



State of Oregon Department of Environmental Quality

# Permanent Title V Permit Fees Director Report

Jan. 25, 2024

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# **DEQ Recommendation to the DEQ Director**

The DEQ Air Quality Program recommends that Director Feldon, on behalf of the Environmental Quality Commission, adopt the proposed rules in Attachment A as part of Chapter 340 of the Oregon Administrative Rules.

# Overview

## Short summary of proposed rule changes

DEQ proposes rules to increase Title V operating permit fees as authorized by House Bill 3229. The proposed fee increases are necessary for DEQ to provide essential services associated with Oregon's Title V permitting program. On Jan. 24, 2024, DEQ proposed, and the EQC approved, delegation of this rulemaking to Director Feldon. DEQ will propose the rules to Director Feldon in January 2024.

The fee increase effective for the 2023 invoice year is 43 percent for the period of July 2023 to August 2024. DEQ applied this increase to permit fees on the invoices DEQ issued in August 2023 for annual emissions during 2022 and the operating period Nov. 15, 2023 to Nov. 14, 2024.

The fee increase effective for the 2024 invoice year is an additional non-compounding 40 percent for the period of August 2024 to August 2025. DEQ will apply this increase to permit fees on the invoices DEQ will issue in August 2024 for annual emissions during 2023 and the operating period Nov. 15, 2024 to Nov. 14, 2025. Beginning in 2025, DEQ can increase Title V fees by the consumer price index or three percent, whichever is lower.

## Background of reasons for doing this rulemaking

Title V of the federal Clean Air Act requires each state to develop and implement a comprehensive operating permit program for major industrial sources of air pollution.

Oregon's Title V program:

- Administers federal health standards, air toxic requirements and other regulations to protect air quality;
- Issues, renews or modifies Title V permits to prevent or reduce air pollution through permit requirements;
- Completes required Title V inspections;
- Ensures that existing sources of air pollution comply with state and federal air emissions standards;
- Ensures that new sources of air pollution install controls such as filtration equipment, combustion controls and vapor controls needed to protect air quality;
- Issues public notices and information about the Title V program; and
- Provides other essential services such as emission inventories, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA.

## Affected parties

The proposed rules would affect facilities that currently have a Title V permit and any facility that applies for this type of permit in the future.



# Statement of Need

## What need would the proposed rule address?

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 fund its Title V program through permit fees. The Oregon Legislature established Oregon's Title V fees in three categories:

- 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; and
- Specific activity fees assessed when a source owner or operator modifies a permit.

The fees cover DEQ's costs to operate the Title V program. Costs include a portion of air quality monitoring, planning and agency central services, such as accounting and human resources. House Bill 3229 authorized DEQ to increase fees by 43 percent in 2023 and an additional non-compounding 40 percent in 2024 to meet funding requirements. Beginning in 2025, DEQ can increase Title V fees by the consumer price index or three percent, whichever is lower.

Oregon's Title V operating permit program requires additional funding to provide essential program services. Costs have increased over time due to increased program costs which have outpaced inflation. The proposed fees would allow Oregon to provide requisite program services up to August 2025. Failure to increase Title V fees could affect DEQ's ability to maintain adequate program staff and jeopardize effective program administration.

## How would the proposed rule address the need?

The proposed rules would increase Title V permit fees to pay for increased program costs.

## How will DEQ know the rule addressed the need?

The rules will have addressed the need if the increased fees help the Title V program balance its budget and avoid a disruption in requisite services.

# Rules Affected, Authorities, Supporting Documents

## Lead division

Air Quality Division

## Program or activity

Title V Operating Permit Program

## Chapter 340 action

Amend				
340-220-0030	340-220-0040	340-220-0050		

Statutory Authority – ORS				
468.020	468.065	468A.025	468A.040	468A.050
468A.310	468A.315			

Statutes Implemented – ORS				
468.065	468A.050	468A.315		

## Documents relied on for rulemaking

Document title	Document location
2021-2023 Legislatively approved budget	<a href="#">Oregon Legislature Website</a>
Clean Air Act, including Clean Air Act Amendments of 1990	<a href="#">EPA Website</a>
U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index	<a href="#">Bureau of Labor Statistics Website</a>

# Fee Analysis

The proposed rules would increase existing Title V fees. EQC's authority to act on the proposed fees is in ORS 468A.315.

