



State of Oregon Department of Environmental Quality

Oregon Environmental Quality Commission Meeting

July 20, 2023

Item E: Title V 2023 Fee Increase Temporary Rule (Action)

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DEQ recommendation to the EQC

The DEQ Air Quality Program recommends the Environmental Quality Commission adopt temporary rules to implement House Bill 3229 as well as increase Title V fees. HB 3229 increased the Title V base fee and per ton emission fee. DEQ recommends increasing other Title V fees by a commensurate 43% as authorized by the legislatively approved FY 2023-25 DEQ budget, HB 5018. The increase would be effective Aug. 1, 2023.

Proposed EQC motion:

“I move that the Environmental Quality Commission:

- 1. For the reasons described in the DEQ staff report supporting this proposal, find that the failure to act promptly to adopt temporary rules will result in serious prejudice to the public interest and the interests of Title V permit holders; and*
- 2. Adopt the temporary rule amendments attached to the DEQ staff report as Exhibit A as part of Chapter 340 of the Oregon Administrative Rules, to increase Title V fees, effective August 1, 2023.”*

Overview

DEQ seeks to implement select provisions of HB 3229 (2023) and HB 5018 (2023) through a temporary rulemaking. Specifically, this rulemaking incorporates adjustments to the statutory Title V fees and makes commensurate 43% adjustments to fees found in administrative rule as authorized by the agency's Legislative Adopted Budget, effective Aug. 1, 2023. The legislation also increased statutory fees to higher levels effective Jan. 1, 2024. The additional increase will be brought before the commission as part of a subsequent permanent rulemaking.

The proposed temporary rule allows DEQ to implement the approved Title V fee increase for 2023, providing DEQ the necessary funding to begin replenishing its Title V permitting program. The proposed temporary rule would increase annual revenue for the program by approximately \$1.5 million spread across all Title V permittees. DEQ will conduct a formal rulemaking, including stakeholder engagement and a public notice process, to permanently implement all increases authorized by HB 3229 (2023) and HB 5018 (2023).

Statement of need

EPA delegates authority to DEQ to operate the Title V program in Oregon and regularly reviews Oregon's program for compliance with federal requirements. DEQ must comply with federal requirements to maintain a federally approved and delegated program.

The federal Clean Air Act requires each state to fully pay for its Title V program through permit fees. The Oregon Legislature established three categories of Title V fees:

- An annual base fee assessed to all Title V sources regardless of emission quantities.
- Emission fees assessed per ton of emissions from individual sources per calendar year.
- Fees for specific activities as authorized under ORS 468A.315(1)(b).

The fees cover DEQ's costs to implement the Title V program to regulate Oregon's major industrial sources. Activities include permit writing, permit modifications, construction approvals, annual report reviews, inspections, air quality monitoring, source test reviews, enforcement, small business assistance and public engagement.

Oregon's Title V operating permit program requires increased funding to provide essential program services. Costs have significantly risen since the last time the legislature adjusted the Title V fees in 2011. Failure to increase Title V fees will diminish DEQ's ability to maintain adequate program staff and jeopardize effective program administration.

Justification for adopting temporary rules

OAR 468A.315

Adopting this temporary rule will allow DEQ to implement the approved fee increase for the 2023 Title V invoicing cycle, which begins in August 2023. Failure to act promptly will force DEQ to wait an additional year before it can apply the fee increase to its annual Title V invoicing process. DEQ's Title V program is currently underfunded and understaffed to address a significant renewal permit application backlog.

Failure to restore resourcing of the Title V program will increase the permit renewal and new application backlog, prevent some sources from implementing necessary upgrades, and hinder DEQ's ability to regulate Oregon's major industrial sources. The lack of staff and resources delays sources from implementing changes and upgrades and allows existing sources to continue to operate under the requirements of expired and outdated permits. Current levels of resourcing limits DEQ's ability to appropriately regulate air emissions from those major sources. Delaying implementation of the new fees by a year will result in continued insufficient staffing levels and prevent DEQ from initiating hiring of essential additional staff.

Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s).

Title V of the 1990 Federal Clean Air Act requires each state to develop a comprehensive operating permit program for major industrial sources of air pollution. The program clarifies the environmental obligations of a business through a Title V permit that includes all of its air pollution control requirements.

