

**ALASKA DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**



**18 AAC 50 Air Quality Control
Responsiveness Summary
Revision of Permit Administration and Emission Fees Rulemaking**

August 07, 2015

Introduction

Alaska Statutes require that the Department of Environmental Conservation (the Department) evaluate fees every four years and establish revised fees in regulation. Alaska Statutes additionally require that the results of the fee study be published in a report. This report was available for review and comment along with the proposed fee amendments during the public comment period. As a result of the current fee study, the Department proposed revision to the fees and associated regulations in the Air Quality regulations, 18 AAC 50 on May 21, 2015, as follows:

- Amend **18 AAC 50.230** to correct cross references to provisions of 18 AAC 50.400.
- Amend **18 AAC 50.260** to correct cross references to provisions of 18 AAC 50.400.
- Repeal and readopt **18 AAC 50.400** to revise permit administration and compliance fees in accordance with the fee study results and add definitions. The analysis of the fee study resulted in a proposed reduction of the number of fee categories from 66 to 24, which will reduce administrative costs and fee complexity.
- Amend **18 AAC 50.403** to clarify negotiated settlement agreement fees.
- Repeal **18 AAC 50.405** which addressed a transition process for permit fees before 2005.
- Amend **18 AAC 50.410** to revise emission fees in accordance with the fee study results.
- Amend **18 AAC 50.420** to revise language addressing billing procedures.

This document provides the Department's response to public comments received during the public comment period.

Opportunities for Public Participation

The proposed regulation changes to 18 AAC 50 were described in the Department's public notice which was signed on May 21, 2015, and posted on the public notice web pages of the State of Alaska, the Department of Environmental Conservation, and the Division of Air Quality on May 21, 2015. The public notice was published in the Alaska Dispatch News on May 23 – 24, 2015. The Department accepted public comment through June 30, 2015. The Department's public notice stated that DEC would hold a public hearing on June 24 if the Department received a request for a hearing by June 19, 2015. The Department received no requests, and cancelled the hearing. The Department posted notice of the cancellation on the State, Department, and Air Permits Programs public notice web pages on June 22, 2015.

Commenters

Comments were received from:

- Golden Valley Electric Association (GVEA) (See Appendix I)
- Aurora Energy, LLC (Aurora) (See Appendix II)

Revisions to Regulations:

Revisions were made to the regulations based on comments.

The fees for standard coal-fired plants were revised (see response on page 4 of this document and revised fees on page 2 of the adopted regulations).

1. The annual permit fee for the standard coal-fired plant category was changed from \$10,567 to \$ 6,871; and
2. the annual compliance review fee for the standard coal-fired plant category was changed from \$6,737 to \$ 6,767.

The definition for coal-fired plants was changed (see response on page 10 of this document and revised language on page 2 and revised definition on page 8 of the adopted regulations).

1. Added the word “standard” to coal-fired plant in 18 AAC 50.400(a)(3);
2. added the word “standard” to the coal-fired plant definition in 18 AAC 50.400(i)(9);
3. exempted any coal-fired plants that are within 10 miles of Denali National Park (i.e. GVEA-Healy) from the annual permit and annual compliance review flat fee category for standard coal-fired plants (see response on pages 4-5 of this document and page 8 of the adopted regulations); and
4. added language to clarify that the definition applies only to coal-fired plants which generate electricity.

Fiscal Impact Comments:

The Fiscal impact comments received:

1. questioned the proposed creation of a separate coal-fired plant category;
2. objected to including the unrealized obligation for the Division of Administrative Services in the calculation of emission fees;
3. objected to the high fees calculated for the coal-fired category and proposed lower fees for the coal-fired plants based on alternative calculation methods;
4. recommended that sources should be allowed to select a contractor to draft their final permit to be reviewed by ADEC staff on a time and material basis; and
5. recommended that fee increases be based on a phased approach in the future.

This section summarizes the comments by topic and presents the Department’s response. The full text of the comments received are provided in the appendices.

