

**TITLE 252. OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL RULES**

RULE IMPACT STATEMENT

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-2.3. Annual operating fees for area sources of air pollution [NEW]

Subchapter 7. Permits for Minor Facilities

Part 2. Permit Application Fees [AMENDED]

252:100-7-3. Permit application fees

Subchapter 8. Permits for Part 70 Sources

Part 3. Permit Application Fees [AMENDED]

252:100-8-1.7. Permit application fees

Before the Air Quality Advisory Council, October 27, 2010 and January 19, 2011
Before the Environmental Quality Board, February 25, 2011

1. **DESCRIPTION:** The Department is proposing to add a new section to Subchapter 5 of the Air Pollution Control Rules that will alter the current fee structure to allow the agency to invoice certain “area sources” (i.e., non-major) of hazardous air pollutants . The proposed new section will require area sources that are not subject to permitting but are subject to National Emission Standards for Hazardous Air Pollutants (NESHAPs) to pay an annual operating fee. (Note that permitted facilities currently pay an annual operating fee based on emissions.) In addition, the Department is proposing significant increases in permit application fees in Subchapters 7 and 8.
2. **CLASSES OF PERSONS AFFECTED:** Owners and operators of facilities that are subject to NESHAPs but are not subject to air quality permitting will be affected by the changes to Subchapter 5. Owners and operators of facilities that apply for air quality permits will be affected by the changes to Subchapters 7 and 8.
3. **CLASSES OF PERSONS WHO WILL BEAR COSTS:** Owners and operators of facilities that are subject to NESHAPs but not subject to air quality permitting will be assessed an annual operating fee. Also, owners and operators of facilities that apply for air quality permits will pay higher permit application fees.
4. **INFORMATION ON COST IMPACTS FROM PRIVATE/PUBLIC ENTITIES:** The Department has received no information on cost impacts from private or public entities.
5. **CLASSES OF PERSONS BENEFITED:** The citizens of the State of Oklahoma will benefit from a more adequately funded program to monitor and control air pollution. Owners and operators of facilities will benefit from a more equitably funded program that has sufficient resources to ensure timely and appropriate action on any permit applications they submit. Also, Oklahoma citizens and facility owners and operators will benefit because the additional funding will enable the Department to continue to assume EPA delegation of

authority to implement and enforce new federal air quality standards and programs.

6. **PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** All owners and operators of area sources that are subject to NESHAPs but not air quality permitting requirements would be assessed annual operating fees based on the type of facility. Gasoline dispensing facilities (gas stations) would be assessed an annual operating fee of \$250, \$500, or \$750, depending on the facility's average monthly throughput of gasoline. Gasoline distribution bulk terminals, bulk plants, and pipeline facilities would be assessed an annual operating fee of \$500. All other (non-permitted) area sources would be assessed an annual operating fee of \$250. Also, the owners and operators of facilities that apply for air quality permits will pay \$100 to \$1,000 more in permit application fees for minor facility permits and \$250 to \$6,500 more for major source (PSD and Part 70/Title V) permits, depending on permit application type.
7. **PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** Political subdivisions, including but not limited to state, counties, and municipalities, that own or operate a facility that is subject to air quality permitting requirements and/or NESHAPs would be assessed an annual operating fee and/or increased permit application fees, with minor facilities paying from \$100 to \$1,000 more and major sources paying from \$250 to \$6,500 more, depending on permit application type. A large county motor pool/vehicle maintenance facility could be an example of a facility that is owned or operated by a political subdivision and that is subject to permitting requirements and/or NESHAPs.
8. **POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** Owners and operators of small businesses that are area sources of hazardous air pollutants and subject to NESHAPs but that are not required to obtain air quality permits would be assessed annual operating fees. Also, small businesses would pay higher permit application fees to obtain air quality permits.
9. **LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION FOR EACH FEE CHANGE:** Over the years, Oklahoma has been delegated authority to implement and enforce numerous federal NESHAPs including those affecting smaller sources referred to as "area sources." The proposed fee increase will enable the Department to continue to accept delegation of NESHAPs. The funding will be used to improve and maintain the inventory of area sources and to implement appropriate compliance assurance measures for these sources. Also, the enhanced inventory of area sources will support future air quality planning efforts and revisions to the State Implementation Plan.

Currently, only those area sources that are subject to permitting requirements are assessed annual operating fees. However, the Department currently lacks the funds to fully implement and enforce the area source NESHAPs program because many area sources are not subject to permitting requirements, and therefore are not assessed annual operating fees. The Department proposes that owners and/or operators of area sources that are not subject to the permitting requirements in Subchapters 7 and 8 be assessed an annual operating fee of \$250, \$500, or \$750, depending on the type of facility.

In an effort to address air quality program costs associated with air pollution from automobiles

and trucks, and the costs of implementation of the area source NESHAPs for gasoline dispensing and distribution facilities, the Department proposes a stratified fee structure for these facilities. Gasoline dispensing facility area sources that are subject to 40 CFR Part 63, Subpart CCCCCC, but not subject to permitting requirements would pay an annual operating fee based on average monthly gasoline throughput. Gasoline dispensing facilities with throughput of 10,000 gallons or less would pay an annual operating fee of \$250. Gasoline dispensing facilities with throughput of more than 10,000 gallons but less than 100,000 gallons would pay an annual operating fee of \$500. Gasoline dispensing facilities with throughput of 100,000 gallons or more would pay an annual operating fee of \$750. The stratification in this rule is consistent with the federal NESHAP structure. Area source gasoline distribution facilities categorized as bulk terminals, bulk plants, and pipeline facilities that are subject to 40 CFR Part 63, Subpart BBBBBB, but not subject to permitting requirements would pay an annual operating fee of \$500.

