



State of Oregon Department of Environmental Quality

Draft Fiscal Impact Statement

ACDP Fee Increase 2020

Introduction

This is a draft fiscal impact statement developed by DEQ for the Air Contaminant Discharge Permit fee increase 2020 rulemaking. This document is being presented to the Fiscal Advisory Committee for their input before being finalized for inclusion in the public notice.

Fee Analysis

These proposed rules would establish new fees and increase existing fees. EQC authority to act on the proposed fees is ORS 468A, 468.020, 468A.025, 468A.040 and 468A.310.

Brief description of proposed fees

DEQ proposes to increase fees associated with the Air Contaminant Discharge Permit program sufficient to generate a 70% increase in revenue, charge for certain notification of intent to construct applications, and establish a new permit category for certain sources already subject to permitting.

Reasons

The proposed fees address the legislatively approved changes to DEQ's budget. Policy Option Package 116, approved in the 2019 legislative session, authorizes an additional six 'full time equivalent' positions and increases revenue to sustain the increased costs of the program.

By establishing a new Basic Air Contaminant Discharge Permit category, DEQ is streamlining permitting and compliance for relatively simple sources that would otherwise be subject to more costly and time-consuming permits.

The proposed fees would address increased program and staff costs including COLA, step increases and benefits. ACDP fees were last raised in 2014.

The proposed fees would address legislative concerns surrounding proper funding for the ACDP program. A secretary of state audit in 2017 demonstrated that the program was insufficiently funded. The legislative approval of Policy Option Package 116 in the 2019 session reaffirms that the legislature wants to remedy the issues addressed in the audit.

Fee proposal alternatives considered

DEQ considered the following alternatives:

- No fee increases, which does not allow DEQ to maintain current service levels or hire additional legislatively approved positions.
- Move existing fee payers into different annual fee classifications, which creates internal information technology issues with how ACDP annual fees interact with Cleaner Air Oregon annual fees. This appears to be a viable option for a future fee-related rulemaking as DEQ is currently engaged in the development of an enterprise-wide data management system.
- Create new ACDP fee categories, which creates internal information technology issues with how DEQ currently generates invoices. This appears to be a viable option for a future rulemaking as DEQ is currently engaged in the development of an enterprise-wide data management system.
- Increasing all annual fee categories a proportionately equivalent amount.

Fee payer

Fee payers would be air quality permit-holders from across the state including, but not limited to, the activities and operations listed in Oregon Administrative Rules Chapter 340 Division 216 Table 1.

Fee payers would also be individuals or companies who propose construction activities subject to the Type 2 construction notification requirements in OAR 340 Division 210.

Fee payers would also be sources subject to permitting from OAR 340 Division 216 Table 1 that meet the criteria of the new Basic ACDP, but these fee payers will be assessed a lesser fee than is or would otherwise be applicable.

Affected party involvement in fee-setting process

DEQ convened a Rules and Fiscal Advisory Committee that included appointees representing a variety of industries directly and indirectly affected by the proposed rules. The RAC/FAC met on Nov. 12, 2019 and Dec. 9, 2019 to discuss ways to establish fees that would allow DEQ to generate the required revenue.

Summary of impacts

Annual fees

The impacts of the draft rules include an increase to annual fee payers in the following way:

Basic ACDP categories 1-7

Would incur an annual fee increase of 25% due December 2020 and a subsequent increase of 25% over 2019 fees to be due December 2021 resulting in a total fee increase of 50% over 2019 fees over two years.

- Current fee: \$432
- December 2020 fee: \$540
- December 2021 and subsequent fees: \$648

New Basic ACDP category 8

Annual fee established at \$1,469

- Sources eligible for this new permit category previously paid an annual fee of at least \$2,304.

General ACDPs

Would incur an increase of 70%:

- Fee Class one: current fee of \$864 and proposed fee of \$1,469.
- Fee Class two: current fee of \$1,555 and proposed fee of \$2,644.
- Fee Class three: current fee of \$2,246 and proposed fee of \$3,818.
- Fee Class four: current fee of \$432 and proposed fee of \$734.
- Fee Class five: current fee of \$144 and proposed fee of \$245.
- Fee Class six: current fee of \$288 and proposed fee of \$490.

Simple ACDPs

Would incur an increase of 70%:

- Simple Low: current fee of \$2,304 and proposed fee of \$3,917.
- Simple High: current fee of \$4,608 and proposed fee of \$7,834.

Standard ACDPs

Would incur an increase of 71%:

- Current fee of \$9,216 and proposed fee of \$15,759.