DEQ currently has insufficient funds to operate its Title V program and cannot fulfill its obligations for this EPA delegated program. DEQ finds that a temporary rule is necessary for DEQ to continue its important work to protect air quality and public health.

Failure to fulfill DEQ's obligations to administer our Title V program could result in poorer air quality in Oregon and additional risk for fence-line communities. Oregon's major sources and local economies can also be impacted by delayed permit issuance and construction approvals.

Who would suffer these consequences?

The members of the public and stakeholders who could be harmed if EQC did not take this action are:

- Fence-line communities living adjacent to Title V sources without permits or with an expired permit, who may be directly exposed to air contaminant emissions that might be prevented under new, applicable permit requirements;
- Vulnerable populations who are sensitive to poor air quality, for the same reason;
- Members of the public for the same reason;
- Existing facilities needing modifications or construction approvals; and

- New facilities needing a Title V permit to begin operations.

Why or how failure to immediately take rulemaking action would cause these consequences?

DEQ cannot regulate Oregon’s major sources of pollution, process permit applications, and issue construction approvals without adequate staffing and funding. A temporary rulemaking provides DEQ the ability to collect the legislatively approved fee increase in the upcoming August 2023 invoice cycle, allowing DEQ to begin restoration of its Title V program immediately. Failure to pass a temporary rulemaking to implement these fee increases will delay DEQ from restoring its Title V program and effectively regulating Oregon’s major sources of pollution until 2025.

How would the temporary rule avoid or mitigate consequences?

If EQC adopts the proposed temporary rule amendments, DEQ will have the necessary funding to support continuity within the program and prevent continued growth of a permit backlog. The funding will allow DEQ to begin restoration of its Title V program in late 2024.

The funding also allows DEQ to address the consequences identified for industrial sources and surrounding communities, including timely permit issuance and air quality protection for communities. The Title V program protects Oregonians from pollution-related health problems and premature death, and improves the health and productivity of Oregon’s work force.

Rules affected, authorities, supporting documents

Lead division

Air Quality Division

Program or activity

Title V Operating Permit Program

Chapter 340 action

Rules Amended – OAR		
340-220-0030	340-220-0040	340-220-0050

Statutory authority

Statutory Authority – ORS			
468.020	468.065	468A.310	468A.315

Statutes implemented

Statutes Implemented – ORS	
468.065	468A.315

Legislation

HB 3229 (2023), HB 5018 (2023)

Documents relied on for rulemaking

Document title	Document location
2023-2025 Legislatively approved budget	Oregon Legislature Website
Oregon House Bills 3229 and 5018 (2023)	HB3229 , HB5018
Clean Air Act, including Clean Air Act Amendments of 1990	EPA Website

Housing costs

As ORS 183.534 requires, DEQ evaluated whether the proposed rules presented to EQC would influence 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. It is possible that a permit holder could change the price of goods and services to pass on any fee changes to consumers, though any estimate of the possible impact would be speculative using information available at this time.

Fee analysis

This temporary rule would increase existing Title V fees. EQC’s authority to act on the proposed fees is in ORS 468.020, ORS 468.065, and ORS 468A.315.

Brief description of proposed fees

The Oregon Legislature has established three categories of Title V fees. The proposed rules would increase the annual base fees, annual emission fees, and specific activity fees sufficient to

increase annual revenue for the Title V program by 43%, or approximately \$1.5 million in 2023 invoicing cycle. The fees would be spread across all Title V permittees.

Reasons

The temporary rule would implement the legislatively approved changes to DEQ’s budget, HB 5018 (2023) and HB 3229. HB 3229, approved in the 2023 legislative session, authorizes an increase to the Title V base and emission fees by 43% in 2023 and an additional non-compounding 40% in 2024, to sustain the Title V program. The approved budget includes legislative approval for the EQC to raise the specific activity fees by the same percentage. The Title V fees have not had a legislatively approved increase since 2011.

The temporary rule would allow DEQ to address immediate needs including increased program and staff costs. The temporary rule allows DEQ to adequately administer federal standards for major sources, air toxic requirements and other regulations to reduce health risks from air pollution. The temporary rule would also allow the Title V program to issue, renew or modify permits to prevent or reduce air pollution through permit requirements, and ensure existing pollution sources comply with state and federal air emissions standards to protect air quality.