Oregon's Title V program administers federal health standards, air toxic requirements and other regulations to reduce the number of unhealthy air days and health risks from air toxics. The program issues, renews or modifies permits to prevent or reduce air pollution through permit requirements. In addition, it ensures existing pollution sources comply with state and federal air emissions standards and new sources of air pollution install controls such as filtration equipment, combustion controls and vapor controls needed to protect air quality. Other essential services include emission inventories, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA.

## Brief description of proposed fees

The Oregon Legislature established Oregon's Title V fees in three categories. The proposed rules would increase the annual base, emission fees and specific activity fees, described under the Statement of Need section above.

## Reasons

The proposed fees would address increased program costs.

## Fee proposal alternatives considered

Federal law requires DEQ to perform requisite program services to retain delegation of the Title V program. Federal law also requires DEQ to fund the permit program entirely by permit fees. DEQ could decline to administer the program, shifting the program from DEQ to EPA; however, DEQ has chosen not to pursue this alternative to maintain regulatory consistency for the regulated public and citizens of Oregon.

## Fee payer

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

HB 3229 increased the Title V base fee to \$12,504 in 2023 and \$16,002 in 2024, and the emissions fee to \$95 a ton in 2023 and \$121 in 2024, for the 2023 and 2024 invoicing cycles. The fees were adopted through the legislative process.

## Summary of impacts

The proposed fee increase would affect approximately 104 facilities that currently have a Title V permit and any facility that applies for this type of permit in the future.

## Fee payer agreement with fee proposal

HB 3229 was subject to several public hearings and involvement by multiple parties. The enrolled bill was a compromise staggered increase to stabilize the program over the next few years while trying to mitigate the impact on facilities.

## How long will the current fee sustain the program?

2022 Fees	
Program revenue from fees	\$3,407,000
Effective date of fees	8/16/2022

2023 Fees	
Program revenue from fees	\$4,872,000
Effective date of fees	8/01/2023

2024 Fees	
Program revenue from fees	\$6,192,000
Anticipated effective date of fees	01/28/2023

Transactions and Revenue				
Fiscal Year	Number of transactions	Number of fee payers	Impact on revenue (+/-)	Total revenue (+/-)
FY2022-2023	239	108		\$3,407,000
FY2023-2024	253	108	\$1,424,000*	\$4,831,000
FY2024-2025	244	107	\$1,361,000*	\$6,192,000



## Fee schedule

The following table shows the amounts of the proposed fees.

<b>Proposed Fees</b>			
<b>Fee category</b>	<b>2022 Fees</b>	<b>2023 Fees</b>	<b>Proposed 2024 Fees</b>
<b>Annual Title V Fees</b>			
Emission Fee	\$66.10	\$95.00	\$121.00
Annual Base Fee	\$8,744	\$12,504	\$16,002
<b>Specific Activity Fees</b>			
Administrative Amendment	\$533	\$762	\$975
Simple Modification	\$2,133	\$3,049	\$3,903
Moderate Modification	\$15,995	\$22,872	\$29,276
Complex Modification	\$31,989	\$45,744	\$58,552
Air Monitoring Review	\$4,265	\$6,099	\$7,807

# Statement of Fiscal and Economic Impact

## Fiscal and Economic Impact

The increase in Title V permit fees would affect approximately 104 permit holders directly and increase annual program revenue by approximately 43 percent in the 2023 invoice year and an additional non-compounding 40 percent in the 2024 invoice year.

The direct impact of the fee increase on permit holders assumes that emissions will remain the same in 2023 as they were in and 2022 and reflects adjustments to Plant Site Emission Limit changes in recently amended and renewed Title V permits.

