



State of Oregon Department of Environmental Quality

Oregon Environmental Quality Commission Meeting

July 22-23, 2021

Rulemaking, Action Item K

Increase Title V Permit Fees by the Consumer Price Index 2021

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DEQ Recommendation to the EQC

DEQ recommends that the Environmental Quality Commission adopt the proposed rules on pages 29 through 33 on this report as part of Chapter 340 of the Oregon Administrative Rules to increase Title V permit fees by the change in the consumer price index.

Language of Proposed EQC Motion:

“I move that the commission adopt the proposed rule amendments on pages 29 through 33 of this report as part of Chapter 340 of the Oregon Administrative Rules.”

Overview

DEQ proposes rules to increase Title V operating permit fees by the change in the Consumer Price Index (CPI) as authorized by federal and state law. The proposed fee increases are necessary for DEQ to provide essential services associated with Oregon's Title V permitting program. Increasing the fees routinely and moderately helps the program avoid large increases and provides predictable costs for fee payers.

The proposed rules would increase the fees in two phases. This approach will save administrative costs by holding a single public notice and comment period for the two rulemakings.

Phase one: DEQ will propose the phase one rules at the commission's meeting in July 2021. The proposed fee increase effective for the 2022 invoice year is 1.46 percent based on the Bureau of Labor Statistics September 2020 consumer price index for the period of September 2019 to August 2020. DEQ would apply this CPI increase to permit fees on the invoices DEQ will issue in August 2021 for annual emissions during 2020 and the operating period Nov. 15, 2021, to Nov. 14, 2022.

Phase two: DEQ intends to propose the phase two rules at a commission meeting between December 2021 and May 2022, when the future CPI changes are known. While the actual increase for phase two of the rulemaking will not be known until September 2021, DEQ anticipates the increase will be approximately 2.03 percent. DEQ plans to return to the commission in early 2022 to propose the phase two increase.

Background

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 primarily support staff who write permits and conduct compliance reviews, but also include a portion of air quality monitoring, planning and agency central services, such as accounting and human resources. The Clean Air Act and state law authorize DEQ to increase fees by the annual change in the consumer price index to meet funding requirements by considering inflation.

Oregon's Title V operating permit program requires the proposed funding increases to continue to provide essential program services. Costs to operate the program have increased over the last two years due to inflation. The Environmental Quality Commission last increased Title V fees in 2019 to provide requisite program services up to August 2020. The proposed fees would allow Oregon to provide requisite program services up to August 2022. Failure to increase Title V fees could affect DEQ's ability to maintain adequate program staff and would jeopardize effective program administration.

How would the proposed rule address the need?

The proposed rules would increase Title V permit fees by the change in the consumer price index. The increase would enable the program to pay for increased program costs and maintain current staffing levels.

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
2019-2021 Legislatively approved budget	Oregon Legislature Website
Clean Air Act, including Clean Air Act Amendments of 1990	EPA Website
U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index	Bureau of Labor Statistics Website

Fee Analysis

The proposed rules would increase existing Title V fees. EQC's authority to act on the proposed fees is in ORS 468A.050.

Oregon's Title V program administers federal health standards, air toxics 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 completing emission inventories, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA.

EQC authority to act on the proposed fees is in ORS 468A.315.

Brief description of proposed fees

The Oregon Legislature established Oregon's Title V fees in three categories: annual base fees, emission fees and specific activity fees. The proposed rules increase each category as described under the Statement of Need section above and increases based on the consumer price index described under the Summary section on page one.

Reasons

The proposed fees would address increased program costs and allow the program to maintain current staffing levels.

Fee proposal alternatives considered

Federal law requires DEQ to perform Title V 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 in order to maintain regulatory consistency for the regulated public and people 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, regional and national consumption. Title V permit holders are an important part of the Oregon economy.

Affected party involvement in fee-setting process

DEQ worked with Title V stakeholders when the fees were increased in the 2007 legislative session and again during the 2009 session when the statutory language related to annual Consumer Price Index increases was clarified.

During the public comment period for the current proposed CPI increase, 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.

