

**TITLE 252. OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL RULES
SUBCHAPTER 5**

RULE IMPACT STATEMENT

**Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-2.3. Annual operating fees for toxics emissions [NEW]**

Before the Air Quality Advisory Council, October 27, 2010
Before the Environmental Quality Board, November 16, 2010

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 for toxics emissions. The proposed new section will allow the department to invoice hazardous air pollutants, lead, and lead compounds at a rate different from other regulated air pollutants, and will require area sources not subject to permitting but subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) to pay an annual operating fee.
2. **CLASSES OF PERSONS AFFECTED:** Any owner or operator of a facility emitting hazardous air pollutants, lead, and lead compounds and/or subject to a NESHAP, whether subject to air quality permitting or not, will be subject to these new operating fees.
3. **CLASSES OF PERSONS WHO WILL BEAR COSTS:** Any owner or operator of a facility emitting hazardous air pollutants, lead, and lead compounds and/or subject to a NESHAP, whether subject to air quality permitting or not, will bear the costs of these new operating 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 BENEFITTED:** The citizens of the State of Oklahoma will benefit from an adequately funded program to monitor and control toxics emissions.
6. **PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS:** Operating fees will increase for owners and operators of facilities that emit toxics.
7. **PROBABLE ECONOMIC IMPACT ON POLITICAL SUBDIVISIONS:** Political subdivisions, including but not limited to state, counties and municipalities, that are owners and operators of stationary sources that emit toxic air pollutants would be assessed annual operating fees based on those emissions.
8. **POTENTIAL ADVERSE EFFECT ON SMALL BUSINESS:** For the first time owners and operators of small businesses that emit toxic air pollutants will be assessed an operating fee based on those emissions.
9. **LISTING OF ALL FEE CHANGES, INCLUDING A SEPARATE JUSTIFICATION**

FOR EACH FEE CHANGE: For owners and operators of facilities subject to the new toxic operating fees, the fee will increase from a fee equal to the regulated air pollutant fee to \$50 per ton of hazardous air pollutant emitted. This is a \$16 per ton increase for Part 70 sources and \$25 per ton increase for minor facilities. In addition, owners and operators of facilities that emit less than one ton of toxic air pollutants will now be billed for a full ton of toxic emissions. Studies show that toxic air pollutants are harmful to human health at lower levels than previously thought. The current budget shortfalls have forced the department to question the equity of the fee structure. It is intended that invoicing separately for toxic air pollution emissions will provide the department with more adequate funding for the control of air toxics and encourage owners and operators to control these emissions.

Owners and operators of facilities emitting mercury and mercury compounds will be invoiced \$100 per pound. Mercury is highly toxic in even the tiniest quantities. The Department therefore proposes to invoice mercury in smaller increments. The Department has received comments from Oklahomans concerned with emissions of mercury continuously over the last two years. The citizens are concerned with the effects of mercury on Oklahoma's children and those who consume fish from the state's lakes and reservoirs.

Lead and lead compounds will be invoiced at \$50 per pound emitted. The quantities of lead emitted have decreased over the last two decades but the evidence of its toxicity remains. As with mercury, the Department proposes to invoice lead in pounds.

Over the years, Oklahoma has been delegated authority to implement and enforce numerous federal NESHAPs. Many of these facilities subject to these NESHAPs are small businesses and have been exempt from permitting and operating fees. The Department proposes that owners and/or operators of area source facilities subject to a NESHAP but not subject to permitting be invoiced \$250 per year.

In an effort to address 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's 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.

- 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.

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 fees established by this rule, along with federal grants, will be used to implement and enforce air quality rules and regulations enacted to protect air quality in the State of Oklahoma.
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 toxic operating fees will generate approximately \$2.5 million in revenue, which is needed to offset budgetary shortfalls and cover current and anticipated increased staffing requirements in administering the Department's programs.
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 air toxic emissions. Emissions from these sources comprise 20% of the total statewide annual toxic emissions. This measure would target the remaining 80% of emissions that pose significant risk to public health, but are regulated by programs that are currently underfunded. The result would be a more equitable distribution of costs.
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 toxic pollution programs, coupled with a significant reduction in state appropriated funds, has caused a need for reexamination of the Department's funding needs. While restoring legislative funding would ease the burden of operating 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 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 fee would fund the agency's program to monitor and control emissions of air toxics from area sources. Toxic air pollutants may cause cancer or other serious health effects, such as reproductive effects or birth defects, and adverse

environmental effects.

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 cause a reduction in services intended to educate the public and protect public health and environment from the effects of toxic air pollutants.

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. This measure would target the remaining 80% of emissions that pose significant risk to public health, but are regulated by programs that are currently underfunded. The result would be a more equitable distribution of costs. Unpermitted area sources regulated by the program would be required to pay a fee of \$250-\$750 annually. Permitted sources would also pay an increased fee of \$16-\$25 per ton of toxics emitted. Lead and mercury emissions, which are biopersistent, and extremely toxic in low doses, would be assessed a fee commensurate with the risks they pose and the program costs associated with monitoring and controlling them.

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