Title V permit holders are subject to Oregon's greenhouse gas reporting program and most of the permit holders are subject to the greenhouse gas reporting fees. The greenhouse gas reporting fee is equal to 15 percent of their Title V annual base and emission fees, up to a maximum greenhouse gas reporting fee cap of \$4,500. The proposed increase in Title V permit fees will result in an increase in greenhouse gas reporting fees for permit holders below the \$4,500 fee cap threshold.

## Statement of Cost of Compliance

### State agencies

#### State and federal agencies

**Direct Impacts:** Oregon Health Sciences University is the only state agency that holds a Title V permit and paid Title V permit fees of \$15,486 in 2022. The proposed rules would increase their permit fees by about \$6,803 for 2023 and an additional \$6,055 in 2024. OHSU is also subject to greenhouse gas reporting fees equal to 15 percent of its annual emission fee and base fee. OHSU paid \$2,323 in greenhouse gas reporting fees in 2022. Because of the proposed rules, OHSU's greenhouse gas reporting fees would increase by about \$1,020 in 2023 and an additional \$909 in 2024. No federal agencies hold Title V permits.

**Indirect Impacts:** Changes to fees could affect state and federal agencies indirectly if businesses holding Title V permits change the price of goods and services to offset any increased costs from paying a permit fee.

### DEQ

**Direct Impacts:** DEQ has no facilities that require a Title V permit. The proposed fee increases would affect DEQ directly by providing funding necessary to perform requisite program services.

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

## Local governments

**Direct Impacts:** Oregon requires county and city local governments to obtain a Title V major source permit for municipal waste landfills. Fees would increase for three landfills operated by local governments:

- Metropolitan Service District, St. Johns Landfill paid Title V annual permit fees of \$9,140 in 2022. The proposed rules would increase their 2023 fees by about \$3,934 and 2024 fees by an additional \$3,654. St. John's Landfill is subject to greenhouse gas reporting fees equal to 15 percent of their annual emission fee and base fee. This fee would increase by about \$590 in 2023 and an additional \$548 in 2024.
- Deschutes County Solid Waste Department, Knott Landfill paid Title V annual permit fees of \$12,577 in 2022. The proposed rules would increase their 2023 fees by about \$5,437 and 2024 fees by an additional \$5,066. Knott Landfill is subject to greenhouse gas reporting fees equal to 15 percent of their annual emission fee and base fee. This fee would increase by about \$815 in 2023 and an additional \$751 in 2024.
- Douglas County Public Works Department, Roseburg Landfill paid Title V annual permit fees of \$9,801 in 2022. The proposed rules would increase their 2023 fees by about \$4,223 and 2024 fees by an additional \$3,914. Knott Landfill is subject to greenhouse gas reporting fees equal to 15 percent of their annual emission fee and base fee. This fee would increase by about \$634 in 2023 and an additional in \$587 in 2024.

**Indirect Impacts:** Changes to fees could affect county and city local governments indirectly if businesses holding Title V permits change the price of goods and services to offset any increased costs from paying a permit fee.

## Public

**Direct Impacts:** Air pollution creates public health problems that can have negative economic impacts. The proposed rules could affect the public directly and positively if the proposed fee increases provide adequate resources for compliance and technical assistance and help avoid public health costs associated with lower compliance and increased air pollution.

**Indirect Impacts:** 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. DEQ expects any such price increases to be small and lacks available information upon which it could accurately estimate actual potential increases.

## Large businesses - businesses with more than 50 employees

**Direct Impacts:** Approximately 91 large businesses hold Title V permits and a fee increase would affect these permit holders directly. Estimated impacts are based on the assumption that DEQ identified all facilities subject to the Title V program and that the number of Title V permits, and facility emissions remain constant.

The proposed annual base fees and emission fees are provided in the following table. The annual base fee is small in comparison to the emission fees paid by most sources. The rulemaking would also increase specific activity fees. Specific activity fees contribute a small portion of Title V program revenue.

