



State of Oregon Department of Environmental Quality

Oregon Environmental Quality Commission meeting

Sept. 17-18, 2020

Rulemaking, Action Item E ACDP Fee Increase 2020

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DEQ Recommendation to EQC

DEQ recommends that the Environmental Quality Commission:

- Adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules; and
- Approve incorporating the adopted rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040; and
- Direct DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval.

Proposed motion language:

“I move that the Environmental Quality Commission adopt the proposed rules as seen in Attachment A of the staff report for this item as part of Chapter 340 of the Oregon Administrative Rules; and approve incorporating these rule amendments into the Oregon Clean Air Act State Implementation Plan under OAR 340-200-0040; and direct DEQ to submit the SIP revision to the U.S. Environmental Protection Agency for approval.”

Introduction

Short summary of proposed rule changes

DEQ proposes rules to:

1. Increase air contaminant discharge permit fees

Increase air contaminant discharge permit fees to implement the 2019 Legislatively approved budget and provide resources required for administration of Oregon's air contaminant discharge permit program. The rule changes would:

- Phase in increase all ACDP annual fees according to schedules in the proposed rules; and
- Increase most ACDP specific activity fees.

2. Reduce greenhouse gas reporting fees

Reduce greenhouse gas reporting fee percentage of applicable ACDP fee to maintain existing funding levels and avoid unintended fee increases.

3. Add a new fee category for certain Basic Air Contaminant Discharge Permits

Add a listing to OAR 340-216-8010 Table 1, Part A, for Basic ACDPs that provides a new permit category for noncomplex sources that accept an enforceable limit on their uncontrolled potential to emit.

4. Establish a new fee applicable to sources or individuals who submit a Notice of Intent to Construct

Create a new fee associated with a Type 2 Notice of Intent to Construct application required by OAR Chapter 340 Division 210.

DEQ has developed two different rule options for the Oregon Environmental Quality Commission's consideration. DEQ proposes the Oregon Environmental Quality Commission approve one of the proposed rule options for incorporation into the Oregon Clean Air Act State Implementation Plan and submittal to the U.S. Environmental Protection Agency for its approval under the federal Clean Air Act. The options represent different approaches to the rate at which the fee increases would be implemented.

Option 1 – 50% Reduction in Revenue (relative to legislative approval)	
<i>Fee phasing</i>	<i>Impact to DEQ</i>
<ul style="list-style-type: none">• Basic permit holders pay 15% increase in 2020 and 2021, 20% and 2022.• General permit holders pay a 25% increase in 2020 and 2021, and a 20% increase in 2022• Simple permit holders pay a 70% increase in 2020• Standard permit holders pay a 71% increase in 2020	<ul style="list-style-type: none">• DEQ hires four of the six new ACDP positions and delays hiring of remaining positions until next biennium (Winter 2021)• No additional increases needed for at least six years

Option 2 – 70% Reduction in Revenue (relative to legislative approval)	
<i>Fee deferrals and phasing</i>	<i>Impact to DEQ</i>
<ul style="list-style-type: none"> • No increase in 2020 for Basic and General permit holders (90% of fee payers) in 2020 • Basic permit holders pay 20% increase in 2021 and 30% increase in 2022. • General permit holders pay 30% increase in 2021 and a 40% increase in 2022. • Simple and Standard permit holders pay a 45% increase in 2020 and a 25% in 2021. 	<ul style="list-style-type: none"> • DEQ hires two of the six new ACDP positions and delays hiring of remaining positions until next biennium (Winter 2021) • Delayed progress in reducing permit backlog until late 2021

Background

The Air Contaminant Discharge Permit (ACDP) Program is part of Oregon’s federally approved State Implementation Plan, required to meet national air quality standards and Oregon’s clean air laws. It is also DEQ’s primary strategy for addressing air emissions from industrial sources.

Oregon’s Air Contaminant Discharge Permit Program:

- Administers federal health standards, air toxic requirements and other regulations.
- Reduces the number of unhealthy air days and health risks from air toxics.
- Issues, renews or modifies permits to prevent or reduce air pollution from industrial construction and operating activities.
- Ensures that pollution sources comply with applicable state and federal air emissions standards.
- Ensures that sources of air pollution install required controls such as filtration equipment, combustion controls and vapor controls needed to protect air quality.
- Provides other essential services such as State Implementation Plan development, emission inventories, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA. The permit fees help support a portion of air quality monitoring and planning.
- Approximately 91 percent of the revenue for the air contaminant discharge permit program comes from permit fees. State General Fund and federal funds provide the balance.
- Greenhouse gas reporting fees are calculated as a percentage of the permit fee.

The last fee increase for the ACDP program was a 20 percent increase effective June 2014. DEQ sought legislative authorization for a fee increase during the 2017 session, but it was not approved as a result of controversy over the Cleaner Air Oregon program, and four positions were eliminated as a result.

A performance audit conducted by the Secretary of State in 2018 found DEQ was not renewing complex air quality permits on time and not consistently meeting inspection

targets. The performance audit identified a number of factors contributing the permit renewal backlog, including unmanageable workloads caused by budget and staffing cuts. Auditors made ten recommendations. In a follow-up audit, the Secretary of State's office found that DEQ has either fully implemented, or is on the way to fully implementing all ten recommendations.

Auditors recommended that DEQ conduct a comprehensive workload-to-staffing analysis and to work with stakeholders and the legislature to "right-size" the program. The agency completed the comprehensive workload analysis for ACDP in 2018 and found the program needs at least six additional FTE to eliminate the backlog within five years.

As part of DEQ's 2019-2021 Legislatively Approved Budget, the Oregon Legislature authorized fee increases in the Air Contaminant Discharge Permit program to add the six additional positions. The proposal received no opposition throughout the legislative process.

DEQ has proposed two options for implementing the fee increases authorized by the legislature, both of which significantly delay the increases and reduce funding for this biennium. These reductions respond to the economic disruption caused by the COVID-19 pandemic, and are designed to reduce fiscal impacts particularly for smaller sources of air emissions. In addition the proposed rules include new fee-waiver language. This provides fee payers an avenue to request a fee waiver, which may be approved in part or in full, on a case-by-case basis by the DEQ Director.

Affected parties

The proposed amendments would affect:

- Facilities that currently have an Air Contaminant Discharge Permit and any facility that applies for this type of permit in the future.
- Facilities that have an Air Contaminant Discharge Permit that must report greenhouse gases under OAR Chapter 340 Division 215 and pay greenhouse gas reporting fees.
- Facilities that submit a Notice of Intent to Construct application to conduct activities that meet the criteria in OAR Chapter 340 Division 210 for a Type 2 change (generally, minor changes to permits for existing facilities).
- Facilities that are subject to permitting under OAR Chapter 340 Division 216 Table 1, Part B number 85 but are eligible and elect to apply for the new Basic ACDP. These are certain sources, both stationary and portable, that would have actual emissions, if the source were to operate uncontrolled, of five or more tons per year of direct PM_{2.5} or PM₁₀ if located in a PM_{2.5} or PM₁₀ nonattainment or maintenance area, or 10 or more tons per year of any single criteria pollutant if located in any part of the state.

The proposed amendment of Oregon Administrative Rule 340-200-0040 to incorporate new air contaminant discharge permit program fees into the State of Oregon Clean Air Act Implementation Plan does not change the regulated parties.

Alternatives Considered

What alternatives did DEQ consider?

As noted above, the last fee increase for the ACDP program was in 2014. Infrequent adjustments to fees result in larger and less predictable increases for regulated entities. Current state law does not include a provision for routine adjustments to Air Contaminant Discharge Permit fees using a price index. The proposed fees address increased costs in current service levels, and fund program resources required to address capacity requirements identified by both the Oregon Secretary of State and EPA.

DEQ considered increasing all annual fee categories a proportionately equivalent amount, but advisory committee feedback stressed the importance of minimizing the impact to small businesses, specifically the Basic ACDPs.

DEQ considered leaving the greenhouse gas reporting fees at current levels, but decided against that option to ensure that the ACDP fee increase does not also raise greenhouse gas reporting fees and further increase the balance of funds in the Greenhouse Gas Reporting subprogram.

Statement of Need

What need would the proposed rule address?

1. Increase Air Contaminant Discharge Permit fees

The Air Contaminant Discharge Permit Program serves two important purposes.

First, ACDPs are required under the federal Clean Air Act to ensure that new and modified sources are equipped with required emission control technology and that emissions from the new facilities will not violate air quality standards or other federal requirements. The construction approval process is important because it is most cost-effective for facilities to install emission controls at the time of new construction, and because the approval process ensures that emissions from new sources will not cause violations of federal air quality standards, which can have area-wide negative economic consequences. Timely permitting of new sources is important because applicants may not begin construction until the approvals are issued. DEQ prioritizes this work as a result.

Second, ACDPs also govern operation of air pollution sources that are not subject to the federal Title V operating permit program. This includes sources with emissions that fall below Title V permitting thresholds, as well as sources that request emission limits that assure that they will stay below Title V permitting thresholds. Facilities are subject to a variety of federal and state air quality emission standards that help ensure that Oregonians breathe clean and healthy air, and air contaminant discharge permits ensure that permittees comply with these standards.

The ACDP program is funded by a combination of permit fees, general fund and federal funds. Since the 1990s, general and federal funds have declined to the point where permit fees now account for approximately 91 percent of program revenue. In addition, ACDP fees have not kept pace with inflation because the law does not base fees on a price index. Even with this loss in funding from all sources, DEQ was able to delay the need for a fee increase from 2007 until 2014 by implementing extensive program streamlining. In 2017, DEQ sought a 20 percent increase in fees to address worsening shortfalls in permit renewals and inspections. These increases were approved by the EQC and the Governor, as part of the Governor's recommended budget. However, as a result of last-minute controversy in the legislature over the Cleaner Air Oregon program, the legislature failed to include the increases in the agency's 2017 legislatively-approved budget, and as a result DEQ had to eliminate four positions, further worsening the resource shortfalls.

In 2019, the legislature approved restoring the funding sought by the agency, including the fee increases that are before the commission in this rulemaking. The fee changes proposed in this rulemaking would bring DEQ back on schedule with necessary

program funding and is expected to fund the program adequately into the 2025-2027 biennium.

A Secretary of State performance audit in 2018 found that DEQ was not renewing complex air quality permits on time and not consistently meeting inspection targets. The audit identified a number of factors contributing to these issues, including unmanageable workloads caused by budget and staffing cuts. While all of the audit's ten recommendations are either fully or close to fully implemented, funding and positions remain an important outstanding recommendation to be addressed.

A comprehensive staffing-to-workload analysis was conducted by DEQ in 2018 that showed six additional staff are needed for DEQ to reduce the backlog within five years and better meet core program commitments. This workload analysis was a recommendation of the Secretary of State audit and contributed to gaining stakeholder trust and buy-in regarding the fee increase proposal.

DEQ has balanced its vital obligation to enforce the law and protect public health with consideration of the dramatic disruptions caused by the COVID-19 pandemic. To lessen the economic impact to sources across Oregon, DEQ modified the proposed rules ahead of the May 2020 EQC meeting and has since developed an additional reduction option to further delay the fee increase s. Each option has different impacts to both permittees and DEQ.

2. Adjust the calculation for greenhouse gas reporting fees

Greenhouse gas reporting fees are assessed as a percentage of the source's ACDP fee. As a result, permit holders would pay higher greenhouse gas reporting fees as an unintended effect of increasing air contaminant discharge permit fees. Adjusting the greenhouse gas reporting percentage downward ensures permit holders will pay the same or slightly less greenhouse gas reporting fees.

How would the proposed rule address the need?

1. Increase Air Contaminant Discharge Permit fees

The proposed rules would increase ACDP fees, eventually reaching the overall revenue levels authorized by the 2019 legislature. However, the increases would be reduced significantly for most sources (those with a smaller amount of emissions), and would be deferred for many others. While these changes would further delay progress in reducing backlogs in permit renewals and inspections, they would avoid making those program performance shortfalls worse

2. Adjust the calculation for greenhouse gas reporting fees

Adjusting the percentage of the Air Contaminant Discharge Permit fee used to calculate greenhouse gas reporting fees from 12.5 percent to 7.31 percent avoids the unintended consequence of having an increase in the ACDP also trigger an increase in greenhouse gas reporting fees. Fee payers would pay the same dollar amount as they currently pay under the current fee percentage or slightly less.

How will DEQ know the rule addressed the need?

The rule will have addressed the need if:

- DEQ eliminates the past shortfalls in permit renewals and permit inspections over then next five years.
- Permitted facilities avoid an increase in greenhouse gas reporting fees.

Rules Affected, Authorities, Supporting Documents

Lead division

Air Quality Division

Program or activity

Air Contaminant Discharge Permit Program

Chapter 340 action: Amend

Amend - OAR		
340-200-0040	340-210-0230	340-210-0240
340-216-8020	340-216-8010	

Statutory Authority - ORS				
468.020	468.065	468A.025	468A.035	468A.050
468A.070	468A	468A.040	468A.055	468A.310

Statutes Implemented - ORS				
468	468A.025	468A.035	468A.050	468A.070
468A.135	468A.040	468A.055	468A.310	468A

Legislation

House Bill 5017 (2019)

Policy Option Package 116 (2019)

Fee Analysis

These proposed rules would establish new fees and increase existing fees. EQC authority to act on the proposed fees is ORS 468A, 468.020, 468A.025, 468A.040 and 468A.310.

Brief description of proposed fees

DEQ proposes to increase fees associated with the Air Contaminant Discharge Permit program sufficient to generate an increase in revenue, charge for certain notification of intent to construct applications, and establish a new permit category for certain sources already subject to permitting.

Reasons

The proposed fees incorporate the legislatively approved changes to DEQ's budget. Policy Option Package 116, approved in the 2019 legislative session, authorizes the fee increases. Industry, environmental, and other stakeholders did not oppose DEQ's request for additional positions.

By establishing a new Basic Air Contaminant Discharge Permit category, DEQ is streamlining permitting for relatively simple sources that would otherwise be subject to more costly and time-consuming permits. Some Simple and Standard ACDP sources may be eligible for assignment to this Basic ACDP, which would result in a decrease in total fee revenue; this is made up for in part by the increase to specific activity fees.

The proposed fees would address increased program and staff costs including cost of living adjustments, step increases and benefits. ACDP fees were last raised in 2014.

The proposed fees would address legislative concerns surrounding proper funding for the ACDP program. The Secretary of State audit from 2018 found that the program was insufficiently funded. The legislative approval of Policy Option Package 116 in the 2019 session reaffirms that the legislature desires to remedy the issues addressed in the audit.

Fee proposal alternatives considered

DEQ considered the following alternatives:

- No fee increases, which would require DEQ to further reduce program staffing by approximately 30 percent.. Without a fee increase, the program will eliminate 10 of the 35 legislatively approved positions over the next few years, significantly impacting the agency's ability to deliver on core responsibilities.
- Increasing annual fees at differing rates and in differing amounts in order to reduce fiscal impacts to source categories that have lower emissions levels.
- Increasing all annual fee categories a proportionately equivalent amount.

Fee payers

Fee payers are air quality permit-holders from across the state including, but not limited to, the activities and operations listed in Oregon Administrative Rules Chapter 340 Division 216 Table 1.

Fee payers are also be individuals or companies who propose construction activities subject to the Type 2 construction notification requirements in OAR 340 Division 210, excluding existing Basic and General Air Contaminant Discharge Permit holders.

Fee payers are also be sources subject to permitting from OAR 340 Division 216 Table 1 that meet the criteria of the new Basic ACDP, but these fee payers will be assessed a lesser fee than is or would otherwise be applicable.

Affected party involvement in fee-setting process

Ahead of the 2019 legislative session, DEQ held three stakeholder meetings to discuss program priorities and needs and develop a consensus around proposed fee increases. This collaborative effort resulted in a budget proposal that included these fee increases, and that was not opposed during the legislative process. Ahead of the this rulemaking process, DEQ convened a workshop with industry stakeholders to discuss options regarding how to implement the overall increase in fees approved by the legislature. DEQ also notified all permitted sources of an expected fee increase and encouraged participation in the rulemaking process.

DEQ convened a Rules and Fiscal Advisory Committee that included appointees representing a variety of industries directly and indirectly affected by the proposed rules. The Rules Advisory Committee/Fiscal Advisory Committee met Nov. 12, 2019, and Dec. 9, 2019.

Summary of impacts

DEQ began the analysis on how to raise the approved fee revenue with the simplest approach after establishing several alternatives as not viable: raising annual fees for all permit types by the same percentage across the board. This option allows fee payers with less complex permits and lesser fees an appropriately proportional impact. Rules and Fiscal Advisory Committee feedback, public comment, statutory requirements, and the broad impacts of Covid-19 led DEQ to make several changes to the across the board baseline approach. Attachments 'A' and 'B,' have different impacts to sources as described below.

DEQ's Air Quality program will aggressively communicate Payment Schedule and Agreements, otherwise known as 'installment plans', as outlined within the 'ACDP & TV Invoicing Internal Management Directive' to assist sources in paying their annual fees in light of the economic impacts of Covid-19. These 'installment plans' do not incur any interest or additional fees but rather allow a source to pay their fees over a specified period of time.

Annual fees

The impacts of the draft rules include an increase to annual fee payers as summarized in the following table for each option, and then described in more detail in the text that follows:

Option 1 (Attachment 'A')				
Permit Type	Current Fee	Dec 2020 Fee Due	Dec 2021 Fee Due	Dec 2022 Fee Due
Basic #1-7	\$432	\$497	\$562	\$648
Basic ACDP #8 (new)	N/A*	\$1,469		
General 1	\$864	\$1,080	\$1,296	\$1,469
General 2	\$1,555	\$1,944	\$2,333	\$2,644
General 3	\$2,246	\$2,808	\$3,369	\$3,818
General 4	\$432	\$540	\$648	\$734
General 5	\$144	\$180	\$216	\$245
General 6	\$288	\$360	\$432	\$490
Simple Low	\$2,304	\$3,917		
Simple high	\$4,608	\$7,834		
Standard ACDP	\$9,216	\$15,759		

*The new Basic ACDP is proposed to be applicable to sources that were already required to have at least a Simple ACDP; the lowest potential annual fee a source would be paying on this permit was \$2,304.

