

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form

DEQ 4-2009 (Temp)

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on August 20, 2009 by the

Department of Environmental Quality
Agency and Division

OAR Chapter 340
Administrative Rules Chapter Number

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to become effective upon filing through February 20, 2010. (A maximum of 180 days including the effective date.)

RULE CAPTION

Oregon Title V Operating Permit CPI Fee Increase

RULEMAKING ACTION

Amend: OAR 340-220-0030; OAR 340-220-0040; OAR 340-220-0050

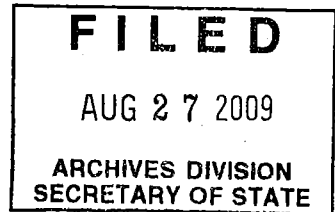
Stat. Auth.: ORS 468.020, ORS 468.065, 468A.025, ORS 468A.040, ORS 468A.310

Stats. Implemented: ORS 468A.315

RULE SUMMARY

The temporary rule amendments increase Title V Operating Permit fees by the change in the 2008 consumer price index and conform to new statutory requirements of Senate Bill 104, which amended ORS 468A.315. The old and new fees are described below:

Annual Base Fee	from \$5,183 to \$5,421
Emission Fee (per ton)	from \$51.83 to \$54.21
Administrative Fee	from \$418 to \$437
Simple Modification	from \$1,672 to \$1,748
Moderate Modification	from \$12,540 to \$13,115
Complex Modification	from \$25,081 to \$26,231
Ambient Air Monitoring	from \$3,344 to \$3,497



Larry McAllister

Authorized Signer

August 25, 2009

Date

Larry McAllister
Printed name

*Copies include a photocopy of this certificate with paper copy of each rule listed in the Rulemaking Action.

**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:

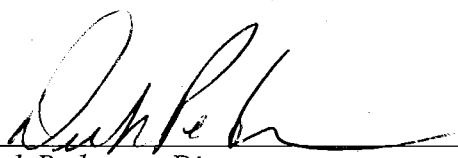
- Senate Bill 104 (a Public Law number is not yet available):
<http://www.leg.state.or.us/09reg/measpdf/sb0100.dir/sb0104.en.pdf>
- ORS 468A.315: <http://www.leg.state.or.us/ors/468a.html>
- Consumer Price Index history for all urban consumers (U.S. Department of Labor, Bureau of Labor Statistics): 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

8-20-09

Date Signed

DIVISION 220

OREGON TITLE V OPERATING PERMIT FEES

340-220-0030

Annual Base Fee

- (1) The Department will assess an annual base fee of \$ 4,390 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2007 to November 14, 2008.
- (2) The Department will assess an annual base fee of \$ 4,849 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2008 to November 14, 2009.
- (3) The Department will assess an annual base fee of \$ 5,421 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2009 to November 14, 2010, and for each annual period thereafter.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

340-220-0040

Emission Fee

- (1) The Department will assess an emission fee of \$ 43.90 per ton of each regulated pollutant emitted during calendar year 2006 to each source subject to the Oregon Title V Operating Permit Program.
- (2) The Department will assess an emission fee of \$ 48.49 per ton of each regulated pollutant emitted during calendar year 2007 to each source subject to the Oregon Title V Operating Permit Program.
- (3) The Department will assess an emission fee of \$ 54.21 per ton of each regulated pollutant emitted during calendar year 2008 and for each calendar year thereafter to each source subject to the Oregon Title V Operating Permit Program.
- (4) The emission fee will be applied to emissions based on the elections made according to OAR 340-220-0090.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

340-220-0050

Specific Activity Fees

- (1) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of August 21, 2007 to August 25, 2008 as follows:
 - (a) Existing Source Permit Revisions:
 - (A) Administrative* -- \$ 406;
 - (B) Simple -- \$ 1,626;
 - (C) Moderate -- \$ 12,194;
 - (D) Complex -- \$ 24,387.
 - (b) Ambient Air Monitoring Review -- \$ 3,252.
- (2) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of August 26, 2008 to August 25, 2009 as follows:
 - (a) Existing Source Permit Revisions:
 - (A) Administrative* -- \$ 418;
 - (B) Simple -- \$ 1,672;
 - (C) Moderate -- \$ 12,540;
 - (D) Complex -- \$ 25,081.
 - (b) Ambient Air Monitoring Review -- \$ 3,344.
- (3) The Department will assess specific activity fees for an Oregon Title V Operating Permit program source as of August 26, 2009 as follows:

(a) Existing Source Permit Revisions:

(A) Administrative* -- \$ 437;

(B) Simple -- \$ 1,748;

(C) Moderate -- \$ 13,115;

(D) Complex -- \$ 26,231.

(b) Ambient Air Monitoring Review -- \$ 3,497.

*Includes revisions specified in OAR 340-218-0150(1)(a) through (g). Other revisions specified in 340-218-0150 are subject to simple, moderate or complex revision fees.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A