Summary of impacts

The proposed fee increase would affect the 100 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

DEQ has increased Title V fees regularly since Oregon was granted delegation of the Title V program in 1993. Fee payers generally do not oppose this annual fee increase, which is equal to the rate of inflation.

How long will the current fee sustain the program?

Current Fees		
Program costs covered by fees	\$7,495,000	100%
Fee Last Changed	7/18/2019	

Proposed Fees		
Expected change in revenue (+/-)	-\$277,000*	-3.7%*
Expected effective date	7/27/2021	

Transactions and Revenue				
Biennium	Number of transactions	Number of fee payers	Impact on revenue (+/-)	Total revenue (+/-)
Current biennium FY2020-2021	258	100		\$7,495,000
Next biennium FY2022-2023	242	102**	-\$277,000*	\$7,218,000

*Loss in revenue is a result of the shutdown of the PGE Boardman coal-fired power plant at the end of 2020.

**Includes two new Title V permit applications on file.

Fee schedule

The following table shows the amounts of the proposed fees.

Proposed Fees		
Fee category	2021 Fees	Proposed 2022 Fees
Annual Title V Fees		
Annual Base Fee	\$8,367	\$8,489
Emission Fee	\$63.26	\$64.18
Specific Activity Fees		
Administrative Amendment	\$510	\$518
Simple Modification	\$2,041	\$2,071
Moderate Modification	\$15,306	\$15,529
Complex Modification	\$30,612	\$31,058
Air Monitoring Review	\$4,082	\$4,141

¹ Fees based on the 2020 consumer price index.

Statement of Fiscal and Economic Impact

Fiscal and Economic Impact

The proposed increase in Title V permit fees would affect approximately 102 permit holders and applicants directly and increase annual program revenue by approximately 1.46 percent in the 2022 invoice year and an additional 2.03 percent in the 2023 invoice year.

The direct impact of the fee increase on permit holders assumes emissions for most sources will remain the same in future years and that the current 2021 CPI estimate as of April 16, 2021, will be the same as the final 2021 change in the index.

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 of \$4,500. Because the greenhouse gas reporting fee calculation is a percentage of the Title V fees, the proposed increase in Title V permit fees would result in a 1.46 percent increase in the greenhouse gas reporting fees for these permit holders in the invoices DEQ will issue in 2022, and an additional 2.03 percent increase in the invoices DEQ will issue in 2023. The cap of \$4,500 remains unchanged.

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 \$14,819 in 2021. The proposed rules would increase their permit fees by about \$216 for 2022 and an additional estimated \$305 for 2023. OHSU is also subject to greenhouse gas reporting fees equal to 15 percent of its annual emission fee and base fee. OHSU paid \$2,223 in greenhouse gas reporting fees in 2021. Because of the proposed rules, OHSU's greenhouse gas reporting fees would increase by about \$32 in 2022 and increase by an additional estimated \$46 in 2023. 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 does not anticipate any change to the price of goods and services to be significant.

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. DEQ does not anticipate any change to the price of goods and services to be significant.

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 \$8,873 in 2021. The proposed rules would increase their 2022 fees by about \$130 and an additional estimated \$183 increase for 2023. 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 \$19 in 2022 and increase an additional estimated \$27 in 2023.
- Deschutes County Solid Waste Department, Knott Landfill paid Title V annual permit fees of \$12,036 in 2021. The proposed rules would increase their 2022 fees by about \$176 and an additional estimated \$248 for 2023. 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 \$26 in 2022 and increase an additional estimated \$37 in 2023.
- Douglas County Public Works Department, Roseburg Landfill paid Title V annual permit fees of \$10,644.36 in 2021. The proposed rules would increase their 2022 fees by about \$155 and an additional estimated \$219 for 2023. 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 \$23 in 2022 and increase an additional estimated \$33 in 2023.

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. DEQ does not anticipate any change to the price of goods and services to be significant.

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.

Proposed Title V Fees For 2022			
Fee Category	2021 Fees	Proposed 2022 Fees (to be invoiced)	Increase over 2021 Fees
Annual Base Fee	\$8,367	\$8,489	\$122
Emission Fee	\$63.26	\$64.18	\$0.92

¹ Fees based on the 2020 consumer price index.