Option 1 (reduces fee increases for most fee payers for this year and next relative to DEQ's legislatively-approved budget and the fees presented to the Rules Advisory Committee. The figures above show the annual fee amounts that would result from this phased-in approach for Basic and General ACDPs (ninety percent of the overall number of sources that pay fees) over three years beginning December 2020. This would result in a fifty percent reduction in the funding increase approved for the ACDP program for this biennium (relative to the legislative approval).

1. Basic ACDP categories 1-7

Annual fee increase phased-in over the course of three years: 15 percent increase in December 2020, 15 percent increase in December 2021 and 20 percent increase in December 2022.

2. New Basic ACDP category 8

Annual fee established at \$1,469. Sources eligible for this new permit category previously paid an annual fee of at least \$2,304.

3. General ACDPs categories (1-6)

Annual fee increase phased-in over the course of three years: 25 percent increase in December 2020, 25 percent increase in December 2021, and 20 percent increase in December 2022.

4. Simple ACDPs

Annual fee increase of 70 percent, beginning in December 2020.

5. Standard ACDPs

Annual fee increase of 71 percent beginning in December 2020.

Option 2 (Attachment 'B')				
Permit Type	Current Fee	Dec 2020 Fee Due	Dec 2021 Fee Due	Dec 2022 Fee Due
Basic ACDP #1-7		\$432	\$518	\$648
Basic ACDP #8 (new)	N/A*		\$1,469	
General 1		\$864	\$1,123	\$1,469
General 2		\$1,555	\$2,022	\$2,644
General 3		\$2,246	\$2,920	\$3,818
General 4		\$432	\$562	\$734
General 5		\$144	\$187	\$245
General 6		\$288	\$374	\$490
Simple Low	\$2,304	\$3,341	\$3,917	
Simple high	\$4,608	\$6,682	\$7,834	
Standard ACDP	\$9,216	\$13,363	\$15,667	

*The new Basic ACDP is proposed to be applicable to sources that were already required to have at least a Simple ACDP; the lowest potential annual fee a source would be paying on this permit was \$2,304.

Option 2 (Attachment 'B') further reduces the fiscal impact to sources, relative to Option 1, Attachment 'A'. The reduced revenue to the agency would result in a delay in addressing permit and inspection backlogs of at least one year..

1. Basic ACDP categories 1-7

No fee increase until December 2021. Annual fee increase of 20 percent in December 2021 and 30 percent increase in December 2022.

2. New Basic ACDP category 8

Annual fee established at \$1,469. Sources eligible for this new permit category previously paid an annual fee of at least \$2,304.

3. General ACDPs categories (1-6)

No fee increase due until December 2021. Annual fee increase of 30 percent increase in December 2021 and 40 percent increase in December 2022.

4. Simple ACDPs

Annual fee increase of 45 percent increase in December 2020 and 25 percent in December 2021.

5. Standard ACDPs

Annual fee increase of 45 percent in December 2020 and 25 percent in December 2021.

Specific activity fees

Both rule options include changes in specific activity fees:

Initial permitting fees

Increase of 25 percent to fees required with submission of an application for a new permit:

- Short Term Activity ACDP: Current fee of \$3,600 and proposed fee of \$4,500.
- Basic ACDP: Current fee of \$144 and proposed fee of \$180.
- General ACDP: Current fee of \$1,440 and proposed fee of \$1,800.
- Simple ACDP: Current fee of \$7,200 and proposed fee of \$9,000.
- Construction ACDP: Current fee of \$11,520 and proposed fee of \$14,400.
- Standard ACDP: Current fee of \$14,400 and proposed fee of \$18,000.
- Standard ACDP (Major NSR or Type A State NSR): current fee of \$50,400 and proposed fee of \$63,000.

Specific activity fees

Increase of 25 percent to fees required to modify an existing permit or upon a specific occurrence:

- Basic Technical Modification: Current fee of \$432 and proposed fee of \$540.
- Simple Technical Modification: Current fee of \$1,440 and proposed fee of \$1,800.
- Moderate Technical Modification: Current fee of \$7,200 and proposed fee of \$9,000.
- Complex Technical Modification: Current fee of \$14,400 and proposed fee of \$18,000.
- Major NSR or Type A State NSR Modification: Current fee of \$50,400 and proposed fee of \$63,000.
- Modeling Review: Current fee of \$7,200 and proposed fee of \$9,000.
- Public Hearing at Source's Request: Current fee of \$2,880 and proposed fee of \$3,600.
- State MACT Determination: Current fee of \$7,200 and proposed fee of \$9,000.
- Compliance Order Monitoring (monthly): Current fee of \$144 and proposed fee of \$180.

Notification of Intent to Construct Type 2 applications

Fee established at \$720. This fee is proposed in both rules as not being applicable to existing Basic and General ACDPs.

Greenhouse gas reporting fee

The greenhouse gas reporting fee percentage has been adjusted downward to maintain current program revenue levels, from 12.5 to 7.31 for Option 1 Attachment A. The percent decrease for Option 2 Attachment B is from 12.5 to 8.62 initially, and then decreased to 7.31. This fee is a percent of the applicable annual ACDP fees listed above.

Small business considerations

To minimize impacts to small businesses:

- Both rule options include new fee-waiver related language. This provides an avenue for fee payers to request a waiver, to be reviewed and approved in part or in full, on a case-by-case basis.
- Both rule attachments either phase-in or delay and phase-in the annual fee increases for Basic and General ACDPs. Basic and General ACDP permit holders account for the majority of small businesses requiring an air quality permit.
- The new Basic ACDP (category #8) is proposed to be established; this will most likely be applicable to current Simple ACDPs that are relatively simple operations; these are also likely to be smaller facilities and processes.
- The non-technical permit modification fee (a specific activity fee) is not proposed to increase and will incur no changes as this fee is paid most frequently by small businesses (Basic and General ACDPs).
- The Notification of Intent to Construct Type 2 fee is proposed to not be applicable to Basic and General ACDPs. While this drastically reduces the number of potential fee payers, it also reduces the impact to the smallest sources.

These proposals both represent efforts to reduce the fiscal impact on most or all businesses, large and small, from the increase originally authorized by the legislature. Both options reduce the overall amount of fees permittees would have paid under the legislatively-approved fee increase.

Rules Advisory Committee

DEQ considered advisory committee input and comments received during the public comment period in developing final recommendations to the commission. A number of changes to the proposed fee structure were made based on this input.

Links to supporting documents for proposed fees

- Oregon Administrative Rules Chapter 340 Division 216 Table 2:
<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=259030>
- Oregon Administrative Rules Chapter 340:
<https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=80>
- House Bill 5017 (2019):
<https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB5017>
- Oregon Revised Statutes 468A, 468.020, 468A.025, 468A.040 and 468A.310:
https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx

How long will the current fee sustain the program?


The proposed increase in revenue from both options are expected to sustain the program through the 2023-2025 biennium due to the variable timing associated with hiring for each option.

Option 1, Attachment A Rules				
Current Fees				
Program costs covered by fees (Amount estimated to be spent of fee revenue in 19-21)		\$6,480,597		91.6%
Program costs covered by General Fund (Amount estimated to be spent of General Funds in 19-21)		\$595,437		8.4%
Fee last changed	June 26, 2014			
Proposed Fees				
Expected change in revenue (+/-) (Change in revenue for the 19-21 biennium) Note: Percent of change = \$7,200,000 fee revenue in 17-19 budget + estimated additional fee revenue of \$1,701,918		\$1,701,918		23.7%
Main GF required by statute/rule to fund program		\$0		0%
Proposed fee allows General Fund replacement		\$0		0%
Expected effective date	July 1, 2020			
Transactions and Revenue				
Biennium	Number of transactions	Number of fee payers	Impact on revenue (+/-)	Total revenue (+/-)
Current biennium	10070	4731	\$1,701,918 (for one year increase in 19-21)	\$8,901,918
Next biennium	10070	4731	\$2,449,608 (additional impact for 21-23 biennium)	\$11,259,366
Option 2, Attachment B Rules				
Current Fees				
Program costs covered by fees (Amount estimated to be spent of fee revenue in 19-21)		\$6,480,597		91.6%
Program costs covered by General Fund (Amount estimated to be spent of General Funds in 19-21)		\$595,437		8.4%
Fee last changed	June 26, 2014			
Proposed Fees				

Expected change in revenue (+/-) (Change in revenue for the 19-21 biennium) Note: Percent of change = \$7,200,000 fee revenue in 17-19 budget + estimated additional fee revenue of \$945,343	\$945,343	11%		
Main GF required by statute/rule to fund program	\$0	0%		
Proposed fee allows General Fund replacement	\$0	0%		
Expected effective date	July 1, 2020			
Transactions and Revenue				
Biennium	Number of transactions	Number of fee payers	Impact on revenue (+/-)	Total revenue (+/-)
Current biennium	10070	4731	\$945,343 (for one year increase in 19-21)	\$7,627,451
Next biennium	10070	4731	\$3,858,419 (additional impact for 21-23 biennium)	\$11,485,870

Fee schedule

OAR Chapter 340 Division 216 Table 2 (Option 1, Attachment A Rules):

	<i>(Option 1, Attachment A Rules)</i>	
	OAR 340-216-8020	
	Table 2	
Air Contaminant Discharge Permits		
Part 1. Initial Permitting Application Fees: (in addition to first annual fee)		
Short Term Activity ACDP	\$4,500.00	
Basic ACDP	\$180.00	
Assignment to General ACDP ¹	\$1,800.00	
Simple ACDP	\$9,000.00	
Construction ACDP	\$14,400.00	
Standard ACDP	\$18,000.00	
Standard ACDP (Major NSR or Type A State NSR)	\$63,000.00	



(Option 1, Attachment A Rules)

OAR 340-216-8020

Table 2

Air Contaminant Discharge Permits

1. DEQ may waive the assignment fee for an existing source requesting to be assigned to a General ACDP because the source is subject to a newly adopted area source NESHAP as long as the existing source requests assignment within 90 days of notification by DEQ.

Part 2a. Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year) (applicable through June 30, 2021)

Short Term Activity ACDP		\$0
Basic ACDP	(A) #1-7 OAR 340-216-8010 Table 1 Part A	\$497.00
	(B) #8 OAR 340-216-8010 Table 1 Part A	\$1,469.00
General ACDP	(A) Fee Class One	\$1,080.00
	(B) Fee Class Two	\$1,944.00
	(C) Fee Class Three	\$2,808.00
	(D) Fee Class Four	\$540.00
	(E) Fee Class Five	\$180.00
	(F) Fee Class Six	\$360.00
Simple ACDP	(A) Low Fee	\$3,917.00
	(B) High Fee	\$7,834.00
Standard ACDP		\$15,759.00
Greenhouse Gas Reporting, as required by OAR 340, Division 215		7.31% of the applicable ACDP annual fee in Part 2

1. DEQ may extend the payment due date for dry cleaners or gasoline dispensing facilities until March 1st.

Part 2b. Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year) (applicable July 1, 2021 through June 30, 2022)

Short Term Activity ACDP		\$0
Basic ACDP	(A) #1-7 OAR 340-216-8010 Table 1	\$562.00



(Option 1, Attachment A Rules)

OAR 340-216-8020

Table 2

Air Contaminant Discharge Permits

	Part A	
	(B) #8 OAR 340-216-8010 Table 1 Part A	\$1,469.00
General ACDP	(A) Fee Class One	\$1,296.00
	(B) Fee Class Two	\$2,333.00
	(C) Fee Class Three	\$3,369.00
	(D) Fee Class Four	\$648.00
	(E) Fee Class Five	\$216.00
	(F) Fee Class Six	\$432.00
Simple ACDP	(A) Low Fee	\$3,917.00
	(B) High Fee	\$7,834.00
Standard ACDP		\$15,759.00
Greenhouse Gas Reporting, as required by OAR 340, Division 215		7.31% of the applicable ACDP annual fee in Part 2
Part 2c. Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year) (applicable July 1, 2022)		
Short Term Activity ACDP		\$0
Basic ACDP	(A) #1-7 OAR 340-216-8010 Table 1 Part A	\$648.00
	(B) #8 OAR 340-216-8010 Table 1 Part A	\$1,469.00
General ACDP	(A) Fee Class One	\$1,469.00
	(B) Fee Class Two	\$2,644.00
	(C) Fee Class Three	\$3,818.00
	(D) Fee Class Four	\$734.00
	(E) Fee Class Five	\$245.00
	(F) Fee Class Six	\$490.00
Simple ACDP	(A) Low Fee	\$3,917.00



(Option 1, Attachment A Rules)

**OAR 340-216-8020
Table 2
Air Contaminant Discharge Permits**

	(B) High Fee	\$7,834.00
Standard ACDP		\$15,759.00
Greenhouse Gas Reporting, as required by OAR 340, Division 215		7.31% of the applicable ACDP annual fee in Part 2
Part 3. Cleaner Air Oregon Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year)		
Basic ACDP	(A) #1-7 OAR 340-216-8010 Table 1 Part A	\$151.00
	(B) #8 OAR 340-216-8010 Table 1 Part A	\$302.00
General ACDP	(A) Fee Class One	\$302.00
	(B) Fee Class Two	\$544.00
	(C) Fee Class Three	\$786.00
	(D) Fee Class Four	\$151.00
	(E) Fee Class Five	\$50.00
	(F) Fee Class Six	\$100.00
Simple ACDP	(A) Low Fee	\$806.00
	(B) High Fee	\$1,612.00
Standard ACDP		\$3,225.00
1. DEQ may extend the payment due date for dry cleaners or gasoline dispensing facilities until March 1st.		
Part 4. Specific Activity Fees:		
Notice of Intent to Construct Type 2 ¹		\$720.00
Permit Modification	(A) Non-Technical ²	\$432.00
	(B) Basic Technical	\$540.00
	(C) Simple Technical	\$1,800.00



(Option 1, Attachment A Rules)

OAR 340-216-8020

Table 2

Air Contaminant Discharge Permits

	(D) Moderate Technical	\$9,000.00
	(E) Complex Technical	\$18,000.00
Toxic Air Contaminant Permit Addendum Modification	(A) Non-Technical	\$432.00
	(B) Basic Technical	\$432.00
	(C) Simple Technical	\$1,440.00
	(D) Moderate Technical	\$7,200.00
	(E) Complex Technical	\$14,440.00
Major NSR or Type A State NSR Permit Modification		\$63,000.00
Modeling Review (outside Major NSR or Type A State NSR)		\$9,000.00
Public Hearing at Source's Request		\$3,600.00
State MACT Determination		\$9,000.00
Compliance Order Monitoring ³		\$180.00/month

Part 5. Late Fees:

8-30 days late	5%
31-60 days late	10%
61 or more days late	20%

1. The Type 2 Notice of Intent to Construct does not apply to existing Basic ACDP or General ACDP sources.

2. For gasoline dispensing facilities, a portion of these fees will be used to cover the fees required for changes of ownership in OAR 340-150-0052(4) if DEQ receives both forms at the same time.

3. This is a one-time fee payable when a compliance order is established in a permit or a DEQ order containing a compliance schedule becomes a final order of DEQ and is based on the number of months DEQ will have to oversee the order.

NOTE: See history of this table under OAR 340-216-0020.

OAR Chapter 340 Division 216 Table 2 (Option 2, Attachment B Rules):



(Option 2, Attachment B Rules)

OAR 340-216-8020

Table 2

Air Contaminant Discharge Permits

Part 1. Initial Permitting Application Fees: (in addition to first annual fee)		
Short Term Activity ACDP		\$4,500.00
Basic ACDP		\$180.00
Assignment to General ACDP ¹		\$1,800.00
Simple ACDP		\$9,000.00
Construction ACDP		\$14,400.00
Standard ACDP		\$18,000.00
Standard ACDP (Major NSR or Type A State NSR)		\$63,000.00
1. DEQ may waive the assignment fee for an existing source requesting to be assigned to a General ACDP because the source is subject to a newly adopted area source NESHAP as long as the existing source requests assignment within 90 days of notification by DEQ.		
Part 2a. Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year) (applicable through June 30, 2021)		
Short Term Activity ACDP		\$0
Basic ACDP	(A) #1-7 OAR 340-216-8010 Table 1 Part A	\$432.00
	(B) #8 OAR 340-216-8010 Table 1 Part A	\$1,469.00
General ACDP	(A) Fee Class One	\$864.00
	(B) Fee Class Two	\$1,555.00
	(C) Fee Class Three	\$2,246.00
	(D) Fee Class Four	\$432.00
	(E) Fee Class Five	\$144.00
	(F) Fee Class Six	\$288.00
Simple ACDP	(A) Low Fee	\$3,341.00
	(B) High Fee	\$6,682.00
Standard ACDP		\$13,363.00



(Option 2, Attachment B Rules)

OAR 340-216-8020

Table 2

Air Contaminant Discharge Permits

Greenhouse Gas Reporting, as required by OAR 340, Division 215	8.62% of the applicable ACDP annual fee in Part 2
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1. DEQ may extend the payment due date for dry cleaners or gasoline dispensing facilities until March 1st.