1. Creating a separate coal-fired plant category for fixed Title V fees

Both commenters objected to creating a separate coal-fired power plant category for Title V renewal and compliance fees. They recommended that the coal-fired plants remain in the large power plant category. The commenters based their recommendation on the following points:

- Other source categories include complex sources, but the Department does not propose creating a separate category for those complex sources.
- The higher costs for the coal-fired sources during the fee review period were due to circumstances which are not expected to recur in the future.
- The sources remaining in the large power plant category could have increased future costs similar to those experienced by the coal-fired sources during the fee study period.

Evaluation and response:

Although other source categories may have a mix of more and less complex sources, the magnitude of the cost increases for the large power plant category caused the Department to examine this category more closely. The other source categories increases were not as dramatic and did not warrant closer scrutiny. As explained in the fee analysis report, the Department found that the cost of coal-fired power plants disproportionately affected the overall cost of the large power plant source category. The reasons for the disproportionate costs were related to the common fact of being a coal-fired power plant. This is a logical and consistent basis for establishing a flat fee category for coal-fired sources.

Fee categories should be based on the similarity of the amount of work involved for the sources. Fee calculations are based on actual historical costs. It is clear that the amount of work involved for the coal-fired plants has significant differences from the work for other sources in the large power plant category and that being coal-fired was a primary cause of the difference in work. The commenter's third point alludes to this difference—that the other sources may have specific rules not applicable to coal-fired sources in the future which might increase costs. Therefore, separate categories are appropriate.

The Department also examined the make-up of the coal-fired plant category to ensure similarity in the amount of work involved between the sources. The renewal of the GVEA-Healy Title V permit had significantly higher costs compared to the other coal-fired plants, more than 3 times the average cost of the category. This indicates that the GVEA-Healy plant may have less in common with other coal-fired plants than previously thought. GVEA-Healy is much larger than the other plants and it is located 3 miles from Denali National Park. Because of this, the plant is subject to extensive public and federal agency scrutiny. In addition, the re-start of the Healy Clean Coal Plant required an associated review for the Prevention of Significant Deterioration (PSD) permit status and additional permitting requirements to ensure compliance with Consent Decree Civil Action No. 4:12-cv-00025-RRB dated November 19, 2012. All of these factors increase costs for permitting services and are significant differences from the other coal-fired plants. Therefore, GVEA Healy facility should not be included in the new coal-fired plant flat fee category. Therefore, the final regulations will exclude GVEA from the standard coal-fired plant category based on its size and proximity to Denali National Park.

Because this leaves GVEA Healy alone as a unique source, the Department will not set a fixed fee for the source. Costs for permit and compliance services will be billed on a time-and-expense basis as required by AS 37.10.052(d) and 18 AAC 50.400(j). This is consistent with the treatment of other unique sources, such as the Valdez Marine Terminal.

Conclusion

The Department will retain the separate category for coal-fired plants and will redefine the category to exclude large plants in close proximity to Denali National Park. Large coal-fired plants in close proximity to Denali National Park will be charged time-and-expenses. The following table presents the recalculated annual fixed fees for coal-fired plants other than GVEA-Healy.

		Public Noticed Amount	Revised Amount by moving Healy to T&E	Change due to Removing Healy
TV Renewal NEW FEE - Coal Power Plants	COAL	\$10,566.97	\$6,871.28	(\$3,695.69)
Routine Compliance (RC): NEW FEE - Coal Power Plants	RC20- (Accounting code) Also, Source Test Plans (STP) & Source Test Review (STR	\$6,737.15	\$6,766.72	+\$29.57

2. Including the DAS services unrealized obligation in emission fees

A commenter objected to increasing the emission fees to cover an increased draw on permit fee revenue by the Division of Administrative Services (DAS). The commenter claimed that there was no basis for why permit fees should fund 5.6% of DAS and that the Department presented no evidence that CAPF accounted for 5.6% of the Departments personal services cost, other than a statement to that effect in the report. The commenter recommended that the amount provided to DAS should be based on the percentage of service DAS provides to the Air Quality Division or the amount in an underlying requirement, if any. Based on this reasoning the commenter asks that the emission fee be reduced to \$37.24 per ton.

