

Addendum to DEQ recommendation to the EQC in the staff report

DEQ recommends that the Environmental Quality Commission:

Determine that the increased fees in the proposed TEMPORARY rules, as presented in Attachment A, are necessary to cover the reasonable indirect and direct costs of implementing Oregon's air contaminant discharge permit program;

Adopt the proposed TEMPORARY rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules to be effective upon filing with the Secretary of State for 180 days; and

Adopt the justification for temporary rules as provided in Attachment B.

Action item E: Temporary rules to increase air contaminant discharge permit fees

Attachment B

October 16-17, 2013, EQC meeting

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Justification of Temporary Rule(s): The EQC finds that failure to adopt the temporary rules will result in serious prejudice to the public interest because it will have the following consequences:

DEQ must issue air contaminant discharge permit invoices as scheduled in October 2013. If DEQ proceeded with a regular rulemaking after the legislative session ended in July 2013, the rulemaking would not be complete before the October 2013 invoices were sent. In that case, DEQ would be required to invoice the 2013 permit fees twice - the typical invoice in October, and a supplemental invoice at the conclusion of permanent rulemaking. The supplemental invoice would cause additional costs for DEQ and permit holders. It would likely produce errors, confusion and additional non-productive work for DEQ and the regulated community. With or without temporary rules, facilities would owe the same amount of fees because the program budget including the fee increase was adopted by the 2013 Oregon Legislature and state law authorizes EQC to set fees at levels to cover anticipated costs of the program.


Authorized Signer

Dick Pedersen
Printed Name

Oct. 9, 2013
Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.
ARC 945-2005

Statement of Need and Justification for Temporary Rules

Secretary of State

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Environmental Quality, Air Quality Division
Agency and Division

OAR Chapter 340
Administrative Rules Chapter Number

In the Matter of: Air contaminant discharge permit fee increase, Divisions 210 and 216

Rule Caption: Proposal to increase air contaminant discharge permit fees by 20 percent

Statutory Authority: ORS 468.020, 468.065, 468A.025, 468A.040

Other Authority: Not applicable

Stats. Implemented: ORS 468A.050

Need for the Temporary Rule(s): The 2013 Oregon Legislature approved Policy Package 111 as part of DEQ's budget bill, Senate Bill 5520. The policy package restores 3.67 full-time equivalent staff positions to the air contaminant discharge permit program based on an approximate 20 percent fee increase. The policy package was based on increasing the fees in both of the annual billing cycles in the 2013-2015 biennium. Fees are invoiced in October of each year to meet program funding needs.

In addition to increasing air contaminant discharge permit fees by 20 percent, the proposed rule amendments decrease greenhouse gas reporting fees from 15 percent to 12.5 percent of the permit fee. Greenhouse gas reporting is a separate program from permitting, but the greenhouse gas reporting fees are based on the air contaminant discharge permit fees and are invoiced at the same time as the permit fees. Without this revision, facilities will pay higher greenhouse gas reporting fees as a result of the permit fee increase.

The proposed rule amendments also provide a one-time reduction in the cost of past fees and late fees for facilities holding simple permits that unintentionally underpaid annual fees. Without this revision, about 25 facilities will pay up to \$16,320 each as a result of invoice errors discovered in a recent audit. The proposed rule amendments are retroactive for previous years' fees and reduce the economic hardship for affected facilities by waiving the late fees and only requiring the past two years of underpayment to be collected. As a result of the rule amendments, facilities will pay no more than \$3,840 in underpaid fees and DEQ will allow facilities to establish a payment plan that can be spread out over three years.

Documents Relied Upon, and where they are available: Documents relied upon are available by contacting DEQ or online as follows:

- Senate Bill 5520 (2013) <http://www.leg.state.or.us/l3reg/measures/sb5500.dir/sb5520.en.html>
- Senate Bill 5520 Budget Reports
- ACDP revenue forecast for the 2013-2015 biennium