

# Enrolled Senate Bill 107

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CHAPTER .....

AN ACT

Relating to emission fees for major sources; creating new provisions; amending ORS 468A.315; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 468A.315 is amended to read:

468A.315. [(1)(a)] **(1)** [Beginning one year after the date of submittal of the federal operating permit program to the Administrator of the United States Environmental Protection Agency,] The fee schedule required under ORS 468.065 (2) for a source subject to the federal operating permit program shall be based on a schedule established **every two years** by rule by the Environmental Quality Commission in accordance with this section. Except for the additional fee under subsection [(2)(f)] **(2)(e)** of this section, this fee schedule shall be in lieu of any other fee for a permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable direct and indirect costs of implementing the federal operating permit program and shall consist of:

[(A)] **(a)** An emission fee [of \$25] per ton of **each** regulated pollutant emitted during the prior calendar year as determined under subsection (2) of this section, **subject to annual fee increases as set forth in paragraph (d) of this subsection. The following emission fees apply:**

**(A) \$27 per ton emitted during the 2006 calendar year.**

**(B) \$29 per ton emitted during the 2007 calendar year.**

**(C) \$31 per ton emitted during the 2008 calendar year and each calendar year thereafter.**

[(B)] **(b)** Fees for the following specific elements of the federal operating permit program:

[(i)] **(A)** Reviewing and acting upon applications for modifications to federal operating permits.

[(ii)] **(B)** Any activity related to permits required under ORS 468A.040 other than the federal operating permit program.

[(iii)] **(C)** Department of Environmental Quality activities for sources not subject to the federal operating permit program.

[(iv)] **(D)** Department review of ambient monitoring networks installed by a source.

[(v)] **(E)** Other distinct department activities created by a source or a group of sources if the [Environmental Quality] commission finds that the activities are unique and specific and that additional rulemaking is necessary and will impose costs upon the department that are not otherwise covered by federal operating permit program fees.

[(C)] **(c)** A base fee for a source subject to the federal operating permit program. This base fee shall be no more than [\$2,500,] **the fees set forth in subparagraphs (A) to (D) of this paragraph,**

subject to increases as set forth in [subparagraph (D) of this paragraph] **paragraph (d) of this subsection:**

(A) \$2,700 for the period of November 15, 2007, through November 14, 2008.

(B) \$2,900 for the period of November 15, 2008, through November 14, 2009.

(C) \$3,100 for the period of November 15, 2009, through November 14, 2010.

(D) \$4,100 for the period of November 15, 2010, through November 14, 2011, and for each annual period thereafter.

[(D)] (d) An annual increase **in the fees set forth in paragraphs (a) to (c) of this subsection** by the percentage, if any, by which the Consumer Price Index exceeds the Consumer Price Index for the calendar year 1989 if the commission determines by rule that the increased [fee is] **fees are** necessary to cover all reasonable direct and indirect costs of implementing the federal operating permit program.

*[(b) If the administrator grants interim or partial approval of the federal operating permit program and the commission determines the interim or partial approval results in a reduction in the reasonable direct and indirect costs of developing and administering the program to less than the level supported by the fee, the commission shall reduce the emission fee established by this section commensurate with the reduction in the department's responsibilities under Title V of the Clean Air Act. The reduced fee shall apply until the commission determines that the cause for the interim or partial approval has been eliminated.]*

(2)(a) The fee on emissions of regulated pollutants required under this section shall be based on the amount of each regulated pollutant emitted during the prior calendar year as documented by information provided by the source in accordance with criteria adopted by the commission or, if the source elects to pay the fee based on permitted emissions, the fee shall be based on the emission limit for the plant site of the major source.

*[(b) If the fee on PM10 emissions is based on the plant site emission limit for a source that does not have a plant site emission limit for PM10, the department may assess the fee on the plant site emission limit for total suspended particulates in lieu of PM10.]*

[(c)] (b) The fee required by [this] **subsection (1)(a) of this section** [shall] **does** not apply to any emissions [of any regulated pollutant or total suspended particulates, whether permitted or documented,] in excess of 4,000 tons per year of [that pollutant] **any regulated pollutant through calendar year 2010 and in excess of 7,000 tons per year of all regulated pollutants for each calendar year thereafter.** [There shall be no revision of] **The department may not revise** a major source's plant site emission limit due solely to payment of the fee on the basis of documented emissions.