Evaluation and Response

The Department regularly reviews the cost allocations that support its indirect costs to ensure compliance with the Department’s Indirect Cost Allocation Proposal, which is developed under the guidance of the Federal Office of Management and Budget (OMB) Circular A-87 and is approved annually by the Environmental Protection Agency (EPA). Additionally, the Clean Air Act and 40 C.F.R. Part 70 require that States’ Title V programs collect fees sufficient to cover the permit program costs, which are defined as “all reasonable (direct and indirect) costs required to develop and administer a permit program... (whether such costs are incurred by the permitting authority or

other State or local agencies that do not issue permits directly, but that support permit issuance or administration).” In all cases, the Department uses the percentage of direct labor as the basis for allocating indirect costs. The Unrealizable Obligation included in the FY10 – FY13 Fee Study complies with OMB and EPA guidance for the recovery of indirect costs. Please see Appendix III for the document “FeesFY14.TitleVEmissionsUnrealizableObligation.2-2-15” which provides additional details.

The Department specifically complies with the following federal guidance:

EPA’s “Title V Fee Demonstration and Additional Fee Demonstration Guidance” publication (1993) reads:

“In general, indirect costs benefit an agency as a whole and are not readily identified with specific projects or functions. Examples of indirect costs included in overall agency administration are expenses for personnel services, agency management, and accounting services. Indirect costs also includes costs like space rental for offices or laboratories, utility costs, insurance, and other costs which cannot be easily assigned to specific activities. Most State agencies receiving Federal grant funds develop indirect cost rates that are used to distribute a portion of the operations overhead to the benefiting grants, and have people well versed in developing indirect cost rates.”

EPA’s “Clean Air Title V Financial Management and Reporting” publication (1997) reads:

“In order to maintain efficient and accurate accounting practices, air quality program accountants and managers alike need to ensure that all indirect costs are recovered, and that they are recovered equitably. The most practical method of allocating indirect labor costs to Title V and non-Title V programs involves using direct labor charges as an index. Under this framework, indirect labor charges are allocated to Title V and non-Title V programs based on the number of direct labor hours charged to the various air programs. For example, if Title V direct labor charges represent sixty percent of the total direct labor charges within the air quality division, assigning sixty percent of the indirect labor costs to the Title V program is justifiable. It can be assumed that sixty percent of the secretarial and managerial support time is being spent on Title V related tasks under this scenario. Allocating indirect non-labor costs among Title V and non-Title V is more complicated. As indirect costs are to be shared among a variety of programs, they should be allocated in a manner where the program receiving the greatest benefit from the source of the cost is responsible for the majority of the cost recovery. Unfortunately, this presents a tedious and complicated task for accounting staff. Instead, common practice usually involves the same process as described for indirect labor; as the indirect non-labor costs are allocated based on the percentage direct labor charged to each program.”

Conclusion:

The Department finds that the indirect costs were appropriately set and the emission fee will not be reduced as requested by the commenter.

3. Coal-fired plant fee rate and calculation methods

A commenter claims that the Department does not explain how the fixed fee for coal-fired plants was calculated, and suggests that the number may represent inefficiencies and duplication of effort. The commenter provides a recalculation of the fee based on the average increase in fees needed to fund the program plus:

- an assumption that learning and understanding applicable federal regulations costs no more than \$3000 per year;
- an assumption that future compliance costs will be less than past costs;
- an assumption that new monitoring, recordkeeping, and reporting will not require increased effort to review;
- an assumption that a coal burning permit Title V permit will cost 40% more than the average permit; and
- an assumption that additional public scrutiny and comment costs an average of \$3000 per year.

