

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR RESOURCES**

AIR POLLUTION CONTROL REGULATION NO. 28

OPERATING PERMIT FEES



Effective 23 January 1995

Last Amended 31 January 2011

AUTHORITY: These regulations are authorized pursuant to R.I. Gen. Laws § 42-17.1-2(s) and 23-23, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

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28.1 Definitions

Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to the Rhode Island Air Pollution Control General Definitions Regulation. As used in this regulation, the following terms shall, where the context permits, be construed as follows:

- 28.1.1 **"Actual Emissions"** means the actual rate of emissions in tons per year of any regulated air pollutant emitted by a stationary source. Actual emissions shall be calculated using the stationary source's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the calendar year.
- 28.1.2 **"Affected Source"** shall have the meaning given to it in the regulations promulgated under Title IV of the Act.
- 28.1.3 **"Air Pollution Inventory Forms"** means the forms the Division sends to stationary sources for emissions information.
- 28.1.4 **"Application Fee"** means the fee stationary sources applying for an emissions cap shall pay.
- 28.1.5 **"Area Source"** means any stationary source of hazardous air pollutants that is not a major source.
- 28.1.6 **"Calendar Year"** means the period beginning 1 January and ending the following 31 December.
- 28.1.7 **"Compliance/assurance fee"** means the annual fee which stationary source's with emissions caps shall pay.

- 28.1.8 **“Emissions Cap”** means any emission limitation or physical or operational limitations, imposed in a federally enforceable document, that establishes the maximum quantity of emissions which may be released from a stationary source.
- 28.1.9 **“Emissions Fee”** means the fee assessed on an air pollution source based on the stationary source's actual emissions calculated in accordance with Section 28.4.
- 28.1.10 **“General emissions cap”** means an emissions cap that is issued to similar stationary sources and contains the same terms and conditions. A general emissions cap is initially made available for public comment. No opportunity for public comment is provided when individual sources apply to be covered by the general emissions cap.
- 28.1.11 **Major source”** means any of the following:
- (a) For pollutants other than radionuclides, all of the pollutant-emitting activities located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or
 - (b) For radionuclides, “major source” shall have the meaning specified by the Administrator by rule.
 - (c) All the pollutant-emitting activities, which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties and are under control of the same person or persons under common control, that emits or has the potential to emit, 100 tpy or more of any regulated air pollutant including any fugitive emissions, to the extent they are quantifiable; or
- Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same two-digit code as described in the Standard Industrial Classification Manual, 1987.
- (d) All the pollutant-emitting activities, which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties and are under control of the same person or

persons under common control, that emits or has the potential to emit 50 tpy or more of volatile organic compounds or oxides of nitrogen including any fugitive emission, to the extent they are quantifiable.

Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same two-digit code as described in the Standard Industrial Classification Manual, 1987.

28.1.12 **“Regulated air pollutant”** means the following:

- (a) Nitrogen oxides or any volatile organic compounds;
- (b) Any pollutant for which a national ambient air quality standard has been promulgated;
- (c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
- (d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or
- (e) Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and I of the Act, including the following:
 - (1) Any pollutant subject to requirements under Section 112(j) of the Act. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which the source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and
 - (2) Any pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect I individual source subject to Section 112(g)(2) requirement.
- (f) Any substance which is listed in Table I of Air Pollution Control Regulation No.22.

28.1.13 "Standard emissions cap" means an emissions cap that is issued to a stationary source and contains terms and conditions that are specific to that stationary source. Each standard emissions cap is made available for public comment prior to issuance.

28.1.14 **"Start-up"** means the setting in operation of an affected facility for any purpose.

28.2 Applicability and Exemptions

28.2.1 This regulation applies to the following stationary sources as defined below:

- (a) Any major source;
- (b) Any affected source under Title IV of the Act; or
- (c) Any stationary source in a source category designated by the EPA pursuant to 40 CFR 70; or
- (d) Any stationary source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act; and
- (e) Any stationary source, including an area source, subject to a standard or other requirement under Section 112 of the Act, except that a source is not required to pay a fee solely because it is subject to regulations or requirements under Section 112(r) of this Act.

