

State of Oregon
Department of Environmental Quality

Memorandum

Date: Nov. 16, 2012

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item G, Action item, Rule proposal: Title V operating permit fee increases authorized in statute
Dec. 6-7, 2012, EQC meeting

Why this is 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 by monitoring compliance with air quality regulations for industrial facilities. 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 the reasonable costs for DEQ to operate the program. Failure to increase 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 Oregon Environmental Quality Commission:

- (1) Determine that increasing Title V operating permit fees by the change in the consumer price index, according 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 proposed amendments to Oregon Administrative Rules Chapter 340, Division 220, as presented in attachment A.

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 U.S. 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 authorizes the commission to adjust all of the fee categories by the annual change in the consumer price index. The commission must amend the rules in order to implement a fee increase.

The rulemaking would increase Title V fees for the 2013 invoice year by the change in the 2012 consumer price index, which is approximately 2.6 percent.

In order to adjust fees to reflect the annual change in the consumer price index, DEQ has usually conducted a fee increase rulemaking every year. To reduce the cost of rulemaking, DEQ investigated the possibility of establishing a two-year fee schedule with one rulemaking every two years. However, because of timing issues related to the release of consumer price index data, DEQ's invoicing schedule and the length of time needed to complete a rulemaking, DEQ determined it is not feasible to include two years' worth of consumer price index increase in one rulemaking.

While a single rulemaking approach is not feasible, DEQ is implementing a two-phase approach that achieves savings by combining the public notice and comment for two rulemakings. Phase 1, which included fees for the 2012 invoice year, was presented to the commission in June 2012. The commission adopted the 2012 fees at its June meeting. In Phase 2, the current phase of the rulemaking, DEQ is presenting the 2013 changes to the commission for consideration. The proposed rules in attachment A reflect the proposed fees for the 2013 invoice year.

Revenue from the proposed fees would fund the Title V program through 2014 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 facilities 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 source. As of August 2012, when DEQ issued invoices for the 2012 invoice year, there were 120 sources that were subject to Oregon's Title V program.

The proposed amendments would increase Title V fees for 2013 by the change in the 2012 consumer price index. Most sources pay more in emission fees than base fees each year. The table on the following page illustrates the proposed fees.

Proposed Title V fees for 2013 by fee category:

Fee category	Existing fees in rule	Proposed 2013 fees (to be invoiced)	<i>Increase over existing fees</i>
Annual base fee	\$7,466	\$7,657	\$191
Emission fee (per ton)	\$56.45	\$57.90	\$1.45
<i>Specific Activity Fees</i>			
Administrative	\$455	\$466	\$11
Simple	\$1,820	\$1,867	\$47
Moderate	\$13,657	\$14,008	\$351
Complex	\$27,314	\$28,016	\$702
Ambient Review	\$3,641	\$3,735	\$94

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

In February 2012, 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 included over 4,600 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 via email. DEQ held a public hearing in March to provide a forum for Title V permit holders and interested parties to comment on the rule. In November 2012, DEQ notified Title V permit holders of the proposed 2013 fee increase via email.

Public comment

DEQ did not receive any public comment on this rulemaking.

Key issues	Because DEQ must cover all program costs using permit fee revenue, DEQ is unable to maintain 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. DEQ would issue invoices reflecting the fee increases to Title V permit holders in August 2013.
Attachments	A. Proposed Rule Revisions B. Presiding Officer's Report on Public Hearing C. Statement of Need and Fiscal and Economic Impact D. Land Use Evaluation Statement E. Relationship to Federal Requirements Questions
Available online or upon request	<ul style="list-style-type: none">• <i>Online:</i> Oregon Revised Statutes (ORS 468.020, 468.065, 468A.025, 468A.040, 468A.050, 468A.310 and 468A.315)• <i>Online:</i> 2011-2013 Legislatively approved budget• <i>Online:</i> Federal Clean Air Act Amendments of 1990• <i>Online:</i> U.S. Department of Labor, Bureau of Statistics, Consumer Price Index through August 2012• <i>By request:</i> Legal notice of hearing• <i>By request:</i> Rulemaking announcement• <i>By request:</i> 2011-2013 Revenue forecast

Approved:

Division: _____

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