Part 2b. Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year) (applicable July 1, 2021 through June 30, 2022)

Short Term Activity ACDP		\$0
Basic ACDP	(A) #1-7 OAR 340-216-8010 Table 1 Part A	\$518.00
	(B) #8 OAR 340-216-8010 Table 1 Part A	\$1,469.00
General ACDP	(A) Fee Class One	\$1,123.00
	(B) Fee Class Two	\$2,022.00
	(C) Fee Class Three	\$2,920.00
	(D) Fee Class Four	\$562.00
	(E) Fee Class Five	\$187.00
	(F) Fee Class Six	\$374.00
Simple ACDP	(A) Low Fee	\$3,917.00
	(B) High Fee	\$7,834.00
Standard ACDP		\$15,667.00
Greenhouse Gas Reporting, as required by OAR 340, Division 215		7.31% of the applicable ACDP annual fee in Part 2

Part 2c. Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year) (applicable July 1, 2022)

Short Term Activity ACDP		\$0
Basic ACDP	(A) #1-7 OAR 340-216-8010 Table 1 Part A	\$648.00



(Option 2, Attachment B Rules)

OAR 340-216-8020

Table 2

Air Contaminant Discharge Permits

	(B) #8 OAR 340-216-8010 Table 1 Part A	\$1,469.00
General ACDP	(A) Fee Class One	\$1,469.00
	(B) Fee Class Two	\$2,644.00
	(C) Fee Class Three	\$3,818.00
	(D) Fee Class Four	\$734.00
	(E) Fee Class Five	\$245.00
	(F) Fee Class Six	\$490.00
Simple ACDP	(A) Low Fee	\$3,917.00
	(B) High Fee	\$7,834.00
Standard ACDP		\$15,667.00
Greenhouse Gas Reporting, as required by OAR 340, Division 215		7.31% of the applicable ACDP annual fee in Part 2
Part 3. Cleaner Air Oregon Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year)		
Basic ACDP	(A) #1-7 OAR 340-216-8010 Table 1 Part A	\$151.00
	(B) #8 OAR 340-216-8010 Table 1 Part A	\$302.00
General ACDP	(A) Fee Class One	\$302.00
	(B) Fee Class Two	\$544.00
	(C) Fee Class Three	\$786.00
	(D) Fee Class Four	\$151.00
	(E) Fee Class Five	\$50.00
	(F) Fee Class Six	\$100.00
Simple ACDP	(A) Low Fee	\$806.00
	(B) High Fee	\$1,612.00
Standard ACDP		\$3,225.00



(Option 2, Attachment B Rules)

OAR 340-216-8020

Table 2

Air Contaminant Discharge Permits

1. DEQ may extend the payment due date for dry cleaners or gasoline dispensing facilities until March 1st.

Part 4. Specific Activity Fees:

Notice of Intent to Construct Type 2 ¹		\$720.00
Permit Modification	(A) Non-Technical ²	\$432.00
	(B) Basic Technical	\$540.00
	(C) Simple Technical	\$1,800.00
	(D) Moderate Technical	\$9,000.00
	(E) Complex Technical	\$18,000.00
Toxic Air Contaminant Permit Addendum Modification	(A) Non-Technical	\$432.00
	(B) Basic Technical	\$432.00
	(C) Simple Technical	\$1,440.00
	(D) Moderate Technical	\$7,200.00
	(E) Complex Technical	\$14,440.00
Major NSR or Type A State NSR Permit Modification		\$63,000.00
Modeling Review (outside Major NSR or Type A State NSR)		\$9,000.00
Public Hearing at Source's Request		\$3,600.00
State MACT Determination		\$9,000.00
Compliance Order Monitoring ³		\$180.00/month

Part 5. Late Fees:

8-30 days late	5%
31-60 days late	10%
61 or more days late	20%

1. The Type 2 Notice of Intent to Construct does not apply to existing Basic ACDP or General ACDP sources.
 2. For gasoline dispensing facilities, a portion of these fees will be used to cover the fees required for changes of ownership in OAR 340-150-0052(4) if DEQ receives both forms at



(Option 2, Attachment B Rules)

OAR 340-216-8020

Table 2

Air Contaminant Discharge Permits

the same time.

3. This is a one-time fee payable when a compliance order is established in a permit or a DEQ order containing a compliance schedule becomes a final order of DEQ and is based on the number of months DEQ will have to oversee the order.

NOTE: See history of this table under OAR 340-216-0020.

Statement of Fiscal and Economic Impact

Fiscal and economic impact

Increases in air contaminant discharge permit fees and new fees for certain construction applications, would affect approximately 2,500 permit holders and registrants directly and result in an overall increase in costs of:

- Option 1 Attachment A: \$1,701,178 in the 2019-21 biennium, and \$2,449,608 in 21-23 (relative to current fee levels).
- Option 2 Attachment B: \$945,343 in the 2019-21 biennium, and \$3,858,447 in 21-23 (relative to current fee levels).

Adjustments to the greenhouse gas reporting fees hold overall costs for that program at current levels by decreasing percentage of the ACDP fee amounts from 12.5 to a variable percent based on the phased-in fee increases. This adjustment allows the program to maintain sufficient revenue and sources to continue paying at current fee levels or less. Approximately 133 of the 2,500 ACDP sources pay the greenhouse gas reporting fee, the majority of which are Simple and Standard ACDPs.

Establishing the new Basic ACDP category would decrease costs to the covered permit holders, as these sources are currently subject to a more costly permit.

Statement of cost of compliance

State agencies

Federal and state agencies hold approximately 28 air contaminant discharge permits. The permit fee increases and new fees for construction would affect these permit holders directly.

Adjustments to the calculation of greenhouse gas reporting fees would not affect any of these permit holders directly as it would only maintain existing revenue levels. Changes to fees could affect these agencies indirectly if businesses change the price of goods and services to offset any increased or decreased costs from paying a permit fee.

Local governments

Local governments hold approximately 60 air contaminant discharge permits. The permit fee increases and new fees for construction would affect these permit holders directly. Adjustments to the calculation of greenhouse gas reporting fees would not affect these permit holders directly. Changes to fees could affect local governments indirectly if businesses change the price of goods and services to offset any increased or decreased costs from paying a permit fee.

Public

The proposed rules could affect the public directly if proposed construction of a source of air pollution required a notification to DEQ and qualified as a Type 2 Notification of Intent to Construct based on emissions. Changes to fees could affect the public indirectly if businesses

change the price of goods and services to offset any increased or decreased costs from paying a permit fee.

Large businesses - Businesses with more than 50 employees

Approximately 1,508 large businesses hold air contaminant discharge permits. The permit fee increases and new fees for construction would affect these permit holders directly. Adjustments to the calculation of greenhouse gas reporting fees would not affect these permit holders, as it would maintain existing revenue. The type of permit required for a facility determines the permit fees regardless of the number of employees.

Changes to fees could affect businesses indirectly if other businesses change the price of goods and services to offset any increased or decreased costs from paying a permit fee.

Small businesses – Businesses with 50 or fewer employees

Generally, facilities with less complex permits experience a smaller economic impact from fee increases than larger facilities with more complex permits. Small businesses often fall into the Basic or General ACDP categories (about 87 percent of permittees), where the cost of the fee increases range from about \$100 to \$1,500 per year based on the industry or activity type. Examples of these small businesses are dry cleaners, automotive body shops, chrome plating facilities, and sawmills.

Some small businesses, that hold more complex Simple and Standard permits, would experience higher fee increases per year.

Additional proposed fee increases would affect small businesses required to apply for a new permit or a modification to an existing permit, by increasing most specific activity fees by 25 percent.

New proposed fees for certain construction applications could also affect small businesses by establishing a fee of \$720. Basic and General ACDPs do not pay this fee and account for approximately 87 percent of permittees.

Adjustments to the calculation of greenhouse gas reporting fees would not directly affect small businesses as the adjustment is proposed downward to sustain existing levels of revenue funding.

Changes to fees could affect small businesses indirectly if other businesses change the price of goods and services to offset any increased or decreased costs from paying a permit fee.

ORS 183.336 Cost of Compliance Effect on Small Businesses

1. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rules.

Based on self-reporting on the number of employees, these proposed rules would affect approximately 964 small businesses.

- Basic ACDP: 147
- General ACDP: 753
- Simple ACDP: 47
- Standard ACDP: 17

2. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

The proposed rules do not require any additional activities. All permittees already pay annual and specific activity fees. No new information is required to be submitted with the proposed construction application fees.

3. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

The proposed rules will not require any additional resources. All permittees already pay annual and specific activity fees.

4. Describe how DEQ involved small businesses in developing this proposed rule.

DEQ included the small business environmental assistance program in the rulemaking process.

DEQ included a notification of the proposed rulemaking and an expected fee increase to all ACDP sources with the December 2019 invoices, providing approximately a one-year notification of an expected increase.

The Rules Advisory Committee/Fiscal Advisory Committee included representatives from a variety of industry types, including several that are predominantly made up of small businesses (dry cleaners, crematories, and wood preservers).

Documents relied on for fiscal and economic impact

Document title	Document location
DEQ TRAACS air quality database reports	DEQ Headquarters Office 700 NE Multnomah St. Suite 600 Portland, OR 97232

Advisory committee fiscal review

DEQ appointed an advisory committee.

As ORS 183.33 requires, DEQ asked for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 to reduce that impact.

The committee reviewed the draft fiscal and economic impact statement and its findings are stated in the minutes dated Dec. 9, 2019. The committee determined the proposed rules would have a significant adverse impact on small businesses in Oregon, and discussion included how to reduce those impacts.

As ORS 183.333 and 183.540 require, the committee considered how DEQ could reduce the rules' fiscal impact on small business by:

- Establishing differing compliance or reporting requirements or time tables for small business;
- Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
- Utilizing objective criteria for standards;
- Exempting small businesses from any or all requirements of the rule; or
- Otherwise establishing less intrusive or less costly alternatives applicable to small business.

DEQ made several changes to the draft rules to reduce the impact to small businesses:

- The Basic ACDP annual fee increase was lowered and spread over a three-year period (either three-year phase-in or delay and two-year phase-in). This represents a smaller and slower fee increase as compared to other categories.
- The General ACDP annual fee increase also was spread over a three-year period (either three-year phase-in or delay and two-year phase-in). This represents a slower fee increase as compared to other categories.
- The non-technical permit modification fee is not proposed to increase and will incur no changes as this fee is incurred most frequently by Basic or General ACDP owners and operators who have bought or sold an operation or have changed the entity's legal name.
- The Notification of Intent to Construct Type 2 fee is proposed to not be applicable to existing Basic or General ACDPs.

Housing Cost

As ORS 183.534 requires, DEQ evaluated whether the proposed rules would have an effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel.

DEQ determined the proposed rules would have an effect on the development costs because if a permit holder passes on the increase in fee costs to consumers, but expects that the costs would be minimal because of the relatively small dollar amounts involved for most sources, and the fact that the increased costs would be spread among many customers of the businesses paying the fees..

Federal Relationship

ORS 183.332, 468A.327 and OAR 340-011-0029 require DEQ to attempt to adopt rules that correspond with existing equivalent federal laws and rules unless there are reasons not to do so.

The proposed rules add requirements additional to those in federal requirements.

The proposed rules restore services for operating the air contaminant discharge permit program. While there is a federal requirement for Oregon to pay for its Clean Air Act Title V operating permit program with permit fees, and some of those permit holders must also sometimes obtain air contaminant discharge permits, the majority of facilities holding air contaminant discharge permits are required to have a permit under state law and not federal law.

Land Use

Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with statewide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the rule or program, or
- The rule or program is reasonably expected to have significant effects on:
- Resources, objects, or areas identified in the statewide planning goals, or
- Present or future land uses identified in acknowledge comprehensive plans

DEQ determined whether the proposed rules involve programs or actions that affect land use by reviewing its Statewide Agency Coordination plan. The plan describes the programs that DEQ determined significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

Goal	Title
5	Natural Resources, Scenic and Historic Areas, and Open Spaces
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarine Resources
19	Ocean Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

Determination

DEQ determined that these proposed rules do not affect land use under OAR 340-018-0030 or DEQ's State Agency Coordination Program.

EQC Prior Involvement

The commission has reviewed the rules within Attachment A as part of the May 7, 2020, regular EQC meeting, but has not reviewed the rules proposed within Attachment B. EQC did review the agency's request budget for 2019-21, which included substantial proposed increases in fee revenue for the ACDP program as well as the proposed rules at the May 7, 2020, EQC meeting.

Advisory Committee

Background

DEQ convened the ACDP Fee Increase 2020 advisory committee. The committee included industry representatives and met two times. The committee's web page is located at: <https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rACDPFees2020.aspx>

The committee members were:

Rulemaking Name Advisory Committee	
Name	Representing
John Hickey	Asphalt Pavement Association of Oregon
Sharla Moffett	Oregon Business & Industry
Amanda Dalton	Northwest Grocery Association
Kathryn Van Natta	Northwest Pulp & Paper Association
Andy Davidson/ Andy Easton	Oregon Association of Hospitals and Health Systems
Rick Angstrom	Oregon Concrete & Aggregate Producers Association
Kathryn Butters	Oregon Dry Cleaner Program Advisory Committee
David Lockwood	Oregon Feed and Grain Association
Taylor Lucy	Oregon Forestry & Industries Council
Danelle Romain	Oregon Fuels Association
Jack Trumbull/ Wally Ordeman	Oregon Funeral Directors Association
Thane Giles	Pacific Northwest Steel Fabricator's Association
Ryan Pessah	Western Wood Preservers Institute

Meeting notifications

To notify people about the advisory committee's activities, DEQ:

- Sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:
 - Rulemaking
 - Air Quality Permit Fee Increases
 - Air Quality Permits
 - DEQ Public Notices
- Added advisory committee announcements to DEQ's calendar of public meetings at [DEQ Calendar](#).

Committee discussions

In addition to the recommendations described under the Statement of Fiscal and Economic Impact section above, the committee reviewed the charter, discussed an array of fee increase scenarios, and stressed the importance of minimizing the impact to small businesses, namely Basic ACDPs.

Public Engagement

Public notice

DEQ provided notice of the proposed rulemaking and rulemaking hearing by:

- On Jan. 27, 2020, Filing notice with the Oregon Secretary of State for publication in the February 2020 Oregon Bulletin;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at:
<https://www.oregon.gov/deq/Regulations/rulemaking/Pages/rACDPFees2020.aspx> ;
- Emailing approximately 12,000 interested parties on the following DEQ lists through GovDelivery:
 - Rulemaking
 - DEQ Public Notices
 - Air Quality Permits
 - Air Quality Permit Fee Increases
- Emailing all existing permittees covered by the ACDP program.
- Emailing the following key legislators required under [ORS 183.335](#):
 - Speaker Kotek
 - Representative Reardon
 - Senate President Courtney
 - Senator Taylor
- Emailing advisory committee members,
- Posting on the DEQ event calendar: [DEQ Calendar](#)

Comment deadline

DEQ only considered comments on the proposed rules that DEQ received by 4 p.m. on Monday March 2, 2020.

Public hearing

DEQ held one public hearing. DEQ received two comments at the hearing. Attachment C includes all comments and DEQ's responses. Original comments are on file with DEQ.

Presiding Officers' Record

Hearing

Date	Feb. 27, 2020
Place	DEQ Portland Office. 700 NE Multnomah St. Suite 600, Portland, OR 97232
Start Time	2 p.m.
End Time	3:20 p.m.
Presiding Officer	Jill Inahara

Presiding officer's report

The presiding officer convened the hearing, summarized procedures for the hearing, and explained that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to sign the registration list, or if attending by phone, to indicate their intent to present comments. The presiding officer advised all attending parties interested in receiving future information about the rulemaking to sign up for GovDelivery email notices.

As Oregon Administrative Rule 137-001-0030 requires, the presiding officer summarized the content of the rulemaking notice.

Four people attended the hearing in person and there were no attendees by teleconference or webinar. Two people commented orally and there were no written comments submitted at the hearing.

Summary of Public Comments and DEQ Responses

Public comment period

DEQ accepted public comment on the proposed rulemaking from Jan. 27, 2020, until 4 p.m. on March 2, 2020. DEQ received 12 comments during the comment period, and the comments and DEQ's response are included as Attachment C of this report.

Implementation

Notification

The proposed rules would become effective upon filing on approximately Friday, Sept. 18, 2020, with the implementation of fee increases beginning dependent on the rules adopted by the EQC. DEQ would notify affected parties by:

- Emailing interested parties on ACDP-related GovDelivery lists;
- Emailing DEQ's regional air quality managers and staff; and
- Making informational changes to DEQ's external website.

Compliance and enforcement

- Affected parties: Current DEQ rules require permit holders to pay fees as applicable per OAR 340-216-8020 Table 2. After adoption and filing with the Secretary of State, any fees identified in Table 2 will be assessed the new amount. Permittee's annual fee invoices are mailed by DEQ prior to the December 1 due date.
- DEQ staff: Staff will be notified, upon EQC approval, that the fees in Table 2 have been changed. When working with sources, staff will be advised to refer to the new Table 2 fees to ensure applications are submitted with the correct assessable fee amounts.

Measuring, sampling, monitoring and reporting

- Affected parties: This rulemaking does not propose any changes to existing measuring, sampling, monitoring, or reporting requirements.

Systems

- Website: DEQ will update its website with a new 'Notice of Intent to Construct' form to clearly reference the established fee.
- Database: DEQ will use its existing TRAACS database to process applications and track notices of intent to construct applications.
- Invoicing: DEQ will use its existing TRAACS database for invoicing.

Training

- Affected parties: As the only newly established requirement is the fee for Type 2 'Notice of Intent to Construct', DEQ will ensure the external facing webpage provides additional clarity for sources obtaining the appropriate form.
- DEQ staff: DEQ holds an all-air-quality manager meeting weekly and frequently discusses the rulemaking. Additionally, DEQ will email all air quality managers and staff of the updated table upon adoption.

Five-Year Review

Requirement

Oregon law requires DEQ to review new rules within five years after EQC adopts them. The law also exempts some rules from review. DEQ determined whether the rules described in this report are subject to the five-year review. DEQ based its analysis on the law in effect when EQC adopted these rules.

Exemption from five-year rule review

The Administrative Procedures Act exempts all of the proposed rules from the five-year review because the proposed rules would:

- Amend or repeal an existing rule. ORS 183.405(4); and
- Implement legislatively approved fee changes. ORS 183.405(5)(c).

Accessibility Information

You may review copies of all documents referenced in this announcement at:
Oregon Department of Environmental Quality
700 NE Multnomah St., Ste. 600
Portland, OR, 97232

To schedule a review of all websites and documents referenced in this announcement, call Dan DeFehr, Portland DEQ office, 503-229-6442. (800-452-4011, ext. 5622 toll-free in Oregon).

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.



