

**SUMMARY OF COMMENTS AND STAFF RESPONSES FOR PROPOSED
REVISIONS TO SUBCHAPTER 5. REGISTRATION, EMISSIONS
INVENTORY AND ANNUAL OPERATING FEE**

**COMMENTS RECEIVED AT THE JULY 18, 2007
AIR QUALITY ADVISORY COUNCIL MEETING**

Verbal Comments

1. **COMMENT:** Mr. Bud Ground, PSO, noted that given the anticipated overall reduction in emissions from most Title V sources over the next 5 years, there is a need for an "overall fee...restructure."

RESPONSE: Staff will take this comment into consideration.

**COMMENTS RECEIVED PRIOR TO AND AT THE JANUARY 17, 2008
AIR QUALITY ADVISORY COUNCIL MEETING**

Written Comments

OGE Energy Corporation - Email letter from Julia Bevers dated January 8, 2008

2. **COMMENT:** "We request that subparagraph §100-5-2.2(c) be revised to provide clarification about underpayment of emission fees. It is unclear whether the [current language] applies to those instances in which the invoiced amount is fully paid on time but is found at a later time, either by self-discovery or during a compliance inspection, that the invoiced amount was incorrect." Suggested addition to 2.2(c):

(4) When a fee underpayment has been made as a result of an error, previously unknown by the facility, the underpaid fee shall be due and payable on the invoice due date. If the facility voluntarily notifies the DEQ of the error within 120 days of discovery, whether through self-discovery or during a compliance inspection, the collection of fees owed shall go back no further than two years previous to the current billing year. If the unreported emissions are not reported within 120 days of discovery, the DEQ may issue an administrative order to recover fees and may assess a reasonable administrative fine in accordance with the provisions of the Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 et seq., to an owner or operator of a facility who has underpaid such fees.

RESPONSE: This language does not directly relate to the fee increase issue and is outside the scope of the Department's proposal.

Grand River Dam Authority - Email from Perry S. Friedrich, dated January 10, 2008

3. **COMMENT:** "Fee adjustments, especially those of the magnitude associated with Part 70 major sources, should be reviewed rather than occur automatically. I believe an annual (or other periodic) demonstration of need to justify increases in operating fees is prudent."

RESPONSE: The CPI adjustment represents an annual review process and is intended to keep the fees current with inflation. The process is patterned after the federal Clean Air Act, and the Department has no plans to deviate from that process. Therefore, it is staff's opinion that no additional review is necessary.

4. **COMMENT:** "The wording in the proposed method for calculating fee adjustment as specified in 100-5-2.2(b)(3) would result in fees increasing at a rate greater than the increases in the CPI."

RESPONSE: The method used to calculate the CPI adjustment has not been changed - only the base year has been updated. The CPI adjustment each year is based on the annual operating fee as stated in the rule, and not on the previously adjusted total fee. Therefore, no change is necessary.

Oklahoma Independent Petroleum Association (OIPA) - email from Angie Burckhalter, dated January 16, 2008

5. **COMMENT:** We see the ODEQ's fee increase as an additional tax on our industry...We have significant concerns with the proposed fee increase for minor sources and linking fee increases to the Consumer Price Index (CPI)...At a minimum, fee increases should not be linked to the CPI. In addition, we don't think it is appropriate for companies with minor source permits to pay for other portions of ODEQ's air program that they are not associated with.

RESPONSE: The rule proposal does not include a tax proposal. The DEQ may assess fees sufficient to cover the reasonable costs of implementing and enforcing its air programs. (27A O.S. § 2-5-113) See response to comment #3.

6. **COMMENT:** What recent studies have been conducted that has (sic) evaluated the ODEQ's air quality program to ensure it is operating in the most efficient manner and that all the current program elements being conducted are necessary? If studies have been completed, how can industry obtain a copy?

RESPONSE: In 2005 and 2006, the DEQ conducted a comprehensive workload assessment of every section in every division of the agency. The Department has taken the results of this study into consideration when developing the fee proposal.

7. **COMMENT:** How will ODEQ address funding increases if EPA finalizes proposed rules that can potentially bring in more facilities under minor source permits i.e. will ODEQ suspend the automatic CPI fee increase?

RESPONSE: More facilities means more work for the DEQ as the regulatory agency. The CPI adjustment does not necessarily represent an increase, but rather keeps the agency's fees current with inflation. See response to comment #3.

8. **COMMENT:** What is the ODEQ's actual cost to manage minor emission sources?

RESPONSE: As of December 31, 2007, the management of minor source facilities represented approximately 20% of the Division's annual budget.

9. **COMMENT:** How many FTEs are needed to address minor facilities versus the number for major facilities?

RESPONSE: The DEQ time and effort (T&E) reporting system allows the Air Quality Division to track staff time spent on minor facility activities. At any given time, 20-25% of the Air Quality Division's FTEs are assigned to addressing minor facilities.

Environmental Federation of Oklahoma (EFO) - letter from James Barnett received at the January 17, 2008 Council meeting

10. **COMMENT:** "...the Department is still required by state law to demonstrate the reasonable cost of operating the permit program. It appears that no such demonstration has been conducted regarding the current fee proposal, nor has other persuasive justification been provided."

RESPONSE: The DEQ has complied with and continues to comply with the statutory requirements for providing a fee justification and supporting documentation as required by 74 O.S., § 3117. The fee justification will be submitted with the notices required pursuant to this section.

11. **COMMENT:** "EFO believes mobile sources should be required to share the regulatory cost burden...Suggestions toward this end could include adding a modest motor vehicle tax fee, dedicating a portion of a gasoline tax, etc."

RESPONSE: Staff agrees that mobile sources are responsible for a significant portion of the air pollution in Oklahoma; however, the Department does not have authority to assess taxes on vehicles or fuel. These would likely require statutory changes.

Verbal Comments

EFO - Jim Barnett, President and General Counsel

12. **COMMENT:** "...there needs to be a new justification document prepared that demonstrates" the need for a fee increase.

RESPONSE: See response to comment #10. It is the intent of the Department to prepare a fee justification for presentation to the Environmental Quality Board if the rule is recommended to the Board by the Council.

- 13. COMMENT:** "My members feel like they are bearing an inordinate share proportion of the burden for running the program here at the Air Quality Division. I think it's time for the mobile sources to step up to the plate." The EFO is offering to work with the Department to obtain more equity in the funding from the legislature.

RESPONSE: See item #11.

Mary Francis, private citizen

- 14. COMMENT:** "I am in favor of adequate funding. If fees are the only way this Board can go about getting their funding, then I'm for it."

RESPONSE: Comment has been noted.