<b>Proposed Title V Fees For 2023 and 2024</b>					
<b>Fee Category</b>	<b>2022 Fees</b>	<b>2023 Fees</b>	<b>Increase over 2022 Fees</b>	<b>2024 Fees</b>	<b>Increase over 2023 Fees</b>
<b>Annual Base Fee</b>	\$8,744	\$12,504	\$3,760	\$16,002	\$3,498
<b>Emission Fee</b>	\$66.10	\$95.00	\$28.90	\$121.00	\$26.00

The requirement for a Title V permit is most often based on quantity of emissions from a facility. In general, lower emitting sources with less complex permits would experience a smaller annual dollar impact from the proposed fee increases. The table below shows the effect of the proposed fees on invoices issued to sources emitting 50, 250, 500 or 5,000 tons per year.

<b>Emissions per calendar year</b>	<b>2022 Fees</b>	<b>2023 Fees</b>	<b>Increase in fees</b>	<b>2024 Fees</b>	<b>Increase in fees</b>
<b>50 tons/yr.</b>	\$12,049	\$17,254	\$5,205	\$22,052	\$4,798
<b>250 tons/yr.</b>	\$25,269	\$36,254	\$10,985	\$46,252	\$9,998
<b>500 tons/yr.</b>	\$41,794	\$60,004	\$18,210	\$76,502	\$16,498
<b>5,000 tons/yr.</b>	\$339,244	\$487,504	\$148,260	\$621,002	\$133,498

**Indirect Impacts:** 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**

### **Cost of Compliance for Small Businesses**

**Direct Impacts:** Most Title V permit holders are large businesses, but the requirement to hold a Title V permit is most often based on potential emission levels rather than business size. Approximately 11 small businesses are required to hold Title V permits because their potential emissions exceed Title V applicability thresholds. None of the small businesses holding Title V permits emit more than 250 tons per year in a typical year. Businesses emitting 250 tons per year would experience a fee increase of \$10,985 in 2023 over existing fees and an additional \$9,998 in 2024 and an additional fee increase of \$710 in greenhouse gas reporting fees in 2023 over 2022 fees and no fee increase in greenhouse reporting fees in 2024 because

if the \$4,500 cap in greenhouse reporting fees. None of the small businesses are subject to greenhouse gas reporting fees.

**Indirect Impacts:** Changes to fees could affect small businesses if other businesses holding Title V permits change the price of goods and services to offset any increased costs from paying a permit fee.

**a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.**

DEQ estimates that approximately 11 percent of Title V permit holders (about 11 businesses) are small businesses with 50 or fewer employees, such as fiberglass reinforced plastic facilities and smaller wood refinishing operations.

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

The proposed rule amendments do not establish any additional reporting, recordkeeping or other administrative activities.

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

The proposed rule amendments do not require any additional equipment, supplies, labor or increased administration.

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

DEQ provided notice of the proposed rules to all Title V permit holders, including those that are small businesses. The rule advisory committee meeting held on Oct. 27, 2023, included a representative of a small business to be a member on the committee.

**Documents relied on for fiscal and economic impact**

Document title	Document location
2023 House Bill 3229	<a href="#">Oregon Legislature Website</a>
2023-2025 Legislatively approved budget	<a href="#">Oregon Legislature Website</a>
Clean Air Act, including Clean Air Act Amendments of 1990	<a href="#">EPA Website</a>
U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index	<a href="#">Bureau of Labor Statistics Website</a>

## **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 reduce that impact.

Businesses and other interested parties were engaged throughout the legislative session to inform the legislatively approved fee increases in HB3229. The proposed Permanent Title V rulemaking allows DEQ to adopt the fee increases into rule and implement through our annual invoicing cycle and special activity fees.

The committee met on Oct. 27, 2023, and discussed fiscal and economic impacts on business. DEQ considers a small business as 50 or fewer employees. Committee members stated that it is difficult to determine if there will be a significant adverse impact based on DEQ's small business definition. Number of staff is not an accurate indicator of revenue or emissions.

