
Date: July 28, 2009
To: Environmental Quality Commission
From: Dick Pedersen, Director
Subject: Agenda Item E, Temporary Rule Adoption: Oregon Title V Operating Permit CPI Fee Increase
August 20-21, 2009 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 risks from air toxics. State and federal laws require the program to be entirely funded by permit fees. Failure to maintain sufficient funding could affect the Department of Environmental Quality's ability to maintain federal approval of the program. DEQ needs the proposed increases to Oregon's Title V permit fees to cover all costs to implement the program.

Department Recommendation DEQ recommends that the Environmental Quality Commission:

- (1) Determine that increasing the Title V 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;
- (2) Adopt the rules as amended in Attachment A to increase Oregon's Title V operating permit fees by the change in the CPI and implement Senate Bill 104 (2009), pursuant to ORS 468A.315; and
- (3) Adopt the justification for temporary rules as provided in Attachment B.

Background and Need for Rulemaking Federal law requires major industrial sources of air pollution to have operating permits under Title V of the Clean Air Act. Oregon's Title V program, which was approved by the EPA in 1994, is an important part of DEQ's strategy to maintain clean air. The purpose of the program is to ensure that Title V permit holders comply with regulations to protect air quality.

Federal and state laws require that Title V permit fees be set at levels sufficient to cover all costs of the Title V program. 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, planning and program management costs. To help meet the funding requirement, federal and state laws authorize annual increases to the fees based on the change in the consumer price index.

DEQ needs 35 full-time equivalent positions to administer an effective program. The agency cut program staff in previous years due to inadequate revenue. Based on fee increase legislation in 2007, DEQ made a commitment to the Oregon Legislature and stakeholders to use the fees collected in 2009, with the consumer price index fee increase, to restore the final Title V position required to return full staff levels to the program.

The revenue from the proposed fees would fund the program through 2010. A fully staffed program benefits Oregonians and the environment by helping 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 requirements to maintain a federally approved and delegated Title V program; and
- Issue public notices and information about the program.

Temporary rules are needed to maintain a single Title V billing in 2009. DEQ was unable to propose the fee increase through a regular, permanent rulemaking in time for billing in 2009 because the statute that authorizes the fees (ORS 468A.315) required a technical correction. This correction became effective upon passage of Senate Bill 104 on June 16, 2009. Without temporary rules, DEQ would issue invoices in August 2009 as scheduled and issue a second billing for the increase after adoption of the permanent rulemaking. With or without the temporary rules, permittees would owe the same amount of fees because the statute has a retroactive clause for fee collection.

Effect of Rule

Title V Fee Increases

The proposed rule amendments increase fees for all 122 Title V sources in the program. Title V permit holders are generally the largest stationary emission sources, including power generation, wood and paper products and fiberglass manufacturing facilities. The EPA bases the Title V permit requirements 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 they have the potential to emit at or above major source emission thresholds.

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 fee, assessed when a source owner or operator modifies a permit or installs ambient monitoring networks requiring DEQ's review.

This proposal would increase the Title V fees by 4.6 percent based on the 2008 consumer price index. The table below illustrates the proposed fees.

Fee Category	Existing fees	Proposed fees	Increase
Annual Base Fee	\$5,183	\$5,421	\$238
Emission Fee (per ton)	\$51.83	\$54.21	\$2.38
<i>Specific Activity Fees:</i>			
Administrative	\$418	\$437	\$19
Simple	\$1,672	\$1,748	\$76
Moderate	\$12,540	\$13,115	\$575
Complex	\$25,081	\$26,231	\$1,149
Ambient Review	\$3,344	\$3,497	\$153

Correction to Consumer Price Index Period Used in Fee Calculations

This proposal implements a technical correction required by Senate Bill 104. The bill aligned the consumer price index period in statute with the federal definition. While the Clean Air Act defines the consumer price index calendar year as the twelve-month period ending Aug. 31, the statute simply provided “calendar year,” commonly understood as the twelve-month period ending Dec. 31. The correction shifts the period used in fee calculations back several months.

- Commission Authority** The commission has authority to take this action under ORS 468.020, 468.065, 468A.025, 468A.040, 468A.310 and 468A.315
- Stakeholder Involvement** DEQ worked with stakeholders and received their support for the legislation that corrected the consumer price index period. DEQ mailed letters to Title V sources in July 2009 to describe how this rulemaking proposal would affect invoices. DEQ did not convene an advisory panel to develop this proposal because the legislature authorized the fees and the technical correction in statute.
- Public Comment** No public comment period is required for adoption of temporary rules. DEQ will proceed with the required public notice and comment process when it performs the permanent rulemaking.
- Key Issues** DEQ must issue invoices to Title V permit holders as scheduled in August 2009 to prevent a shortfall in program funding. If the commission did not immediately revise the rules, but required DEQ to proceed with a permanent rulemaking, the rulemaking would not be complete before DEQ issues the invoices. DEQ would be required to invoice the 2009 Title V permit fees twice: the invoice in August, and a supplemental invoice at the conclusion of

permanent rulemaking. The supplemental invoice would cause additional cost and budgeting difficulties for DEQ and Title V permit holders.

