

Date: September 25, 2007
To: Environmental Quality Commission
From: Stephanie Hallock, Director
Subject: Agenda Item C, Rule Adoption: Oregon Air Contaminant Discharge Permit Fee Increase; October 18, 2007 EQC Meeting

Why is this Important

The Air Contaminant Discharge Permit (ACDP) program contributes to the prevention of air pollution and helps reduce the number of unhealthy air days and the risks from air toxics by reducing pollution through permit requirements and preventing pollution through technical assistance.

Oregon's ACDP program is part of Oregon's federally approved State Implementation Plan (SIP) to meet national air quality standards. The ACDP program requires additional funding to continue to effectively protect Oregon's air quality.

Department Recommendation

The Department recommends that the Commission:

- (1) Determine that the increased fees in the proposed rule (as presented in Attachment A) are necessary to cover the reasonable indirect and direct costs of implementing Oregon's Air Contaminant Discharge Permit program; and
- (2) Amend OAR 340-216-0020 Table 2 (as presented in Attachment A) to increase Oregon's Air Contaminant Discharge Permit fees by 20 percent ^[1].

^[1] It is not necessary to amend Oregon's SIP because the EPA does not require that Oregon's SIP include ACDP fees.

Background and Need for Rulemaking

ACDPs authorize the construction of new facilities and operation of existing facilities in Oregon. The ACDP program helps ensure that new sources of air pollution install controls such as afterburners and vapor degreasers needed to protect air quality and that existing pollution sources are in compliance with state and federal emissions standards. The program also administers tighter federal health standards, new air toxics requirements and other regulations.

The 2007 Oregon Legislature approved the Department's ACDP budget package requiring a 20 percent increase in ACDP fees. Fees pay 85 percent of ACDP program costs. State General Funds and federal funds pay the rest. ACDP fees help pay for permitting, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to the EPA. ACDP fees also help support a portion of air quality monitoring, planning, and central services such as accounting and human resources.

ACDP program costs have increased since 2001, but through streamlining, the Department has avoided a fee increase and has reduced program staffing. No additional reductions are possible without reducing essential program functions and

services. If the legislature had not approved increased spending authority, the Department would have had to cut four ACDP positions over the next two biennia. These positions issue permits, inspect facilities and respond to complaints. Loss of these positions would cause delays in permitting, possible degradation of air quality due to out-of-date permits, reduced compliance assistance, and reduced technical assistance in permitting and pollution prevention.

The annual revenue from a 20 percent fee increase would fully fund the ACDP program for at least two biennia and would benefit Oregon's environment and economy by helping the Department:

- Issue and renew ACDP permits in a timely manner
- Meet the Oregon Progress Board economic benchmark to issue 90 percent of ACDP permits within the target timeframes
- Complete required ACDP inspections
- Monitor and enforce compliance with air quality regulations

Effect of Rule

The proposed rule amendments increase fees for all ACDP pollution sources by 20 percent. There are approximately 1,130 businesses with ACDPs in Oregon. Many are small businesses with 50 or fewer employees. Generally, facilities with less complex permits would feel a smaller annual economic impact than larger facilities with more complex permits. From 2006 invoice information, the Department estimates that about 78 percent of ACDP holders would have an annual fee increase between \$60 and \$320, and approximately 22 percent would experience an annual fee increase between \$640 and \$1,280.

The following two tables show the amount of the proposed fee increase and number of permits in each fee category for annual and initial permit fees. Specific Activity Fees, such as permit modification fees, would also increase by 20 percent. The proposed increase to Specific Activity Fees is available in Attachment A. Specific Activity Fees contribute a relatively small portion of program revenue.

Annual Permitting Fees	From:	To:	Increase:	Number of Permits in 2006
Basic ACDP	\$300	\$360	\$60	161
General Class I ACDP	\$600	\$720	\$120	201
General Class II ACDP	\$1,080	\$1,296	\$216	331
General Class III ACDP	\$1,560	\$1,872	\$312	157

Simple Low ACDP	\$1,600	\$1,920	\$320	38
Simple High ACDP	\$3,200	\$3,840	\$640	94
Standard ACDP	\$6,400	\$7,680	\$1,280	149
Initial Permitting Fees for New Facilities	From:	To:	Increase:	Number of Initial Permits in 2006
Short Term Activity ACDP	\$2500	\$3000	\$500	0
Basic ACDP	\$100	\$120	\$20	19
Assignment to General ACDP	\$1,000	\$1,200	\$200	37
Simple ACDP	\$5,000	\$6,000	\$1,000	7
Construction ACDP	\$8,000	\$9,600	\$1,600	2
Standard ACDP	\$10,000	\$12,000	\$2,000	2
Standard ACDP (New Source Review)	\$35,000	\$42,000	\$7,000	0

Commission Authority

The Commission has authority to take this action under ORS 468.020, 468A.040, 468A.035 and 468A.025.

Stakeholder Involvement

The Department held Air Quality Permit Program information sessions in 2006 for permit holders to describe the proposed ACDP fee increase. The Department shared the proposal with its Small Business Compliance Advisory Panel and with lobbyists for many of the industrial sectors required to have ACDPs in 2006 and to the Associated Oregon Industries Air Committee in early 2007.

The Department also convened an advisory committee to generate input and recommendations on the fiscal impact statement for the proposed ACDP fee increase. Committee members represented small businesses, industrial sectors required to have ACDPs, and environmental groups in Oregon. The Advisory Committee Membership and Report is provided in Attachment C.

The Department mailed copies of the public notice package to all ACDP businesses and interested parties in July 2007, and held a public hearing at DEQ Headquarters in Portland on the proposed rules in August 2007, but discovered there were some access problems with the building. Members of the public had access up until the hearing's scheduled start time; however, the building was inadvertently locked for the first thirty minutes of the hearing. Access resumed for the remainder of the scheduled hour-and-a-half hearing. No members of the public attended the hearing nor did anyone notify the Department that the temporary access problems interfered with their intent to attend the hearing. The presiding officer's report for this hearing is provided in Attachment D.

Public Comment

A public comment period extended from July 16, 2007 to August 20, 2007. The

Department received two written comments. A summary of comments and Department responses is provided in Attachment B.

Key Issues

While the ACDP Fee Increase Rulemaking Advisory Committee found that the proposed fee increases would have a fiscal and economic impact and could have a significant adverse effect on some small businesses, it did not recommend mitigation steps outlined in ORS 183.540 such as establishing less costly alternatives or exempting small businesses from requirements of program rules. The committee concluded that the benefits of an effective ACDP program such as adequate service to businesses and continued protection of public health outweigh the potential fiscal burdens of the proposed fee increase on small business.

Next Steps

If adopted by the Commission, the proposed fee increases would become effective upon filing with the Secretary of State. The Department would mail invoices reflecting the fee increase to ACDP permittees in October 2007 with payment due in December 2007. Because this is a continuation of an existing program, no additional resources or training will be needed to implement the rule.

Attachments

- A. Proposed Rule Revisions
- B. Summary of Public Comments and Agency Responses
- C. Advisory Committee Membership and Report
- D. Presiding Officer's Report for Rulemaking Hearing
- E. Relationship to Federal Requirements
- F. Statement of Need and Fiscal and Economic Impact
- G. Land Use Evaluation Statement

Available Upon Request

- 1. Legal Notice of Hearing and Public Notice Package
- 2. Cover Memorandum from Public Notice
- 3. Written Comment Received

Approved:

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