Discussion also centered on the timing of the fee increase. While there was general agreement about the need for fee increases to restore the Title V program, the legislatively approved fees were passed and implemented within nine months. Business desires more time to budget and plan for fee increases. While there is a financial impact on all business, the committee identified the desire for more communication, predictable fees, and smaller, incremental fees to avoid adverse impacts on small and large businesses in Oregon.

## **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. 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.

# Racial Equity

ORS 183.335(2)(a)(F) requires state agencies to provide a statement identifying how adoption of this rule will affect racial equity in this state.

Adoption of the proposed rule would affect air quality permitting fees statewide - across various sectors, public and private. Since the fee increase will apply equally across all permit categories and tiers, and there are no expected changes to practical implementation of the permitting program activities because of this rule adoption, and there is no expected impact on racial equity in the state. Increasing the fees, as proposed, will help maintain program services critical to protecting public health and the environment (such as permit compliance assurance, inspections, and enforcement) which may be particularly important in BIPOC or historically underserved communities.

# Environmental Justice Considerations

ORS 182.545 requires natural resource agencies to consider the effects of their actions on environmental justice issues.

Environmental justice communities are communities of color, communities experiencing lower incomes, tribal communities, rural communities, coastal communities, communities with limited infrastructure and other communities traditionally underrepresented in public processes and adversely harmed by environmental and health hazards, including seniors, youth, and persons with disabilities.

The Title V permitting program is designed to regulate and reduce emissions from major sources in Oregon. Environmental justice communities are often fence-line communities near these major sources. Adopting the Title V fee rules provides the necessary funding for DEQ to regulate and inspect these facilities in traditionally overburdened communities.



# Federal Relationship

This section complies with OAR 340-011-0029 and ORS 468A.327 to clearly identify the relationship between the proposed rules and applicable federal requirements.

The proposed rulemaking is not different from, or in addition to, applicable federal requirements and imposes stringency equivalent to federal requirements. The proposed rules implement federal requirements of the Clean Air Act and EPA rules (40 CFR Part 70) that Oregon's Title V operating permit program be fully funded through permit fees.

## **What alternatives did DEQ consider if any?**

During the public comment period, DEQ requested public comment on whether to consider other options for achieving the rule's substantive goals while reducing negative economic impact of the rule on business. Federal law requires DEQ to perform requisite program services to retain delegation of the Title V program. Federal law also requires DEQ to fund the permit program entirely by permit fees. DEQ could decline to administer the program, shifting the program from DEQ to EPA; however, DEQ has chosen not to pursue this alternative to maintain regulatory consistency for the regulated public and citizens of Oregon.

# 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, objectives or areas identified in the statewide planning goals, or
  - Present or future land uses identified in acknowledged comprehensive plans

To determine whether the proposed rules involve programs or actions that affect land use, DEQ reviewed its Statewide Agency Coordination plan, which describes the DEQ programs that have been determined to significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

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

On July 20, 2023, the EQC adopted the Title V fee increase by temporary rule. On Jan. 24, 2024, DEQ proposed, and EQC delegated, final approval of the permanent rule to adopt the Title V fee increase to Director Feldon.

# Advisory Committee

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 reduce that impact.

Businesses and other interested parties were engaged throughout the legislative session to inform the legislatively approved fee increases in HB3229. The proposed Permanent Title V rulemaking allows DEQ to adopt the fee increases into rule and implement through our annual invoicing cycle and special activity fees.

The committee met on Oct. 27, 2023, and discussed fiscal and economic impacts on business. DEQ considers a small business as 50 or fewer employees. Committee members stated that it is difficult to determine if there will be a significant adverse impact based on DEQ's small business definition. Number of staff is not an accurate indicator of revenue or emissions.

