

State of Oregon  
Department of Environmental Quality

Memorandum

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**Date:** July 28, 2009  
**To:** Environmental Quality Commission  
**From:** Dick Pedersen, Director  
**Subject:** Agenda Item E, Temporary Rule Adoption: Oregon Title V Operating Permit CPI Fee Increase  
August 20-21, 2009 EQC Meeting

**Why is this Important** Oregon's Title V operating permit program contributes to the prevention of air pollution and helps reduce the number of unhealthy air days and risks from air toxics. State and federal laws require the program to be entirely funded by permit fees. Failure to maintain sufficient funding could affect the Department of Environmental Quality's ability to maintain federal approval of the program. DEQ needs the proposed increases to Oregon's Title V permit fees to cover all costs to implement the program.

**Department Recommendation** DEQ recommends that the Environmental Quality Commission:

- (1) Determine that increasing the Title V fees by the change in the consumer price index, pursuant to the proposed rules presented in Attachment A, is necessary to cover the reasonable indirect and direct costs of implementing Oregon's Title V operating permit program;
- (2) Adopt the rules as amended in Attachment A to increase Oregon's Title V operating permit fees by the change in the CPI and implement Senate Bill 104 (2009), pursuant to ORS 468A.315; and
- (3) Adopt the justification for temporary rules as provided in Attachment B.

**Background and Need for Rulemaking** Federal law requires major industrial sources of air pollution to have operating permits under Title V of the Clean Air Act. Oregon's Title V program, which was approved by the EPA in 1994, is an important part of DEQ's strategy to maintain clean air. The purpose of the program is to ensure that Title V permit holders comply with regulations to protect air quality.

Federal and state laws require that Title V permit fees be set at levels sufficient to cover all costs of the Title V program. Title V fees pay for permitting, technical assistance, inspections, enforcement, rule and policy development, data management and reporting to EPA. The fees also support a portion of air quality monitoring, planning and program management costs. To help meet the funding requirement, federal and state laws authorize annual increases to the fees based on the change in the consumer price index.

DEQ needs 35 full-time equivalent positions to administer an effective program. The agency cut program staff in previous years due to inadequate revenue. Based on fee increase legislation in 2007, DEQ made a commitment to the Oregon Legislature and stakeholders to use the fees collected in 2009, with the consumer price index fee increase, to restore the final Title V position required to return full staff levels to the program.

The revenue from the proposed fees would fund the program through 2010. A fully staffed program benefits Oregonians and the environment by helping DEQ:

- Issue and renew Title V permits in a timely manner;
- Complete required Title V inspections;
- Monitor and enforce compliance with air quality regulations;
- Comply with requirements to maintain a federally approved and delegated Title V program; and
- Issue public notices and information about the program.

Temporary rules are needed to maintain a single Title V billing in 2009. DEQ was unable to propose the fee increase through a regular, permanent rulemaking in time for billing in 2009 because the statute that authorizes the fees (ORS 468A.315) required a technical correction. This correction became effective upon passage of Senate Bill 104 on June 16, 2009. Without temporary rules, DEQ would issue invoices in August 2009 as scheduled and issue a second billing for the increase after adoption of the permanent rulemaking. With or without the temporary rules, permittees would owe the same amount of fees because the statute has a retroactive clause for fee collection.

## **Effect of Rule**

### **Title V Fee Increases**

The proposed rule amendments increase fees for all 122 Title V sources in the program. Title V permit holders are generally the largest stationary emission sources, including power generation, wood and paper products and fiberglass manufacturing facilities. The EPA bases the Title V permit requirements on the quantity of emissions from a source rather than size of the business. Smaller sources such as wood refinishing and fiberglass reinforced plastic facilities are also subject to the Title V program if they have the potential to emit at or above major source emission thresholds.

DEQ rules establish Title V permit fees in three categories:

- Annual base fee, assessed to all Title V sources regardless of emission quantities;
- Emission fee, assessed on emissions from the individual sources per calendar year; and
- Specific activity fee, assessed when a source owner or operator modifies a permit or installs ambient monitoring networks requiring DEQ's review.

This proposal would increase the Title V fees by 4.6 percent based on the 2008 consumer price index. The table below illustrates the proposed fees.

Fee Category	Existing fees	Proposed fees	Increase
Annual Base Fee	\$5,183	\$5,421	\$238
Emission Fee (per ton)	\$51.83	\$54.21	\$2.38
<i>Specific Activity Fees:</i>			
Administrative	\$418	\$437	\$19
Simple	\$1,672	\$1,748	\$76
Moderate	\$12,540	\$13,115	\$575
Complex	\$25,081	\$26,231	\$1,149
Ambient Review	\$3,344	\$3,497	\$153

**Correction to Consumer Price Index Period Used in Fee Calculations**

This proposal implements a technical correction required by Senate Bill 104. The bill aligned the consumer price index period in statute with the federal definition. While the Clean Air Act defines the consumer price index calendar year as the twelve-month period ending Aug. 31, the statute simply provided “calendar year,” commonly understood as the twelve-month period ending Dec. 31. The correction shifts the period used in fee calculations back several months.

**Commission Authority**

The commission has authority to take this action under ORS 468.020, 468.065, 468A.025, 468A.040, 468A.310 and 468A.315

**Stakeholder Involvement**

DEQ worked with stakeholders and received their support for the legislation that corrected the consumer price index period. DEQ mailed letters to Title V sources in July 2009 to describe how this rulemaking proposal would affect invoices. DEQ did not convene an advisory panel to develop this proposal because the legislature authorized the fees and the technical correction in statute.

**Public Comment**

No public comment period is required for adoption of temporary rules. DEQ will proceed with the required public notice and comment process when it performs the permanent rulemaking.

**Key Issues**

DEQ must issue invoices to Title V permit holders as scheduled in August 2009 to prevent a shortfall in program funding. If the commission did not immediately revise the rules, but required DEQ to proceed with a permanent rulemaking, the rulemaking would not be complete before DEQ issues the invoices. DEQ would be required to invoice the 2009 Title V permit fees twice: the invoice in August, and a supplemental invoice at the conclusion of

permanent rulemaking. The supplemental invoice would cause additional cost and budgeting difficulties for DEQ and Title V permit holders.

**Next Steps**

If the commission adopts the temporary rules, the fee increases would become effective upon filing with the Secretary of State. The fees would be reflected in invoices that DEQ will issue to Title V permittees in August 2009, with payment due in October 2009. Because this is a continuation of an existing program, DEQ does not need additional resources or training to implement the rule amendments. DEQ will propose a permanent rulemaking in February 2010 to make the fee increases permanent. The permanent rulemaking proposal will also include the Title V fees authorized in statute for next year's billing. Because Senate Bill 104 corrected the statute, the commission is now able to establish Title V fees on a two-year schedule, reducing the frequency of future consumer price index fee increase rulemakings from once per year to once per biennium.

**Attachments**

- A. Proposed Rule Changes
- B. Statement of Need and Justification
- C. Senate Bill 104

**Available Upon Request**

- 1. ORS 468A.315
- 2. 2009-2011 Legislatively Approved Budget
- 3. Fiscal Year 2010 Title V Revenue Forecast

Approved:

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