Evaluation and Response

The Department finds the commenter’s proposed method to be confusing, without a recognized precedent or accounting basis, and dependent on multiple unsupported assumptions. In contrast, the Department follows a methodology for setting administrative fees that is based on the requirements of Alaska Statutes found in AS 37.10.052,

“A fixed fee adopted under this subsection may not exceed the estimated average reasonable direct cost incurred by the resource agency in providing the standard designated regulatory service.”

This method is based on general accounting practices and was used in the last fee study and with other fees being set through this study. The expense tracking system used by the Department records expenses by specific project, by fee/phase category, and by specific activity. This method ensures that expenses cannot be counted in more than one fee category.

To calculate the Title V renewal fee for Title V renewals under 18 AAC 50.400(a), the accounting staff pulled labor and non-labor expenses as follows:

1. Selected all expenses coded to the large power plant category by that specific project “phase code”.
 - a. This code differentiates projects by type: oil & gas, large power plant, small power plant, etc.
2. Narrowed down to all expenses coded to the specific fee code associated with 18 AAC 50.400(a)(2)(A).
 - a. This code differentiates whether the expense is for the annual permit renewal or the annual compliance work.
3. Narrowed down further to all expenses coded to the specific activity code associated with the flat fee.
 - a. This code differentiates whether the work was for a time-and-expense activity, a routine compliance activity, a flat fee activity, etc.
4. The accounting staff in the Department reconciled these expenses to the State of Alaska accounting system and reviewed thousands of expense entries to verify data was indeed captured in the correct fee categories. Where outliers existed, corrections were made to

ensure every penny of permit expenses was captured appropriately for the fee study publication.

5. These expenses identified a large cost difference between two groups of projects in this category under the current regulations: coal-fired plants vs. non-coal-fired plants. Due to the large difference in cost, the Department determined it was appropriate to separate them into two groups.
6. From this data, the coal-fired plants' expenses were isolated by the individual projects; the total cost from July 1, 2009, to June 30, 2013, for that subset of facilities totaled \$184,921.97.
7. The status of Title V permits is calculated based on the percentage of the project that was completed during the time frame of the fee study, as was done in prior fee studies. This totaled 3.5 of completed renewal permits for the represented time period for coal-fired plants. The progress milestones are measured as follows:
 - a. 25%: Received complete application
 - b. 50%: Draft permit delivered to supervisor OR start of public comment period
 - c. 75%: End of public comment period OR final permit delivered to supervisor
 - d. 100%: Permit issued OR transmittal of final permit to EPA
8. The total expenses for the coal-fired plants (\$184,921.97) was divided by the amount of work completed (3.5) to provide the total five year cost to issue each coal permit (\$52,834.85).
9. Since the Title V renewals are billed annually, this permit costs was annualized over the five year time period covered by the permit (divided by 5) to result in the annual fee of \$10,566.97.
10. When the revised regulations were proposed, the fee was rounded to the nearest dollar. Therefore, the costs from July 1, 2009, to June 30, 2013, result in an annual permit fee for coal-fired plants' Title V permit renewal of \$10,567.
11. After further review of the GVEA-Healy project, the Department determined that GVEA-Healy's Title V renewal permit costs were an outlier within the coal-fired plant category, as it had a 3 times higher costs than any other coal-fired plant during this timeframe. Therefore, the Department removed the expenses for the GVEA-Healy renewal permit from the above calculations and recalculated the coal-fired plant category fee (excluding GVEA-Healy) which results in a new \$6,871.28 annual permit fee for coal-fired plants' Title V renewals. The GVEA-Healy project will instead be billed on a time-and-expense basis under 18 AAC 50.400(h) for both Title V renewal annual permit and routine compliance review fees.
12. A similar process was conducted to calculate annual compliance review fees as described above, but since annual compliance review fees can have a wide variation in activity type by permit by year, the number of active permits in this annual compliance category was divided into the total cost of conducting routine compliance for this permit group. The coal-fired plant category (excluding GVEA-Healy) routine compliance review fee was recalculated to \$6,766.72.