28.2.2 The following stationary sources are exempt from this regulation:

- (a) All stationary sources listed in Subsection 28.2.1 that are not major stationary sources, affected sources or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act.
- (b) In the case of stationary sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act after 21 July 1992, that are not major sources, the EPA will determine whether to exempt any or all such applicable stationary sources from the requirement to obtain an operating permit at the time that the new standard is promulgated, and if such sources must get a permit, they are subject to this regulation.
- (c) All stationary sources and stationary source categories that would be subject to this regulation solely because they are subject to 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters).
- (d) All stationary sources and stationary source categories that would be subject to this regulation solely because they are subject to 40 CFR Part 61, subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation).
- (e) A stationary source is not required to pay a fixed fee and an annual emissions fee solely because it is subject to regulations or requirements under Section 112 (r) of the Act.

- 28.2.3 Stationary sources that emitted or had the potential to emit any air pollutants in excess of the thresholds for a major source as defined in 28.1.11 at any time since 1 January 1990, shall be presumed to be a major source.

The owner or operator of a stationary source can rebut this presumption by presenting evidence to demonstrate to the satisfaction of the Division that the potential to emit of the stationary source has been reduced by means of a physical change or change in the method of operation of the stationary source.

28.3 Requirement to Pay a Fee

- 28.3.1 Any owner or operator of a stationary source subject to the provisions of this regulation shall pay a fee to the Department of Environmental Management.
- 28.3.2 Stationary sources required to obtain an operating permit pursuant to Air Pollution Control Regulation No. 29 shall pay a fee in accordance with Subsection 28.4.1-28.4.4.
- 28.3.3 Stationary sources that apply for an emissions cap pursuant to Air Pollution Control Regulation No. 29 shall pay the applicable fees in subsection 28.4.1 - 28.4.4 due prior to the date the emissions cap application is submitted and shall pay an application fee. Those sources which are granted emissions caps shall pay an annual compliance/assurance fee. The annual compliance/assurance fee shall be paid to the Department of Environmental Management and is in lieu of that required by subsection 28.4.2-28.4.4.
- 28.3.4 Failure to pay any of the fees required in this regulation shall be a violation of this regulation.

28.4 Fee Determination

- 28.4.1 Fixed fee due 1 February 1995:

ACTUAL EMISSIONS	FEE
< 10 tons per year	\$ 207
\$ 10 tons per year < 20 tons per year	\$ 488
\$ 20 tons per year < 50 tons per year	\$ 845
\$ 50 tons per year	\$ 1503

- 28.4.2 Fixed fee due 1 July 1995:

ACTUAL EMISSIONS:	FEE
< 10 tons per year	\$ 372
\$ 10 tons per year < 20 tons per year	\$ 880
\$ 20 tons per year < 50 tons per year	\$ 1524
\$ 50 tons per year	\$ 2709

28.4.3 Fixed fee due 1 January 1996:

ACTUAL EMISSIONS:	FEE
< 10 tons per year	\$ 480
\$ 10 tons per year < 20 tons per year	\$ 1134
\$ 20 tons per year < 50 tons per year	\$ 1962
\$ 50 tons per year	\$ 3488

28.4.4 Beginning 1 September 1996, stationary sources shall pay an annual emissions fee. Sources whose actual emissions are less than 10 tons per year shall pay a fixed fee. Fees for sources with actual emissions greater than or equal to 10 tons per year shall be assessed on a per ton basis. All regulated air pollutants shall be assessed at the same rate. The Division will determine the fixed fee charge and dollar per ton fee by 31 January 1996 and 31 January of each subsequent year and provide public notice of this preliminary fee determination. In all cases the fee must generate at least enough revenue to cover the direct and indirect costs of running the Operating Permit Program. The Division will determine the final fees by adjusting the preliminary fee determination to account for any monies that may be carried over from the previous fiscal year.

28.4.5 Stationary sources applying for a standard emissions cap shall pay an application fee of \$1100. Stationary sources applying for a general emissions cap shall pay an application fee of \$250.

28.4.6 Stationary sources with approved emissions caps shall pay an annual compliance/assurance fee of \$350.

28.4.7 All fees shall be calculated and assessed based on the actual emissions of all regulated air pollutants from the stationary source. The following shall be excluded from the calculation of actual emissions:

- (a) Carbon monoxide;
- (b) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;
- (c) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Act;
- (d) The amount of a stationary source's actual emissions of each regulated air pollutant that the stationary source emits in excess of four thousand (4000) tons per year.