Specific activity fees

The impacts of the draft rules includes specific activity fee increases in the following way:

Initial permitting fees

Would incur an increase of 25%:

- Short Term Activity ACDP: current fee of \$3,600 and proposed fee of \$4,500.
- Basic ACDP: current fee of \$144 and proposed fee of \$180.
- General ACDP: current fee of \$1,440 and proposed fee of \$1,800.
- Simple ACDP: current fee of \$7,200 and proposed fee of \$9,000.
- Construction ACDP: current fee of \$11,520 and proposed fee of \$14,400.
- Standard ACDP: current fee of \$14,400 and proposed fee of \$18,000.
- Standard ACDP (Major NSR or Type A State NSR): current fee of \$50,400 and proposed fee of \$63,000.

Specific activity fees

Would incur an increase of 25%:

- Basic Technical Modification: current fee of \$432 and proposed fee of \$540.
- Simple Technical Modification: current fee of \$1,440 and proposed fee of \$1,800.
- Moderate Technical Modification: current fee of \$7,200 and proposed fee of \$9,000.
- Complex Technical Modification: current fee of \$14,400 and proposed fee of \$18,000.
- Major NSR or Type A State NSR Modification: current fee of \$50,400 and proposed fee of \$63,000.
- Modeling Review: current fee of \$7,200 and proposed fee of \$9,000.
- Public Hearing at Source's Request: current fee of \$2,880 and proposed fee of \$3,600.
- State MACT Determination: current fee of \$7,200 and proposed fee of \$9,000.
- Compliance Order Monitoring (monthly): current fee of \$144 and proposed fee of \$180.

Notification of Intent to Construct Type 2 applications

Fee established at \$720.

Greenhouse gas reporting fee

The greenhouse gas reporting fee percentage has been adjusted downward to maintain current program revenue levels, from 12.5% to 7.31% based on the fee increases above.

Small business considerations

To minimize impacts to small businesses:

- The Basic ACDP annual fee increase is proposed as 50% total and spread over a two-year period. This represents a smaller and slower fee increase as compared to other categories.
- The non-technical permit modification fee is not proposed to increase and will incur no changes as this fee is incurred most frequently by Basic or General ACDP owners and operators who have bought or sold an operation.
- The Notification of Intent to Construct Type 2 fee is proposed to be applied to a subsequent annual ACDP invoice for some Basic and General ACDPs. This will occur when a Type 2 construction project, when completed, would allow a source to remain eligible for their existing Basic or General ACDP.

Fee payer agreement with fee proposal

This will be discussed at the Dec. 9, 2019 meeting.

Links to supporting documents for proposed fees

Oregon Administrative Rules Chapter 340 Division 216 Table 2:

<https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=259030>

Oregon Administrative Rules Chapter 340:

<https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=80>

House Bill 5017 (2019): <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB5017>

Oregon Revised Statutes 468A, 468.020, 468A.025, 468A.040 and 468A.310:

https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx

How long will the current fee sustain the program?

The 70% increase in revenue is expected to sustain the program through the 2023-2025 biennium.

Current Fees		
Program costs covered by fees	\$6,480,597.79	91.6%
Program costs covered by General Fund	\$595,437.50	8.4%
Fee last changed	June 26, 2014	

Proposed Fees		
Expected change in revenue (+/-)	\$2,304,600	31.1%
Main GF required by statute/rule to fund program	\$0	0%
Proposed fee allows General Fund replacement	\$0	0%
Expected effective date	July 1, 2020	

Transactions and Revenue				
Biennium	Number of transactions	Number of fee payers	Impact on revenue (+/-)	Total revenue (+/-)
Current biennium	10070	4731	\$2,304,600	\$9,707,860
Next biennium	10070	4731	\$2,326,848	\$12,034,708

Fee schedule

ORAR Chapter 340 Division 216 Table 2:

 <div style="text-align: center;"> <h2>ORAR 340-216-8020</h2> <h3>Table 2</h3> <h1>Air Contaminant Discharge Permits</h1> </div>		
Part 1. Initial Permitting Application Fees: (in addition to first annual fee)		
Short Term Activity ACDP		\$ 4,500.00 3,600.00
Basic ACDP		\$ 180.00 144.00
Assignment to General ACDP ¹		\$ 1,800.00 1,440.00
Simple ACDP		\$ 9,000.00 7,200.00
Construction ACDP		\$ 14,400.00 11,520.00
Standard ACDP		\$ 18,000.00 14,400.00
Standard ACDP (Major NSR or Type A State NSR)		\$ 63,000.00 50,400.00
<p>1. DEQ may waive the assignment fee for an existing source requesting to be assigned to a General ACDP because the source is subject to a newly adopted area source NESHAP as long as the existing source requests assignment within 90 days of notification by DEQ.</p>		
Part 2. Annual Fees: (Due date 12/1 ¹ for 1/1 to 12/31 of the following year)		
Short Term Activity ACDP		\$ 0 NA
Basic ACDP	(A) #1-7 ORAR 340-216-8010 Table 1 Part A	\$540.00 (due 12/1/2020) \$648.00 (due 12/1/2021 forward) 432.00
	(B) #8 ORAR 340-216-8010 Table 1 Part A	\$1,469.00
General ACDP	(A) Fee Class One	\$ 1,469.00 864.00
	(B) Fee Class Two	\$ 2,644.00 1,555.00
	(C) Fee Class Three	\$ 3,818.00 2,246.00
	(D) Fee Class Four	\$ 734.00 432.00
	(E) Fee Class Five	\$ 245.00 144.00
	(F) Fee Class Six	\$ 490.00 288.00
Simple ACDP	(A) Low Fee	\$ 3,917.00 2,304.00
	(B) High Fee	\$ 7,834.00 4,608.00
Standard ACDP		\$ 15,759.00 9,216.00

Greenhouse Gas Reporting, as required by OAR 340, Division 215		7.31 12.5 % of the applicable ACDP annual fee in Part 2
1. DEQ may extend the payment due date for dry cleaners or gasoline dispensing facilities until March 1st.		
Part 3. Cleaner Air Oregon Annual Fees: (Due date 12/1¹ for 1/1 to 12/31 of the following year)		
Basic ACDP	(A) #1-7 OAR 340-216-8010 Table 1 Part A	\$151.00
	(B) #8 OAR 340-216-8010 Table 1 Part A	\$302.00
General ACDP	(A) Fee Class One	\$302.00
	(B) Fee Class Two	\$544.00
	(C) Fee Class Three	\$786.00
	(D) Fee Class Four	\$151.00
	(E) Fee Class Five	\$50.00
	(F) Fee Class Six	\$100.00
Simple ACDP	(A) Low Fee	\$806.00
	(B) High Fee	\$1,612.00
Standard ACDP		\$3,225.00
1. DEQ may extend the payment due date for dry cleaners or gasoline dispensing facilities until March 1st.		
Part 4. Specific Activity Fees:		
Notice of Intent to Construct Type 2¹		\$720.00
Permit Modification	(A) Non-Technical²	\$432.00
Non-Technical Permit Modification or Air Toxics Permit Attachment Modification⁺	(A) (B) Basic Technical	\$540.00 \$432.00
	(C) Simple Technical	\$1,800.00
	(D) Moderate Technical	\$9,000.00
	(E) Complex Technical	\$18,000.00
Toxic Air Contaminant Permit Addendum Modification	(A) Non-Technical	\$432.00

	(B) Basic Technical	\$432.00
	(C) Simple Technical	\$1,440.00
	(D) Moderate Technical	\$7,200.00
	(E) Complex Technical	\$14,440.00
Major NSR or Type A State NSR Permit Modification		\$63,000.00 50,400.00
Modeling Review (outside Major NSR or Type A State NSR)		\$9,000.00 7,200.00
Public Hearing at Source's Request		\$3,600.00 2,880.00
State MACT Determination		\$9,000.00 7,200.00
Compliance Order Monitoring ²³		\$180.00 144.00 /month
Part 5. Late Fees:		
8-30 days late		5%
31-60 days late		10%
61 or more days late		20%



**OAR 340-216-8020
Table 2
Air Contaminant Discharge Permits**

1. Basic and General ACDP sources that, after an approved and completed Type 2 change, remain eligible for their issued or assigned ACDP will have this fee applied to the next ACDP annual invoice from Part 2.

~~1.2.~~ For gasoline dispensing facilities, a portion of these fees will be used to cover the fees required for changes of ownership in OAR 340-150-0052(4) if DEQ receives both forms at the same time.

~~2.3.~~ This is a one-time fee payable when a compliance order is established in a permit or a DEQ order containing a compliance schedule becomes a final order of DEQ and is based on the number of months DEQ will have to oversee the order.

NOTE: See history of this table under OAR 340-216-0020.

Statement of fiscal and economic impact

Fiscal and economic impact

Increases in air contaminant discharge permit fees and new fees for certain construction applications, would affect approximately 2,500 permit holders and registrants directly and increase program revenue by \$2,304,600 in the 2019 to 2021 biennium.

Adjustments to the calculation of greenhouse gas reporting fees would not adversely affect any permit holders as it would decrease the percentage from 12.5% to 7.31%. This adjustment allows the program to maintain revenue at current levels and sources to continue paying at current fee levels. Approximately 133 of the 2,500 ACDP sources pay the GHG reporting fee.

