

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 2406

By: Faught

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8 COMMITTEE SUBSTITUTE

9 An Act relating to environment and natural resources;  
10 amending 27A O.S. 2011, Section 2-5-113, which  
11 relates to Oklahoma Clean Air Act permit fees;  
12 clarifying statutory language; requiring emergency  
13 engines to be classified, permitted and regulated as  
14 minor source facilities; prohibiting fees and  
15 permitting of emergency engines to be based on the  
16 potential to emit; requiring certain facilities to  
17 remain classified, permitted and regulated in a  
18 certain manner; and providing an effective date.

19 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

20 SECTION 1. AMENDATORY 27A O.S. 2011, Section 2-5-113, is  
21 amended to read as follows:

22 Section 2-5-113. A. Upon the effective date of rules  
23 promulgated pursuant to the Oklahoma Clean Air Act establishing a  
24 schedule of permit fees, the owner or operator of any source  
required to have a permit shall be subject to pay to the Department  
of Environmental Quality or, upon delegation, the appropriate city-  
county authority:

1 1. A fee sufficient to cover the reasonable cost of reviewing  
2 and acting upon any application for a construction or operating  
3 permit for any new source or for the modification of any existing  
4 source;

5 2. An annual operating permit fee sufficient to cover the  
6 reasonable costs, both direct and indirect, of implementing and  
7 enforcing the permit program authorized by the Oklahoma Clean Air  
8 Act and the Federal Clean Air Act, including, but not to be limited  
9 to:

- 10 a. the costs of reviewing and acting upon any permit  
11 renewal,
- 12 b. emissions and ambient monitoring, for those costs  
13 incurred under the permitting program,
- 14 c. preparing generally applicable rules or guidance,
- 15 d. modeling, monitoring, analyses and demonstrations,
- 16 e. preparing inventories and tracking emissions, and  
17 f. inspections and enforcement.

18 B. The annual operating fee may be imposed in graduated yearly  
19 increases as necessary to cover the above costs, but for any major  
20 source, affected source, or any source, including an area source,  
21 subject to standards or regulations under Section 111 or 112 of the  
22 Federal Clean Air Act, any source required to have a permit under  
23 parts C or D of Title I of the Federal Clean Air Act, or any other  
24 source as may be required to have a permit pursuant to the Federal

1 Clean Air Act, the fee, beginning January 1, 1993, shall be Ten  
2 Dollars (\$10.00) per ton of regulated air contaminant, due and  
3 payable upon receipt of invoice. Thereafter, following rulemaking,  
4 the annual operating fee shall be Twenty-five Dollars (\$25.00) per  
5 ton or such amount, either higher or lower, as is determined to  
6 adequately reflect the demonstrated reasonable costs of the  
7 operating permit program. Fees may be based upon the amount of  
8 regulated air contaminant allowed by permit to be emitted, or upon  
9 actual emissions properly determined, or both; provided, however,  
10 that the rate per ton shall be the same whether applied to actual or  
11 to allowable emissions. The applicant shall annually have the  
12 option to elect either actual or allowable emissions as the basis  
13 for calculating the operating fee. For other sources subject to  
14 permitting requirements, fees may be assessed consistent with the  
15 criteria in subsection A of this section. No fee, however, shall be  
16 required for the emission of carbon monoxide and no assessment shall  
17 be made for emissions in excess of four thousand (4,000) tons per  
18 contaminant per year per source, or any group or stationary sources  
19 located within a contiguous area and under common control.

20 C. The fees authorized in this section shall be set forth by  
21 rule and shall preclude collection of any additional permitting fees  
22 by any other state or local governmental authority for emission of  
23 the same air contaminants. Provided further, in the event that a  
24 particular substance may exhibit the characteristics of more than

1 one type of regulated air contaminant, and to prevent a double fee  
2 from being assessed, the Department may assign only one single  
3 classification to that particular substance for fee assessment  
4 purposes. For those sources subject to the fee specified in  
5 subsection B of this section, the rule shall further provide for the  
6 annual operating fee to be adjusted automatically each year by the  
7 percentage, if any, by which the Consumer Price Index for the most  
8 recent calendar year ending before the beginning of such year  
9 exceeds the Consumer Price Index for the calendar year 1989. For  
10 the purposes of this subsection:

11 1. The Consumer Price Index for any calendar year is the  
12 average of the Consumer Price Index for all urban consumers  
13 published by the Department of Labor as of the close of the twelve-  
14 month period ending on August 31 of each calendar year; and

15 2. The revision of the Consumer Price Index which is the most  
16 consistent with the Consumer Price Index for calendar year 1989  
17 shall be used.

18 D. Any fee not received by the Department within the prescribed  
19 time period allotted for payment, unless a lesser amount shall be  
20 provided for by rule, shall be subject to a one and one-half percent  
21 (1 1/2%) per month penalty.

22 E. There is hereby created within the Department of  
23 Environmental Quality Revolving Fund, a subaccount which shall  
24 consist of all permit fees collected by the Department pursuant to

1 Title V of the Federal Clean Air Act as authorized by the Oklahoma  
2 Clean Air Act. All monies accruing to the credit of such subaccount  
3 shall be budgeted and expended by the Department for the sole  
4 purpose of implementing the permit program as set forth in Title V  
5 of the Federal Clean Air Act and the Oklahoma Clean Air Act.

6 F. The Department shall classify, permit and regulate all  
7 emergency engines as minor source facilities, as such facilities are  
8 defined by the Department. All fees and all permitting requirements  
9 set forth by rule by the Department for emergency engines shall be  
10 based on the actual emissions of the emergency engine and shall not  
11 be based on the potential to emit. Any facility with an emergency  
12 engine which was permitted and operated as a de minimus facility  
13 prior to July 1, 2015, shall continue to be classified, permitted  
14 and regulated as a de minimus facility until the facility is no  
15 longer in operation or a new facility is constructed that replaces  
16 the current facility.

17 SECTION 2. This act shall become effective November 1, 2016.

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