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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**DEQ 9-2023**

CHAPTER 340

DEPARTMENT OF ENVIRONMENTAL QUALITY

**FILED**

07/20/2023 3:52 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Title V 2023 Fee Increase Temporary Rule

EFFECTIVE DATE: 08/01/2023 THROUGH 01/27/2024

AGENCY APPROVED DATE: 07/20/2023

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**NEED FOR THE RULE(S):**

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 OF TEMPORARY FILING:**

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.

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DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

2023-2025 Legislatively approved budget Oregon Legislature Website -

[https://www.oregonlegislature.gov/lfo/Documents/2019-21 Legislatively Adopted Budget Detailed Analysis.pdf](https://www.oregonlegislature.gov/lfo/Documents/2019-21%20Legislatively%20Adopted%20Budget%20Detailed%20Analysis.pdf)

Oregon House Bills 3229 and 5018 (2023) HB3229, HB5018 -

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3229/Enrolled>

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB5018/Enrolled>

Clean Air Act, including Clean Air Act Amendments of 1990 EPA Website - <https://www.epa.gov/clean-air-act-overview>

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#### HOUSING IMPACT STATEMENT:

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.

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NOTE: Additional PDF filed with this filing not included in this document. Please contact Department of Environmental Quality for a copy of this document.

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#### RULES:

340-220-0030, 340-220-0040, 340-220-0050

AMEND: 340-220-0030

RULE TITLE: Annual Base Fee

RULE SUMMARY: Increasing Title V fees by 43% as authorized by HB 3229.

#### RULE TEXT:

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

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

STATUTORY/OTHER AUTHORITY: ORS 468, 468A, ORS 468, 468A

STATUTES/OTHER IMPLEMENTED: ORS 468, 468A, ORS 468, 468A

AMEND: 340-220-0040

RULE TITLE: Emission Fee

RULE SUMMARY: Increasing Title V fees by 43% as authorized by HB 3229.

RULE TEXT:

(1) For operations during the period of November 15, 2022 to November 14, 2023, DEQ will assess an emission fee of \$66.10 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 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

AMEND: 340-220-0050

RULE TITLE: Specific Activity Fees

RULE SUMMARY: Increasing Title V fees by 43% as authorized by HB 3229.

RULE TEXT:

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

(a) Existing source permit revisions:

(A) Administrative\* — \$533;

(B) Simple — \$2,133;

(C) Moderate — \$15,995;

(D) Complex — \$31,989; and

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

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

(a) Existing source permit revisions:

(A) Administrative\* — \$762;

(B) Simple — \$3,050;

(C) Moderate — \$22,873;

(D) Complex — \$45,744; and

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

(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