



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
503-229-5696
TTY: 503-229-6993

July 6, 2009

Christine Samples
Budget and Management Division
Department of Administrative Services
155 Cottage St NE, U10
Salem, OR 97301-3965

Dear Ms. Samples:

Enclosed are Forms 107BF21 and 107BF22 and background documentation for a proposal to add the following fees:

- A new general Air Contaminant Discharge Permit (ACDP) fee category for sources with limited requirements and where existing DEQ resources can be leveraged to reduce the cost of implementing new federal standards;
- A general ACDP attachments and an attachment fee for sources eligible for multiple general ACDPs; and
- A registration program and registration fees as an alternative to permitting and permitting fees.

The new permit, permit attachments, and registration program would minimize the fiscal and administrative impact on affected sources, many of which are small businesses, and provide DEQ with revenue to implement new federal standards. Passage of Senate Bill 103 by the 2009 legislature provides DEQ with the authority to establish the registration program and fees.

If you have questions, please contact Jerry Ebersole at 503-229-6974 or EBERSOLE.Gerald@deq.state.or.us. When returning the signed and completed Part I form, please return it to Jerry Ebersole at 811 SW 6th Avenue, Portland, OR 97204.

Thank you for your assistance.

Sincerely,

Joni Hammond
Deputy Director

Enclosures

cc: Jim Roys, MSD-Budget Office, DEQ
Greg Aldrich, Government Relations Manager, DEQ
Uri Papish, Program Operations Section Manager, Air Quality Division, DEQ
Jerry Ebersole, Air Quality Division, DEQ
Shelley Matthews, Division Rules Coordinator, Air Quality Division, DEQ
Ken Rocco, Legislative Fiscal Office



Fee Approval Form

REQUEST FOR FEE INCREASE/ESTABLISHMENT/DECREASE

PART 1 (State agencies: Complete when requesting authority to increase or establish fees administratively, or when notifying DAS of a fee decrease.)

Agency Name: Department of Environmental Quality

Agency Number: 34000

Division/Program: Air Quality/Program Operations

Contact: Uri Papish (503) 229-6974

(Name and phone number)

Date received:

Brief Description of Fee Change:
This rulemaking proposes to: add one General ACDDP fee category for sources with limited requirements and where resources can be leveraged to reduce the cost of implementation; add General ACDDP attachments and an attachment fee for sources eligible for multiple General ACDDPs; and add a registration program and registration fees as an alternative to permitting and permitting fees.

Check one:

Fee Increase Fee Establishment Fee Decrease Statutory Authority for fee: ORS 468.065, 468A.050

Please check all statements that apply and provide the anticipated date(s) below:

Date proposed rule(s), or rule(s) change, to be filed with the Secretary of State: July 15, 2009

Anticipated rule adoption date: December 11, 2009

Date fee schedule becomes effective: January 1, 2010

Date of proposed E-Board Action:

REQUIRED - Attach Form 107BF22 and cover letter, with information on each fee affected. (See instructions on back.)

Approved: Denied: Date: ____/____/____

Reviewed by: _____ By: _____
Director, Department of Administrative Services

PART 2 (State agencies: Complete following rule adoption or fee effective date.)

Administrative Rule Reference: _____ Date rule adopted or fee effective: ____/____/____ **

Actual fee amount(s) adopted: _____

Authorized agency signature: _____ Date: ____/____/____

** Form must be returned to DAS within 10 days of the date rule is adopted or fee is effective.

Note: Approval good only through July 1 of the next odd-numbered year or sine die, whichever is later, unless approved in legislation by the Regular Session of the Legislative Assembly.

