

A-Engrossed
House Bill 4002

Ordered by the House February 16
Including House Amendments dated February 16

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Energy and Environment)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

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 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; amending ORS 468.065,
3 468A.300 and 468A.315; and declaring an emergency.

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

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

6 **SECTION 2. (1) The fee schedules required under ORS 468.065 (2) for permits described**
7 **in subsection (2) of this section shall include a fee that is reasonably calculated to cover the**
8 **direct and indirect costs of the Department of Environmental Quality and the Environmental**
9 **Quality Commission in developing and implementing, under ORS 468A.025 (3), a program and**
10 **rules to reduce the public health risks of emissions of toxic air contaminants from industrial**
11 **and commercial air contamination sources.**

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

13 **(a) Apply for any class of air contamination sources classified pursuant to ORS 468A.050**
14 **for which a person is required to obtain permits under ORS 468A.040 or 468A.155 or is subject**
15 **to the federal operating permit program pursuant to ORS 468A.310; and**

16 **(b) Be in addition to, and not in lieu of, any other fee required under ORS 468.065 or**
17 **468A.315.**

18 **(3) Before establishing fees pursuant to this section, the commission shall consider the**
19 **total fees for each class of air contamination sources subject to the fee required by sub-**
20 **section (1) of this section.**

21 **(4) Any fees collected under this section for an air contamination source issued a permit**
22 **under ORS 468A.040 or 468A.155 or a source subject to the federal operating permit program**
23 **pursuant to ORS 468A.310 must be collected concurrent with the fee for that specific permit.**

24 **(5)(a) Any rule adopted under ORS 468.065 (2) regarding late payment of emission fees**
25 **by an air contamination source issued a permit under ORS 468A.040 or 468A.155 shall apply**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 in the same manner to an air contamination source issued a permit under ORS 468A.040 or
2 468A.155 for late payment of fees under this section.

3 (b) Any rule adopted under ORS 468A.315 regarding late payment of emission fees by
4 sources subject to the federal operating permit program shall apply in the same manner to
5 sources subject to the federal operating permit program for late payment of fees under this
6 section.

7 (6) The department may, in the manner provided in ORS 468.070, refuse to issue, suspend,
8 revoke or refuse to renew a permit issued under ORS 468A.040 or 468A.155 or under the
9 federal operating permit program pursuant to ORS 468A.310 for failure to comply with the
10 provisions of this section.

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

12 468.065. Subject to any specific requirements imposed by ORS 448.305, 454.010 to 454.040, 454.205
13 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B:

14 (1) Applications for all permits authorized or required by ORS 448.305, 454.010 to 454.040,
15 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B shall
16 be made in a form prescribed by the Department of Environmental Quality. Any permit issued by
17 the department shall specify its duration, and the conditions for compliance with the rules and
18 standards, if any, adopted by the Environmental Quality Commission pursuant to ORS 448.305,
19 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468,
20 468A and 468B.

21 (2) By rule and after hearing, the commission may establish a schedule of fees for permits issued
22 pursuant to ORS 468A.040, 468A.045, 468A.155 and 468B.050. Except as provided in ORS 468A.315
23 and 468B.051 **and section 2 of this 2018 Act**, the fees contained in the schedule shall be based upon
24 the anticipated cost of filing and investigating the application, of carrying out applicable require-
25 ments of Title V, of issuing or denying the requested permit, and of an inspection program to de-
26 termine compliance or noncompliance with the permit. The fee shall accompany the application for
27 the permit. The fees for a permit issued under ORS 468A.040 or 468B.050 may be imposed on an
28 annual basis.

29 (3) An applicant for certification of a project under ORS 468B.040 or 468B.045, and any person
30 submitting a notice of intent to seek reauthorization, a preliminary application or an application for
31 reauthorization of a water right for a hydroelectric project under ORS 543A.030, 543A.035, 543A.075,
32 543A.080 or 543A.095 shall pay as a fee all expenses incurred by the commission and department
33 related to the review and decision of the Director of the Department of Environmental Quality and
34 commission. These expenses may include legal expenses, expenses incurred in evaluating the project,
35 issuing or denying certification and expenses of commissioning an independent study by a contractor
36 of any aspect of the proposed project. These expenses shall not include the costs incurred in de-
37 fending a decision of either the director or the commission against appeals or legal challenges. The
38 department shall bill applicants for costs incurred on a monthly basis, and shall provide a biennial
39 report describing how the moneys were spent. An applicant may arrange with the department to pay
40 the fee on a quarterly basis. The department shall not charge a fee under the fee authority in this
41 subsection if the holder is being charged a fee under ORS 543.088 and 543.090 or 543A.405. In no
42 event shall the department assess fees under this section and under ORS 543A.405 for performance
43 of the same work.

44 (4) The department may require the submission of plans, specifications and corrections and re-
45 visions thereto and such other reasonable information as it considers necessary to determine the

1 eligibility of the applicant for the permit.