[(d)] (c) The commission shall establish by rule criteria for the acceptability and verifiability of information related to emissions as documented, including but not limited to the use of:

- (A) Emission monitoring;
- (B) Material balances;
- (C) Emission factors;
- (D) Fuel use;
- (E) Production data; or
- (F) Other calculations.

[(e)] (d) The department shall accept reasonably accurate information that complies with the criteria established by the commission as documentation of emissions.

[(f)] (e) The rules adopted under this section shall require an additional fee for failure to pay, substantial underpayment of or late payment of emission fees.

**(3) The commission shall establish by rule the size fraction of total particulates subject to emission fees as particulates under this section.**

[(3)] (4) As used in this section:

(a) "Regulated pollutant" [has the meaning given in section 502(b) of the Clean Air Act] **means particulates, volatile organic compounds, oxides of nitrogen, and sulfur dioxide;** and

(b) "Consumer Price Index" has the meaning given in [section 502(b) of the Clean Air Act.] 42 U.S.C. 7661a(b), as in effect on the effective date of this 2007 Act.

**SECTION 2.** Section 3 of this 2007 Act is added to and made a part of ORS 468A.300 to 468A.330.

**SECTION 3.** (1) Prior to the adoption, amendment or repeal of any rule pursuant to ORS chapter 183 that applies to any facility required to pay fees under ORS 468A.315, the Environmental Quality Commission shall include with the notice of intended action required under ORS 183.335 (1) a statement of whether the intended action imposes requirements in addition to the applicable federal requirements and, if so, shall include a written explanation of:

(a) The commission's scientific, economic, technological, administrative or other reasons for exceeding applicable federal requirements; and

(b) Any alternatives the commission considered and the reasons that the alternatives were not pursued.

(2) The statement provided by the commission under subsection (1) of this section shall be based upon information available to the commission at the time the commission prepares the written explanation.

(3) Notwithstanding ORS 183.335 (3), an opportunity for an oral hearing before the commission regarding the statement specified in subsections (1) and (2) of this section shall be granted only if:

(a) The request for a hearing is received, within 14 days after the commission issues the notice of intended action required under ORS 183.335 (1), from 10 persons or from an association having no fewer than 10 members; and

(b) The request describes how the persons or association that made the request will be directly harmed by the adoption, amendment or repeal of a rule under subsection (1) of this section.

(4) If an oral hearing is granted under subsection (3) of this section, the commission shall give notice of the hearing at least 14 days before the hearing to the persons or association requesting the hearing, to any persons who have requested notice pursuant to ORS 183.335 (8) and to the persons specified in ORS 183.335 (15).

(5) Subsection (3) of this section does not apply if the commission includes with the notice of intended action required under ORS 183.335 (1) a notice that an oral hearing will be held before the commission.

(6) The provisions of this section do not apply to temporary rules adopted by the commission under ORS 183.335 (5).

**SECTION 4.** (1) The amendments to ORS 468A.315 (1)(a) by section 1 of this 2007 Act apply only to emission fees assessed for calendar years beginning on or after January 1, 2006.

(2) The amendments to ORS 468A.315 (1)(c) by section 1 of this 2007 Act apply only to base fees assessed on or after July 1, 2007.

(3) If this 2007 Act becomes effective after July 1, 2007, the Department of Environmental Quality shall issue a supplemental billing for the additional fees owing under ORS 468A.315 (1)(a) and (c), as amended by section 1 of this 2007 Act, for fees assessed between July 1, 2007, and the effective date of this 2007 Act.

**SECTION 5.** This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

**Passed by Senate May 14, 2007**

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Secretary of Senate

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President of Senate

**Passed by House June 5, 2007**

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Speaker of House

**Received by Governor:**

.....M,....., 2007

**Approved:**

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2007

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Secretary of State