Fee payers

There are just over 100 Title V sources in Oregon. Title V permit holders include many of the largest industrial facilities in the state and are the largest point sources of air pollution in the state. These facilities are mainly large employers and produce items for local and regional consumption. Title V permit holders are an important part of the Oregon economy.

Affected party involvement in fee-setting process

DEQ advised Title V fee payers and stakeholders of necessary increases throughout the development of the agency’s 2023-2025 biennial budget. DEQ also convened fee-paying stakeholders upon introduction of HB 3229 in the 2023 legislative session. The measure saw significant stakeholder involvement and activity throughout the session.

Summary of impacts

The temporary rulemaking increases all Title V fees by 43% for the 2023 invoicing cycle.

Annual Title V Fees		
Fee category	Current Fee	Increased Fee
Annual base fee	\$8,744	\$12,504
Emission fee/ton*	\$66.10	\$95
Administrative permit revision fee	\$533	\$762
Simple permit revision fee	\$2,133	\$3,050
Moderate permit revision fee	\$15,995	\$22,873
Complex permit revision fee	\$31,989	\$45,744
Ambient air monitoring review fee	\$4,265	\$6,099

*Annual emission fees are determined by the total emissions reported for the previous calendar year.

Current and proposed fee information

Current Fees		
Program costs covered by fees	\$3,559,634	100%
Program costs covered by General Fund	\$0	0%
Fees Last Changed	2022	

Proposed Fees		
Expected change in revenue (+/-)	\$1,530,643	43%
Main GF required by statute/rule to fund program	\$0	0%
Proposed fee allows General Fund replacement	\$0	0%
Expected effective date	Aug. 1, 2023	

Transactions and Revenue				
Fiscal Year	Number of transactions	Number of fee payers	Impact on revenue (+/-)	Total revenue (+/-)
FY2023	141	104	\$0	\$3,559,634
FY2024	140	103	\$1,530,643	\$5,090,277

Notification

DEQ is providing notice of this temporary rulemaking through a GovDelivery bulletin and emails to Title V permit holders who will be directly affected by these fee increases.

Environmental justice considerations

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, culture, education or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. DEQ is

committed to incorporating environmental justice best practices into its programs and decision-making, to ensure all people in Oregon have equitable environmental and public health protections.

ORS 182.545 requires natural resource agencies to consider the effects of their actions on environmental justice issues. The fee increase is a statutory authorization and directed at permit holders/fee payers, so there is not a broad policy change or projected change.

EQC prior involvement

DEQ shares general rulemaking information with the EQC through the regular Director's Report. DEQ presented its 2023-2025 Agency Request Budget to the commission throughout the course of its development. The agency sought formal certification of its Agency Request Budget, and Governor's Request Budget by the commission and updated the commission throughout the course of the 2023 legislative session. The increase authorized by HB 3229 is less than that requested in the commission certified Agency Request Budget.

Implementation

The temporary rule and corrected fees would become effective on Aug. 1, 2023.

Exhibit A



State of Oregon Department of Environmental Quality

Draft Rules – Edits Highlighted

Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

Chapter 340

Division 220

OREGON TITLE V OPERATING PERMIT FEES

340-220-0030

Annual Base Fee

(1) DEQ will assess an annual base fee of ~~\$8,744~~~~\$8,489~~ for each source subject to the Oregon Title V Operating Permit program for the period of November 15, ~~2022~~~~1~~ to November 14, ~~2023~~~~2~~.

(2) DEQ will assess an annual base fee of ~~\$12,504~~~~\$8,744~~ for each source subject to the Oregon Title V Operating Permit program for the period of November 15, ~~2023~~~~2~~ to November 14, ~~2024~~~~3~~, and for each annual period thereafter.

