

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATEMENT OF NEED AND JUSTIFICATION**

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

Department of Environmental Quality

Agency and Division

OAR Chapter 340

Administrative Rules Chapter Number

Rule Caption: Oregon Title V Operating Permit CPI Fee Increase

In the Matter of: Oregon Title V Operating Permit Fees, Division 220

Statutory Authority: ORS 468.020, ORS 468.065, ORS 468A.025, ORS 468A.040, ORS 468A.310 and ORS 468A.315

Other Authority: N/A

Statute Implemented: ORS 468A.315

Need for the Temporary Rules: Temporary rules are needed to maintain a single Title V billing in 2009. State and federal laws authorize annual increases to Oregon's Title V operating permit fees based on the change in the consumer price index. A temporary rulemaking to adopt the consumer price index fee increase is required for the Department of Environmental Quality to meet its customary schedule for assessing and invoicing Title V fees. Without temporary rules, DEQ would need to invoice Title V sources in August 2009 for fees currently specified in OAR 340-220-0030 through 0050, and after adoption of a permanent rulemaking, send a supplemental invoice for the difference between the current fees and the newly-increased fees. Two invoices for permit fees could cause confusion, potential budgeting difficulties for fee payers and additional work for DEQ and the regulated community. With or without the temporary rules, permittees would owe the same amount because the statute has a retroactive clause for fee collection.

Background:

Federal and state laws require that Title V permit fees be set at levels sufficient to cover all program costs. The 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.

DEQ needs to increase the Title V fees in 2009 by the change in the consumer price index to operate the program at full staff levels. While DEQ needs 35 FTE to administer an effective program, it 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 authorized for 2009, with the consumer price index increase, to restore the final Title V position required to return full staff levels to the program.

DEQ was unable to propose the increase through regular, permanent rulemaking in time for billing in 2009 because the statute that authorizes the fees (ORS 468A.315) required a technical

correction, which only recently became effective with the passage of Senate Bill 104 on June 16, 2009.

Documents Relied Upon: Documents relied upon are available by contacting DEQ or online as follows:

- Senate Bill 104 (a Public Law number is not yet available):
<http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0104.en.pdf>
- ORS 468A.315: <http://www.leg.state.or.us/ors/468a.html>
- Consumer Price Index history for all urban consumers (U.S. Department of Labor, Bureau of Labor Statistics): <http://www.bls.gov/cpi/>
- DEQ Fiscal Year 2010 Title V revenue forecast

Justification of Temporary Rules: The commission finds that failure to adopt the temporary rules will result in serious prejudice to the public interest and the interest of DEQ and Title V permit holders because it will have the following consequences:

Without these rule changes, Oregon rules concerning the dates for consumer price index fee increases would conflict with state statute and the federal Clean Air Act, which would potentially jeopardize federal delegation of the Title V operating permit program. Failure to adopt the rules could also jeopardize federal delegation because the state program must be entirely funded by permit fees; the rules are necessary to generate revenue to cover program costs. 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 costs for DEQ and Title V permit holders.

Housing Cost Impacts:

DEQ has determined that this proposed rulemaking may have a negative impact on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel because increased permit fees could be passed along in the form of slightly higher costs for development and construction (such as building products and utilities). DEQ is not able to quantify the impact of the proposed rulemaking due to a lack of available information, but expects any impact to be minimal.

Dick Pedersen, Director
On Behalf of the Environmental Quality Commission

Date Signed