State of Oregon Department of Environmental Quality

ACDP Fee Increase 2020

Draft Rules – Edits Highlighted

Key to Identifying Changed Text:

~~Strikethrough: Deleted Text~~

Underline: New/inserted text

[NOTE: Summary of Changes: **Updating date for when SIP was last modified.**]

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by DEQ and is adopted as the State Implementation Plan (SIP) of the State of Oregon under the FCAA, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made under the EQC's rulemaking procedures in OAR 340 division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the EPA for approval. The SIP was last modified by the EQC on July 20~~July 18~~, 2020~~19~~.

(3) Notwithstanding any other requirement contained in the SIP, DEQ may:

(a) Submit to the EPA any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after DEQ has complied with the public hearings provisions of 40 C.F.R. 51.102; and

(b) Approve the standards submitted by LRAPA if LRAPA adopts verbatim, other than non-substantive differences, any standard that the EQC has adopted, and submit the standards to EPA for approval as a SIP revision.

(4) Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the EPA. If any provision of the federally approved State Implementation Plan conflicts with any provision adopted by the EQC, DEQ must enforce the more stringent provision.

Statutory/Other Authority: ORS 468.020 & 468A

Statutes/Other Implemented: ORS 468A.035 & 468A.135

History:

DEQ 18-2019, amend filed 07/19/2019, effective 07/19/2019

DEQ 14-2019, amend filed 05/17/2019, effective 05/17/2019

[DEQ 4-2019, amend filed 01/24/2019, effective 01/24/2019](#)

[DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018](#)

[DEQ 192-2018, amend filed 09/14/2018, effective 09/14/2018](#)

[DEQ 190-2018, amend filed 07/13/2018, effective 07/13/2018](#)

[DEQ 11-2018, amend filed 03/23/2018, effective 03/23/2018](#)

DEQ 7-2017, f. & cert. ef. 7-13-17

DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-

2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 18-2011, f. & cert. ef. 12-21-11; DEQ 1-2012, f. & cert. ef. 5-17-12; DEQ 7-2012, f. & cert. ef. 12-10-12; DEQ 10-2012, f. & cert. ef. 12-11-12; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 11-2013, f. & cert. ef. 11-7-13; DEQ 12-2013, f. & cert. ef. 12-19-13; DEQ 1-2014, f. & cert. ef. 1-6-14; DEQ 4-2014, f. & cert. ef. 3-31-14; DEQ 5-2014, f. & cert. ef. 3-31-14; DEQ 6-2014, f. & cert. ef. 3-31-14; DEQ 7-2014, f. & cert. ef. 6-26-14; DEQ 6-2015, f. & cert. ef. 4-16-15; DEQ 7-2015, f. & cert. ef. 4-16-15; DEQ 10-2015, f. & cert. ef. 10-16-15; DEQ 14-2015, f. & cert. ef. 12-10-15; DEQ 2-2017, f. & cert. ef. 1-19-17

[NOTE: Summary of Changes: **Adding language for “applicable fees” to be included with Type 2 notices of construction or modification.**]

340-210-0230

Notice of Construction and Approval of Plans: Notice to Construct

(1) Any person proposing a Type 1 or 2 change must provide notice and applicable fees in OAR 340-216-8020 to DEQ before constructing or modifying a stationary source or air pollution control device. The notice must be in writing on a form supplied by DEQ and include the following information as applicable:

- (a) Name, address, and nature of business;
- (b) Name of local person responsible for compliance with these rules;
- (c) Name of person authorized to receive requests for data and information;
- (d) The type of construction or modification as defined in OAR 340-210-0220;
- (e) A description of the constructed or modified source;
- (f) A description of the production processes and a related flow chart for the constructed or modified source;
- (g) A plot plan showing the location and height of the constructed or modified source. The plot plan must also indicate the nearest residential or commercial property;
- (h) Type and quantity of fuels used;
- (i) The change in the amount, nature and duration of regulated pollutant emissions;

(j) Plans and specifications for air pollution control devices and facilities and their relationship to the production process, including estimated efficiency of air pollution control devices under present or anticipated operating conditions;

(k) Any information on pollution prevention measures and cross-media impacts the owner or operator wants DEQ to consider in determining applicable control requirements and evaluating compliance methods;

(l) A list of any requirements applicable to the new construction or modification;

(m) Where the operation or maintenance of air pollution control devices and emission reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness, information necessary for DEQ to establish operational and maintenance requirements under OAR 340-226-0120(1) and (2); and

(n) Amount and method of refuse disposal; and

(o) Land Use Compatibility Statement signed by a local (city or county) planner either approving or disapproving construction or modification to the source if required by the local planning agency.

(2) Any person proposing a Type 3 or 4 change must submit an application for either a construction ACDP, new permit, or permit modification, whichever is appropriate.

(3) The owner of operator must notify DEQ of any corrections and revisions to the plans and specifications upon becoming aware of the changes.

(4) Where a permit issued in accordance with OAR 340 divisions 216 or 218 includes construction approval for future changes for operational flexibility, the notice requirements in this rule are waived for the approved changes.

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

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040, 468A.050, 468A.055, 468A.070 & 468A.310

Statutes/Other Implemented: ORS 468A.025, 468A.035, 468A.040, 468A.050, 468A.055, 468A.070 & 468A.310

History:

DEQ 7-2015, f. & cert. ef. 4-16-15

DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

[NOTE: Summary of Changes: **Adding language to include fees with Type 2 notices of construction or modification.**]

340-210-0240

Notice of Construction and Approval of Plans: Construction Approval

(1) Approval to Construct:

(a) For Type 1 changes, the owner or operator may proceed with the construction or modification 10 calendar days after DEQ receives the notice required in OAR 340-210-0230 or on the date that DEQ approves the proposed construction in writing, whichever is sooner, unless DEQ notifies the owner or operator in writing that the proposed construction or modification is not a Type 1 change.

(b) For Type 2 changes, the owner or operator may proceed with the construction or modification 60 calendar days after DEQ receives the notice and fees required in OAR 340-210-0230 or on the date that DEQ approves the proposed construction in writing, whichever is sooner, unless DEQ notifies the owner or operator in writing that the proposed construction or modification is not a Type 2 change.

(c) For Type 3 changes, the owner or operator must obtain either a Construction ACDP or a new or modified Standard ACDP in accordance with OAR 340 division 216 before proceeding with the construction or modification.

(d) For Type 4 changes, the owner or operator must obtain a new or modified Standard ACDP before proceeding with the construction or modification. Type 4 changes may also be subject to OAR 340 division 224, New Source Review requirements.

(2) Approval to construct does not relieve the owner of the obligation of complying with applicable requirements.

(3) Notice of Completion. Unless otherwise specified in the construction ACDP or approval, the owner or operator must notify DEQ in writing that the construction or modification has been completed using a form furnished by DEQ. Unless otherwise specified, the notice is due 30 days after completing the construction or modification. The notice of completion must include the following:

(a) The date of completion of construction or modification; and

(b) The date the stationary source, device, activity, process, or air pollution control device was or will be put in operation.

(4) Order Prohibiting Construction or Modification. If at any time, DEQ determines that the proposed construction is not in accordance with applicable statutes, rules, regulations, and orders, DEQ will issue an order prohibiting the construction or modification. The order prohibiting construction or modification will be forwarded to the owner or operator by certified mail.

(5) Hearing. A person against whom an order prohibiting construction or modification is directed may request a contested case hearing within 20 days from the date of mailing the order. The request must be in writing, state the grounds for hearing, and be mailed to the Director of DEQ. The hearing will be conducted pursuant to the applicable provisions in division 11 of this chapter.

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

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040, 468A.050, 468A.055, 468A.070 & 468A.310

Statutes/Other Implemented: ORS 468A. 025, 468A.035, 468A.040, 468A.050, 468A.055, 468A.070 & 468A.310

History:

DEQ 7-2015, f. & cert. ef. 4-16-15

DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

[NOTE: Summary of Changes: **Updating Part A to include new Basic ACDP category as Part A #8 and hyphenate redi-mix in Part A #2. Updating Part B to: add footnote to Part B. #85 and footnote language below Part B, hyphenate redi-mix in Part B #24, and add reference to footnote 3 in Part B #35.**]

340-216-8010

Table 1 — Activities and Sources

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

[NOTE: See history of these tables under OAR 340-216-0020]

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy.](#)]

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.310

Statutes/Other Implemented: ORS 468A

History:

[DEQ 59-2017, minor correction filed 12/20/2017, effective 12/20/2017](#)

DEQ 7-2015, f. & cert. ef. 4-16-15

DEQ 12-2014(Temp), f. & cert. ef. 11-12-14 thru 5-10-15

DEQ 9-2014, f. & cert. ef. 6-26-14



**Oregon Department of
Environmental Quality**

Table 1 – OAR 340-216-8010

Activities and Sources

The following source categories must obtain a permit as required by OAR 340-216-0020 Applicability and Jurisdiction.

Part A: Basic ACDP

- 1 Autobody repair or painting shops painting more than 25 automobiles in a year and that are located inside the Portland AQMA.
- 2 Concrete manufacturing including redi-mix and CTB, both stationary and portable, more than 5,000 but less than 25,000 cubic yards per year output.
- 3 Crematory incinerators with less than 20 tons/year material input.
- 4 Natural gas and propane fired boilers of 10 or more MMBTU/hour but less than 30 MMBTU/hour heat input constructed after June 9, 1989 that may use less than 10,000 gallons per year of #2 diesel oil as a backup fuel.
- 5 Prepared feeds for animals and fowl and associated grain elevators more than 1,000 tons/year but less than 10,000 tons per year throughput.
- 6 Rock, concrete or asphalt crushing, both stationary and portable, more than 5,000 tons/year but less than 25,000 tons/year crushed.
- 7 Surface coating operations whose actual or expected usage of coating materials is greater than 250 gallons per month but does not exceed 3,500 gallons per year, excluding sources that exclusively use non-VOC and non-HAP containing coatings, e.g., powder coating operations.

- 8 Sources subject to permitting under Part B of this table, number 85 if all of the following criteria are met:
 - a. The source is not subject to any category listed on this table other than Part B number 85;
 - b. The source has requested an enforceable limit on their actual emissions, if the source were to operate uncontrolled, to below Part B number 85 of this table as applicable depending on the source's location through one or both of the following:

i. A limit on hours of operation;

ii. A limit on production;

c. Control devices are not required to be used or otherwise accounted for to maintain emissions levels compliant with 8.b above;

d. The source is not subject to and does not have any affected emissions units subject to a 40 C.F.R. part 60, part 61, or part 63 standard (NSPS or NESHAP);

e. The source is not subject to any specific industry or operation standard in OAR chapter 340 divisions 232, 234, or 236.

f. DEQ has determined that the source is not required to conduct source testing and source testing for emission factor verification will not be required.

Part B: General, Simple or Standard ACDP

- 1 Aerospace or aerospace parts manufacturing subject to RACT as regulated by OAR 340 division 232.
- 2 Aluminum, copper, and other nonferrous foundries subject to an area source NESHAP under OAR 340 division 244.
- 3 Aluminum production – primary.
- 4 Ammonia manufacturing.
- 5 Animal rendering and animal reduction facilities.
- 6 Asphalt blowing plants.
- 7 Asphalt felts or coating manufacturing.
- 8 Asphaltic concrete paving plants, both stationary and portable.
- 9 Bakeries, commercial over 10 tons of VOC emissions per year.
- 10 Battery separator manufacturing.
- 11 Lead-acid battery manufacturing and re-manufacturing.
- 12 Beet sugar manufacturing.
- 13 Boilers and other fuel burning equipment over 10 MMBTU/hour heat input, except exclusively Natural Gas and Propane fired units (with or without #2 diesel backup) under 30 MMBTU/hour heat input.
- 14 Building paper and buildingboard mills.
- 15 Calcium carbide manufacturing.
- 16 Can or drum coating subject to RACT as regulated by OAR 340 division 232.²
- 17 Cement manufacturing.
- 18 Cereal preparations and associated grain elevators 10,000 or more tons/year throughput.¹
- 19 Charcoal manufacturing.
- 20 Chlorine and alkali manufacturing.

- 21 Chrome plating and anodizing subject to a NESHAP under OAR 340 division 244.
- 22 Clay ceramics manufacturing subject to an area source NESHAP under OAR 340 division 244.
- 23 Coffee roasting, roasting 30 or more green tons per year.
- 24 Concrete manufacturing including redi-mix and CTB, both stationary and portable, 25,000 or more cubic yards per year output.
- 25 Crematory incinerators 20 or more tons/year material input.
- 26 Degreasing operations, halogenated solvent cleanings subject to a NESHAP under OAR 340 division 244.
- 27 Electrical power generation from combustion, excluding units used exclusively as emergency generators and units less than 500 kW.
- 28 Commercial ethylene oxide sterilization, excluding facilities using less than 1 ton of ethylene oxide within all consecutive 12-month periods after December 6, 1996.
- 29 Ferroalloy production facilities subject to an area source NESHAP under OAR 340 division 244.
- 30 Flatwood coating regulated by OAR division 232.²
- 31 Flexographic or rotogravure printing subject to RACT under OAR 340 division 232.²
- 32 Flour, blended and/or prepared and associated grain elevators 10,000 or more tons/year throughput.¹
- 33 Galvanizing and pipe coating, except galvanizing operations that use less than 100 tons of zinc/year.
- 34 Bulk gasoline plants, bulk gasoline terminals, and pipeline facilities.
- 35 Gasoline dispensing facilities, excluding gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline per month.³
- 36 Glass and glass container manufacturing subject to a NSPS under OAR 340 division 238 or a NESHAP under OAR 340 division 244.
- 37 Grain elevators used for intermediate storage 10,000 or more tons/year throughput.¹
- 38 Reserved.
- 39 Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries 100 or more tons/year metal charged, not elsewhere identified.

- 40 Gypsum products manufacturing.
- 41 Hardboard manufacturing, including fiberboard.
- 42 Hospital sterilization operations subject to an area source NESHAP under OAR 340 division 244.
- 43 Incinerators with two or more tons per day capacity.
- 44 Lime manufacturing.
- 45 Liquid storage tanks subject to RACT under OAR 340 division 232.²
- 46 Magnetic tape manufacturing.
- 47 Manufactured home, mobile home and recreational vehicle manufacturing.
- 48 Marine vessel petroleum loading and unloading subject to RACT under OAR 340 division 232.
- 49 Metal fabrication and finishing operations subject to an area source NESHAP under OAR 340 division 244, excluding facilities that meet all the following:
 - a. Do not perform any of the operations listed in OAR 340-216-0060(2)(b)(W)(i) through (iii);
 - b. Do not perform shielded metal arc welding (SMAW) using metal fabrication and finishing hazardous air pollutant (MFHAP) containing wire or rod; and
 - c. Use less than 100 pounds of MFHAP containing welding wire and rod per year.
- 50 Millwork manufacturing, including kitchen cabinets and structural wood members, 25,000 or more board feet/maximum 8 hour input.
- 51 Molded container manufacturing.
- 52 Motor coach manufacturing.
- 53 Motor vehicle and mobile equipment surface coating operations subject to an area source NESHAP under OAR 340 division 244, excluding motor vehicle surface coating operations painting less than 10 vehicles per year or using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year, mobile equipment surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year, and motor vehicle surface coating operations registered pursuant to OAR 340-210-0100(2).
- 54 Natural gas and oil production and processing and associated fuel burning equipment.
- 55 Nitric acid manufacturing.
- 56 Nonferrous metal foundries 100 or more tons/year of metal charged.

- 57 Organic or inorganic chemical manufacturing and distribution with ½ or more tons per year emissions of any one criteria pollutant, sources in this category with less than ½ ton/year of each criteria pollutant are not required to have an ACDP.
- 58 Paint and allied products manufacturing subject to an area source NESHAP under OAR 340 division 244.
- 59 Paint stripping and miscellaneous surface coating operations subject to an area source NESHAP under OAR 340 division 244, excluding paint stripping and miscellaneous surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year.
- 60 Paper or other substrate coating subject to RACT under OAR 340 division 232.²
- 61 Particleboard manufacturing, including strandboard, flakeboard, and waferboard.
- 62 Perchloroethylene dry cleaning operations subject to an area source NESHAP under OAR 340 division 244, excluding perchloroethylene dry cleaning operations registered pursuant to OAR 340-210-0100(2).
- 63 Pesticide manufacturing 5,000 or more tons/year annual production.
- 64 Petroleum refining and re-refining of lubricating oils and greases including asphalt production by distillation and the reprocessing of oils and/or solvents for fuels.
- 65 Plating and polishing operations subject to an area source NESHAP under OAR 340 division 244.
- 66 Plywood manufacturing and/or veneer drying.
- 67 Prepared feeds manufacturing for animals and fowl and associated grain elevators 10,000 or more tons per year throughput.
- 68 Primary smelting and/or refining of ferrous and non-ferrous metals.
- 69 Pulp, paper and paperboard mills.
- 70 Rock, concrete or asphalt crushing, both stationary and portable, 25,000 or more tons/year crushed.
- 71 Sawmills and/or planing mills 25,000 or more board feet/maximum 8 hour finished product.
- 72 Secondary nonferrous metals processing subject to an Area Source NESHAP under OAR 340 division 244.
- 73 Secondary smelting and/or refining of ferrous and nonferrous metals.
- 74 Seed cleaning and associated grain elevators 5,000 or more tons/year throughput.¹

- 75 Sewage treatment facilities employing internal combustion engines for digester gasses.
- 76 Soil remediation facilities, both stationary and portable.
- 77 Steel works, rolling and finishing mills.
- 78 Surface coating in manufacturing subject to RACT under OAR 340 division 232.²
- 79 Surface coating operations with actual emissions of VOCs before add on controls of 10 or more tons/year.
- 80 Synthetic resin manufacturing.
- 81 Tire manufacturing.
- 82 Wood furniture and fixtures 25,000 or more board feet/maximum 8 hour input.
- 83 Wood preserving (excluding waterborne).
- 84 All other sources, both stationary and portable, not listed herein that DEQ determines an air quality concern exists or one which would emit significant malodorous emissions.
- 85 All other sources, both stationary and portable, not listed herein which would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons per year of direct PM2.5 or PM10 if located in a PM2.5 or PM10 nonattainment or maintenance area, or 10 or more tons per year of any single criteria pollutant if located in any part of the state.⁴
- 86 Chemical manufacturing facilities that do not transfer liquids containing organic HAP listed in Table 1 of 40 CFR part 63 subpart VVVVVV to tank trucks or railcars and are not subject to emission limits in Table 2, 3, 4, 5, 6, or 8 of 40 CFR part 63 subpart VVVVVV.
- 87 Stationary internal combustion engines if:
 - a. For emergency generators and firewater pumps, the aggregate engine horsepower rating is greater than 30,000 horsepower; or
 - b. For any individual non-emergency or non-fire pump engine, the engine is subject to 40 CFR part 63, subpart ZZZZ and is rated at 500 horsepower or more, excluding two stroke lean burn engines, engines burning exclusively landfill or digester gas, and four stroke engines located in remote areas; or
 - c. For any individual non-emergency engine, the engine is subject to 40 CFR part 60, subpart III and:
 - A. The engine has a displacement of 30 liters or more per cylinder; or

B. The engine has a displacement of less than 30 liters per cylinder and is rated at 500 horsepower or more and the engine and control device are either not certified by the manufacturer to meet the NSPS or not operated and maintained according to the manufacturer's emission-related instructions; or

d. For any individual non-emergency engine, the engine is subject to 40 CFR part 60, subpart JJJJ and is rated at 500 horsepower or more and the engine and control device are either not certified by the manufacturer to meet the NSPS or not operated and maintained according to the manufacturer's emission-related instructions.