Statutory/Other Authority: ORS 468 & 468A

Statutes/Other Implemented: ORS 468 & 468A

History:

DEQ 14-2022, amend filed 08/16/2022, effective 08/16/2022

DEQ 10-2021, amend filed 07/23/2021, effective 07/23/2021

DEQ 12-2019, amend filed 05/16/2019, effective 05/16/2019

DEQ 189-2018, amend filed 07/13/2018, effective 07/13/2018

DEQ 1-2017, f. & cert. ef. 1-19-17

DEQ 7-2016, f. & cert. ef. 6-9-16

DEQ 2-2015, f. & cert. ef. 1-7-15

DEQ 10-2014, f. & cert. ef. 9-4-14

DEQ 9-2012, f. & cert. ef. 12-11-12

DEQ 5-2012, f. & cert. ef. 7-2-12

DEQ 16-2010, f. & cert. ef. 12-20-10

Reverted to DEQ 10-2008, f. & cert. ef. 8-25-08
DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10
DEQ 10-2008, f. & cert. ef. 8-25-08
Reverted to DEQ 7-2006, f. & cert. ef. 6-30-06
DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08
DEQ 7-2006, f. & cert. ef. 6-30-06
DEQ 6-2005, f. & cert. ef. 7-11-05
DEQ 6-2004, f. & cert. ef. 7-29-04
DEQ 11-2003, f. & cert. ef. 7-23-03
DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01
DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01
DEQ 8-2000, f. & cert. ef. 6-6-00
DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2580
DEQ 10-1999, f. & cert. ef. 7-1-99
DEQ 12-1998, f. & cert. ef. 6-30-98
DEQ 9-1997, f. & cert. ef. 5-9-97
DEQ 7-1996, f. & cert. ef. 5-31-96
DEQ 22-1995, f. & cert. ef. 10-6-95
DEQ 12-1995, f. & cert. ef. 5-23-95
DEQ 13-1994, f. & cert. ef. 5-19-94
DEQ 20-1993(Temp), f. & cert. ef. 11-4-93

340-220-0040

Emission Fee

(1) For operations during the period of November 15, 2022 to November 14, 2023, DEQ will assess an emission fee of ~~\$66.10~~~~\$64.18~~ per ton of each regulated pollutant emitted during calendar year ~~2021~~ to each source subject to the Oregon Title V Operating Permit Program.

(2) For operations during the period of November 15, 2023 to November 14, 2024, DEQ will assess an emission fee of ~~\$95~~~~\$66.10~~ per ton of each regulated pollutant emitted during calendar year ~~2022~~ to each source subject to the Oregon Title V Operating Permit Program. DEQ will assess the same per ton emission fee for operations in subsequent comparable November 15 to November 14 operating periods, based on subsequent calendar year's emissions of regulated pollutants, respectively, to each source subject to the Oregon Title V Operating Permit Program.

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

Statutory/Other Authority: ORS 468.020

Statutes/Other Implemented: ORS 468 & 468A

History:

DEQ 14-2022, amend filed 08/16/2022, effective 08/16/2022

DEQ 10-2021, amend filed 07/23/2021, effective 07/23/2021
DEQ 12-2019, amend filed 05/16/2019, effective 05/16/2019
DEQ 189-2018, amend filed 07/13/2018, effective 07/13/2018
DEQ 1-2017, f. & cert. ef. 1-19-17
DEQ 7-2016, f. & cert. ef. 6-9-16
DEQ 2-2015, f. & cert. ef. 1-7-15
DEQ 10-2014, f. & cert. ef. 9-4-14
DEQ 9-2012, f. & cert. ef. 12-11-12
DEQ 16-2010, f. & cert. ef. 12-20-10
DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10
DEQ 10-2008, f. & cert. ef. 8-25-08
DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08
DEQ 7-2006, f. & cert. ef. 6-30-06
DEQ 6-2005, f. & cert. ef. 7-11-05
DEQ 6-2004, f. & cert. ef. 7-29-04
DEQ 11-2003, f. & cert. ef. 7-23-03
DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01
DEQ 8-2000, f. & cert. ef. 6-6-00
DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2590
DEQ 10-1999, f. & cert. ef. 7-1-99
DEQ 12-1998, f. & cert. ef. 6-30-98
DEQ 9-1997, f. & cert. ef. 5-9-97
DEQ 7-1996, f. & cert. ef. 5-31-96
DEQ 22-1995, f. & cert. ef. 10-6-95
DEQ 12-1995, f. & cert. ef. 5-23-95
DEQ 13-1994, f. & cert. ef. 5-19-94
DEQ 20-1993(Temp), f. & cert. ef. 11-4-93

340-220-0050

Specific Activity Fees

(1) DEQ will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of July 27, 2022~~1~~ to August 1, 2023~~2~~ as follows:

(a) Existing source permit revisions:

(A) Administrative* — ~~\$533~~~~\$518~~;

(B) Simple — ~~\$2,133~~~~\$2,071~~;

(C) Moderate — ~~\$15,995~~~~\$15,529~~;

(D) Complex — ~~\$31,989~~~~\$31,058~~; and

(b) Ambient air monitoring review — ~~\$4,265~~~~\$4,141~~.