Discussion also centered on the timing of the fee increase. While there was general agreement about the need for fee increases to restore the Title V program, the legislatively approved fees were passed and implemented within nine months. Business desires more time to budget and plan for fee increases. While there is a financial impact on all business, the committee identified the desire for more communication, predictable fees, and smaller, incremental fees to avoid adverse impacts on small and large businesses in Oregon.

# Public Engagement

## Public notice

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

- On Oct. 31, 2023 Filing notice with the Oregon Secretary of State for publication in the November 2023 Oregon Bulletin;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [Title V Fee Increases 2023 rulemaking page](#);
- Emailing approximately 19,515 interested parties on the following DEQ lists through GovDelivery:
  - Rulemaking
  - DEQ Public Notices
  - Title V Permit Program
- Emailing approximately 104 sources subject to Title V fees
- Emailing the following key legislators required under [ORS 183.335](#):
  - Representative Pam Marsh
  - Representative Paul Holvey
  - Representative Khank Pham
  - Senator Michael Dembrow
  - Representative Tawna Sanchez
  - Representative Elizabeth Steiner
- 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 Dec. 2, 2023.

## Public Hearing

DEQ held one public hearing. DEQ received no comments at the hearing. Later sections of this document include a summary of the 14 comments received during the open public comment period, DEQ's responses, and a list of the commenters. Original comments are on file with DEQ.

## Presiding Officers' Record

### Hearing 1

Date	Nov. 30, 2023
Place	Remotely via Zoom
Start Time	3 p.m.
End Time	3:30 p.m.
Presiding Officer	Jill Inahara

### Presiding Officer:

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.

No person presented any oral testimony or written comments.

# Summary of Public Comments and DEQ Responses

## Public comment period

DEQ accepted public comment on the proposed rulemaking from Oct.31, 2023 until 4 p.m. on Dec. 1, 2023.

For public comments received by the close of the public comment period, the following table organizes comments into 14 categories with cross references to the commenter number. DEQ's response follows the summary. Original comments are on file with DEQ.

DEQ did not change the proposed rules in response to comments.

### Comment 1

DEQ received 9 comments in this category from commenters.

#### Response

DEQ understands your concern regarding the fee increases and their impact on individuals, businesses and individual. However, the federal Clean Air Act requires each state to fully and adequately fund its Title V permitting program through permitting fees. Oregon's Title V permitting program currently requires additional funding to provide adequate and essential program services because costs have increased over time due to increased program costs which have outpaced inflation.

### Comment 2

DEQ received 1 comment in this category from commenters.

#### Response

The Environmental Quality Commission adopted temporary rules to implement these fees on July 21, 2023. The temporary rules will expire Jan. 27, 2024. This rulemaking proposed to make the temporary rules permanent.

### Comment 3

DEQ received 7 comments in this category from commenters.

#### Response

DEQ appreciates your support of the proposed fee increases.

### Comment 4

DEQ received 2 comments in this category from commenters.

## **Response**

DEQ appreciates your support for the proposed fee increases and shares your hope that businesses would implement changes that better protect air quality and public health. DEQ also agrees that the proposed fee increases would increase costs on affected businesses and government entities, and potentially impact consumers if businesses pass on the increased costs by increasing the costs of goods and services.

## **Comment 5**

DEQ received 4 comments in this category from commenters.

## **Response**

DEQ agrees that the fee increases are overdue and necessary to address the backlog in un-renewed permits.

## **Comment 6**

DEQ received 1 comment in this category from commenters.

## **Response**

DEQ understands the need for limited government and for government to protect civil liberties. Federal law requires DEQ to perform requisite program services to retain delegation of the Title V program. Federal law also requires DEQ to fund the permit program entirely by permit fees. DEQ could decline to administer the program, shifting the program from DEQ to EPA; however, DEQ has chosen not to pursue this alternative to maintain regulatory consistency for the regulated public and citizens of Oregon.

## **Comment 7**

DEQ received 1 comment in this category from commenters.

## **Response**

DEQ shares your concern regarding air quality and public health and safety.

## **Comment 8**

DEQ received 1 comment in this category from commenters.