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.

Result of Proposed Fees by Quantity of Emissions			
Emissions per calendar year	2021 Fees	Proposed 2022 Fees (to be invoiced)	Increase in fees
50 tons/yr.	\$11,530	\$11,698	\$168
250 tons/yr.	\$24,182	\$24,534	\$352
500 tons/yr.	\$39,997	\$40,579	\$582
5,000 tons/yr.	\$324,667	\$329,389	\$4,722

¹ Fees based on the 2020 consumer price index.

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. DEQ does not anticipate any change to the price of goods and services to be significant.

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 \$352 in 2022 over existing fees and an additional fee increase of \$497 in 2023 over 2022 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. DEQ does not anticipate any change to the price of goods and services to be significant, but lacks specific information upon which it could accurately estimate potential increases.

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.

Documents relied on for fiscal and economic impact

Document title	Document location
2019-2021 Legislatively approved budget	Oregon Legislature Website
Clean Air Act, including Clean Air Act Amendments of 1990	EPA Website

Advisory committee fiscal review

DEQ did not appoint an advisory committee for the proposed rules because federal law and Oregon statute authorize the fee increases. Additionally, has routinely adjusted Title V program fees to account for inflations for many years.

Housing Cost Impact

As ORS 183.530 and .534 require, 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 DEQ does not anticipate any change to the price of goods and services to be significant, but lacks specific information upon which it could accurately estimate potential increases.

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 impose 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 people 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

This fee increase was assumed in the development of the DEQ Agency Request Budget for the 2021-2023 biennium, which the commission reviewed and certified in 2020.

Advisory Committee

DEQ did not convene an advisory committee because federal law and Oregon statute authorize the fee increases. Additionally, the EQC has routinely adjusted Title V program fees to account for inflation for many years.

Public Engagement

Public notice

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

- On April 30, 2021, filing notice with the Oregon Secretary of State for publication in the May 2021 Oregon Bulletin;
- Posting the Notice, Invitation to Comment and Draft Rules on the web page for this rulemaking, located at: [Title V CPI 2021 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 102 sources subject to Title V fees
- Emailing the following key legislators required under [ORS 183.335](#):
 - Senate President Courtney
 - Senator Beyer
 - House Speaker Kotek
 - Representative Marsh
- Posting on the DEQ event calendar: [DEQ Calendar](#)

Public Hearing

DEQ held one public hearing. DEQ received no comments at the hearing. Later sections of this document include a summary of the five comments received during the 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	May 17, 2021
Place	Virtual using Zoom
Start Time	5 p.m.
End Time	5:35 p.m.
Presiding Officer	Emil Hnidey, Agency Rules Coordinator

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.

One person attended the hearing virtually. 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 April 30, 2021, until 4 p.m. on May 21, 2021.

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

The table below lists people and organizations that submitted public comments about the proposed rules by the deadline.

List of Commenters	
Name	Organization
Shane Latimer	SCS Engineers
Dave Blanchard	
Gabe Forrester	Douglas County Public Works
Kathryn VanNatta	Northwest Pulp and Paper Association
Jonah Sandford	Northwest Environmental Defense Center

For public comments received by the close of the public comment period, a summary of the comments and DEQ's responses are below. Original comments are on file with DEQ.

Shane Latimer

Affiliation **SCS Engineers**

Comment

We have recently encountered some possible inconsistencies in DEQ Title V permitting and fees and are wondering if your comment process might be a good forum to address these, or at least get some clarification. The inconsistencies for which we would like some clarification include the following:

Some DEQ staff seem to be basing fees on reported actual emissions and others on PTEs for similar situations/sites. We would hope that DEQ could clarify that one may use actual, calculated emissions since we go through all the work to compile those values. The rules

outlined in OAR 340-220 seem to potentially leave enough ambiguity where different DEQ staff may interpret the rules differently.

