,134*	$12,802	*$825*
Metro's St. Johns Landfill	$5,348	$6,585	*$1,237*	$7,273	*$688*	$7,774	*$501*

The proposed fee increases could indirectly affect local governments because the fee increases could be passed through by Title V permit holders, resulting in a slight increase in the costs of products or services provided by businesses with Title V permits.

Impacts on State Entities

The proposed fee increases would impact state entities required to have Title V permits. According to DEQ's understanding, Oregon Health Sciences University (OHSU) is the only state entity required to have a Title V permit. Oregon State University (OSU) was required to have a Title V permit until early 2007 and only paid Title V emission fees on 2006 emissions. DEQ estimates that the proposed fee increases would result in the following impacts on state entities. These projections are based on 2006 emissions and assume that OHSU's emissions will be the same in 2007 and 2008.

State Entity	From 2006 Fees	To 2007 Fees	*Increase over 2006 Fees*	To 2008 Fees	*Increase over 2007 Fees*	To 2009 Fees	*Increase over 2008 Fees*
OHSU	$8,537	$10,140	*$1,603*	$11,201	*$1,061*	$11,972	*$771*
OSU	$4,292	$4,785	*$493*	N/A	*N/A*	N/A	*N/A*

The proposed fee increases could indirectly affect state entities including DEQ and other agencies because the fee increases could be passed through by Title V permit holders, resulting in a slight increase in the costs of products or services provided by businesses with Title V permits.

Impacts on DEQ

DEQ would not incur any additional costs to implement the proposed fee increases. Instead, DEQ would gain additional resources needed to operate its Title V program.

Impacts on other Agencies

DEQ anticipates that no other agencies would be directly affected by the proposed rule amendments. However, the proposed fee increases could indirectly affect other agencies because the fee increases could be passed through by Title V permit holders, resulting in a slight increase in the costs of products or services provided by businesses with Title V permits.

Assumptions

Estimated revenue forecasts and expenditures are based on the assumption that all facilities subject to the Title V program have been identified and that the number of Title V permits and facility emissions will remain approximately the same as in 2006. DEQ estimates that 123 sources will be subject to Title V permitting and fee requirements in fiscal year 2009.

Housing Costs

DEQ has determined that the proposed fee increases may have a negative impact on the development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel if the fee increases are passed through by Title V permit holders providing products and services for such development and construction. The possible impact appears to be minimal. DEQ cannot quantify this impact at this time because the information available to it does not indicate whether the fee increases would be passed on to consumers and any such estimate would be speculative.

Administrative Rule Advisory Committee	DEQ convened an advisory committee to generate input and recommendations on the fiscal impact statement for the proposed rule amendments. The committee evaluated the fiscal impact statement before DEQ added the fees for 2009 to this proposal [1]. The committee concluded that the proposed fee increases would have a fiscal and economic impact and could have a significant adverse impact on the six small businesses that DEQ indicated would be affected, but did not have enough information to conclusively make a finding to that effect. However, the committee stated that despite any possible adverse impact on small business it did not believe there is a need at this time for additional mitigation steps as outlined in ORS 183.540. The benefits of an effective Title V program, such as adequate service to businesses and continued protection of public health, outweigh the potential fiscal burdens on small business. [1] Although SB 107 authorized a phased-in fee increase over the three-year period from 2007 to 2009 DEQ chose not to include the fees for 2009 in the original rulemaking proposal because the information needed to adjust fees for 2009 by inflation is not yet available. In response to public comment received during the original comment period, DEQ has included the full phase-in of the fees in this rulemaking even though the last year will need to be adjusted for inflation in a future rulemaking.

Prepared by: Andrea Curtis

Approved by DEQ Budget Office: Jim Roys

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Land Use Evaluation Statement

RULE CAPTION

Proposal to Increase Oregon's Title V Operating Permit Fees

1. **Explain the purpose of the proposed rules.**

Oregon's Title V Operating Permit program requires additional funding to continue protecting Oregon's air quality. Due to inadequate Title V revenue, DEQ had to reduce staffing by three positions in the 2005-2007 biennium. Without a fee increase, DEQ would have had to reduce staffing by an additional one-and-a-half positions in the 2007-2009 biennium. Failure to maintain adequate staff levels could affect DEQ's ability to maintain federal approval of the state program.

The federal Clean Air Act requires each state's Title V program to be fully funded through permit fees. To address the problem of inadequate funding, DEQ proposed and the 2007 Oregon Legislature passed Senate Bill (SB) 107. This increased Oregon's Title V Operating Permit fees in statute (ORS 468A.315) by 24%, to be phased in over three years: 2007, 2008, and 2009. In addition, the statute provides for annual increases in Title V fees based on increases in the Consumer Price Index (CPI). DEQ also proposed and the Legislature approved DEQ's budget package for the Title V program that restores Title V positions through a phase-in process based on the timing of the fee increase.

The objective of this rulemaking is to align fees in rule with fees in statute. This rulemaking would make permanent a fee increase for 2007 that was already adopted in a temporary rule and invoiced to permittees in August 2007. It would also increase Title V fees for 2008 and 2009. The fees for 2007 include the increase in the 2006 CPI and the fees for 2008 and 2009 include the increase in the 2007 CPI. The revenue from the proposed fees will fund the Title V program through fiscal year 2009. This rulemaking also implements a correction to the formula that DEQ uses to calculate the change in the CPI and changes the regulated pollutants assessed emission fees and the emissions fee cap to comply with requirements of SB 107.

2. **Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?**

Yes.

a. **If yes, identify existing program/rule/activity:**

The proposed rules affect the Oregon Title V program, which regulates air emissions from industrial businesses.

b. **If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?**

Yes.

c. If no, apply the following criteria to the proposed rules.

Not applicable.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

The proposed rule amendments would be implemented through DEQ's existing stationary source permitting program. An approved Land Use Compatibility Statement is required from local government before an air permit is issued.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

Not applicable.