

250-RICR-120-05-28

TITLE 250 – DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 120 – AIR RESOURCES

SUBCHAPTER 05 - AIR POLLUTION CONTROL

PART 28 - Operating Permit Fees

28.1 Purpose and Authority

28.1.1 Purpose

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

28.1.2 Authority

These regulations are authorized pursuant to R.I. Gen. Laws § 42-17.1-2(19) and R.I. Gen. Laws Chapter 23-23, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

28.2 Application

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

28.3 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.

28.4 Definitions

- A. Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to [Part 0](#) of this Subchapter (General Definitions). As used in this regulation, the following terms shall, where the context permits, be construed as follows:
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.

2. "Affected source" means the meaning given to it in the regulations promulgated under 42 U.S.C. §§ 7651 through 7651o, (CAA §§ 401 through 416)).
3. "Air pollution inventory forms" means the forms the Office of Air Resources sends to stationary sources for emissions information.
4. "Application fee" means the fee stationary sources applying for an emissions cap shall pay.
5. "Area source" means any stationary source of hazardous air pollutants that is not a major source.
6. "Calendar year" means the period beginning January 1 and ending the following December 31.
7. "Class I or Class II substance" means each of the substances listed as provided in 42 U.S.C. § 7671a.
8. "Compliance/assurance fee" means the annual fee which stationary sources with emissions caps shall pay.
9. "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.
10. "Emissions fee" means the fee assessed on an air pollution source based on the stationary source's actual emissions calculated in accordance with § 28.7 of this Part.
11. "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.
12. "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, ten (10) tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to 42 U.S.C. § 7412(b), (CAA § 112(b)), twenty-five (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, one hundred (100) tpy or more of any regulated air pollutant including any fugitive emissions, to the extent they are quantifiable; or
- d. 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.
- e. 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 fifty (50) tpy or more of volatile organic compounds or oxides of nitrogen including any fugitive emission, to the extent they are quantifiable.
- f. 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.

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 42 U.S.C. § 7411 (CAA § 111);
- d. Any Class I or II substance subject to a standard promulgated under or established by 42 U.S.C. §§ 7671 through 7671q (CAA §§ 601 through 618);
- e. Any pollutant subject to a standard promulgated under 42 U.S.C. § 7412 (CAA § 112) or other requirements established under 42 U.S.C. § 7412 (CAA § 112), including 42 U.S.C. § 7412(g) (CAA § 112(g)), 42 U.S.C. § 7412(j) (CAA § 112(j)), 42 U.S.C. § 7412(r) (CAA § 112(r)) , including the following:
 - (1) Any pollutant subject to requirements under 42 U.S.C. § 7412(j) (CAA § 112(j)). If the Administrator fails to promulgate a standard by the date established pursuant to 42 U.S.C. § 7412(e) (CAA § 112(e)), any pollutant for which the source would be major shall be considered to be regulated on the date eighteen (18) months after the applicable date established pursuant to 42 U.S.C. § 7412(e) (CAA § 112(e)); and
 - (2) Any pollutant for which the requirements of 42 U.S.C. § 7412(g)(2) (CAA § 112(g)(2)) have been met, but only with respect to the individual source subject to 42 U.S.C. § 7412(g)(2) (CAA § 112(g)(2)) requirement.
- f. Any substance which is listed in [§ 22.10](#) of this Subchapter (Air Toxics).

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.

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

28.5 Applicability and Exemptions

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

- 1. Any major source;

2. Any affected source under 42 U.S.C. §§ 7651 through 7651o (CAA §§ 401 through 416); or
3. Any stationary source in a source category designated by the EPA pursuant to 40 C.F.R. § 70; or
4. Any stationary source, including an area source, subject to a standard, limitation, or other requirement under 42 U.S.C. § 7411 (CAA § 111); and
5. Any stationary source, including an area source, subject to a standard or other requirement under 42 U.S.C. § 7412 (CAA § 112), except that a source is not required to pay a fee solely because it is subject to regulations or requirements under 42 U.S.C. § 7412(r) (CAA § 112(r)).