88 All sources subject to RACT under OAR 340 division 232, BACT or LAER under OAR 340 division 224, a NESHAP under OAR 340 division 244, a NSPS under OAR 340 division 238, or State MACT under OAR 340-244-0200(2), except sources:

- a. Exempted in any of the categories above;
- b. For which a Basic ACDP is available; or
- c. Registered pursuant to OAR 340-210-0100(2).

89 Pathological waste incinerators.

¹ Applies only to Special Control Areas

² Portland AQMA, Medford-Ashland AQMA or Salem-Keizer in the SKATS only

³ "monthly throughput" means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at the gasoline dispensing facility during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at the gasoline dispensing facility during the month, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at the gasoline dispensing facility during the previous 11 months, and then dividing that sum by 12

⁴ A source subject to permitting from this category may be able to obtain a Basic ACDP under Part A number 8 of this table. For sources that meet the criteria of Part A number 8 of this table, the enforceable production or hours limitation in an issued ACDP may be used to demonstrate a permit is not required by Part B number 85 of this table irrespective of the term 'uncontrolled'.

Part C: Standard ACDP

- 1 Incinerators for PCBs, other hazardous wastes, or both.
- 2 All sources that DEQ determines have emissions that constitute a nuisance.
- 3 All sources electing to maintain the source's netting basis.
- 4 All sources that request a PSEL equal to or greater than the

SER for a regulated pollutant.

- 5 All sources having the potential to emit 100 tons or more of any regulated pollutant, except GHG, in a year.
- 6 All sources having the potential to emit 10 tons or more of a single hazardous air pollutant in a year.
- 7 All sources having the potential to emit 25 tons or more of all hazardous air pollutants combined in a year.

NOTE: See history of these tables under OAR 340-216-0020

[NOTE: Summary of Changes: **Updating ACDP fees in attached table and adding fee waiver-related language.**]

340-216-8020

Table 2 — Air Contaminant Discharge Permits

(1) Sources referred to in Table 1 of OAR 340-216-8010 are subject to air contaminant discharge permit fees in Table 2.

(2) Requests for waiver of fees must be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship. The Director may waive part or all of a fee.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan that EQC adopted under OAR 340-200-0040 with the exception of all references to toxic air contaminants and OAR chapter 340, division 245.]

[NOTE: See history of this table under OAR 340-216-0020.]

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy.](#)]

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.310

Statutes/Other Implemented: ORS 468A

History:

[DEQ 15-2019, amend filed 06/25/2019, effective 06/25/2019](#)


[DEQ 13-2019, amend filed 05/16/2019, effective 05/16/2019](#)


[DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018](#)

[DEQ 60-2017, minor correction filed 12/20/2017, effective 12/20/2017](#)

DEQ 7-2015, f. & cert. ef. 4-16-15

DEQ 9-2014, f. & cert. ef. 6-26-14


 <div style="text-align: center;"> OAR 340-216-8020 Table 2 Air Contaminant Discharge Permits </div>		
Part 1. Initial Permitting Application Fees: (in addition to first annual fee)		
Short Term Activity ACDP		\$3,600.00 <u>\$4,500.00</u>
Basic ACDP		\$144.00 <u>\$180.00</u>
Assignment to General ACDP ¹		\$1,440.00 <u>\$1,800.00</u>
Simple ACDP		\$7,200.00 <u>\$9,000.00</u>
Construction ACDP		\$11,520.00 <u>\$14,400.00</u>
Standard ACDP		\$14,400.00 <u>\$18,000.00</u>
Standard ACDP (Major NSR or Type A State NSR)		\$50,400.00 <u>\$63,000.00</u>
1. DEQ may waive the assignment fee for an existing source requesting to be assigned to a General ACDP because the source is subject to a newly adopted area source NESHAP as long as the existing source requests assignment within 90 days of notification by DEQ.		
Part 2a. Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year) (applicable through June 30, 2021)		
Short Term Activity ACDP		\$NA <u>0</u>
Basic ACDP		\$432.00
<u>Basic ACDP</u>	(A) #1-7 <u>OAR 340-216-8010 Table 1 Part A</u>	<u>\$497.00</u>
	(B) #8 <u>OAR 340-216-8010 Table 1 Part A</u>	<u>\$1,469.00</u>
General ACDP	(A) Fee Class One	\$864.00 <u>\$1,080.00</u>
	(B) Fee Class Two	\$1,555.00 <u>\$1,944.00</u>
	(C) Fee Class Three	\$2,246.00 <u>\$2,808.00</u>
	(D) Fee Class Four	\$432.00 <u>\$540.00</u>
	(E) Fee Class Five	\$144.00 <u>\$180.00</u>
	(F) Fee Class Six	\$288.00 <u>\$360.00</u>
Simple ACDP	(A) Low Fee	\$2,304.00 <u>\$3,917.00</u>
	(B) High Fee	\$4,608.00 <u>\$7,834.00</u>

 OAR 340-216-8020 Table 2 Air Contaminant Discharge Permits	
Standard ACDP	\$9,216.00 <u>15,759.00</u>
Greenhouse Gas Reporting, as required by OAR 340, Division 215	12.57.31 % of the applicable <u>ACDP</u> annual fee in Part 2
1. DEQ may extend the payment due date for dry cleaners or gasoline dispensing facilities until March 1st.	
Part 2b. Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year) (applicable July 1, 2021 through June 30, 2022)	
Short Term Activity ACDP	\$ <u>NA</u>
Basic ACDP	(A) #1-7 OAR 340-216-8010 Table 1 Part A <u>\$562.00</u>
	(B) #8 OAR 340-216-8010 Table 1 Part A <u>\$1,469.00</u>
General ACDP	(A) Fee Class One <u>\$864.00</u> <u>1,296.00</u>
	(B) Fee Class Two <u>\$1,555.00</u> <u>2,333.00</u>
	(C) Fee Class Three <u>\$2,246.00</u> <u>3,369.00</u>
	(D) Fee Class Four <u>\$432.00</u> <u>648.00</u>
	(E) Fee Class Five <u>\$144.00</u> <u>216.00</u>
	(F) Fee Class Six <u>\$288.00</u> <u>432.00</u>
Simple ACDP	(A) Low Fee <u>\$2,304.00</u> <u>3,917.00</u>
	(B) High Fee <u>\$4,608.00</u> <u>7,834.00</u>
Standard ACDP	\$9,216.00 <u>15,759.00</u>
Greenhouse Gas Reporting, as required by OAR 340, Division 215	7.31 <u>12.5</u> % of the applicable <u>ACDP</u> annual fee in Part 2
Part 2c. Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year) (applicable July 1, 2022)	
Short Term Activity ACDP	\$ <u>NA</u>



OAR 340-216-8020 Table 2 Air Contaminant Discharge Permits

Basic ACDP	(A) #1-7 <u>OAR 340-216-8010 Table 1 Part A</u>	<u>\$648.00</u>
	(B) #8 <u>OAR 340-216-8010 Table 1 Part A</u>	<u>\$1,469.00</u>
General ACDP	(A) Fee Class One	\$864.00 <u>1,469.00</u>
	(B) Fee Class Two	\$1,555.00 <u>2,644.00</u>
	(C) Fee Class Three	\$2,246.00 <u>3,818.00</u>
	(D) Fee Class Four	\$432.00 <u>734.00</u>
	(E) Fee Class Five	\$144.00 <u>245.00</u>
	(F) Fee Class Six	\$288.00 <u>490.00</u>
Simple ACDP	(A) Low Fee	\$2,304.00 <u>3,917.00</u>
	(B) High Fee	\$4,608.00 <u>7,834.00</u>
Standard ACDP		\$9,216.00 <u>15,759.00</u>
Greenhouse Gas Reporting, as required by OAR 340, Division 215		7.31 <u>12.5</u> % of the applicable ACDP annual fee in Part 2
Part 3. Cleaner Air Oregon Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year)		
Basic ACDP	(A) #1-7 <u>OAR 340-216-8010 Table 1 Part A</u>	\$151.00
	(B) #8 <u>OAR 340-216-8010 Table 1 Part A</u>	<u>\$302.00</u>
General ACDP	(A) Fee Class One	\$302.00
	(B) Fee Class Two	\$544.00
	(C) Fee Class Three	\$786.00
	(D) Fee Class Four	\$151.00
	(E) Fee Class Five	\$50.00
	(F) Fee Class Six	\$100.00
Simple ACDP	(A) Low Fee	\$806.00

		OAR 340-216-8020 Table 2 Air Contaminant Discharge Permits	
		(B) High Fee	\$1,612.00
Standard ACDP			\$3,225.00
1. DEQ may extend the payment due date for dry cleaners or gasoline dispensing facilities until March 1st.			
Part 4. Specific Activity Fees:			
<u>Notice of Intent to Construct Type 2¹</u>			<u>\$720.00</u>
<u>Permit Modification</u>	(A) <u>Non-Technical²</u>		<u>\$432.00</u>
	(B) <u>Basic Technical</u>		<u>\$540.00</u>
	(C) <u>Simple Technical</u>		<u>\$1,800.00</u>
	(D) <u>Moderate Technical</u>		<u>\$9,000.00</u>
	(E) <u>Complex Technical</u>		<u>\$18,000.00</u>
<u>Toxic Air Contaminant Permit Addendum Modification</u>	(A) <u>Non-Technical</u>		<u>\$432.00</u>
	(B) <u>Basic Technical</u>		<u>\$432.00</u>
	(C) <u>Simple Technical</u>		<u>\$1,440.00</u>
	(D) <u>Moderate Technical</u>		<u>\$7,200.00</u>
	(E) <u>Complex Technical</u>		<u>\$14,440.00</u>
Major NSR or Type A State NSR Permit Modification			\$50,400.00 <u>63,000.00</u>
Modeling Review (outside Major NSR or Type A State NSR)			\$7,200.00 <u>9,000.00</u>
Public Hearing at Source's Request			\$2,880.00 <u>3,600.00</u>
State MACT Determination			\$7,200.00 <u>9,000.00</u>
Compliance Order Monitoring ²³			\$144.00 <u>180.00/month</u>
Part 5. Late Fees:			
8-30 days late			5%
31-60 days late			10%
61 or more days late			20%



OAR 340-216-8020 Table 2 Air Contaminant Discharge Permits

1. The Type 2 Notice of Intent to Construct does not apply to existing Basic ACDP or General ACDP sources.

2. For gasoline dispensing facilities, a portion of these fees will be used to cover the fees required for changes of ownership in OAR 340-150-0052(4) if DEQ receives both forms at the same time.

3. This is a one-time fee payable when a compliance order is established in a permit or a DEQ order containing a compliance schedule becomes a final order of DEQ and is based on the number of months DEQ will have to oversee the order.

NOTE: See history of this table under OAR 340-216-0020.



State of Oregon Department of Environmental Quality

ACDP Fee Increase 2020

Draft Rules – Edits Highlighted

Key to Identifying Changed Text:

~~Strikethrough: Deleted Text~~

Underline: New/inserted text

[NOTE: Summary of Changes: **Updating date for when SIP was last modified.**]

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by DEQ and is adopted as the State Implementation Plan (SIP) of the State of Oregon under the FCAA, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made under the EQC's rulemaking procedures in OAR 340 division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the EPA for approval. The SIP was last modified by the EQC on ~~July 18~~July 20, 2020~~19~~.

(3) Notwithstanding any other requirement contained in the SIP, DEQ may:

(a) Submit to the EPA any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after DEQ has complied with the public hearings provisions of 40 C.F.R. 51.102; and

(b) Approve the standards submitted by LRAPA if LRAPA adopts verbatim, other than non-substantive differences, any standard that the EQC has adopted, and submit the standards to EPA for approval as a SIP revision.

(4) Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the EPA. If any provision of the federally approved State Implementation Plan conflicts with any provision adopted by the EQC, DEQ must enforce the more stringent provision.

Statutory/Other Authority: ORS 468.020 & 468A

Statutes/Other Implemented: ORS 468A.035 & 468A.135

History:

DEQ 18-2019, amend filed 07/19/2019, effective 07/19/2019

DEQ 14-2019, amend filed 05/17/2019, effective 05/17/2019
DEQ 4-2019, amend filed 01/24/2019, effective 01/24/2019
DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018
DEQ 192-2018, amend filed 09/14/2018, effective 09/14/2018
DEQ 190-2018, amend filed 07/13/2018, effective 07/13/2018
DEQ 11-2018, amend filed 03/23/2018, effective 03/23/2018
DEQ 7-2017, f. & cert. ef. 7-13-17
DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef.

1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef. 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 18-2011, f. & cert. ef. 12-21-11; DEQ 1-2012, f. & cert. ef. 5-17-12; DEQ 7-2012, f. & cert. ef. 12-10-12; DEQ 10-2012, f. & cert. ef. 12-11-12; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 11-2013, f. & cert. ef. 11-7-13; DEQ 12-2013, f. & cert. ef. 12-19-13; DEQ 1-2014, f. & cert. ef. 1-6-14; DEQ 4-2014, f. & cert. ef. 3-31-14; DEQ 5-2014, f. & cert. ef. 3-31-14; DEQ 6-2014, f. & cert. ef. 3-31-14; DEQ 7-2014, f. & cert. ef. 6-26-14; DEQ 6-2015, f. & cert. ef. 4-16-15; DEQ 7-2015, f. & cert. ef. 4-16-15; DEQ 10-2015, f. & cert. ef. 10-16-15; DEQ 14-2015, f. & cert. ef. 12-10-15; DEQ 2-2017, f. & cert. ef. 1-19-17

[NOTE: Summary of Changes: **Adding language for “applicable fees” to be included with Type 2 notices of construction or modification.**]

340-210-0230

Notice of Construction and Approval of Plans: Notice to Construct

(1) Any person proposing a Type 1 or 2 change must provide notice and applicable fees in OAR 340-216-8020 to DEQ before constructing or modifying a stationary source or air pollution control device. The notice must be in writing on a form supplied by DEQ and include the following information as applicable:

- (a) Name, address, and nature of business;
- (b) Name of local person responsible for compliance with these rules;
- (c) Name of person authorized to receive requests for data and information;
- (d) The type of construction or modification as defined in OAR 340-210-0220;
- (e) A description of the constructed or modified source;
- (f) A description of the production processes and a related flow chart for the constructed or modified source;
- (g) A plot plan showing the location and height of the constructed or modified source. The plot plan must also indicate the nearest residential or commercial property;
- (h) Type and quantity of fuels used;

- (i) The change in the amount, nature and duration of regulated pollutant emissions;
 - (j) Plans and specifications for air pollution control devices and facilities and their relationship to the production process, including estimated efficiency of air pollution control devices under present or anticipated operating conditions;
 - (k) Any information on pollution prevention measures and cross-media impacts the owner or operator wants DEQ to consider in determining applicable control requirements and evaluating compliance methods;
 - (l) A list of any requirements applicable to the new construction or modification;
 - (m) Where the operation or maintenance of air pollution control devices and emission reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness, information necessary for DEQ to establish operational and maintenance requirements under OAR 340-226-0120(1) and (2); and
 - (n) Amount and method of refuse disposal; and
 - (o) Land Use Compatibility Statement signed by a local (city or county) planner either approving or disapproving construction or modification to the source if required by the local planning agency.
- (2) Any person proposing a Type 3 or 4 change must submit an application for either a construction ACDP, new permit, or permit modification, whichever is appropriate.
- (3) The owner of operator must notify DEQ of any corrections and revisions to the plans and specifications upon becoming aware of the changes.
- (4) Where a permit issued in accordance with OAR 340 divisions 216 or 218 includes construction approval for future changes for operational flexibility, the notice requirements in this rule are waived for the approved changes.

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

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040, 468A.050, 468A.055, 468A.070 & 468A.310

Statutes/Other Implemented: ORS 468A.025, 468A.035, 468A.040, 468A.050, 468A.055, 468A.070 & 468A.310

History:

DEQ 7-2015, f. & cert. ef. 4-16-15

DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

[NOTE: Summary of Changes: **Adding language to include fees with Type 2 notices of construction or modification.**]

340-210-0240

Notice of Construction and Approval of Plans: Construction Approval

(1) Approval to Construct:

(a) For Type 1 changes, the owner or operator may proceed with the construction or modification 10 calendar days after DEQ receives the notice required in OAR 340-210-0230 or on the date that DEQ approves the proposed construction in writing, whichever is sooner, unless DEQ notifies the owner or operator in writing that the proposed construction or modification is not a Type 1 change.