DEQ Response

DEQ understands your concern that Title V emission fees are not being applied consistently. DEQ has and will continue to train its staff to ensure that the Title V fee rules are applied consistently to all Title V sources. Title V sources may pay their emission fees either on actual emissions or potential to emit. The ability to pay emissions fees on actual emissions is limited to emissions determined using a continuous monitoring system in accordance with OAR 340-220-0130; verified emission factors developed for a particular source or a combination of sources venting to a common stack in accordance with OAR 340-220-0170; material balances determined in accordance with OAR 340-220-0140, 340-220-0150, or 340-220-0160; and verified emission factors for source categories in accordance with OAR 340-220-0170(11). The referenced rules require actual emissions to be determined using facility specific data. Emissions determined using emission factors or emission data that are not facility specific, such as AP-42 emissions factors which are determined using data from multiple facilities around the country, are not eligible.

Comment

We have been told that it might cost our client \$20,000 in permit fees to remove a piece of equipment (an aged tub grinder) from their Title V permit, which is currently costing them about \$1200/year even though the equipment had been removed prior to the Title V permit being issued. We would suggest that perhaps DEQ could incentivize the removal of emitting equipment by making the cost of the required permit modification more reasonable.

Please let me know if you think it would be worthwhile to submit a more formal version of these comments via your process.

DEQ Response

The cost and timing of removing a piece of equipment from a Title V permit is beyond the scope of this rulemaking. DEQ appreciates the comment and will take it under consideration for future rulemakings addressing the Title V operating permit program.

Dave Blanchard

Comment

I'm just wondering if it was intentional that the scope/definition of "Title V Permits" was left out of this notice. I had to look online to find out what was being included, and whether it might apply to me. (It turns out that it doesn't.) I'm in favor of making all government declarations as informative as possible, so I'd like to suggest that in the future, any notices with legal designations done by number, acronym, or Roman numeral, be spelled out or made clear at least once in each public announcement. Thanks for listening!

DEQ Response

DEQ appreciates the comment and understands the confusion that may be created when terms or acronyms are not fully defined in a rulemaking and other public notices and will strive to better define terms going forward.

Gabe Forrester

Affiliation Douglas County Public Works

Comment

With the increases in fees and state revenues through this rulemaking, what improvements will be made throughout the state in regards to environmental health? Due to COVID-19 restrictions last year, I was told that DEQ got a lot less done than expected and had funds left over. Can we expect something to improve moving forward in regards to our environmental management such as turn-around time on permits, new facilities backed by the state, grants, and so forth with the fee increases?

DEQ Response

During the COVID-19 pandemic, DEQ reprioritized some work to account for the public health and safety concerns as well as addressing permit backlog and timeliness, but this did not leave the Title V permitting program with a budget surplus. DEQ did not increase fees by the CPI in 2020 (for Fiscal Year 2021) and is now proposing to increase TV fees according to the CPI to account for nationwide inflation and to provide the essential services associated with Oregon's Title V permitting program.

Kathryn VanNatta

Affiliation Northwest Pulp and Paper Association

Comment

Oregon's pulp and paper sector has been recognized as an essential business by state and federal governments. Without fail, our Oregon mills' essential workers have been making vital paper products we all use every day to help fight against COVID-19. Our essential paper products are used by Oregon consumers as well as being distributed within the Western US and abroad. NWPPA members are regulated by many federal and Oregon-only DEQ air quality programs each with unique perspectives and goals.

NWPPA asks the Department and the Environmental Quality Commission carefully consider the regulatory effect for an Oregon industry subject to the confluence of multiple air regulatory program requirements and the cross-media pollution effects of various control technologies under consideration in each program. Our goal is to avoid unintended environmental and economic consequences.

The end result is that your Oregon pulp and paper manufacturers have a difficult time forecasting and planning their mill operations and investments when multiple DEQ programs have conflicting requirements and increasing fees.

DEQ Response

The scope of this rulemaking is a CPI adjustment to Title V fees, which has occurred since the early days of Oregon's Title V program in the 1990s. This regular, modest increase is specifically designed to avoid larger increases, facilitating predictable budgeting for DEQ and impacted sources.

