

D R A F T

SUMMARY

Requires Environmental Quality Commission to establish fee applicable to certain air contamination sources to cover direct and indirect costs of Department of Environmental Quality and commission in developing and implementing a program and rules to reduce public health risks of emissions of toxic air contaminants from industrial and commercial air contamination sources.

Limits total amount of fees collected during biennium beginning July 1, 2017, to \$2,000,000.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to fees on air contamination sources; creating new provisions;
3 amending ORS 468.065, 468A.300 and 468A.315; and declaring an emer-
4 gency.

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

6 **SECTION 1. Section 2 of this 2018 Act is added to and made a part**
7 **of ORS chapter 468A.**

8 **SECTION 2. (1) The fee schedules required under ORS 468.065 (2) for**
9 **permits described in subsection (2) of this section shall include a fee**
10 **that is reasonably calculated to cover the direct and indirect costs of**
11 **the Department of Environmental Quality and the Environmental**
12 **Quality Commission in developing and implementing, under ORS**
13 **468A.025 (4)(e), a program and rules to reduce the public health risks**
14 **of emissions of toxic air contaminants from industrial and commercial**
15 **air contamination sources.**

16 **(2) The fee required by subsection (1) of this section shall:**

1 (a) Apply for any class of air contamination sources classified pur-
2 suant to ORS 468A.050 for which a person is required to obtain permits
3 under ORS 468A.040 or 468A.155 or is subject to the federal operating
4 permit program pursuant to ORS 468A.310; and

5 (b) Be in addition to, and not in lieu of, any other fee required un-
6 der ORS 468.065 or 468A.315.

7 (3) Before establishing fees pursuant to this section, the commis-
8 sion shall consider the total fees for each class of air contamination
9 sources subject to the fee required by subsection (1) of this section.

10 (4) Any fees collected under this section for an air contamination
11 source issued a permit under ORS 468A.040 or 468A.155 or a source
12 subject to the federal operating permit program pursuant to ORS
13 468A.310 must be collected as part of the fee for that specific permit.

14 (5)(a) Any rule adopted under ORS 468.065 (2) regarding late pay-
15 ment of emission fees by an air contamination source issued a permit
16 under ORS 468A.040 or 468A.155 shall apply in the same manner to an
17 air contamination source issued a permit under ORS 468A.040 or
18 468A.155 for late payment of fees under this section.

19 (b) Any rule adopted under ORS 468A.315 regarding late payment
20 of emission fees by sources subject to the federal operating permit
21 program shall apply in the same manner to sources subject to the
22 federal operating permit program for late payment of fees under this
23 section.

24 (6) The department may, in the manner provided in ORS 468.070,
25 refuse to issue, suspend, revoke or refuse to renew a permit issued
26 under ORS 468A.040 or 468A.155 or under the federal operating permit
27 program pursuant to ORS 468A.310 for failure to comply with the pro-
28 visions of this section.

29 **SECTION 3.** ORS 468.065 is amended to read:

30 468.065. Subject to any specific requirements imposed by ORS 448.305,
31 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and

1 ORS chapters 468, 468A and 468B:

2 (1) Applications for all permits authorized or required by ORS 448.305,
 3 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and
 4 ORS chapters 468, 468A and 468B shall be made in a form prescribed by the
 5 Department of Environmental Quality. Any permit issued by the department
 6 shall specify its duration, and the conditions for compliance with the rules
 7 and standards, if any, adopted by the Environmental Quality Commission
 8 pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to
 9 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

10 (2) By rule and after hearing, the commission may establish a schedule
 11 of fees for permits issued pursuant to ORS 468A.040, 468A.045, 468A.155 and
 12 468B.050. Except as provided in ORS 468A.315 and 468B.051 **and section 2**
 13 **of this 2018 Act**, the fees contained in the schedule shall be based upon the
 14 anticipated cost of filing and investigating the application, of carrying out
 15 applicable requirements of Title V, of issuing or denying the requested per-
 16 mit, and of an inspection program to determine compliance or noncompliance
 17 with the permit. The fee shall accompany the application for the permit. The
 18 fees for a permit issued under ORS 468A.040 or 468B.050 may be imposed on
 19 an annual basis.

