
Date: November 15, 2010
To: Environmental Quality Commission
From: Dick Pedersen, Director
Subject: Agenda item N, Rule adoption: Title V operating permit fee increases
December 9-10, 2010, EQC meeting

Why this is important Oregon's Title V operating permit program helps prevent air pollution, reduce the number of unhealthy air days and 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 Department of Environmental Quality is proposing increases to Oregon's Title V operating permit fees to cover DEQ's costs to operate the program. Failure to increase the fees could affect DEQ's ability to maintain adequate staff levels in the program, which could jeopardize DEQ's ability to protect Oregon's air quality and maintain federal approval of the state program.

DEQ recommendation and EQC motion

DEQ recommends that the Environmental Quality Commission:

- (1) Determine that increasing Title V operating permit 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 proposed amendments to Oregon administrative rules chapter 340 division 220 as presented in attachment A. The amendments increase Oregon's Title V operating permit fees by the amounts in statute and by the change in the consumer price index pursuant to ORS 468A.315. The fee increases reflect a technical correction required by Senate Bill 104 (2009), codified in ORS 468A.315.

Background and need for rulemaking

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. The Environmental Protection Agency approved Oregon's program in 1994.

The Oregon Legislature established Oregon's Title V fees in three categories:

- An annual base fee is assessed to all Title V sources regardless of emission quantities;
- Emission fees are assessed per ton on emissions of regulated pollutants from individual sources per calendar year; and

- Specific activity fees are assessed when a source owner or operator modifies a permit or installs ambient monitoring networks requiring DEQ's review.

Title V fees pay for permitting, inspections, technical assistance, 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.

State law increases the annual base fee in 2010 and authorizes the commission to adjust all of the fee categories by the annual change in the consumer price index. The commission must adopt the fees by rule to reflect the change in the index since 1989.

The increase to the annual base fee stabilizes program revenue by reducing reliance on emission fees and increasing reliance on base fees. This is necessary to prevent a loss of revenue when new federal regulations reduce emissions from the highest emitting sources in coming years and when the emission fee cap changes 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.

Revenue from the proposed fees would fund the Title V program through 2012 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 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 businesses required to hold Title V operating permits. Title V permit holders are generally the largest stationary emission sources in Oregon, such as 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 subject to Title V permitting if they have the potential to emit at or above major source thresholds. DEQ anticipates approximately 116 sources will be subject to Oregon's Title V program in 2011.

The proposed rulemaking would increase Title V fees for 2010 and 2011 and incorporate a fee increase for 2009 identical to the increase already adopted through a temporary rulemaking. The fees for 2009 include the change in the 2008 consumer price index and reflect a technical correction required by statute. The fees for 2010 include the increase to the annual base fee in statute and the change in the 2009 consumer price index, and the fees for 2011 include the change in the 2010 consumer price index. The annual base fee is smaller than the emission fees paid by most sources. The table below illustrates the proposed fees.

Proposed Title V fees for 2009, 2010 and 2011 by fee category:

Fee category	From fees in rule	To 2009 fees (already invoiced)	Increase over fees in rule	To 2010 fees (to be invoiced)	Increase over 2009 fees	To 2011 fees (to be invoiced)	Increase over 2010 fees
Annual base fee	\$5,183	\$5,421	\$238 (4.6%)	\$7,183	\$1,762 (32.5%)	\$7,289	\$106 (1.5%)
Emission fee (per ton)	\$51.83	\$54.21	\$2.38 (4.6%)	\$54.31	\$0.10 (0.2%)	\$55.11	\$0.80 (1.5%)
<i>Specific Activity Fees:</i>							
Administrative	\$418	\$437	\$19 (4.6%)	\$437	\$0 (0.0%)	\$444	\$7 (1.6%)
Simple	\$1,672	\$1,748	\$76 (4.6%)	\$1,751	\$3 (0.2%)	\$1,777	\$26 (1.5%)
Moderate	\$12,540	\$13,115	\$575 (4.6%)	\$13,139	\$24 (0.2%)	\$13,333	\$194 (1.5%)
Complex	\$25,081	\$26,231	\$1,149 (4.6%)	\$26,279	\$48 (0.2%)	\$26,667	\$388 (1.5%)
Ambient Review	\$3,344	\$3,497	\$153 (4.6%)	\$3,503	\$6 (0.2%)	\$3,555	\$52 (1.5%)

Technical correction

The proposed fees reflect a technical correction pursuant to Senate Bill 104 (2009), codified in ORS 468A.315. 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 August 31, the statute simply provided “calendar year,” commonly understood as the twelve-month period ending December 31. The correction shifts the consumer price index period DEQ uses in fee calculations back several months. This resulted in a onetime larger than normal percentage increase in the fees that were already invoiced in 2009. The correction does not affect the percentage increase in 2010 or subsequent years.

The rulemaking would not require retroactive collection of fees. In August 2009, the commission adopted temporary rule amendments that increased fees for 2009 to allow DEQ to issue invoices to Title V permit holders on the normal 2009 billing schedule and avoid the need for a supplemental billing.

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 reached out to permit holders and DEQ's small business compliance advisory panel in 2007 regarding Title V program funding and the need to increase Title V fees in statute. DEQ worked with fee payer representatives including Associated Oregon Industries and Northwest Pulp and Paper Association on legislation to increase the fees in statute, which the Oregon Legislature adopted in 2007.

In September 2010, DEQ published information about the proposed rules in newspapers and on its website and used its on-line subscription delivery service to notify the public about the rulemaking proposal. This includes over 2,400 people subscribed to receive updates about air quality rules and the Title V program. DEQ sent notice of the proposed rulemaking to Title V permit holders and interested parties. DEQ held a public hearing in October to provide a forum for Title V permit holders and interested parties to comment on the rule.

Public comment

DEQ issued notice of the proposed rulemaking in September 2010 and held a formal public comment period for the proposed rules from Sept. 20, 2010, to Oct. 19, 2010. Attachment B provides summaries of the public comments received and DEQ's responses. After the public comment period closed, DEQ made minor technical corrections to the rules. DEQ eliminated references to OAR chapter 340 division 218 from the description of specific activity fees and eliminated language that is no longer applicable in the rule governing assessment of emission fees for calendar year 2008.

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 the proposed fee increases. Inadequate funding could jeopardize DEQ's ability to properly implement the program and maintain federal approval.

Next steps

If the commission adopts the proposed rule amendments, the fee increases would become effective upon filing with the Secretary of State and DEQ would issue invoices to Title V permittees in December 2010.

Attachments

- A. Proposed rule revisions
- B. Summary of public comments and agency responses
- C. Presiding Officer's report on public hearing
- D. Statement of Need and Fiscal and Economic Impact
- E. Land Use Evaluation statement
- F. Relationship to Federal Requirements questions
- G. Written comments received

Available upon request

- Oregon Revised Statutes (ORS 468.020, 468.065, 468A.025, 468A.040, 468A.310 and 468A.315)
- 2009-2011 Legislatively approved budget
- 2009-2011 Revenue forecast
- Legal notice of hearing
- Rulemaking announcement
- Written comments received
- Federal Clean Air Act Amendments of 1990
- US Department of Labor, Bureau of Statistics, Consumer Price Index through August 2010

Approved:

Division: _____

Section: _____

Report prepared by: Andrea Curtis
Phone: 503-229-6866