Comment

NWPPA strongly objects to DEQ's rulemaking process because DEQ did not convene a rules advisory committee or fiscal advisory committee to gather stakeholder input on these air fee increases when three other concurrent air program rulemakings are taking place.

DEQ Response

DEQ did not convene an advisory committee for this rulemaking because the federal Clean Air Act and state law specifically authorize DEQ to increase fees by the annual change in the consumer price index to meet funding requirements by considering inflation.

Comment

DEQ is proposing actions in the three other concurrent rulemakings that could drive the need for air permit modifications and/or activities and businesses would face these increased permitting activity fees for the next two years.

DEQ Response

DEQ understands that businesses face increased permitting fees as a result of this and other recent rulemakings. The purpose of the proposed fee increases in this rulemaking is to allow Oregon to meet its obligation under federal law to fully fund its Title V permitting program. Failing to adequately fund its Title V program would put Oregon at risk of losing its delegation status and the implementation of Oregon's Title V permitting program by the Environmental Protection Agency. DEQ understands that large and complex sources, such as Title V permit holders, are often subject to multiple regulatory programs designed to address various environmental issues. The extent to which other rulemakings may compel a source to modify permits (and pay associated fees) will be evaluated in the Fiscal Impact Statements associated with those rulemakings.

Comment

The total number of Oregon Title V air operating permits has declined over time, but the Title V fees have steadily increased. A smaller number of Title V permits means less permit writer work and decreased associated permit writer costs.

DEQ Response

DEQ agrees that the total number of Title V permits has declined, however, so too have the number of positions authorized for the Title V program.

Additionally, Title V revenue has declined over time, while the costs per FTE continue to rise with inflations. In fiscal year 2015, Oregon's Title V revenue was \$4,013,000. If the proposed fees are adopted by the EQC, in fiscal year 2022, Oregon's Title V revenue is

projected to be \$3,785,000. In fiscal year 2023, even with an additional increase in fees by the consumer price index, Oregon's Title V revenue is projected to drop to \$3,453,000. DEQ projects this increase is necessary to provide resources necessary to operate the TV program.

Comment

DEQ states on page 8 of the rulemaking package, “The direct impact of the fee increase on permit holders is based on an assumption that emissions will remain the same in future years and that the current 2021 CPI estimate as of April 16, 2021 will be the same as the final 2021 change in the index.” NWPPA disagrees with DEQ’s assumption that emissions remain the same and the Consumer Price Index (CPI) will not change. NWPPA believes that the rules will have a larger fiscal impact than DEQ projects and DEQ should consider mitigation measures.

DEQ Response

DEQ agrees that emissions do not stay the same and the Consumer Price Index will likely change from the value DEQ used to estimate the impact of the proposed FY2023 fee increases. However, DEQ must have estimates in place for FY2023 revenues and that is done by assuming that future emissions will be similar to past emissions and the final CPI value will be similar to a long term average CPI or a partial year CPI value if available. This is consistent with how DEQ has estimated revenues and CPI increases in past Title V CPI rulemakings. The actual increase DEQ will proposed for FY 2023 will be based on final Consumer Price Index data published later this year.

Comment

DEQ states on page 7 of the rulemaking package, “During the public comment period, DEQ requests 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.” NWPPA’s suggested options for achieving the rule’s substantive goals while reducing negative economic impacts of the rule on business are: Delay by one year the Increase Title V Permit Fees by the Consumer Price Index 2021 rulemaking; and, convene a DEQ rulemaking advisory committee and fiscal advisory committee to examine mitigating the effects on small businesses and the fiscal effect of a reduced number of Title V facilities on agency revenue.

DEQ Response

DEQ skipped the annual increase in Title V program fees by the Consumer Price index for Fiscal Year 2021. Delaying the annual increase in Title V program fees by the Consumer Price index for Fiscal Year 2022 by one year would further compound the impact of skipping the annual increase for Fiscal Year 2021 and would not accomplish the substantive goals of this rulemaking.