(b) For Type 2 changes, the owner or operator may proceed with the construction or modification 60 calendar days after DEQ receives the notice and fees required in OAR 340-210-0230 or on the date that DEQ approves the proposed construction in writing, whichever is sooner, unless DEQ notifies the owner or operator in writing that the proposed construction or modification is not a Type 2 change.

(c) For Type 3 changes, the owner or operator must obtain either a Construction ACDP or a new or modified Standard ACDP in accordance with OAR 340 division 216 before proceeding with the construction or modification.

(d) For Type 4 changes, the owner or operator must obtain a new or modified Standard ACDP before proceeding with the construction or modification. Type 4 changes may also be subject to OAR 340 division 224, New Source Review requirements.

(2) Approval to construct does not relieve the owner of the obligation of complying with applicable requirements.

(3) Notice of Completion. Unless otherwise specified in the construction ACDP or approval, the owner or operator must notify DEQ in writing that the construction or modification has been completed using a form furnished by DEQ. Unless otherwise specified, the notice is due 30 days after completing the construction or modification. The notice of completion must include the following:

(a) The date of completion of construction or modification; and

(b) The date the stationary source, device, activity, process, or air pollution control device was or will be put in operation.

(4) Order Prohibiting Construction or Modification. If at any time, DEQ determines that the proposed construction is not in accordance with applicable statutes, rules, regulations, and orders, DEQ will issue an order prohibiting the construction or modification. The order

prohibiting construction or modification will be forwarded to the owner or operator by certified mail.

(5) Hearing. A person against whom an order prohibiting construction or modification is directed may request a contested case hearing within 20 days from the date of mailing the order. The request must be in writing, state the grounds for hearing, and be mailed to the Director of DEQ. The hearing will be conducted pursuant to the applicable provisions in division 11 of this chapter.

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

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040, 468A.050, 468A.055, 468A.070 & 468A.310

Statutes/Other Implemented: ORS 468A. 025, 468A.035, 468A.040, 468A.050, 468A.055, 468A.070 & 468A.310

History:

DEQ 7-2015, f. & cert. ef. 4-16-15

DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01

[NOTE: Summary of Changes: **Updating Part A to include new Basic ACDP category as Part A #8 and hyphenate redi-mix in Part A #2. Updating Part B to: add footnote to Part B. #85 and footnote language below Part B, hyphenate redi-mix in Part B #24, and add reference to footnote 3 in Part B #35.**]

340-216-8010

Table 1 — Activities and Sources

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

[NOTE: See history of these tables under OAR 340-216-0020]

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy.](#)]

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.310

Statutes/Other Implemented: ORS 468A

History:

[DEQ 59-2017, minor correction filed 12/20/2017, effective 12/20/2017](#)

DEQ 7-2015, f. & cert. ef. 4-16-15

DEQ 12-2014(Temp), f. & cert. ef. 11-12-14 thru 5-10-15

DEQ 9-2014, f. & cert. ef. 6-26-14



**Oregon Department of
Environmental Quality**

Table 1 – OAR 340-216-8010

Activities and Sources

The following source categories must obtain a permit as required by OAR 340-216-0020 Applicability and Jurisdiction.

Part A: Basic ACDP

- 1 Autobody repair or painting shops painting more than 25 automobiles in a year and that are located inside the Portland AQMA.
- 2 Concrete manufacturing including redi-mix and CTB, both stationary and portable, more than 5,000 but less than 25,000 cubic yards per year output.
- 3 Crematory incinerators with less than 20 tons/year material input.
- 4 Natural gas and propane fired boilers of 10 or more MMBTU/hour but less than 30 MMBTU/hour heat input constructed after June 9, 1989 that may use less than 10,000 gallons per year of #2 diesel oil as a backup fuel.
- 5 Prepared feeds for animals and fowl and associated grain elevators more than 1,000 tons/year but less than 10,000 tons per year throughput.
- 6 Rock, concrete or asphalt crushing, both stationary and portable, more than 5,000 tons/year but less than 25,000 tons/year crushed.
- 7 Surface coating operations whose actual or expected usage of coating materials is greater than 250 gallons per month but does not exceed 3,500 gallons per year, excluding sources that exclusively use non-VOC and non-HAP containing coatings, e.g., powder coating operations.
- 8 Sources subject to permitting under Part B of this table, number 85 if all of the following criteria are met:
 - a. The source is not subject to any category listed on this table other than Part B number 85:

- b. The source has requested an enforceable limit on their actual emissions, if the source were to operate uncontrolled, to below Part B number 85 of this table as applicable depending on the source's location through one or both of the following:
 - i. A limit on hours of operation;
 - ii. A limit on production;
- c. Control devices are not required to be used or otherwise accounted for to maintain emissions levels compliant with 8.b above;
- d. The source is not subject to and does not have any affected emissions units subject to a 40 C.F.R. part 60, part 61, or part 63 standard (NSPS or NESHAP);
- e. The source is not subject to any specific industry or operation standard in OAR chapter 340 divisions 232, 234, or 236.
- f. DEQ has determined that the source is not required to conduct source testing and source testing for emission factor verification will not be required.

Part B: General, Simple or Standard ACDP

- 1 Aerospace or aerospace parts manufacturing subject to RACT as regulated by OAR 340 division 232.
- 2 Aluminum, copper, and other nonferrous foundries subject to an area source NESHAP under OAR 340 division 244.
- 3 Aluminum production – primary.
- 4 Ammonia manufacturing.
- 5 Animal rendering and animal reduction facilities.
- 6 Asphalt blowing plants.
- 7 Asphalt felts or coating manufacturing.
- 8 Asphaltic concrete paving plants, both stationary and portable.
- 9 Bakeries, commercial over 10 tons of VOC emissions per year.
- 10 Battery separator manufacturing.
- 11 Lead-acid battery manufacturing and re-manufacturing.
- 12 Beet sugar manufacturing.
- 13 Boilers and other fuel burning equipment over 10 MMBTU/hour heat input, except exclusively Natural Gas and Propane fired units (with or without #2 diesel backup) under 30 MMBTU/hour heat input.
- 14 Building paper and buildingboard mills.
- 15 Calcium carbide manufacturing.
- 16 Can or drum coating subject to RACT as regulated by OAR 340 division 232.²
- 17 Cement manufacturing.
- 18 Cereal preparations and associated grain elevators 10,000 or more tons/year throughput.¹
- 19 Charcoal manufacturing.
- 20 Chlorine and alkali manufacturing.

- 21 Chrome plating and anodizing subject to a NESHAP under OAR 340 division 244.
- 22 Clay ceramics manufacturing subject to an area source NESHAP under OAR 340 division 244.
- 23 Coffee roasting, roasting 30 or more green tons per year.
- 24 Concrete manufacturing including redi_mix and CTB, both stationary and portable, 25,000 or more cubic yards per year output.
- 25 Crematory incinerators 20 or more tons/year material input.
- 26 Degreasing operations, halogenated solvent cleanings subject to a NESHAP under OAR 340 division 244.
- 27 Electrical power generation from combustion, excluding units used exclusively as emergency generators and units less than 500 kW.
- 28 Commercial ethylene oxide sterilization, excluding facilities using less than 1 ton of ethylene oxide within all consecutive 12-month periods after December 6, 1996.
- 29 Ferroalloy production facilities subject to an area source NESHAP under OAR 340 division 244.
- 30 Flatwood coating regulated by OAR division 232.²
- 31 Flexographic or rotogravure printing subject to RACT under OAR 340 division 232.²
- 32 Flour, blended and/or prepared and associated grain elevators 10,000 or more tons/year throughput.¹
- 33 Galvanizing and pipe coating, except galvanizing operations that use less than 100 tons of zinc/year.
- 34 Bulk gasoline plants, bulk gasoline terminals, and pipeline facilities.
- 35 Gasoline dispensing facilities, excluding gasoline dispensing facilities with monthly throughput of less than 10,000 gallons of gasoline per month³.
- 36 Glass and glass container manufacturing subject to a NSPS under OAR 340 division 238 or a NESHAP under OAR 340 division 244.
- 37 Grain elevators used for intermediate storage 10,000 or more tons/year throughput.¹
- 38 Reserved.
- 39 Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries

- 100 or more tons/year metal charged, not elsewhere identified.
- 40 Gypsum products manufacturing.
- 41 Hardboard manufacturing, including fiberboard.
- 42 Hospital sterilization operations subject to an area source NESHAP under OAR 340 division 244.
- 43 Incinerators with two or more tons per day capacity.
- 44 Lime manufacturing.
- 45 Liquid storage tanks subject to RACT under OAR 340 division 232.²
- 46 Magnetic tape manufacturing.
- 47 Manufactured home, mobile home and recreational vehicle manufacturing.
- 48 Marine vessel petroleum loading and unloading subject to RACT under OAR 340 division 232.
- 49 Metal fabrication and finishing operations subject to an area source NESHAP under OAR 340 division 244, excluding facilities that meet all the following:
- a. Do not perform any of the operations listed in OAR 340-216-0060(2)(b)(W)(i) through (iii);
 - b. Do not perform shielded metal arc welding (SMAW) using metal fabrication and finishing hazardous air pollutant (MFHAP) containing wire or rod; and
 - c. Use less than 100 pounds of MFHAP containing welding wire and rod per year.
- 50 Millwork manufacturing, including kitchen cabinets and structural wood members, 25,000 or more board feet/maximum 8 hour input.
- 51 Molded container manufacturing.
- 52 Motor coach manufacturing.
- 53 Motor vehicle and mobile equipment surface coating operations subject to an area source NESHAP under OAR 340 division 244, excluding motor vehicle surface coating operations painting less than 10 vehicles per year or using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year, mobile equipment surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year, and motor vehicle surface coating operations registered pursuant to OAR 340-210-0100(2).
- 54 Natural gas and oil production and processing and associated fuel burning equipment.

- 55 Nitric acid manufacturing.
- 56 Nonferrous metal foundries 100 or more tons/year of metal charged.

- 57 Organic or inorganic chemical manufacturing and distribution with ½ or more tons per year emissions of any one criteria pollutant, sources in this category with less than ½ ton/year of each criteria pollutant are not required to have an ACDP.
- 58 Paint and allied products manufacturing subject to an area source NESHAP under OAR 340 division 244.
- 59 Paint stripping and miscellaneous surface coating operations subject to an area source NESHAP under OAR 340 division 244, excluding paint stripping and miscellaneous surface coating operations using less than 20 gallons of coating and 20 gallons of methylene chloride containing paint stripper per year.
- 60 Paper or other substrate coating subject to RACT under OAR 340 division 232.²
- 61 Particleboard manufacturing, including strandboard, flakeboard, and waferboard.
- 62 Perchloroethylene dry cleaning operations subject to an area source NESHAP under OAR 340 division 244, excluding perchloroethylene dry cleaning operations registered pursuant to OAR 340-210-0100(2).
- 63 Pesticide manufacturing 5,000 or more tons/year annual production.
- 64 Petroleum refining and re-refining of lubricating oils and greases including asphalt production by distillation and the reprocessing of oils and/or solvents for fuels.
- 65 Plating and polishing operations subject to an area source NESHAP under OAR 340 division 244.
- 66 Plywood manufacturing and/or veneer drying.
- 67 Prepared feeds manufacturing for animals and fowl and associated grain elevators 10,000 or more tons per year throughput.
- 68 Primary smelting and/or refining of ferrous and non-ferrous metals.
- 69 Pulp, paper and paperboard mills.
- 70 Rock, concrete or asphalt crushing, both stationary and portable, 25,000 or more tons/year crushed.
- 71 Sawmills and/or planing mills 25,000 or more board feet/maximum 8 hour finished product.
- 72 Secondary nonferrous metals processing subject to an Area Source NESHAP under OAR 340 division 244.
- 73 Secondary smelting and/or refining of ferrous and nonferrous metals.
- 74 Seed cleaning and associated grain elevators 5,000 or more tons/year throughput.¹

- 75 Sewage treatment facilities employing internal combustion engines for digester gasses.
- 76 Soil remediation facilities, both stationary and portable.
- 77 Steel works, rolling and finishing mills.
- 78 Surface coating in manufacturing subject to RACT under OAR 340 division 232.²
- 79 Surface coating operations with actual emissions of VOCs before add on controls of 10 or more tons/year.
- 80 Synthetic resin manufacturing.
- 81 Tire manufacturing.
- 82 Wood furniture and fixtures 25,000 or more board feet/maximum 8 hour input.
- 83 Wood preserving (excluding waterborne).
- 84 All other sources, both stationary and portable, not listed herein that DEQ determines an air quality concern exists or one which would emit significant malodorous emissions.
- 85 All other sources, both stationary and portable, not listed herein which would have actual emissions, if the source were to operate uncontrolled, of 5 or more tons per year of direct PM2.5 or PM10 if located in a PM2.5 or PM10 nonattainment or maintenance area, or 10 or more tons per year of any single criteria pollutant if located in any part of the state.⁴
- 86 Chemical manufacturing facilities that do not transfer liquids containing organic HAP listed in Table 1 of 40 CFR part 63 subpart VVVVVV to tank trucks or railcars and are not subject to emission limits in Table 2, 3, 4, 5, 6, or 8 of 40 CFR part 63 subpart VVVVVV.
- 87 Stationary internal combustion engines if:
 - a. For emergency generators and firewater pumps, the aggregate engine horsepower rating is greater than 30,000 horsepower; or
 - b. For any individual non-emergency or non-fire pump engine, the engine is subject to 40 CFR part 63, subpart ZZZZ and is rated at 500 horsepower or more, excluding two stroke lean burn engines, engines burning exclusively landfill or digester gas, and four stroke engines located in remote areas; or
 - c. For any individual non-emergency engine, the engine is subject to 40 CFR part 60, subpart IIII and:
 - A. The engine has a displacement of 30 liters or more per cylinder; or

B. The engine has a displacement of less than 30 liters per cylinder and is rated at 500 horsepower or more and the engine and control device are either not certified by the manufacturer to meet the NSPS or not operated and maintained according to the manufacturer's emission-related instructions; or

d. For any individual non-emergency engine, the engine is subject to 40 CFR part 60, subpart JJJJ and is rated at 500 horsepower or more and the engine and control device are either not certified by the manufacturer to meet the NSPS or not operated and maintained according to the manufacturer's emission-related instructions.

88 All sources subject to RACT under OAR 340 division 232, BACT or LAER under OAR 340 division 224, a NESHAP under OAR 340 division 244, a NSPS under OAR 340 division 238, or State MACT under OAR 340-244-0200(2), except sources:

- a. Exempted in any of the categories above;
- b. For which a Basic ACDP is available; or
- c. Registered pursuant to OAR 340-210-0100(2).

89 Pathological waste incinerators.

¹ Applies only to Special Control Areas

² Portland AQMA, Medford-Ashland AQMA or Salem-Keizer in the SKATS only

³ "monthly throughput" means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at the gasoline dispensing facility during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at the gasoline dispensing facility during the month, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at the gasoline dispensing facility during the previous 11 months, and then dividing that sum by 12

⁴ A source subject to permitting from this category may be able to obtain a Basic ACDP under Part A number 8 of this table. For sources that meet the criteria of Part A number 8 of this table, the enforceable production or hours limitation in an issued ACDP may be used to demonstrate a permit is not required by Part B number 85 of this table irrespective of the term 'uncontrolled'.

Part C: Standard ACDP

- 1 Incinerators for PCBs, other hazardous wastes, or both.
- 2 All sources that DEQ determines have emissions that constitute a nuisance.
- 3 All sources electing to maintain the source's netting basis.

- 4 All sources that request a PSEL equal to or greater than the SER for a regulated pollutant.
- 5 All sources having the potential to emit 100 tons or more of any regulated pollutant, except GHG, in a year.
- 6 All sources having the potential to emit 10 tons or more of a single hazardous air pollutant in a year.
- 7 All sources having the potential to emit 25 tons or more of all hazardous air pollutants combined in a year.

NOTE: See history of these tables under OAR 340-216-0020

[NOTE: Summary of Changes: **Updating ACDP fees in attached table and adding fee waiver-related language.**]

340-216-8020

Table 2 — Air Contaminant Discharge Permits

(1) Sources referred to in Table 1 of OAR 340-216-8010 are subject to air contaminant discharge permit fees in Table 2.

(2) Requests for waiver of fees must be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship. The Director may waive part or all of a fee.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan that EQC adopted under OAR 340-200-0040 with the exception of all references to toxic air contaminants and OAR chapter 340, division 245.]

[NOTE: See history of this table under OAR 340-216-0020.]

[ED. NOTE: Tables referenced are not included in rule text. [Click here for PDF copy.](#)]

Statutory/Other Authority: ORS 468.020, 468A.025, 468A.040 & 468A.310

Statutes/Other Implemented: ORS 468A

History:

[DEQ 15-2019, amend filed 06/25/2019, effective 06/25/2019](#)

[DEQ 13-2019, amend filed 05/16/2019, effective 05/16/2019](#)

[DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018](#)

[DEQ 60-2017, minor correction filed 12/20/2017, effective 12/20/2017](#)

DEQ 7-2015, f. & cert. ef. 4-16-15

DEQ 9-2014, f. & cert. ef. 6-26-14



OAR 340-216-8020 Table 2 Air Contaminant Discharge Permits


Part 1. Initial Permitting Application Fees: (in addition to first annual fee)


Short Term Activity ACDP	\$3,600.00 <u>\$4,500.00</u>
Basic ACDP	\$144.00 <u>\$180.00</u>
Assignment to General ACDP ¹	\$1,440.00 <u>\$1,800.00</u>
Simple ACDP	\$7,200.00 <u>\$9,000.00</u>
Construction ACDP	\$11,520.00 <u>\$14,400.00</u>
Standard ACDP	\$14,400.00 <u>\$18,000.00</u>
Standard ACDP (Major NSR or Type A State NSR)	\$50,400.00 <u>\$63,000.00</u>


1. DEQ may waive the assignment fee for an existing source requesting to be assigned to a General ACDP because the source is subject to a newly adopted area source NESHAP as long as the existing source requests assignment within 90 days of notification by DEQ.