The commenter's concern that "Sending the compliance documents to contractors to review before the Full Compliance Evaluation (FCE) creates duplicative work on which ADEC is basing the increase in compliance fees." is unfounded. The Department reviews reports as they are submitted throughout the year either in-house or with the assistance of contractors. The Division of Air Quality's Quality Management System (QMS) provides work instructions and guidance which Department staff and contractors follow to complete report reviews. When reports are submitted, either a Department staff person or a contractor completes a draft review of the report. If the review finds non-compliance, a different Department staff person checks the review findings for

accuracy before it is finalized. Once the review is finalized, the report and the review findings are entered into the Department's AirTools database. When staff prepare a Full Compliance Evaluation, they include the results of previous reviews compiled from the AirTools database. This process ensures that reports are reviewed promptly and that findings of non-compliance are accurate. Department staff and contractors do not perform a second "duplicative" examination of previously reviewed reports when preparing an FCE.

The commenter is correct that contracting out work has additional costs that performing the work in house does not have (e.g. procurement processing and contractor management), and these additional costs increase the fixed fees. The Department is not authorized sufficient staff to perform all work in-house, and the Legislature has urged the Department to "use services from the private sector to accomplish portions of the permitting program."¹ Consequently, contractors must be used to accomplish the excess workload. The cost of these contractors must be covered by the relevant permit fees.

Conclusion

The Department finds that the final fixed fees should be based on its established calculation method that is used for all categories based upon actual costs rather than the alternative calculation methods recommended by the commenter.

4. Selection of Contractors

A commenter proposed that the stationary source should be allowed to select the contractor who would provide a copy of the final permit in MS WORD format which the Department would then verify for accuracy on a time and expense basis. The commenter claims this would allow the use of best value contracting method instead of low bid contracting methods, which the Department appears to use. This, the commenter claims would not be a conflict of interest since providing a complete draft permit is just another step in providing the Department with draft language.

Evaluation and Response

Nothing in the current regulations prevents a permit applicant from preparing and submitting the permit they would like to have as part of their permit application. As the commenter indicates, a number of sources submit a redline/strikeout version with their application for the Department's use in preparing a proposed permit. In addition, the Department has standardized templates and standard permit language to make the actual drafting of the permit as efficient as possible.

The comment appears to use the terms "final permit" and "draft permit" interchangeably. The comment does not explain what the Department would do if it finds the drafted permit inadequate. Therefore, it is unclear whether this approach would meet the requirements of Title V of the Clean Air Act. The Department cannot rely on contractors selected and employed by, and therefore ultimately responsible to, the permit applicants to produce final permits without thorough Department review.

¹ Sec. 1, ch 74, SLA 1993

Reviewing the applicable regulations and the language changes proposed by the permittee takes the majority of time in processing an application. These costs would not change and represent the majority of the calculated fixed fee cost. As explained earlier, the Department does not have sufficient personnel to accomplish its review responsibilities in-house. The Department would continue to use its own contractors to review the permits submitted by the applicants.

Additionally, the Department is required to issue contracts according to state statutes and procedures and cannot allow sources to choose contractors. As a public entity, the DEC is governed by public procurement rules that are set forth in State statute and are further defined within governing rules and regulations promulgated through the Alaska Procurement Code. Specifically, AS 36.30.005 defines the restrictions for procurement authority to be exercised only through delegation of constitutionally derived authority to procure an item or service necessary to perform the duties of a state governmental entity within its own infrastructure.

Conclusion

While applicants can submit final permits with their application, the Department must continue to use its own contractor support to review these permits and follow AS 36.30.005. Therefore, the calculated fixed fee is still a valid estimate of the average direct cost of application review consistent with AS 37.10.052. As noted earlier for different reasons, the GVEA-Healy stationary source will not be part of this fixed fee and will be charged on a time and expense basis.