B. The following stationary sources are exempt from this regulation:

1. All stationary sources listed in § 28.5(A) of this Part that are not major stationary sources, affected sources or solid waste incineration units required to obtain a permit pursuant to 42 U.S.C. § 7429(e) (CAA § 129(e)).
2. In the case of stationary sources subject to a standard or other requirement under either 42 U.S.C. § 7411 (CAA § 111) or 42 U.S.C. § 7412 (CAA § 112) after July 21, 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.
3. All stationary sources and stationary source categories that would be subject to this regulation solely because they are subject to 40 C.F.R. § 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters).
4. All stationary sources and stationary source categories that would be subject to this regulation solely because they are subject to 40 C.F.R. § 61, subpart M (National Emission Standard for Asbestos, Section 61.145, Standard for Demolition and Renovation).
5. 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 U.S.C. § 7412(r) (CAA § 112(r)).

- C. 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 § 28.4(A)(12) of this Part at any time since January 1, 1990, shall be presumed to be a major source.
- D. The owner or operator of a stationary source can rebut this presumption by presenting evidence to demonstrate to the satisfaction of the Office of Air Resources 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.

28.6 Requirement to Pay a Fee

- A. 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.
- B. Stationary sources required to obtain an operating permit pursuant to [Part 29](#) of this Subchapter (Operating Permits) shall pay a fee in accordance with § 28.7(A) of this Part.
- C. Stationary sources that apply for an emissions cap pursuant to [Part 29](#) of this Subchapter (Operating Permits) shall pay the applicable fees in § 28.7(A) of this Part 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 § 28.7(A) of this Part.
- D. Failure to pay any of the fees required in this regulation shall be a violation of this regulation.

28.7 Fee Determination

- A. Stationary sources shall pay an annual emissions fee. Sources whose actual emissions are less than ten (10) tons per year shall pay a fixed fee. Fees for sources with actual emissions greater than or equal to ten (10) tons per year shall be assessed on a per ton basis. All regulated air pollutants shall be assessed at the same rate. The Office of Air Resources will determine the fixed fee charge and dollar per ton fee by January 31 of each 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 Office of Air Resources 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.

- B. 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.
- C. Stationary sources with approved emissions caps shall pay an annual compliance/assurance fee of \$350.
- D. 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:
 - 1. Carbon monoxide;
 - 2. 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 42 U.S.C. §§ 7671 through 7671q (CAA §§ 601 through 618);
 - 3. Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under U.S.C. § 7412(r) (CAA § 112(r));
 - 4. 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.
 - 5. The actual emissions from any emissions unit that has been listed as an insignificant activity in [§ 29.20](#) of this Subchapter (Operating Permits).
- E. Actual emissions shall be calculated in accordance with procedures and methods acceptable to the Office of Air Resources.
- F. Stationary sources may amend their Air Pollution Inventory Forms provided the source demonstrates to the satisfaction of the Office of Air Resources that the original submission was incorrect. Amended forms must then be submitted on the date specified by the Office of Air Resources. The Office of Air Resources may adjust a source's fee due to amended Air Pollution Inventory forms.

28.8 Payment of Fees

- A. The annual emissions fee in § 28.7(A) of this Part shall be paid on or before July 1 of each year and shall be based on emissions for the most recent calendar year inventory for which the Office of Air Resources has completed emission calculations. In no event shall the calendar year inventory be more than four (4) years older than the fiscal year for which fees are being assessed. Stationary sources with an annual emission fee of \$5,000 or greater may elect to make four

(4) equal quarterly payments. Quarterly payments shall be submitted on or before the dates listed in the following schedule:

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

- B. The application fee in § 28.7(B) of this Part, for stationary sources applying emissions caps, shall be paid at the time the application for an emissions cap is submitted to the Department.
- C. The compliance/assurance fee in § 28.7(C) of this Part shall be paid on or before December 30 of each year.
- D. A form supplied by the Department shall be used when submitting all payments.
- E. All fees shall be remitted to the Rhode Island Department of Environmental Management - Office of Management Services, 235 Promenade Street, Providence, Rhode Island in the form of a check or money order and made payable to General Treasurer, State of Rhode Island.
- F. 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.

28.9 Penalties

- A. 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.
- B. Notwithstanding any enforcement action, the stationary source shall be subject to a late payment charge of:

1. Ten percent (10%) of the fee due for payments postmarked more than seven (7) or less than thirty (30) days late, and
 2. Twenty percent (20%) of the fee due for payments postmarked on or over thirty (30) days late.
- C. All fees and late charges paid pursuant to the requirements of this regulation shall be non-refundable.

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PART 28 - AIR POLLUTION CONTROL REGULATION NO. 28- OPERATING PERMIT FEES

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