Part 2a. Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year) (applicable through June 30, 2021)

Short Term Activity ACDP		\$0 <u>NA</u>
Basic ACDP	(A) #1-7 <u>OAR 340-216-8010 Table 1 Part A</u>	\$432.00
	(B) #8 <u>OAR 340-216-8010 Table 1 Part A</u>	<u>\$1,469.00</u>
General ACDP	(A) Fee Class One	\$864.00
	(B) Fee Class Two	\$1,555.00
	(C) Fee Class Three	\$2,246.00
	(D) Fee Class Four	\$432.00
	(E) Fee Class Five	\$144.00
	(F) Fee Class Six	\$288.00
Simple ACDP	(A) Low Fee	\$3,341.00 <u>\$2,304.00</u>
	(B) High Fee	\$6,682.00 <u>\$4,608.00</u>
Standard ACDP		\$13,363.00 <u>\$9,216.0</u>

		OAR 340-216-8020 Table 2 Air Contaminant Discharge Permits
		0
Greenhouse Gas Reporting, as required by OAR 340, Division 215		8.62 <u>12.5</u> % of the applicable ACDP annual fee in Part 2
1. DEQ may extend the payment due date for dry cleaners or gasoline dispensing facilities until March 1st.		
Part 2<u>b</u>. Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year) (applicable July 1, 2021 through June 30, 2022)		
Short Term Activity ACDP		\$ NA <u>0</u>
Basic ACDP	(A) #1-7 OAR 340-216-8010 Table 1 Part A	\$ 432 <u>518.00</u>
	(B) #8 OAR 340-216-8010 Table 1 Part A	\$ <u>1,469.00</u>
General ACDP	(A) Fee Class One	\$ 864.00 <u>1,123.00</u>
	(B) Fee Class Two	\$ 1,555.00 <u>2,022.00</u>
	(C) Fee Class Three	\$ 2,246.00 <u>2,920.00</u>
	(D) Fee Class Four	\$ 432.00 <u>562.00</u>
	(E) Fee Class Five	\$ 144.00 <u>187.00</u>
	(F) Fee Class Six	\$ 288.00 <u>374.00</u>
Simple ACDP	(A) Low Fee	\$ 2,304.00 <u>3,917.00</u>
	(B) High Fee	\$ 4,608.00 <u>7,834.00</u>
Standard ACDP		\$ 9,216.00 <u>15,667.00</u>
Greenhouse Gas Reporting, as required by OAR 340, Division 215		7.31 <u>12.5</u> % of the applicable ACDP annual fee in Part 2
1. DEQ may extend the payment due date for dry cleaners or gasoline dispensing facilities until March 1st.		
Part 2<u>c</u>. Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year) (applicable July 1, 2022)		

 OAR 340-216-8020 Table 2 Air Contaminant Discharge Permits		
Short Term Activity ACDP		<u>\$0NA</u>
Basic ACDP	(A) #1-7 <u>OAR 340-216-8010 Table 1 Part A</u>	<u>\$648.00</u>
	(B) #8 <u>OAR 340-216-8010 Table 1 Part A</u>	\$1,469.00
General ACDP	(A) Fee Class One	<u>\$1,469.00</u>
	(B) Fee Class Two	<u>\$2,644.00</u>
	(C) Fee Class Three	<u>\$3,818.00</u>
	(D) Fee Class Four	<u>\$734.00</u>
	(E) Fee Class Five	<u>\$245.00</u>
	(F) Fee Class Six	<u>\$490.00</u>
Simple ACDP	(A) Low Fee	<u>\$3,917.00</u>
	(B) High Fee	<u>\$7,834.00</u>
Standard ACDP		<u>\$15,667.00</u>
Greenhouse Gas Reporting, as required by OAR 340, Division 215		7.31 <u>2.5</u> % of the applicable <u>ACDP</u> annual fee in Part 2
Part 3. Cleaner Air Oregon Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year)		
Basic ACDP	(A) #1-7 <u>OAR 340-216-8010 Table 1 Part A</u>	\$151.00
	(B) #8 <u>OAR 340-216-8010 Table 1 Part A</u>	<u>\$302.00</u>
General ACDP	(A) Fee Class One	\$302.00
	(B) Fee Class Two	\$544.00
	(C) Fee Class Three	\$786.00
	(D) Fee Class Four	\$151.00
	(E) Fee Class Five	\$50.00

	OAR 340-216-8020 Table 2 Air Contaminant Discharge Permits	
	(F) Fee Class Six	\$100.00
Simple ACDP	(A) Low Fee	\$806.00
	(B) High Fee	\$1,612.00
Standard ACDP		\$3,225.00
1. DEQ may extend the payment due date for dry cleaners or gasoline dispensing facilities until March 1st.		
Part 4. Specific Activity Fees:		
<u>Notice of Intent to Construct Type 2¹</u>		<u>\$720.00</u>
<u>Permit Modification</u>	<u>(A) Non-Technical²</u>	<u>\$432.00</u>
	<u>(B) Basic Technical</u>	<u>\$540.00</u>
	<u>(C) Simple Technical</u>	<u>\$1,800.00</u>
	<u>(D) Moderate Technical</u>	<u>\$9,000.00</u>
	<u>(E) Complex Technical</u>	<u>\$18,000.00</u>
<u>Toxic Air Contaminant Permit Addendum Modification</u>	<u>(A) Non-Technical</u>	<u>\$432.00</u>
	<u>(B) Basic Technical</u>	<u>\$432.00</u>
	<u>(C) Simple Technical</u>	<u>\$1,440.00</u>
	<u>(D) Moderate Technical</u>	<u>\$7,200.00</u>
	<u>(E) Complex Technical</u>	<u>\$14,440.00</u>
Major NSR or Type A State NSR Permit Modification		\$50,400.00 <u>63,000.00</u>
Modeling Review (outside Major NSR or Type A State NSR)		\$7,200.00 <u>9,000.00</u>
Public Hearing at Source's Request		\$2,880.00 <u>3,600.00</u>
State MACT Determination		\$7,200.00 <u>9,000.00</u>
Compliance Order Monitoring ²⁻³		\$144.00 <u>180.00/mo</u> <u>nth</u>
Part 5. Late Fees:		
8-30 days late		5%

	
OAR 340-216-8020 Table 2 Air Contaminant Discharge Permits	
31-60 days late	10%
61 or more days late	20%
<p><u>1. The Type 2 Notice of Intent to Construct does not apply to existing Basic ACDP or General ACDP sources.</u></p> <p><u>2. For gasoline dispensing facilities, a portion of these fees will be used to cover the fees required for changes of ownership in OAR 340-150-0052(4) if DEQ receives both forms at the same time.</u></p> <p><u>3. This is a one-time fee payable when a compliance order is established in a permit or a DEQ order containing a compliance schedule becomes a final order of DEQ and is based on the number of months DEQ will have to oversee the order.</u></p> <p>NOTE: See history of this table under OAR 340-216-0020.</p>	

Comments received by close of public comment period

The table below lists people and organizations that submitted public comments about the proposed rules by the deadline. Original comments are on file with DEQ.

Summary of Comments/Responses: ACDP Fee Increase 2020
<p>1. Commenter: Phillip Sollins; Oregon State University (1/27/2020)</p> <p>DEQ is underfunded. Some permits have gone decades without review.</p>
<p>Response: The 2017 Oregon Secretary of State (SOS) audit concluded that DEQ's Air Contaminant Discharge Permit (ACDP) program is underfunded. The 2019 Oregon legislative session appears to have agreed as they ratified a fee increase with the understanding that DEQ would be hiring an additional six full time equivalent (FTE) positions for the ACDP program. The air permit backlog was identified as an area of improvement and DEQ continues to work towards eliminating the backlog and is confident the additional FTE and funding will further this effort.</p>
<p>2. Commenter: Paul Anderson; Rogue Truck Body (1/30/2020)</p> <p>The cost of doing business in Oregon goes up every year. Out of 462,000 business in the state, only 2,400 of them have an air permit. DEQ employs 122 air quality staff. Most permit reviews are only done every three years. This means 6-7 permits need to be reviewed, revised, or inspected each year per employee.</p> <p>DEQ is asking for this increase partly to fund the addition of six more staff members. What are they going to do? That is why I am opposed to any increase in fees or permit cost and ask that the proposal be denied.</p>
<p>Response: The Oregon Legislature approved DEQ's Policy Option Package (POP) 116 and provided budget approval in the form of House Bill 5017 during the 2019 session. As the Oregon Legislature already approved the dollar revenue increase, the purpose of this rulemaking is to establish <i>how</i> DEQ is going to collect the approved revenue. To reduce the fiscal impact further, DEQ has agreed to modify the Notice of Intent to Construct Type 2 fee; it will not be required for Basic or General ACDPs at all instead of being collected and possibly credited to future invoices.</p> <p>DEQ has issued an air quality permit to every source that is known to require one. DEQ's complaint intake system results in new permits being issued on a regular basis and the agency continues to stress the importance of using the complaint system to assist DEQ in finding possibly unpermitted activities.</p>

DEQ employs ~26 full time equivalent (FTE) positions to implement the Air Contaminant Discharge Permit program and regulates 2,568 ACDP sources, or approximately 98 sources per staff member. Different permit types take different amounts of time and work to inspect, write, issue, review reports, determine compliance, etc.

The additional 6 FTE will bring DEQ staff levels up to comparable levels with 2009-2011. Since 2009, the Environmental Quality Commission has directed DEQ to adopt and implement more federal regulations and state rules with less staff. For comparison, during the period in which DEQ's air permitting staff was reduced as shown below (2007-2015), the Environmental Quality Commission directed DEQ to adopt and implement an additional 43 federal regulations.

2009-2011: ~34 FTE

2011-2013: ~32 FTE

2013-2015: ~29 FTE

2015-2017: ~29 FTE

2017-2019: ~26 FTE

Proposed increase 2019-2021: ~33 FTE

The 6 FTE will work on permit issuance, inspections, and enforcement as necessary to further DEQ's goals of eliminating the permit backlog and ensuring compliance.

3. Commenter: Brainard Brauer; Redland Stations, LLC (1/30/2020)

Please exclude small gas stations of less than a specified throughput (for example, 600,000 gallons per year).

I further suggest removing detailed reporting requirements for stations under this limit. As a small station, additional fees for nothing that affects positive community benefit only further discourages staying in business. Small stations, particularly in rural areas, provide a vital service.

Response:

DEQ met with a Rules and Fiscal Advisory Committee to determine the best way to accomplish the substantive goals of this rulemaking while minimizing the impact to small businesses. Several recommendations were taken into account, but singling out individual industry types to be exempt from the fee increase was decided to not be an effective way to accomplish the rulemaking goals while continuing to ensure a level playing field. Permit fee increases, by percentage as proposed, continue to charge lesser fees for sources that were already paying a lesser fee.

For example, the General ACDP Fee Class 5 for a Stage 1 Gasoline Dispensing Facility (AQGP-22) is proposed to go from \$144 to \$245 per year over three years, while a Halogenated Solvent Degreasing operation (AQGP-005) is proposed to go from \$1,555 to \$2,644 per year in the same time.

Any reporting requirements specific to an operation, permit type, or industry is not within scope of this rulemaking. OAR Chapter 340 Divisions 214 and 244 establish

recordkeeping, reporting, and standards. The General ACDP must ensure compliance with all applicable rules.

As resources allow, DEQ works with all permit holders to provide technical assistance in obtaining permits and achieving and maintaining compliance. Where a small business would be required to obtain an ACDP, DEQ technical assistance staff would work with that business and provide clear and accurate information about the projected costs, timelines, compliance and other important permit information.

DEQ's business assistance program webpage can be found here:

<https://www.oregon.gov/deq/aq/aqPermits/Pages/BAP.aspx>

4. **Commenter:** John Spinnett; Steve's Imports (1/31/2020)

I do not see how this fee increase is going to benefit businesses or citizens. If the fee increases are to reduce emissions then perhaps we could instead work together to take action to accomplish this rather than increasing business operating costs.

There is often an answer other than charging business owners in an already expensive city to operate a business.

Response:

The overall work of the ACDP program ensures compliance with applicable state and federal air quality regulations, which, when implemented fully, reduces emissions and verifies applicable emission reduction practices are in place.

The additional 6 FTE authorized by the legislature will assist DEQ in eliminating the current permit backlog. Keeping permits current is vital to ensuring that the most up to date applicable standards are incorporated into permits. The ACDP program has experienced a loss of approximately 8 FTE over the last 4 biennium.

Oregon Legislature approved DEQ's Policy Option Package (POP) 116 and provided budget approval in the form of House Bill 5017 during the 2019 session. As the Oregon Legislature already approved the dollar revenue increase, the purpose of this rulemaking is to establish *how* DEQ is going to collect the approved revenue. To reduce the fiscal impact further, DEQ has agreed to modify the Notice of Intent to Construct Type 2 fee; it will not be required for Basic or General ACDPs at all instead of being collected and possibly credited to future invoices.

5. **Commenter:** Alexandra Carney; Tualatin Auto Body (1/31/2020)

I am opposed to a 70% fee increase. There are too many other taxes and employee benefits that cost employers more that have been passed recently; and new permits that we have never seen in our 34 years of business.

Is the State of Oregon trying to get us all to close our businesses and leave? Where is the support for the employers?

Every year the State is increasing fees and permits. We need government employees who want to build up Oregon not tear it down. DEQ should be able to get more funding from the gross sales tax that was implemented instead of just raising fees.

Response:

Oregon Legislature approved DEQ's Policy Option Package (POP) 116 and provided budget approval in the form of House Bill 5017 during the 2019 session. As the Oregon Legislature already approved the dollar revenue increase, the purpose of this rulemaking is to establish *how* DEQ is going to collect the approved revenue. This comment is outside the scope of this rulemaking. To reduce the fiscal impact further, DEQ has agreed to modify the Notice of Intent to Construct Type 2 fee; it will not be required for Basic or General ACDPs at all instead of being collected and possibly credited to future invoices.

DEQ has not established a new permitting category over the last few years until this rulemaking, which does include a new Basic ACDP category #8. This new category does not require any new types of facilities/operations to obtain a permit but rather simplifies the permitting process for relatively simple operations. Some sources previously operating without a permit may feel like there are new permits, but DEQ continues to remain committed to a level playing field and ensuring all sources are compliant with applicable air quality regulations.

6. **Commenter:** Brian Earls; Highlander Motel & RV (Earl's Shell) (2/5/2020)

I understand that costs go up but as a business, I feel 70% is a large increase.

I would like increases occur over time and gradually. I request that you find ways to be more economical with the dollars you receive. The problem is this increase will be passed on to consumers.

DEQ is ultimately affecting the economy; in this positive economy revenues have grown so I urge you to find additional funding elsewhere in a booming economy.

Under Kate Brown we have seen many increase in taxes including the CAT [Corporate Activities Tax], and many other fees. While we have been blessed with a good economy, we have also seen a large increase in cost. I believe you should raise a smaller amount and see what happens with the economy in the next few years.

Response:

DEQ agrees that a smaller and more frequent fee increase is preferable to a 70% fee increase; DEQ is proposing a modification to the draft rules to phase in the fee increase over three years for Basic and General ACDPs. Historically, DEQ has conducted a fee increase rulemaking for the ACDP program approximately every 5 years and requested a ~20% increase. A fee increase was last conducted in 2014 at 20%; this increase was projected to last the program through 2017. The fee increase in 2017 was not approved by the legislature and was opposed to by the advisory committee in light of the unknown fees that would be associated with DEQ's new Air Toxics program, Cleaner Air Oregon. DEQ

eliminated four FTE to balance the budget as a result. This fee increase is larger than the historically typical 20% to hire 6 additional FTE for the ACDP program, account for raised employee costs, and bring the program back to appropriate levels of funding (see Oregon Secretary of State Audit of DEQ's air permitting program 2017).

Oregon Legislature approved DEQ's Policy Option Package (POP) 116 and provided budget approval in the form of House Bill 5017 during the 2019 session. As the Oregon Legislature already approved the dollar revenue increase, the purpose of this rulemaking is to establish *how* DEQ is going to collect the approved revenue. This comment is outside the scope of this rulemaking. To reduce the fiscal impact further, DEQ has agreed to modify the Notice of Intent to Construct Type 2 fee; it will not be required for Basic or General ACDPs at all instead of being collected and possibly credited to future invoices.

7. Commenter: Marti Sharp; Carson Oil (2/27/2020)

DEQ's proposed fee increase of 70% is arbitrary, capricious and an abuse of discretion; they are unreasonable and not substantiated. A 70% increase in annual fees, or an increase of \$17,382 for our permitted facilities, is unreasonable and is not justified by DEQ.

DEQ cites factors to justify the fee increase such as the need to bring DEQ back on schedule with necessary program funding, providing adequate funding through 2027; and to restore 6 full-time positions. However, DEQ fails to show how an increase in permit fees of 70% will assist with these objectives. In other words, it is not known how these additional fees and costs will be used within the department or applied to the department budget.

To this point, the EPA mandates that air agencies submit a "fee demonstration" to show that its fee schedule would result in the collection and retention of fees to cover air program costs, and only air program costs. (See Updated Guidance on EPA Review of Fee Schedules for Operating Permits, United States Environmental Protection Agency, by Peter Tsirigotis, March 27, 2018). There is no fee demonstration showing by DEQ.

DEQ's proposed fee increase of 70% is arbitrary, capricious and an abuse of discretion and should be set aside. DEQ did not articulate a satisfactory explanation that connects facts to the policy choice. DEQ fails to show how the 70% increase will be specifically applied to the air program. Moreover, imposing a 70% fee increase is not rational and is an unreasonable burden on industry.

While DEQ examined a few options in its rationale, DEQ did not examine all alternatives and should consider other alternatives, such as increased fines for violations of air quality rules and regulations, and increased costs for new construction.

Carson is an industry leader, striving to go above and beyond what is required. Carson hereby requests that the proposed fee structure be re-evaluated and that DEQ look at all of the facts and circumstances surrounding a fee increase. While a 10% increase in fees may be palatable, certainly a 70% increase is not.