Jonah Sandford

Affiliation Northwest Environmental Defense Center

Comment

Commenters strongly support DEQ's proposal to increase permit fees to ensure that rising program costs are fully funded. Under the Clean Air Act ("CAA"), each state is required to fully fund its Title V program through permit fees. See 40 C.F.R. § 70.9. And the CAA and state law specifically authorize DEQ to increase these permit fees by the annual change in the consumer price index to meet funding requirements. ORS 468A.315(d). Because of inflation, Oregon's Title V program now requires additional funding to provide essential program services.

DEQ Response

DEQ agrees that Oregon's Title V program requires additional funding to account for increased program costs and to provide essential program services.

Comment

Oregon's Title V permit fees fund a wide range of services that are critical to protecting public health and the environment. These services include: administration of federal health standards, air toxic requirements, and other regulations to reduce health risks from air toxics; permit issuance and renewal; and ensuring air pollution sources comply with all relevant emissions standards and requirements to install various pollution control devices. It is essential that Title V fees be increased to account for inflation, to ensure DEQ's continued effective administration of these necessary programs.

DEQ Response

DEQ agrees that Oregon's Title V program fees fund a wide range of services that are critical to protecting public health and the environment and that it is essential that Title V fees be increased to account for inflation and to ensure DEQ's continued effective administration of these programs.

Comment

Additionally, permit fees should be increased as proposed to ensure DEQ retains delegation of the Title V program. Federal law requires delegated states to perform various necessary program services to retain delegation, and further requires these states to fund the Title V permit program entirely through permit fees. See generally 40 C.F.R. § 70. By failing to adequately fund its permit program through this fee increase, DEQ would risk losing its delegated status. Such a shift would result in unnecessary and unwise inconsistency for both regulated entities and the public.

DEQ Response

DEQ agrees that Federal law requires delegated states to provide specific Title V program services, fund its Title V permitting program entirely through permit fees, and that failing to adequately fund its Title V program would risk the loss of its delegation status.

Implementation

Notification

The proposed rules would become effective upon filing on approximately July 23, 2021.

DEQ would notify affected parties by:

- 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

You may review copies of all documents referenced in this announcement electronically. To schedule a review of all websites and documents referenced in this announcement, call Donald Hendrix, DEQ (503-229-5108).

Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format, or any other arrangements necessary to accommodate a disability. To make these arrangements, contact DEQ, Portland, at 503-229-5696 or call toll-free in Oregon at 1-800-452-4011, ext. 5696; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. Hearing impaired persons may call 711.



State of Oregon Department of Environmental Quality

Draft Rules – Edits Highlighted

Key to identifying changed text:

~~Strikethrough: Deleted Text~~

Underline: New/inserted text

Department of Environmental Quality

Chapter 340

Division 220

OREGON TITLE V OPERATING PERMIT FEES

340-220-0030

Annual Base Fee

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(2) DEQ will assess an annual base fee of \$8,489 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2021 to November 14, 2022, and for each annual period thereafter.

Statutory/Other Authority: ORS 468 & 468A

Statutes/Other Implemented: ORS 468 & 468A

History:

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

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340-220-0040

Emission Fee

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(2) DEQ will assess an emission fee of \$64.18 per ton of each regulated pollutant emitted during calendar year 2020 and for each calendar year thereafter 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 12-2019, amend filed 05/16/2019, effective 05/16/2019

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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 May 20, 2019 to July 27, 2021 as follows:

(a) Existing source permit revisions:

(A) Administrative* — \$510;

(B) Simple — \$2,041;

(C) Moderate — \$15,306;

(D) Complex — \$30,612; and

(b) Ambient air monitoring review — \$4,082.

(2) DEQ will assess specific activity fees for an Oregon Title V Operating Permit program source as of July 27, 2021 as follows:

(a) Existing source permit revisions:

(A) Administrative* — \$518;

(B) Simple — \$2,071;

(C) Moderate — \$15,529;

(D) Complex — \$31,058; and

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

(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.]

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State of Oregon Department of Environmental Quality

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Department of Environmental Quality

Chapter 340

Division 220

OREGON TITLE V OPERATING PERMIT FEES

340-220-0030

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