- (e) The actual emissions from any emissions unit that has been listed as an insignificant activity in Appendix A of Air Pollution Control Regulation No. 29.

28.4.8 Actual emissions shall be calculated in accordance with procedures and methods acceptable to the Division.

28.4.9 Stationary sources may amend their Air Pollution Inventory Forms provided the source demonstrates to the satisfaction of the Division that the original submission was incorrect. Amended forms must then be submitted on the date specified by the Division. The Division may adjust a source's fee due to amended Air Pollution Inventory forms.

28.5 Payment of Fees

28.5.1 The fixed fee in subsection 28.4.1 shall be paid on or before 1 February 1995.

28.5.2 The fixed fee in subsection 28.4.2 shall be paid on or before 1 July 1995.

28.5.3 The fixed fee in subsection 28.4.3 shall be paid on or before 1 January 1996.

28.5.4 The annual emissions fee in subsection 28.4.4 shall be paid on or before 1 September of each year beginning in 1996 and shall be based on emissions for the most recent calendar year inventory for which the Division has completed emission calculations. In no event shall the calendar year inventory be more than four years older than the fiscal year for which fees are being assessed. Stationary sources with an annual emission fee of \$5,000 (five thousand dollars) or greater may elect to make four equal quarterly payments. Quarterly payments shall be submitted on or before the dates listed in the following schedule:

	Date Payment Due
1st Quarterly Payment	September 1
2nd Quarterly Payment	December 1
3rd Quarterly Payment	March 1
4th Quarterly Payment	June 1

28.5.5 The application fee in subsection 28.4.5, for stationary sources applying emissions caps, shall be paid at the time the application for an emissions cap is submitted to the Department.

28.5.6 The compliance/assurance fee in subsection 28.4.6 shall be paid on or before 1 September of each year beginning in 1996.

28.5.7 A form supplied by the Department shall be used when submitting all payments.

- 28.5.8 All fees shall be remitted to the Rhode Island Department of Environmental Management - Office of Business Affairs, 22 Hayes Street, Providence, Rhode Island in the form of a check or money order and made payable to General Treasurer, State of Rhode Island.
- 28.5.9 The Department will deposit all fees required by this regulation in the Clean Air Operating Permit Fee Fund. The Fund shall be non-lapsing and shall be dedicated solely for use by the Department in administering the operating permit program required under the Clean Air Act. Monies in the fund may be used to hire and fund positions and procure necessary equipment and services adequate to perform the functions of the Department in administering the provisions of the operating permit program.

28.6 Penalties

- 28.6.1 Stationary sources that fail to submit complete Air Pollution Inventory Forms, in the time frame specified by the Department, will be required to pay an annual emissions fee based on potential emissions.
- 28.6.2 Notwithstanding any enforcement action, the stationary source shall be subject to a late payment charge of:
- (a) Ten percent (10%) of the fee due for payments postmarked more than seven (7) or less than thirty (30) days late, and
 - (b) Twenty percent (20%) of the fee due for payments postmarked on or over thirty (30) days late.
- 28.6.3 All fees and late charges paid pursuant to the requirements of this regulation shall be non-refundable.

28.7 General Provisions

28.7.1 Purpose

The purpose of this regulation is to establish a fee system for the operating permits program.

28.7.2 Authority

These regulations are authorized pursuant to R.I. Gen. Laws § 42-17.1-2(s) and 23-23, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35

28.7.3 Application

The terms and provisions of this regulation shall be liberally construed to permit the Department to effectuate the purposes of state law, goals and policies.

28.7.4 Severability

If any provision of this regulation or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulation shall not be affected thereby.

28.7.5 Effective Date

The foregoing regulation, "Operating Permit Fees", as amended, after due notice, is hereby adopted and filed with the Secretary of State this __ day of _____, 2011 to become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 23-23, 42-35, 42-17.1, 42-17.6, of the General Laws of Rhode Island of 1956, as amended.

Terrance Gray, Assistant Director for Air, Waste & Compliance
Department of Environmental Management

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