Response:

Oregon Legislature approved DEQ's Policy Option Package (POP) 116 and provided budget approval in the form of House Bill 5017 during the 2019 session. As the Oregon Legislature already approved the dollar revenue increase, the purpose of this rulemaking is to establish *how* DEQ is going to collect the approved revenue. To reduce the fiscal impact further, DEQ has agreed to modify the Notice of Intent to Construct Type 2 fee; it will not be required for Basic or General ACDPs at all instead of being collected and possibly credited to future invoices.

All fees collected under the ACDP program are used for program related costs. This would include FTE related costs – new positions as well as current service level positions, COLA adjustments, benefits, indirect costs and services and supplies necessary to implement the program. DEQ's budget staff has conducted a review of the proposed fees to ensure that the increases will align with Policy Option Package 116 and is expected to support the program through the 2023-2025 biennium.

Use of Collected Fees: Per ORS 468.065 DEQ must use ACDP fees to cover expenses explicitly associated with the ACDP program. The proposed fee changes in OAR 340-216-8020 Table 2 are ACDP fees (with one exception for Title V sources that submit a Type 2 Notice of Intent to Construct) and as such, may only be used for ACDP program implementation-related costs.

This proposed rulemaking is specifically for DEQ's state-specific air program (Air Contaminant Discharge Permits) and wholly separate from Air Operating Permits (Title V permits) to which the fee demonstration reference applies. These permitting programs are regulated by OAR Chapter 340 divisions 216 (ACDP) and 218 (TV) respectively. The 'Updated Guidance on EPA Review of Fee Schedules for Operating Permits, United States Environmental Protection Agency, by Peter Tsigotis, March 27, 2018' is specifically referring to Title V Operating permit programs, established via 40 C.F.R. part 70 and part 71 and not a state-specific air permit program, like DEQ's ACDP program. Page 1 of the public notice states that DEQ was asking "for public comment on whether there are other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business."

To the alternative options provided in the comment:

Fines for Violations: Civil penalties issued for violations must be applied to the state General Fund and cannot be used to fund the program per ORS 468.135. As this has been addressed by the Oregon Legislature via 468.135, no changes were made in response to this alternative.

Increased Cost for New Construction: Alternative fee scenarios were discussed with the advisory committee; one alternative included a reduction of the overall annual fee increase based on a significant increase to specific activity fees. As annual permit fees account for

90%+ of the program fee revenue, DEQ and the advisory committee found that it would be detrimental to the program and permittees to raise initial permitting and specific activity fees high enough to significantly minimize the annual fee increase.

The reasoning here was twofold:

There is a real possibility that a substantial specific activity fee increase (e.g. initial permitting) would deter businesses from starting up or, worse yet, would provide an incentive for businesses to startup and not notify DEQ or apply for a permit.

Additionally, the advisory committee supported the annual fee increase as the main component of raising the legislatively approved revenue because it provides DEQ the revenue stability necessary to project budgets into the future; this allows DEQ to provide educated estimates on the next projected fee increase and permittees the chance to reasonably anticipate the next fee increase.

Increasing specific activity fees enough to raise the approved revenue (or a significant portion thereof) would likely act as a deterrent to construction or growth that requires permitting action, resulting in a drop in the number of fee payers, reducing agency revenue, and leading to a subsequent fee increase sooner than projected.

DEQ agrees that a smaller (and more frequent) fee increase is preferable to a 70% fee increase; DEQ is proposing a modification to the draft rules to phase in the fee increase over three years for Basic and General ACDPs. Historically, DEQ has conducted a fee increase rulemaking for the ACDP program approximately every 5 years and requested ~20% increase. A fee increase was last conducted in 2014 at 20%; this increase was projected to last the program through 2017 at the time. The fee increase in 2017 was not approved by the legislature and was opposed to by the advisory committee in light of the unknown fees that would be associated with DEQ's new Air Toxics program, Cleaner Air Oregon. DEQ eliminated four FTE to balance the budget as a result. This fee increase is larger than the historically typical 20% to hire 6 additional FTE for the ACDP program, account for raised employee costs, and bring the program back to appropriate levels of funding (see Oregon Secretary of State Audit of DEQ's air permitting program 2017).

Based on the legislative approval of DEQ's budget in HB5017 and the POP 116 during the 2019 session, DEQ disagrees that any part of this proposed rulemaking is arbitrary, capricious, or an abuse of discretion.

8. **Commenter:** Paul Ireland; National Coatings & Supplies, Inc. (2/27/2020 & 3/2/2020)

I represent collision repair facilities in the Portland metro area.

Shop owners feel that while they continually move towards being more environmentally responsible, they keep seeing more fee increases.

Many shops have switched to low VOC paint, waste paint recycling, energy efficient lighting, removing methylene chloride paint strippers, fuel efficient or electric shop vehicles, additional booth filtering, and waste/wash water management. All of my PDX customers continue to comply with federal regulations that they are not subject to.

The majority of reputable automotive paint operations have been moving towards not just non-HAP coatings, but low VOC coatings. They are also moving toward waterborne basecoats and sealers, which can account for up to 75% of coating activities and cut VOC emissions in half. All of these measures to lower output seem to be rewarded with new or higher fees.

Many Portland area shops, under current rules, can go back to using target-HAP containing coatings and join Eco-biz to avoid the General Permit [*obtaining Division 210 registration*]. They would pay less by polluting more. This doesn't add up.

Across Portland there are many unpermitted facilities breaking the rules, while larger operations are complying with all applicable rules, paying fees, etc. My customers feel that they're being penalized for compliance.

Are any of these fee increases going to go towards finding the noncompliant shops? This fee increase lacks focus on the most nefarious polluters: total rebuilders with minimal visibility in unmarked industrial parks using low quality HAP-containing coatings.

The 25 car rule [*Basic ACDP Table 1 Part A.1*] is skewed. Over 95% of automotive painting is collision repair with an average of 2.5 panels using about 40 ounces of paint. A 100-car threshold would make more sense as very small operations that paint once or twice per week would likely not need a permit, while larger shops spraying 10-15 times per day would justify the permit.

Autobody shops are commonly 'mom & pop' operations. A single owner as the only employee at a single location subject to the Basic ACDP is paying the same fees as a company operating 13 sites across the city. Production and emissions from these two types of permitted sources are drastically different (128 gallons of VOC coating compared to 13,000 gallons). It would make more sense to issue permits based on pounds of VOC instead of per location. It would have the added benefit of pushing more shops to lower and lower VOC paint lines.

Many Oregon repair facilities would be compliant with a VOC limit of 3.5 lbs/gallon like other air districts like California, Maricopa County (AZ), and Salt Lake City (UT).

Response:

DEQ appreciates that the industry has taken steps towards being more environmentally conscious and that some have gone beyond what is required by law. DEQ's intent is not to have compliant sources feel penalized for compliance, but rather establish an equitable way to obtain the legislatively approved revenue increase.

As previously stated, DEQ appreciates sources that choose to go beyond applicable regulations to reduce emissions. This is demonstrated by the OAR Chapter 340 Division 210 'area source registration' rules that allows sources otherwise subject to permitting via General, Simple, or Standard ACPD for NESHAP HHHHHH to obtain certification of an

approved environmental program and acquire a 'registration' per OAR chapter 340 division 210 instead of an ACDP. The fees and reporting requirements under a registration are less burdensome than the General (or Simple/Standard) ACDP but ensure the facilities comply with all applicable regulations.

Sources subject to the Basic ACDP, under current OAR, do not have the option to obtain an environmental certification and subsequently register- even though they are not utilizing HAP-containing coatings. DEQ understands that as the industry's typical coatings have shifted over time this may now unintentionally create an incentive for shops that have stopped using HAP-coatings in the Portland area to begin doing so to lessen their reporting requirements and fees.

While a modification of the Activities and Sources Table 1 of Division 216 to address this is not within the scope of this rulemaking, DEQ agrees that it seems appropriate to begin reviewing options to update permit or registration applicability to ensure sources are continually provided an incentive to reduce emissions of HAPs, VOCs, or both (OAR 340-216 Table 1 #B.53, #A.1, and the area source registration of Division 210).

DEQ's online and phone complaint intake process results in unpermitted sources being found and brought into compliance on a regular basis. Complaints can be filed anonymously. Generally speaking, the fee increase providing an additional 6 FTE will allow staff to reduce the current permit backlog, which may also result in the added benefit of staff having more time to research and find unpermitted sources.

DEQ's State Implementation Plan for VOC reduction includes OAR Chapter 340 division 242 requirements for motor vehicle refinishing operations. While these rules apply to almost all commercial shops in the Portland Area, the permitting threshold was established at a higher level, 'more than 25 automobiles'.

DEQ recognizes there is potential to reduce VOC emissions more effectively by requiring some variation of low-VOC coatings than requiring specific coating application and cleaning methods. DEQ plans to begin reviewing options to update permit or registration applicability to ensure sources are continually provided an incentive to reduce emissions of HAP, VOC, or both.

DEQ does not intend to charge different fees for the same activity/source as the activity will generally take a similar amount of time to regulate (inspect, review applications, determine compliance, etc.) regardless of production or throughput volume. The fees associated with an activity are generally designed to ensure the ACDP program collects an amount of funds that will be expended to regulate the activity. As part of the research referenced above, DEQ plans to review the possible ways to establish applicability criteria based on VOC-content or use that may be implemented in a manner that results in less VOC emissions.

9. **Commenter:** Sarah Andrews; League of Women Voters of Oregon (2/28/2020)

The League of Women Voters supports adequate standards for control of all sources of pollution and strict enforcement of established rules and regulations, a comprehensive, coordinated program for management of air as a natural resource, and adequate financing for air pollution abatement programs.

Businesses have been enjoying a period of an underfunded ACDP program. Now, as the ACDP program comes more into line with the true costs of doing business, every effort has been made to include stakeholders in the process of raising the approved revenue in the most equitable way. These proposed fee increases have been carefully crafted to soften the impacts on small businesses.

LWVOR supports these fee changes. We hope that this smooths the way to properly fund the ACDP program with more moderate and more frequent increases going forward.

Response:

Thank you for your support.

DEQ agrees that a smaller and more frequent fee increase is preferable to a 70% fee increase; DEQ is proposing a modification to the draft rules to phase in the fee increase over three years for Basic and General ACDPs. Historically, DEQ has conducted a fee increase rulemaking for the ACDP program approximately every 5 years and requested a ~20% increase. A fee increase was last conducted in 2014 at 20%; this increase was projected to last the program through 2017. The fee increase in 2017 was not approved by the legislature and was opposed to by the advisory committee in light of the unknown fees that would be associated with DEQ's new Air Toxics program, Cleaner Air Oregon. DEQ eliminated four FTE to balance the budget as a result. This fee increase is larger than the historically typical 20% to hire 6 additional FTE for the ACDP program, account for raised employee costs, and bring the program back to appropriate levels of funding (see Oregon Secretary of State Audit of DEQ's air permitting program 2017).

10. **Commenter:** Mark Riskedahl; Northwest Environmental Defense Center (3/2/2020)

I am writing on behalf of the Northwest Environmental Defense Center (NEDC), Green Energy Institute, Neighbors for Clean Air and the Oregon Environmental Council in support of DEQ's proposed rulemaking.

The proposed fee increase is both overdue and necessary for the continued effective implementation of the ACDP program. We believe the proposal is a key element enabling DEQ to continue serving Oregon as an effective regulator of the state's air pollution, and we urge the Environmental Quality Commission (EQC) to adopt the proposed rulemaking.

DEQ's reliance on fees as the primary source of funding for administering the ACDP program illustrates the importance of regularly updating the rate to reflect the costs associated with the regulatory system. Given these fees' role in overall administration of the ACDP program, and the program's central role in the regulation of air quality in the state, it is essential that DEQ ensure adequate funding for the program moving forward.

Requiring the entities obtaining permits to pay for the costs associated with administering the program is reasonable, in part because it requires the applicant to internalize some of the societal cost of the pollution emitted at its facility. The fact that fees have not increased in over six years has led to emitters being able to avoid the actual costs associated with their pollution, while failing to provide sufficient resources for those administering the ACDP program. A limited fee increase of 70% would ensure not only that DEQ has the resources and staff available to properly administer the program, but also that applicants are realizing and internalizing the costs of their emissions.

As part of the Department of Environmental Quality's 2019-2021 Legislatively Approved Budget, the Oregon Legislature authorized a fee increase in the ACDP program sufficient to generate a 70% increase in fee revenue. Given this blessing by Oregon's elected officials, it is time DEQ enacts the proposed fee increase.

DEQ has taken steps to minimize the proposed rule's impact on small businesses, in order to avoid unnecessarily inhibiting economic growth. Such components of the proposed rulemaking indicate that DEQ adequately considered the impact of the change on small businesses, and took realistic steps to minimize those impacts.

There are limited alternatives that are adequate in terms of realizing both the same results as the proposed ACDP fee increase, and the administrative efficiency benefits of the proposed increase. The lack of an effective alternative to the suggested fee increase further supports adoption of the proposed amendments.

The proposed rule amendments are essential to ensuring that Oregon's ACDP program is adequately funded and effective. Given the ACDP program's critical role in regulating air pollution in Oregon, the proposed fee increases are necessary and long overdue. Commenters urge the EQC to approve the rule amendments as written.

Response:

Thank you for your support.

11. **Commenter:** Tony DeFalco; Verde (3/2/2020)

We are writing to support the comments submitted by the Northwest Environmental Defense Center [#10 above] and to provide additional comments.

While we have appreciated a past partnership with DEQ, it was clear that the lack of ability to aggressively pursue permit updates, renewals, etc. hamstrung action to address toxic pollution in our community.

We see the strengthening of the permit program as part of solutions (e.g. CAO) to address pollution here and elsewhere.

We'd like to see an equity lens utilized to address minority- and woman-owned businesses in the fee increase implementation. We do not want polluting facilities to be let off the hook but do want to see the agency articulate an understanding of how institutional racism and sexism have impacted business ownership and growth in Oregon and how application of increases in fees can be structured to address these disparities.

Thank you for considering the comments of NEDC which we strongly support as well as these additional comments.

Response:

Thank you for your support.

DEQ acknowledges the systemic inequalities that disproportionately burden people of color, women, low-income people, people with limited English proficiency and other frontline communities related to environmental and regulatory decision-making, and supports agency and state efforts to reduce and eliminate these discrepancies through implementation of Environmental Justice principles and values. Historically, permit application are based on emissions/pollutant amounts.

As resources allow, DEQ works with all permit holders to provide technical assistance in obtaining permits and achieving and maintaining compliance. Where a minority- or women-owned business would be required to obtain an ACDP, DEQ technical assistance staff would work with that business and provide clear and accurate information about the projected costs, timelines, compliance and other important permit information.

DEQ's business assistance program webpage can be found here:

<https://www.oregon.gov/deq/air/airPermits/Pages/BAP.aspx>

12. **Commenter:** Sharla Moffett; Oregon Business & Industry (3/2/2020)

Oregon Business & Industry (OBI) is the state's leading business association representing approximately 1,600 members that employ more than 300,000 Oregonians. Many businesses in our membership will be affected by this major increase in fees.

The Oregon Legislature approved a 70% fee increase in 2019 for the ACDP program to address budget shortfalls that are contributing to a significant backlog of expired or administratively extended air permits. OBI is cognizant that additional resources are needed in order to implement this important core program. Further, we believe that significant numbers of expired or administratively extended permits diminish public trust in both government and business. It is crucial that DEQ address the backlog to demonstrate that permitting programs are efficient and effective in improving air quality as well as providing certainty for business.

That said, however, we believe the following points are critical going forward:

As new regulatory programs are implemented, we are gravely concerned that manufacturing and industrial sources will be burdened with additional fees and costs as the

need for revenue continues to rise. Permitting programs are a vital element of environmental protection and we believe there should be greater focus on issuance of ACDPs as opposed to the expansion of other regulatory programs.

Occasional and drastic fee increases make it extremely difficult for businesses to budget from year to year. A 70% increase on top of many other new business costs such as the Corporate Activities Tax (CAT), for example, is burdensome and challenging to accommodate. Regular and more incremental fee increases enable businesses to plan for increased business costs in a more systematic way.

Prior to future fee increases, DEQ needs to evaluate the time involved in issuing certain permit types to ensure that businesses are being assessed fairly. In order to achieve this, DEQ also needs to establish reliable ways to track time spent on various ACDPs.

OBI is eager to engage DEQ in future conversations well in advance of any future fee increases in order to address these concerns.

Response:

As the legislature approves fees/funding for a new program (CAO) and the EQC adopts rules to implement the program, DEQ must follow the rules as approved by the EQC. DEQ continues to focus on reducing the permit backlog, and the CAO program has hired staff specifically for implementing this program. This has resulted in a minimal impact to the ACDP program's permit issuance rate as permit writers have CAO-specific employees to ensure the permitting process is not delayed any more than necessary.

DEQ agrees that a smaller and more frequent fee increase is preferable to a 70% fee increase; DEQ is proposing a modification to the draft rules to phase in the fee increase over three years for Basic and General ACDPs. Historically, DEQ has conducted a fee increase rulemaking for the ACDP program approximately every 5 years and requested a ~20% increase. A fee increase was last conducted in 2014 at 20%; this increase was projected to last the program through 2017. The fee increase in 2017 was not approved by the legislature and was opposed to by the advisory committee in light of the unknown fees that would be associated with DEQ's new Air Toxics program, Cleaner Air Oregon. DEQ eliminated four FTE to balance the budget as a result. This fee increase is larger than the historically typical 20% to hire 6 additional FTE for the ACDP program, account for raised employee costs, and bring the program back to appropriate levels of funding (see Oregon Secretary of State Audit of DEQ's air permitting program 2017).

DEQ agrees that additional and more specific time-accounting data is an essential part of establishing a more accurate assessment of fee increases moving forward. An upgraded time accounting system rollout was delayed for an array of reasons, but DEQ anticipates having an updated time-accounting system implemented prior to a subsequent fee increase.