## **Response**

DEQ appreciates your concern that the proposed Title V fee increases are too large and difficult to absorb. Oregon statute establishes Title V permit fees and provides for



inflationary adjustments to the fees based on the change in the consumer price index to ensure that the funding requirement is met. The actual costs of the program increase over time and routinely outpace the consumer price index. To address this, DEQ proposes additional fee increases approximately every four years which must be approved by the Oregon Legislature. The previous two legislatively approved fee increases occurred in 2007 (24 percent) and 2010 (32 percent). Therefore, it has been 13 years since the most recent legislatively approved fee increases.

### **Comment 9**

DEQ received 1 comment in this category from commenters.

### **Response**

DEQ appreciates the support of its inspection and permitting programs and agrees that they are one of our most important means of maintaining and improving air quality.

### **Comment 10**

DEQ received 1 comment in this category from commenters.

### **Response**

DEQ shares your concern regarding the negative health impacts resulting from air pollution.

### **Comment 11**

DEQ received 1 comment in this category from commenters.

### **Response**

DEQ appreciates your support for having a responsive and well-staffed regulatory agency to process permits and work through regulatory issues so that businesses have the confidence to invest in Oregon.

### **Comment 12**

DEQ received 1 comment in this category from commenters.

### **Response**

DEQ appreciates your support for having a well-funded Title V permitting program that provides predictable customer service and consistent compliance and enforcement of clean air rules that leads to better health for Oregon residents.

### Comment 13

DEQ received 1 comment in this category from commenters.

### Response

DEQ shares your concern regarding the negative health impacts related to bad air quality and that they are unequally distributed to low-income people and people of color.

### Comment 14

DEQ received 1 comment in this category from commenters.

### Response

DEQ shares your concern regarding the impact of increased/uncontrolled emissions on low-income people and people of color.

List of Comments		
Comment #	Comment Summary	Commenter Numbers
1	I don't support the fee increases because they will place a financial burden on individuals, corporations and municipalities, due to higher taxes, fees, and loss of businesses and jobs, during a time of higher inflation.	1, 9, 10, 11, 12, 13, 14, 15, 17
2	Why did we received this notification about draft fees and public comment, but we were already assessed the \$95 fee increase?	2
3	I support the fee increases to cover their costs, ensuring that DEQ can maintain a program that adequately enforces federal and state regulations and protect communities from industrial air pollution.	4, 5, 6, 7, 8, 16, 18
4	I understand they will increase costs and potentially fall on consumers, but it is my hope that the fee increases will prompt businesses to innovate and implement safer environmental practices.	3
5	We regret that the Oregon legislature did not address the Title V funding issue and un-renewed permit backlog issue sooner.	6, 7, 8, 18
6	The role of government is to be limited and protect the civil liberties.	9
7	The Portland area has industrial emissions that citizens have health and safety concerns about.	8

<b>List of Comments</b>		
<b>Comment #</b>	<b>Comment Summary</b>	<b>Commenter Numbers</b>
8	I understand that fees need to increase due to program costs, but this increase is too large.	10
9	We support the inspection and permitting of industrial facilities. The permitting of industrial facilities is one of our most important existing clean air tools.	16
10	Air pollution causes or contributes to many of the leading causes of death. Air pollution impacts health across the life course, affecting birth weight to asthma rates.	16
11	Local industry needs a responsive and well-staffed regulatory agency to process permits and work through regulatory issues so that businesses have the confidence to invest in Oregon and create good paying jobs	16
12	A well-funded program that provides predictable customer service and consistent compliance and enforcement of clean air rules will lead to better health.	16
13	Access to well-paying jobs and negative health impacts related to bad air quality are unequally distributed, with low-income people and people of color experiencing disproportionate exposure to air pollution.	16
14	If the program does not increase fees, the impact of increased/uncontrolled emissions will disproportionately affect low-income people and people of color.	16