20 (3) An applicant for certification of a project under ORS 468B.040 or
 21 468B.045, and any person submitting a notice of intent to seek reauthori-
 22 zation, a preliminary application or an application for reauthorization of a
 23 water right for a hydroelectric project under ORS 543A.030, 543A.035,
 24 543A.075, 543A.080 or 543A.095 shall pay as a fee all expenses incurred by the
 25 commission and department related to the review and decision of the Direc-
 26 tor of the Department of Environmental Quality and commission. These ex-
 27 penses may include legal expenses, expenses incurred in evaluating the
 28 project, issuing or denying certification and expenses of commissioning an
 29 independent study by a contractor of any aspect of the proposed project.
 30 These expenses shall not include the costs incurred in defending a decision
 31 of either the director or the commission against appeals or legal challenges.

1 The department shall bill applicants for costs incurred on a monthly basis,
2 and shall provide a biennial report describing how the moneys were spent.
3 An applicant may arrange with the department to pay the fee on a quarterly
4 basis. The department shall not charge a fee under the fee authority in this
5 subsection if the holder is being charged a fee under ORS 543.088 and 543.090
6 or 543A.405. In no event shall the department assess fees under this section
7 and under ORS 543A.405 for performance of the same work.

8 (4) The department may require the submission of plans, specifications
9 and corrections and revisions thereto and such other reasonable information
10 as it considers necessary to determine the eligibility of the applicant for the
11 permit.

12 (5) The department may require periodic reports from persons who hold
13 permits under ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.505 to
14 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. The report
15 shall be in a form prescribed by the department and shall contain such in-
16 formation as to the amount and nature or common description of the
17 pollutant, contaminant or waste and such other information as the depart-
18 ment may require.

19 (6) Any fee collected under a schedule of fees established pursuant to this
20 section or ORS 468A.315 **or section 2 of this 2018 Act** shall be deposited in
21 the State Treasury to the credit of an account of the department. The fees
22 are continuously appropriated to meet the expenses of the program for which
23 they are collected, except as follows:

24 (a) The federal operating permit program shall include a commensurate
25 amount of the fee for any permit specified in this section for which the de-
26 partment incurs costs associated with the requirements of Title V and any
27 fees collected under ORS 468A.315. Fees collected for the federal operating
28 permit program in any biennium that exceed the legislatively approved
29 budget, including amounts authorized by the Emergency Board for the fed-
30 eral operating permit program for such biennium, shall be credited toward
31 the federal operating permit program budget for the following biennium.

1 (b) Fees collected for permits issued under ORS 468B.050 to authorize the
2 discharge of wastes into the waters of the state may be used to pay the ex-
3 penses of any of the programs associated with the issuance of permits under
4 ORS 468B.050 to authorize the discharge of wastes into the waters of the
5 state.

6 (c) The fees collected under a schedule of fees established pursuant to this
7 section or ORS 468A.315 **or section 2 of this 2018 Act** by a regional air
8 pollution control authority pursuant to a permit program authorized by the
9 commission shall be retained by and shall be income to the regional au-
10 thority except as provided in ORS 468A.155 (2)(c). Such fees shall be ac-
11 counted for and expended in the same manner as are other funds of the
12 regional authority. However, if the department finds after hearing that the
13 permit program administered by the regional authority does not conform to
14 the requirements of the permit program approved by the commission pursu-
15 ant to ORS 468A.155, such fees shall be deposited and expended as are permit
16 fees submitted to the department.

17 (7) As used in this section, "Title V" has the meaning given in ORS
18 468A.300.

19 **SECTION 4.** ORS 468A.300 is amended to read:

20 468A.300. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330,
21 468A.415, 468A.420 and 468A.460 to 468A.515 **and section 2 of this 2018**
22 **Act:**

23 (1) "Administrator" means the administrator of the United States Envi-
24 ronmental Protection Agency.

25 (2) "Clean Air Act" means P.L. 88-206 as amended.

26 (3) "Federal operating permit program" means the program established
27 by the Environmental Quality Commission and the Department of Environ-
28 mental Quality pursuant to ORS 468A.310.

29 (4) "Major source" has the meaning given in section 501(2) of the Clean
30 Air Act.

31 (5) "Title V" means Title V of the Clean Air Act.