Next Steps

If the commission adopts the temporary rules, the fee increases would become effective upon filing with the Secretary of State. The fees would be reflected in invoices that DEQ will issue to Title V permittees in August 2009, with payment due in October 2009. Because this is a continuation of an existing program, DEQ does not need additional resources or training to implement the rule amendments. DEQ will propose a permanent rulemaking in February 2010 to make the fee increases permanent. The permanent rulemaking proposal will also include the Title V fees authorized in statute for next year's billing. Because Senate Bill 104 corrected the statute, the commission is now able to establish Title V fees on a two-year schedule, reducing the frequency of future consumer price index fee increase rulemakings from once per year to once per biennium.

Attachments

- A. Proposed Rule Changes
- B. Statement of Need and Justification
- C. Senate Bill 104

Available Upon Request

- 1. ORS 468A.315
- 2. 2009-2011 Legislatively Approved Budget
- 3. Fiscal Year 2010 Title V Revenue Forecast

Approved:

Section: _____

Division: _____

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Oregon Department of Environmental Quality

Proposed Rule Changes

DIVISION 220

OREGON TITLE V OPERATING PERMIT FEES

340-220-0030

Annual Base Fee

(1) The Department will assess an annual base fee of \$ 4,390 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2007 to November 14, 2008.

(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 \$ 5,1835,421 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 \$ 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 \$ 51,8354.21 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.

(4) The emission fee will be applied to emissions based on the elections made according to OAR 340-220-0090.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.035

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:

(a) Existing Source Permit Revisions:

(A) Administrative* -- \$ 406;

(B) Simple -- \$ 1,626;

(C) Moderate -- \$ 12,194;

(D) Complex -- \$ 24,387.

(b) Ambient Air Monitoring Review -- \$ 3,252.

(2) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source ~~as of August 26, 2008~~ for the period of August 26, 2008 to August 25, 2009 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.

(3) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source as of August 26, 2009 as follows:

(a) Existing Source Permit Revisions:

(A) Administrative* -- \$ 437;

(B) Simple -- \$ 1,748;

(C) Moderate -- \$ 13,115;

(D) Complex -- \$ 26,231.

(b) Ambient Air Monitoring Review -- \$ 3,497.

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

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Environmental Quality

OAR Chapter 340

Agency and Division

Administrative Rules Chapter Number

Rule Caption: Oregon Title V Operating Permit CPI Fee Increase

In the Matter of: Oregon Title V Operating Permit Fees, Division 220

Statutory Authority: ORS 468.020, ORS 468.065, ORS 468A.025, ORS 468A.040, ORS 468A.310 and ORS 468A.315

Other Authority: N/A

Statute Implemented: ORS 468A.315

Need for the Temporary Rules: Temporary rules are needed to maintain a single Title V billing in 2009. State and federal laws authorize annual increases to Oregon's Title V operating permit fees based on the change in the consumer price index. A temporary rulemaking to adopt the consumer price index fee increase is required for the Department of Environmental Quality to meet its customary schedule for assessing and invoicing Title V fees. Without temporary rules, DEQ would need to invoice Title V sources in August 2009 for fees currently specified in OAR 340-220-0030 through 0050, and after adoption of a permanent rulemaking, send a supplemental invoice for the difference between the current fees and the newly-increased fees. Two invoices for permit fees could cause confusion, potential budgeting difficulties for fee payers and additional work for DEQ and the regulated community. With or without the temporary rules, permittees would owe the same amount because the statute has a retroactive clause for fee collection.

Background:

Federal and state laws require that Title V permit fees be set at levels sufficient to cover all program costs. The 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, planning and program management costs.

DEQ needs to increase the Title V fees in 2009 by the change in the consumer price index to operate the program at full staff levels. While DEQ needs 35 FTE to administer an effective program, it cut program staff in previous years due to inadequate revenue. Based on fee increase legislation in 2007, DEQ made a commitment to the Oregon Legislature and stakeholders to use the fees authorized for 2009, with the consumer price index increase, to restore the final Title V position required to return full staff levels to the program.

DEQ was unable to propose the increase through regular, permanent rulemaking in time for billing in 2009 because the statute that authorizes the fees (ORS 468A.315) required a technical

correction, which only recently became effective with the passage of Senate Bill 104 on June 16, 2009.

Documents Relied Upon: Documents relied upon are available by contacting DEQ or online as follows:

- Senate Bill 104 (a Public Law number is not yet available):
<http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0104.en.pdf>
- ORS 468A.315: <http://www.leg.state.or.us/ors/468a.html>
- Consumer Price Index history for all urban consumers (U.S. Department of Labor, Bureau of Labor Statistics): <http://www.bls.gov/cpi/>
- DEQ Fiscal Year 2010 Title V revenue forecast

Justification of Temporary Rules: The commission finds that failure to adopt the temporary rules will result in serious prejudice to the public interest and the interest of DEQ and Title V permit holders because it will have the following consequences:

Without these rule changes, Oregon rules concerning the dates for consumer price index fee increases would conflict with state statute and the federal Clean Air Act, which would potentially jeopardize federal delegation of the Title V operating permit program. Failure to adopt the rules could also jeopardize federal delegation because the state program must be entirely funded by permit fees; the rules are necessary to generate revenue to cover program costs. DEQ must issue invoices to Title V permit holders as scheduled in August 2009 to prevent a shortfall in program funding. If the commission did not immediately revise the rules, but required DEQ to proceed with a permanent rulemaking, the rulemaking would not be complete before DEQ issues the invoices. DEQ would be required to invoice the 2009 Title V permit fees twice: the invoice in August, and a supplemental invoice at the conclusion of permanent rulemaking. The supplemental invoice would cause additional costs for DEQ and Title V permit holders.