FEE CHANGE DETAIL REPORT

| Fee Title/ Description | ORS/CAR | Who pays fee | Increase, Establish, Decrease? | Date/Amount of Last Change | Date Fee Expected to be Changed | Current fee | Proposed fee | Proposed fee change | Number 2007- 09 transactions with new fee | Impact on 2007-09 revenue | Total 2007-09 revenue | Number 2009- 11 transactions with new fee | Impact on 2009-11 revenue | Total 2009-11 revenue | Leg Concept Number | Policy Package Number |
|--|---|---|--------------------------------------|----------------------------------|---------------------------------------|----------------|------------------|------------------------|--|---------------------------------|-----------------------------|--|---------------------------------|-----------------------------|--------------------------|-----------------------------|
| General ACDP: Class 6 General ACDP Attachment | 340-216-0060 340-216-0062 ORS 468A.050, 340-217-0040 | NESHAP Area Sources Sources eligible for multiple general permits | Establish Establish | N/A N/A | 12/11/2009 12/11/2009 | \$ - \$ - | \$ 240 \$ 120 | \$ 240 \$ 120 | - - | \$ - \$ - | \$ - \$ - | 150 72 | \$ 36,000 \$ 8,640 | \$ 36,000 \$ 8,640 | N/A N/A | 114 114 |
| Registration | ORS 468A.050, ORS 217-0040 | NESHAP Area Sources | Establish | N/A | 12/11/2009 | \$ - | \$ 180 | \$ 180 | - | \$ - | \$ - | 150 | \$ 27,000 | \$ 27,000 | 407 | 114 |
| Registration | 340-217-0040 | NESHAP Area Sources | Establish | N/A | 12/11/2009 | \$ - | \$ 240 | \$ 240 | - | \$ - | \$ - | 176 | \$ 42,240 | \$ 42,240 | 407 | 114 |

This form and accompanying cover letter must be completed and submitted for three separate purposes:

- 1) Submitted to DAS with the Fee Approval Form (107BF21) when requesting DAS approval to change a fee administratively (Leg Concept/Policy Pkg columns not relevant).
- 2) Submitted to DAS with a Legislative Concept, if that concept would increase a fee or assessment (2007-09 columns not relevant).
- 3) Submitted electronically to BAM analyst, at same time as Agency Request Budget, if budget includes any fee establishment, increase, or decrease (2007-09 columns not relevant).

A cover letter is required that provides an overview of and provides context for the impact of the change or establishment.
See instructions below for more information.

Note: Shaded fields are reported on the Detail of Fee, License, or Assessment Revenue Increase in the budget binder (107BF08).

DEQ Background Documentation Air Contaminant Discharge Permit fees

Why the fee change or new fee required?

The Environmental Protection Agency (EPA) has adopted a series of new air quality regulations that will affect thousands of small businesses in Oregon in 70 different source categories. To comply with these regulations, many Oregon businesses will be required, for the first time, to get an Air Contaminant Discharge Permit (ACDP) from DEQ.

Sources affected by federal air quality standards applicable to non-major sources, are currently required to have a simple or standard ACDP unless a general ACDP has been issued for the source category. The cost of simple and standard ACDP permits range between \$1,920 and \$7,680 per year while a general ACDP permit ranges from \$120 to \$1,872 per year.

New General ACDP Class 6:

DEQ typically implements the federal National Emission Standards for Hazardous Air Pollutants (NESHAP) by adopting the NESHAP by reference and through DEQ's permitting programs, with the exception of the Dry Cleaning NESHAP. The Dry Cleaning NESHAP has been implemented by requiring dry cleaners to report compliance information as part of the Land Quality Division's annual dry cleaner report. The Air Quality Division currently receives no resources to process the reported information or to perform compliance inspections. As a result, there have been limited inspections at dry cleaners and a high rate of non-compliance with the NESHAP. In order to increase the compliance rate, more inspections of dry cleaners are needed. To pay for these inspections, this rulemaking proposes to add a requirement that dry cleaners using perchloroethylene obtain a General ACDP. The new revenue will allow DEQ to perform more inspections at dry cleaners and increase the level of compliance.

The dry cleaning regulation applies to dry cleaners that DEQ already regulates under the Land Quality Division, which charge fees on dry cleaners. To implement the dry cleaning regulation, the Air Quality and Land Quality Divisions are working together to leverage resources and reduce the impact on dry cleaners. The Air Quality and Land Quality Divisions are working on an implementation strategy that would have the Land Quality Division inspect half the dry cleaners using existing funds and the Air Quality Division inspect the other half of dry cleaners using the new fee revenue. This innovative approach will minimize the additional revenue DEQ would need to implement the new dry cleaning regulation. As a result of this work DEQ is proposing a new General ACDP Class 6 which would carry a \$240 annual fee. No current General ACDP fee categories would change. The last time the General ACDP fees were changed was November 8, 2007, when all ACDP fee were increased by 20%.