Establishing a new Basic ACDP category would not adversely affect existing or new permit holders, as it is applicable to sources subject to a more costly permit and would only result in a lesser fiscal impact to those sources.

Statement of cost of compliance

State agencies

Federal and state agencies hold approximately 28 air contaminant discharge permits. The permit fee increases and new fees for construction would affect these permit holders directly. Adjustments to the calculation of greenhouse gas reporting fees would not affect any of these permit holders directly as it would only maintain existing revenue levels. Changes to fees could affect these agencies indirectly if businesses change the price of goods and services to offset any increased or decreased costs from paying a permit fee.

Local governments

Local governments hold approximately 60 air contaminant discharge permits. The permit fee increases and new fees for construction would affect these permit holders directly. Adjustments to the calculation of greenhouse gas reporting fees would not affect these permit holders directly. Changes to fees could affect local governments indirectly if businesses change the price of goods and services to offset any increased or decreased costs from paying a permit fee.

Public

The proposed rules could affect the public directly if proposed construction of a source of air pollution required a notification to DEQ and qualified as a Type 2 Notification of Intent to Construct based on emissions. 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.

Large businesses - businesses with more than 50 employees

Approximately 1,508 large businesses hold air contaminant discharge permits. The permit fee increases and new fees for construction would affect these permit holders directly. Adjustments to the calculation of greenhouse gas reporting fees would not affect these permit holders as it would maintain existing revenue. The type of permit required for a facility determines the permit fees regardless of the number of employees.

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.

Small businesses – businesses with 50 or fewer employees

Many small businesses (with 50 or fewer employees) have an air contaminant discharge permit. Generally, facilities with less complex permits experience a smaller economic impact from fee increases than larger facilities with more complex permits.

The proposed rules would increase annual fees for small businesses. Examples of these small businesses are dry cleaners and automotive body shops.

Some small businesses that hold more complex simple and standard permits could experience higher fee increases per year.

Additional proposed fee increases would affect small businesses required to apply for a new permit or a modification to an existing permit, by increasing most specific activity fees by 25%.

New proposed fees for certain construction applications would also affect small businesses by establishing a fee of \$720.

Adjustments to the calculation of greenhouse gas reporting fees would not directly affect small businesses as the adjustment is proposed downward to sustain existing levels of revenue funding.

Changes to fees could affect small businesses indirectly if other businesses change the price of goods and services to offset any increased or decreased costs from paying a permit fee.

ORS 183.336 Cost of Compliance Effect on Small Businesses

1. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rules.

Based on existing permittee's self-reporting on the number of employees, these proposed rules could affect approximately 964 small businesses.

- Basic ACDP: 147
- General ACDP: 753
- Simple ACDP: 47
- Standard ACDP: 17

2. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

The proposed rules do not require any additional activities. All permittees already pay annual and specific activity fees. No new information is required to be submitted with the proposed construction application fees.

3. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

The proposed rules will not require any additional resources. All permittees already pay annual and specific activity fees.

4. Describe how DEQ involved small businesses in developing this proposed rule.

DEQ included the small business environmental assistance program in the rulemaking process.

DEQ included a notification of the proposed rulemaking and an expected fee increase to all ACDP sources with the December 2019 invoices, providing approximately one-year notification of an increase.

The FAC/RAC included representatives from a variety of industry types including crematories and wood preservers.

Documents relied on for fiscal and economic impact

Document title	Document location
DEQ TRAACS air quality database reports	DEQ Headquarters Office 700 NE Multnomah St. Suite 600 Portland, OR 97232

Advisory committee fiscal review

DEQ appointed an advisory committee.

As ORS 183.33 requires, DEQ will ask for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact,
- The extent of the impact, and
- Whether the proposed rules would have a significant adverse impact on small businesses; if so, then how DEQ can comply with ORS 183.540 to reduce that impact.

The committee will review the draft fiscal and economic impact statement and its findings will be stated in the approved minutes dated Dec. 9, 2019. If the committee determines the proposed rules would have a significant adverse impact on small businesses in Oregon, discussion will include how to reduce the impact.

As ORS 183.333 and 183.540 require, the committee will consider how DEQ could reduce the rules' fiscal impact on small business by:

- Establishing differing compliance or reporting requirements or time tables for small business;
- Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
- Utilizing objective criteria for standards;
- Exempting small businesses from any or all requirements of the rule; or
- Otherwise establishing less intrusive or less costly alternatives applicable to small business.

Housing cost

As ORS 183.534 requires, 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.

DEQ determined the proposed rules might have an effect on the development costs because it is possible that a permit holder could change the price of goods and services to pass on any fee changes to consumers, though any estimate of the possible impact would be speculative using information available at this time.