Housing Cost Impacts:

DEQ has determined that this proposed rulemaking may have a negative impact on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel because increased permit fees could be passed along in the form of slightly higher costs for development and construction (such as building products and utilities). DEQ is not able to quantify the impact of the proposed rulemaking due to a lack of available information, but expects any impact to be minimal.

Dick Pedersen, Director
On Behalf of the Environmental Quality Commission

Date Signed

Enrolled
Senate Bill 104

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Department of Environmental Quality)

CHAPTER

AN ACT

Relating to fee schedule for federal operating permit program; amending ORS 468A.315; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 468A.315 is amended to read:

468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal operating permit program shall be based on a schedule established [*every two years*] by rule by the Environmental Quality Commission in accordance with this section. Except for the additional fee under subsection (2)(e) of this section, this fee schedule shall be in lieu of any other fee for a permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable direct and indirect costs of implementing the federal operating permit program and shall consist of:

(a) An emission fee per ton of each regulated pollutant emitted during the prior calendar year as determined under subsection (2) of this section, subject to annual fee increases as set forth in paragraph (d) of this subsection. The following emission fees apply:

- (A) \$27 per ton emitted during the 2006 calendar year.
- (B) \$29 per ton emitted during the 2007 calendar year.
- (C) \$31 per ton emitted during the 2008 calendar year and each calendar year thereafter.

(b) Fees for the following specific elements of the federal operating permit program:

- (A) Reviewing and acting upon applications for modifications to federal operating permits.
- (B) Any activity related to permits required under ORS 468A.040 other than the federal operating permit program.
- (C) Department of Environmental Quality activities for sources not subject to the federal operating permit program.

(D) Department review of ambient monitoring networks installed by a source.

(E) Other distinct department activities created by a source or a group of sources if the commission finds that the activities are unique and specific and that additional rulemaking is necessary and will impose costs upon the department that are not otherwise covered by federal operating permit program fees.

(c) A base fee for a source subject to the federal operating permit program. This base fee shall be no more than the fees set forth in subparagraphs (A) to (D) of this paragraph, subject to increases as set forth in paragraph (d) of this subsection:

- (A) \$2,700 for the period of November 15, 2007, through November 14, 2008.

(B) \$2,900 for the period of November 15, 2008, through November 14, 2009.

(C) \$3,100 for the period of November 15, 2009, through November 14, 2010.

(D) \$4,100 for the period of November 15, 2010, through November 14, 2011, and for each annual period thereafter.

(d) An annual increase in the fees set forth in paragraphs (a) to (c) of this subsection by the percentage, if any, by which the Consumer Price Index exceeds the Consumer Price Index [*for the calendar year*] **as of the close of the 12-month period ending on August 31, 1989**, if the commission determines by rule that the increased fees are necessary to cover all reasonable direct and indirect costs of implementing the federal operating permit program.

(2)(a) The fee on emissions of regulated pollutants required under this section shall be based on the amount of each regulated pollutant emitted during the prior calendar year as documented by information provided by the source in accordance with criteria adopted by the commission or, if the source elects to pay the fee based on permitted emissions, the fee shall be based on the emission limit for the plant site of the major source.

(b) The fee required by subsection (1)(a) of this section does not apply to any emissions in excess of 4,000 tons per year of any regulated pollutant through calendar year 2010 and in excess of 7,000 tons per year of all regulated pollutants for each calendar year thereafter. The department may not revise a major source's plant site emission limit due solely to payment of the fee on the basis of documented emissions.

(c) The commission shall establish by rule criteria for the acceptability and verifiability of information related to emissions as documented, including but not limited to the use of:

(A) Emission monitoring;

(B) Material balances;

(C) Emission factors;

(D) Fuel use;

(E) Production data; or

(F) Other calculations.

(d) The department shall accept reasonably accurate information that complies with the criteria established by the commission as documentation of emissions.

(e) The rules adopted under this section shall require an additional fee for failure to pay, substantial underpayment of or late payment of emission fees.

(3) The commission shall establish by rule the size fraction of total particulates subject to emission fees as particulates under this section.

(4) As used in this section:

(a) "Regulated pollutant" means particulates, volatile organic compounds, oxides of nitrogen, and sulfur dioxide; and

(b) "Consumer Price Index" has the meaning given in 42 U.S.C. 7661a(b), as in effect on June 20, 2007.

SECTION 2. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate March 3, 2009

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Secretary of Senate

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President of Senate

Passed by House May 22, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State