2 (5) The department may require periodic reports from persons who hold permits under ORS
3 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.505 to 454.535, 454.605 to 454.755 and ORS chap-
4 ters 468, 468A and 468B. The report shall be in a form prescribed by the department and shall
5 contain such information as to the amount and nature or common description of the pollutant, con-
6 taminant or waste and such other information as the department may require.

7 (6) Any fee collected under a schedule of fees established pursuant to this section or ORS
8 468A.315 **or section 2 of this 2018 Act** shall be deposited in the State Treasury to the credit of an
9 account of the department. The fees are continuously appropriated to meet the expenses of the
10 program for which they are collected, except as follows:

11 (a) The federal operating permit program shall include a commensurate amount of the fee for
12 any permit specified in this section for which the department incurs costs associated with the re-
13 quirements of Title V and any fees collected under ORS 468A.315. Fees collected for the federal
14 operating permit program in any biennium that exceed the legislatively approved budget, including
15 amounts authorized by the Emergency Board for the federal operating permit program for such
16 biennium, shall be credited toward the federal operating permit program budget for the following
17 biennium.

18 (b) Fees collected for permits issued under ORS 468B.050 to authorize the discharge of wastes
19 into the waters of the state may be used to pay the expenses of any of the programs associated with
20 the issuance of permits under ORS 468B.050 to authorize the discharge of wastes into the waters
21 of the state.

22 (c) The fees collected under a schedule of fees established pursuant to this section or ORS
23 468A.315 **or section 2 of this 2018 Act** by a regional air pollution control authority pursuant to a
24 permit program authorized by the commission shall be retained by and shall be income to the re-
25 gional authority except as provided in ORS 468A.155 (2)(c). Such fees shall be accounted for and
26 expended in the same manner as are other funds of the regional authority. However, if the depart-
27 ment finds after hearing that the permit program administered by the regional authority does not
28 conform to the requirements of the permit program approved by the commission pursuant to ORS
29 468A.155, such fees shall be deposited and expended as are permit fees submitted to the department.

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

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

32 468A.300. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330, 468A.415, 468A.420 and
33 468A.460 to 468A.515 **and section 2 of this 2018 Act**:

34 (1) "Administrator" means the administrator of the United States Environmental Protection
35 Agency.

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

37 (3) "Federal operating permit program" means the program established by the Environmental
38 Quality Commission and the Department of Environmental Quality pursuant to ORS 468A.310.

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

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

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

42 468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal
43 operating permit program shall be based on a schedule established by rule by the Environmental
44 Quality Commission in accordance with this section. Except for the additional fee under subsection
45 (2)(e) of this section **and the fee under section 2 of this 2018 Act**, this fee schedule shall be in lieu

1 of any other fee for a permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule
2 shall cover all reasonable direct and indirect costs of implementing the federal operating permit
3 program and shall consist of:

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

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

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

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

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

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

12 (B) Any activity related to permits required under ORS 468A.040 other than the federal operat-
13 ing permit program.

14 (C) Department of Environmental Quality activities for sources not subject to the federal oper-
15 ating permit program.

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

17 (E) Other distinct department activities created by a source or a group of sources if the com-
18 mission finds that the activities are unique and specific and that additional rulemaking is necessary
19 and will impose costs upon the department that are not otherwise covered by federal operating
20 permit program fees.

21 (c) A base fee for a source subject to the federal operating permit program. This base fee shall
22 be no more than the fees set forth in subparagraphs (A) to (D) of this paragraph, subject to increases
23 as set forth in paragraph (d) of this subsection:

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

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

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

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

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

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

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

44 (c) The commission shall establish by rule criteria for the acceptability and verifiability of in-
45 formation related to emissions as documented, including 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 complies with the criteria
8 established by the commission as documentation of emissions.

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

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

13 (4) As used in this section:

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

16 (b) "Consumer Price Index" has the meaning given in 42 U.S.C. 7661a(b), as in effect on June
17 20, 2007.

18 **SECTION 6. For the biennium beginning July 1, 2017, the total amount of fees collected**
19 **under section 2 of this 2018 Act may not exceed \$2,000,000.**

20 **SECTION 7. (1) Notwithstanding section 2 (4) of this 2018 Act, a source that has been**
21 **issued, on or before the effective date of this 2018 Act, a permit under ORS 468A.040 or**
22 **468A.155 or under the federal operating permit program pursuant to ORS 468A.310 to emit**
23 **air contaminants during the period beginning July 1, 2018, and ending June 30, 2019, shall pay**
24 **to the Department of Environmental Quality the fee required under section 2 of this 2018**
25 **Act no later than 30 days after the date of the invoice issued by the department for the fee.**

26 (2) If, on or after the effective date of this 2018 Act, a source submits an application for
27 a permit under ORS 468A.040 or 468A.155 or under the federal operating permit program
28 pursuant to ORS 468A.310 that, if issued by the department, would authorize the air con-
29 tamination source to emit air contaminants during the period beginning July 1, 2018, and
30 ending June 30, 2019, the applicable fee required by section 2 of this 2018 Act shall accompany
31 the application for the permit.

32 **SECTION 8. This 2018 Act being necessary for the immediate preservation of the public**
33 **peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect**
34 **on its passage.**