General ACDP Attachments:

With the adoption of numerous area source NESHAPs, it is difficult to include all requirements that apply to a source category into a single General ACDP. It would also be burdensome to issue a single business multiple permits. This rulemaking would allow a business to be assigned

to one General ACDP and one or more General ACDP Attachments. Affected businesses would be charged the full annual fee for one General ACDP, which ranges from \$120 and \$1,872, and an annual fee of \$120 for each General ACDP Attachment.

Registration:

Oregon's Small Business Compliance Advisory Panel asked DEQ to reduce the administrative burden of implementing the new area source NESHAPs. The panel recommended that DEQ establish a registration program as an alternative to permitting for small businesses that voluntarily participate in an environmental certification program. This rulemaking would allow DEQ to exempt certified businesses from permitting if they register with DEQ and pay registration fees. Registration would ensure that businesses comply with the new regulations and encourage them to adopt sustainable practices to achieve greater environmental benefits. The proposed annual registration fees of \$180 (for dry cleaners) and \$240 (for auto body shops) would pay DEQ's cost for developing and implementing the registration program and ensuring compliance with the applicable regulations. Registration is contingent upon passage of 2009 Senate Bill 103, which would give DEQ the authority to charge fees for registration.

Program Funding

The ACDP program is funded by approximately 10% General Fund (\$460,000) and Federal Fund combined with the remaining 90% coming from fees or Other Fund. The new fees are generated by the addition of new permitted sources, and the fee revenue is required to support work associated with the new permits. Statutes do not require a minimum proportion of General Fund in overall program funding but since the overall workload is expanding, the new fee does not allow replacement of General Fund.

Stakeholder Feedback

Auto body shops:

The standing Small Business Compliance Advisory Committee (CAP) has been and will be utilized during this rulemaking. The CAP serves in a voluntary advisory capacity to increase the effectiveness of Oregon's Air Quality Small Business Assistance program. The CAP reviews business assistance materials and new air quality pollution prevention technologies. The purpose of addressing this committee is to present DEQ's implementation strategy for the new federal regulations and receive the committee's input and/or recommendations.

The CAP recommended that DEQ establish a registration program as an alternative to permitting for small businesses that voluntarily participate in an environmental certification program, specifically auto body shops that participate in the EcoBiz. DEQ is proposing to charge an annual fee of \$240 for registered auto body shops. The CAP has not yet commented on the fee level and it is unknown whether they will support or oppose the fee level. However, the proposed annual registration fee of \$240 is less than the proposed annual permitting fee of \$720. In addition, if an auto body shop commits to switch to paints free of toxic metals, the shop is not required to pay permitting fees or registration fees.

Dry cleaners:

DEQ has been discussing the need for new revenue with the standing Dry Cleaner Advisory Committee. DEQ initially proposed General ACDP Class 4 for dry cleaners. The Committee expressed opposition to permitting and objected to a \$360 annual fee as being excessive. DEQ's Land Quality and Air Quality Divisions are working together to leverage existing resources and bring down the cost of the permit. As a result of this work DEQ is proposing a new General ACDP Class 6 which would carry a \$240 annual fee. It is likely the Committee will still oppose permitting and view this fee as too high. However, this rulemaking would allow DEQ to exempt certified dry cleaners from permitting if they register with DEQ and pay registration fees. Registration would potentially address the Committee's opposition to permitting and the \$180 annual registration fee would potentially address the Committee's view that the \$240 annual permitting fee is too high.

Other permittees:

DEQ will receive feedback on General ACDP Attachments as part of the public notice process. At this time, DEQ is not sure whether there will be opposition or support for General ACDP Attachments.

Contracting Out

General ACDP Class 6 would apply to dry cleaners subject to the federal dry cleaning standards. DEQ did not consider contracting out this work because the Department is already doing this work and will leverage resources to minimize the impact on affected dry cleaners.

The fees for general ACDP attachments and registration would apply to sources subject to multiple area source NESHAPs and sources who are participating in an environmental performance program. General ACDP attachments and registration would give DEQ more flexibility to implement the area source NESHAPs and would mitigate the fiscal and administrative burden on affected sources. DEQ did not consider contracting out this work because the Department is already doing ACDP permitting work.