(2) DEQ will assess specific activity fees for an Oregon Title V Operating Permit program source as of August 1, 2023~~2~~, and thereafter, as follows:

(a) Existing source permit revisions:

(A) Administrative* — \$762~~\$533~~;

(B) Simple — \$3,050~~\$2,133~~;

(C) Moderate — \$22,873~~\$15,995~~;

(D) Complex — \$45,744~~\$31,989~~; and

(b) Ambient air monitoring review — \$6,099~~\$4,265~~.

(3) DEQ will assess the following specific activity fee for an Oregon Title V Operating Permit program source for annual greenhouse gas reporting, as required by OAR 340-215-0060(1) — 15 percent of the following, not to exceed \$4,500*:

(a) The applicable annual base fee under OAR 340-220-0030 (for the period of November 15 of the current year to November 14 of the following year); and

(b) The applicable annual emission fee under OAR 340-220-0040.

(4) DEQ will assess the following specific activity fees for an Oregon Title V Operating Permit for Cleaner Air Oregon program implementation, as required by OAR 340-245-0400:

(a) The annual base fee of \$2,859; and

(b) The annual emission fee of \$21.61 per ton of each regulated pollutant for emissions during the previous calendar year, up to and including 7,000 tons of such emissions per year. The emission fee will be applied to emissions based on the elections made under OAR 340-220-0090.

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

Statutory/Other Authority: ORS 468 & 468A

Statutes/Other Implemented: ORS 468 & 468A

History:

DEQ 14-2022, amend filed 08/16/2022, effective 08/16/2022

DEQ 10-2021, amend filed 07/23/2021, effective 07/23/2021

DEQ 23-2019, amend filed 10/08/2019, effective 10/08/2019

DEQ 12-2019, amend filed 05/16/2019, effective 05/16/2019

DEQ 7-2019, amend filed 02/15/2019, effective 02/15/2019

DEQ 197-2018, amend filed 11/16/2018, effective 11/16/2018

DEQ 189-2018, amend filed 07/13/2018, effective 07/13/2018

DEQ 1-2017, f. & cert. ef. 1-19-17
DEQ 7-2016, f. & cert. ef. 6-9-16
DEQ 2-2015, f. & cert. ef. 1-7-15
DEQ 10-2014, f. & cert. ef. 9-4-14
DEQ 9-2012, f. & cert. ef. 12-11-12
DEQ 5-2012, f. & cert. ef. 7-2-12
DEQ 12-2011, f. & cert. ef. 7-21-11
DEQ 11-2011, f. & cert. ef. 7-21-11
DEQ 16-2010, f. & cert. ef. 12-20-10
DEQ 12-2010, f. & cert. ef. 10-27-10
Reverted to DEQ 10-2008, f. & cert. ef. 8-25-08
DEQ 9-2009(Temp), f. 12-24-09, cert. ef. 1-1-10 thru 6-30-10
DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10
DEQ 10-2008, f. & cert. ef. 8-25-08
Reverted to DEQ 7-2006, f. & cert. ef. 6-30-06
DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08
DEQ 7-2006, f. & cert. ef. 6-30-06
DEQ 6-2005, f. & cert. ef. 7-11-05
DEQ 6-2004, f. & cert. ef. 7-29-04
DEQ 11-2003, f. & cert. ef. 7-23-03
DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01
DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01
DEQ 8-2000, f. & cert. ef. 6-6-00
DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2600
DEQ 10-1999, f. & cert. ef. 7-1-99
DEQ 12-1998, f. & cert. ef. 6-30-98
DEQ 13-1994, f. & cert. ef. 5-19-94
DEQ 20-1993(Temp), f. & cert. ef. 11-4-93