

# Enrolled Senate Bill 104

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CHAPTER .....

AN ACT

Relating to fee schedule for federal operating permit program; 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) 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)(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) An emission fee 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) Fees for the following specific elements of the federal operating permit program:

- (A) Reviewing and acting upon applications for modifications to federal operating permits.
- (B) Any activity related to permits required under ORS 468A.040 other than the federal operating permit program.
- (C) Department of Environmental Quality activities for sources not subject to the federal operating permit program.

(D) Department review of ambient monitoring networks installed by a source.

(E) Other distinct department activities created by a source or a group of sources if the 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) A base fee for a source subject to the federal operating permit program. This base fee shall be no more than the fees set forth in subparagraphs (A) to (D) of this paragraph, subject to increases as set forth in 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) 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*] **as of the close of the 12-month period ending on August 31, 1989**, if the commission determines by rule that the increased fees are necessary to cover all reasonable direct and indirect costs of implementing the federal operating permit program.

(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) The fee required by subsection (1)(a) of this section does not apply to any emissions in excess of 4,000 tons per year of 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. 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.

(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.

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

(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.

(4) As used in this section:

(a) "Regulated pollutant" means particulates, volatile organic compounds, oxides of nitrogen, and sulfur dioxide; and

(b) "Consumer Price Index" has the meaning given in 42 U.S.C. 7661a(b), as in effect on June 20, 2007.

**SECTION 2. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.**

**Passed by Senate March 3, 2009**

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Secretary of Senate

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President of Senate

**Passed by House May 22, 2009**

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Speaker of House

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

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Governor

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

.....M,....., 2009

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Secretary of State