1 **SECTION 5.** ORS 468A.315 is amended to read:

2 468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source
3 subject to the federal operating permit program shall be based on a schedule
4 established by rule by the Environmental Quality Commission in accordance
5 with this section. Except for the additional [*fee*] **fees** under subsection (2)(e)
6 of this section **and section 2 of this 2018 Act**, this fee schedule shall be in
7 lieu of any other fee for a permit issued under ORS 468A.040, 468A.045 or
8 468A.155. The fee schedule shall cover all reasonable direct and indirect costs
9 of implementing the federal operating permit program and shall consist of:

10 (a) An emission fee per ton of each regulated pollutant emitted during the
11 prior calendar year as determined under subsection (2) of this section, sub-
12 ject to annual fee increases as set forth in paragraph (d) of this subsection.
13 The following emission fees apply:

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

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

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

18 (b) Fees for the following specific elements of the federal operating permit
19 program:

20 (A) Reviewing and acting upon applications for modifications to federal
21 operating permits.

22 (B) Any activity related to permits required under ORS 468A.040 other
23 than the federal operating permit program.

24 (C) Department of Environmental Quality activities for sources not sub-
25 ject to the federal operating permit program.

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

28 (E) Other distinct department activities created by a source or a group
29 of sources if the commission finds that the activities are unique and specific
30 and that additional rulemaking is necessary and will impose costs upon the
31 department that are not otherwise covered by federal operating permit pro-

1 gram fees.

2 (c) A base fee for a source subject to the federal operating permit pro-
3 gram. This base fee shall be no more than the fees set forth in subparagraphs
4 (A) to (D) of this paragraph, subject to increases as set forth in paragraph
5 (d) of this subsection:

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

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

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

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

11 (d) An annual increase in the fees set forth in paragraphs (a) to (c) of this
12 subsection by the percentage, if any, by which the Consumer Price Index
13 exceeds the Consumer Price Index as of the close of the 12-month period
14 ending on August 31, 1989, if the commission determines by rule that the
15 increased fees are necessary to cover all reasonable direct and indirect costs
16 of implementing the federal operating permit program.

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

23 (b) The fee required by subsection (1)(a) of this section does not apply to
24 any emissions in excess of 4,000 tons per year of any regulated pollutant
25 through calendar year 2010 and in excess of 7,000 tons per year of all regu-
26 lated pollutants for each calendar year thereafter. The department may not
27 revise a major source's plant site emission limit due solely to payment of the
28 fee on the basis of documented emissions.

29 (c) The commission shall establish by rule criteria for the acceptability
30 and verifiability of information related to emissions as documented, includ-
31 ing but not limited to the use of:

- 1 (A) Emission monitoring;
- 2 (B) Material balances;
- 3 (C) Emission factors;
- 4 (D) Fuel use;
- 5 (E) Production data; or
- 6 (F) Other calculations.

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

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

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

15 (4) As used in this section:

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

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

20 **SECTION 6. For the biennium beginning July 1, 2017, the total**
21 **amount of fees collected under section 2 of this 2018 Act may not ex-**
22 **ceed \$2,000,000.**

23 **SECTION 7. (1) Notwithstanding section 2 (4) of this 2018 Act, a**
24 **source that has been issued, on or before the effective date of this 2018**
25 **Act, a permit under ORS 468A.040 or 468A.155 or under the federal op-**
26 **erating permit program pursuant to ORS 468A.310 to emit air con-**
27 **taminants during the period beginning July 1, 2018, and ending June**
28 **30, 2019, shall pay to the Department of Environmental Quality the fee**
29 **required under section 2 of this 2018 Act no later than 30 days after**
30 **the date of the invoice issued by the department for the fee.**

31 (2) If, on or after the effective date of this 2018 Act, a source sub-

1 mits an application for a permit under ORS 468A.040 or 468A.155 or
2 under the federal operating permit program pursuant to ORS 468A.310
3 that, if issued by the department, would authorize the air contam-
4 ination source to emit air contaminants during the period beginning
5 July 1, 2018, and ending June 30, 2019, the applicable supplemental fee
6 required by section 2 of this 2018 Act shall accompany the application
7 for the permit.

8 SECTION 8. This 2018 Act being necessary for the immediate pres-
9 ervation of the public peace, health and safety, an emergency is de-
10 clared to exist, and this 2018 Act takes effect on its passage.

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