Any other area source that is subject to NESHAPs other than 40 CFR, Part 63, Subpart BBBBBB or CCCCCC, but not air quality permitting requirements, would be assessed an annual operating fee of \$250.

The Department is proposing to increase permit application fees for minor facility and Part 70 source permits. The fee for obtaining a construction or operating permit, authorization under a general permit, or applicability determination would be increased by \$100 to \$1000 for a minor facility and by \$250 to \$6500 for a major source (PSD or Part 70/Title V source). The fees for permit by rule registration would not be changed. The existing application fees have been in place for over a decade and do not fully take into consideration the current program costs incurred by the Department in administering the program, including reviewing and acting upon construction and operating permit applications. When the Department last increased its annual operating fees approximately 3 years ago, fee payers requested that any future fee proposal include an evaluation of permit application fees and a recommendation for appropriate increases. The Department's evaluation noted that the proposed permit application fees are lower than or comparable to those charged by surrounding states..

10. **PROBABLE COSTS AND BENEFITS TO DEQ TO IMPLEMENT AND ENFORCE:**
The Department would bear the cost of developing an inventory of unpermitted area source facilities and of modifying its current fee collection processes. The Department's air pollution control program would benefit from the enhanced inventory developed with funding from this fee proposal, and more adequate resources to support the program. The Department would incur no additional costs to implement and enforce the proposed permit application fees but will benefit from the increase in funding to support the program. The additional funding will ensure that the Department has adequate resources, including technical staff, to review and act upon permit applications in a timely manner.
11. **PROBABLE COSTS AND BENEFITS TO OTHER AGENCIES TO IMPLEMENT AND ENFORCE:** None. No other agencies will be implementing or enforcing this rule.
12. **SOURCE OF REVENUE TO BE USED TO IMPLEMENT AND ENFORCE RULE:**
The operating and permit application fees established by this rule proposal, along with

federal grants, will be used to implement and enforce the proposed rules.

13. **PROJECTED NET LOSS OR GAIN IN REVENUES FOR DEQ AND/OR OTHER AGENCIES, IF IT CAN BE PROJECTED:** The Department estimates that the proposed area source operating fees and permit application fee increases will generate approximately \$3 million in revenue annually, which is needed to offset budgetary shortfalls and cover current and anticipated increased staffing requirements in administering the Department's programs. Of the estimated \$3 million, approximately \$850,000 dollars will be generated from the proposed permit application fee increases with the remainder from the proposed area source annual operating fees.
14. **COOPERATION OF POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE RULE:** None is required. DEQ will be responsible for all aspects of implementation of this rule.
15. **EXPLANATION OF THE MEASURES THE DEQ TOOK TO MINIMIZE COMPLIANCE COSTS:** The Department has identified underfunded portions of the air pollution control program and estimated current and future costs associated with those functions. Currently, only permitted sources are invoiced for their hazardous air pollutant (HAP) emissions. Emissions from these sources comprise about 20% of the total statewide annual HAP emissions. This measure would target a significant portion of the facilities responsible for the remaining 80% of HAP emissions that pose significant risk to public health. The result would be a more equitable distribution of costs among pollutant-emitting sources. The existing permit application fees have been in place for over a decade and do not take into consideration the current costs incurred by the Department in administering the program, including reviewing and acting upon construction and operating permit applications. When the Department last increased its annual operating fees, fee payers requested that any future fee proposal include an evaluation of permit application fees and a recommendation for appropriate increases. The Department's evaluation took into consideration the minimum projected program costs, as well as fees charged and program costs incurred by surrounding states. The fees in the resulting proposal are lower than or comparable to those of surrounding states.
16. **DETERMINATION OF WHETHER THERE ARE LESS COSTLY OR NONREGULATORY OR LESS INTRUSIVE METHODS OF ACHIEVING THE PURPOSE OF THE PROPOSED RULE:** Increased workload brought about by the promulgation of numerous federal air pollution programs, coupled with a significant reduction in state appropriated funds, has compelled the Department to reexamine its funding needs. While restoring legislative funding would ease the burden of operating and/or permit application fees on owners and operators who will be affected by these amendments, the Department cannot effect that change.
17. **DETERMINATION OF THE EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT:** The funding provided through the proposed rule change would enable the DEQ to better monitor and enforce state and federal requirements and ensure protection of the public health, safety, and environment.

18. **IF THE PROPOSED RULE IS DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT, EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULE WILL REDUCE THE RISK:** The proposed area source fee would more adequately fund the agency's program to monitor and control emissions of air toxics. Toxic air pollutants may cause cancer or other serious health effects, such as reproductive effects or birth defects, and adverse environmental effects. Also, the proposed permit application fees would provide the funding needed to ensure that the Department has adequate resources to review and take timely and appropriate action on permit applications. Air permits limit emissions to minimize the risk to public health, safety, and the environment from air pollution.
19. **DETERMINATION OF ANY DETRIMENTAL EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF THE PROPOSED RULE IS NOT IMPLEMENTED:** Lack of funding would likely require a reduction in services intended to educate the public and protect public health and the environment from the effects of air pollution.
20. **PROBABLE QUANTITATIVE AND QUALITATIVE IMPACT ON BUSINESS ENTITIES (INCLUDE QUANTIFIABLE DATA WHERE POSSIBLE):** Currently, fees are assessed for only approximately 20% of the actual toxics emitted. Unpermitted area sources regulated by the program would be required to pay a fee of \$250-\$750 annually. The fee for obtaining a construction or operating permit, authorization under a general permit, or applicability determination would increase by \$100 to \$1000 dollars for a minor facility and by \$250 to \$6500 for major source (PSD or Part 70/Title V source).

THIS RULE IMPACT STATEMENT WAS PREPARED ON: September 15, 2010
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