5. Timing of future fee increases

One commenter asked that the Department adjust fees in the future based on a phased approach rather than adjusting all the fees at once, or at least provide estimates of the probable emission fees a year or two in advance. The commenter suggested that this would minimize the impact of fee increases on business budgeting processes.

Evaluation and Response

The request is outside the scope of this regulatory action. The Department acknowledges the concern for future fee evaluations and will take the commenter's suggestion under advisement.

Conclusion

No action necessary

Non-fiscal Impact Comments:

A commenter suggested a change to the definition of coal-fired plant to ensure the rule only applies to sources which generate electricity by burning coal.

Evaluation and Response

The Department agrees that the intent of the definition is to define the large power plants which burn coal to generate electricity. The Department will adjust the definition to make this clear along with other changes necessary to implement the other conclusions of this response to comment.

Appendix I

Golden Valley Electric Association Comments

Appendix II
Aurora Energy, LLC Comments

Appendix III

Title V Emissions Unrealizable Obligation Explanation

Title V Emissions Unrealizable Obligation
 Fee Study FY2010 – FY2013
 Prepared January 2015

The Unrealizable obligation used to calculate the FY2014 Emissions fees for Title V was \$1,600,000.

This represents the additional costs to the Clean Air Protection Fund (CAPF) anticipated beginning in FY2016 due to a proportional re-alignment done by the Division of Administrative Services (DAS). The Division of Administrative Services is an administrative support unit that provides the majority of the finance, procurement, human resources, information technology, and budget services to the Department. It also pays a portion of the overhead expenses, including shared lease costs and core service charges from the Department of Administration. This division is intentionally funded in direct proportion to the funding source breakdown of the Personal Services costs in the Department. This method complies with an approved federal indirect cost allocation plan. An analysis of Department personal services funding in comparison to the funding of the Division of Administrative Services shows that the Division is overfunded by federal receipts, and underfunded by clean air protection fund.

In FY2013, the Clean Air Protection Fund (CAPF) accounted for 5.6% of the Department’s personal service costs, therefore it should proportionally cover 5.6% of the Division of Administrative Services’ costs. However, in the FY2014 budget, CAPF only accounted for 1.7% of those costs. Beginning in FY2016, this gap of 3.9% proportionality will begin to be charged to the CAPF. This represents about \$400,000 per year.

The FY2014 fee study Title V emissions calculation includes the projection of four years of unanticipated obligations. This \$400,000 annual obligation amounts to \$1,600,000 over the next four years.

	FY13 DEC Personal Services		FY14 Actual DAS Funding		Difference	Needed	Change	Rounded
Federal Receipts	14,848,393.41	28.7%	3,649,234.00	35.7%	7.1%	2,928,574.81	(720,659.19)	(720)
Prevention Account of the OHSRPRF	11,303,004.36	21.8%	2,299,600.00	22.5%	0.7%	2,229,311.48	(70,288.52)	(70)
Commercial Passenger Vessel Fund	848,132.26	1.6%	54,800.00	0.5%	-1.1%	167,278.62	112,478.62	110
Ocean Ranger Fund	282,864.41	0.5%	105,400.00	1.0%	0.5%	55,789.85	(49,610.15)	(50)
Clean Air Protection Fund	2,904,278.85	5.6%	172,200.00	1.7%	-3.9%	572,816.04	400,616.04	400
General Funds (including PR, I/A, CIP, and GF)	21,610,663.23	41.7%	3,934,846.00	38.5%	-3.2%	4,262,309.21	327,463.21	330
Total	51,797,336.51	100%	10,216,080.00	100%		10,216,080.00	(0.00)	0.00

Calculation:

- Total DAS Personal Services Funding (\$10,216,080) x FY2013 CAPF Personal Services Percent of Total Department Personal Service Cost (5.6%) = \$572,816.04 Total DAS CAPF proportion.
- \$572,816.04 – Total FY14 DAS CAPF Funding (\$172,200.00) = 400,616.04 Total CAPF needed to pay proportion of DAS costs.
- Rounded to \$400,000 annually