<b>List of Commenters</b>				
<b>#</b>	<b>Name</b>	<b>Organization</b>	<b>Comment Number</b>	<b>Hearing #</b>
1	Tim Guymon	Self	1	
2	Howard Hughes	Collins Pine	2	
3	Garrett Moffit	Self	3	
4	Chris Lukaszewski	Self	3, 4, 5	
5	Jean Trygstad	Self	3	

<b>List of Commenters</b>				
<b>#</b>	<b>Name</b>	<b>Organization</b>	<b>Comment Number</b>	<b>Hearing #</b>
6	Dean Hiser	Self	3, 5	
7	Robin McCurdy	Self	3, 5	
8	Nancy Hiser	Self	3, 5	
9	Dave Hansen	Brownsville City Counselor	1	
10	Tammi Morrow	City of Brownsville	1, 8	
11	Loyd Benitti	Self	1	
12	Theodore Seeber	Self	1	
13	Char Pennie	Self	1	
14	Mike Winklepleck	Brownsville City Counselor	1	
15	Alan Betcher	Self	1	
16	Nadège Dubuisson	Multnomah County Health Department	9, 10, 11, 12, 13, 14	
17	Wally Walls	Self	1	
18	Mark Ogren	Self	3, 5	

# Implementation

## Notification

The proposed rules would become effective upon filing on approximately Jan. 27, 2024. DEQ would notify affected parties by:

- Emailing the 18 parties that submitted public comments.
- Emailing approximately 2,520 interested parties on the Title V Permit Program list through GovDelivery
- Forwarding the GovDelivery notice to Title V permittees

# 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).
- Implement legislatively approved fee changes. ORS 183.405(5)(c).

# Accessibility Information

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Visit DEQ's [Civil Rights and Environmental Justice page](#).

# Draft Rules – Edits Highlighted

Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

## Department of Environmental Quality

### 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 \$~~12,504~~<sup>8,744</sup> for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 202~~3~~<sup>2</sup> to November 14, 202~~4~~<sup>3</sup>.

(2) DEQ will assess an annual base fee of \$~~16,002~~<sup>12,504</sup> for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 202~~4~~<sup>3</sup> to November 14, 202~~5~~<sup>4</sup>, and for each annual period thereafter.

**Statutory/Other Authority:** ORS 468 & 468A

**Statutes/Other Implemented:** ORS 468 & 468A

**History:**

[DEQ 9-2023, temporary amend filed 07/20/2023, effective 08/01/2023 through 01/27/2024](#)

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, 2023~~2~~ to November 14, 2024~~3~~, DEQ will assess an emission fee of \$~~95.00~~~~66.10~~ per ton of each regulated pollutant emitted during calendar year 2022~~1~~ to each source subject to the Oregon Title V Operating Permit Program.

(2) For operations during the period of November 15, 2024~~3~~ to November 14, 2025~~4~~, DEQ will assess an emission fee of \$~~121~~~~95~~ per ton of each regulated pollutant emitted during calendar year 2023~~2~~ 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 9-2023, temporary amend filed 07/20/2023, effective 08/01/2023 through 01/27/2024

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, 2023~~2~~ to August 1, 2024~~3~~ as follows:

(a) Existing source permit revisions:

(A) Administrative\* — \$~~762,533~~;

(B) Simple — \$~~3,050,133~~;

(C) Moderate — \$~~22,873,15,995~~;

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

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

(2) DEQ will assess specific activity fees for an Oregon Title V Operating Permit program source as of August 1, 2024~~3~~ as follows:

(a) Existing source permit revisions:

(A) Administrative\* — \$~~975,762~~;

(B) Simple — \$~~3,903,050~~;

(C) Moderate — ~~\$29,276~~<sup>22,873</sup>;

(D) Complex — ~~\$58,552~~<sup>45,744</sup>; and

(b) Ambient air monitoring review — ~~\$7,807~~<sup>6,099</sup>.

(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 9-2023, temporary amend filed 07/20/2023, effective 08/01/2023 through 01/27/2024

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