A-Engrossed
Senate Bill 1541

Ordered by the Senate February 15
Including Senate Amendments dated February 15

Sponsored by Senators GIROD, ROBLAN, WINTERS, Representative WITT (Presession filed.)

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.

Authorizes Environmental Quality Commission to adopt program and rules to reduce public health risks [*of*] **from** emissions of toxic air contaminants from **individual stationary** industrial and commercial air contamination sources.

Authorizes commission to establish by rule pilot program for evaluating and controlling public health risks from toxic air contaminant emissions from multiple stationary air contamination sources.

Allows Department of Environmental Quality, pursuant to rules adopted by commission, to regulate individual existing air contamination source under program or pilot program based on adjusted benchmark for excess noncancer risk. Sunsets January 1, 2029.

Authorizes commission to establish fee applicable to certain air contamination sources to cover direct and indirect costs of developing and implementing **individual air contamination source** program and rules.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to toxic air contaminants; creating new provisions; amending ORS 468.065, 468A.300 and 468A.315; and declaring an emergency.

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

SECTION 1. Sections 2 to 7 of this 2018 Act are added to and made a part of ORS chapter 468A.

DEFINITIONS

SECTION 2. As used in sections 2 to 7 of this 2018 Act:

(1) "Benchmark for excess lifetime cancer risk" means:

(a) For a new or reconstructed air contamination source, an excess lifetime cancer risk level of 10 in one million.

(b) For an existing air contamination source, an excess lifetime cancer risk level of 50 in one million.

(2) "Benchmark for excess noncancer risk" means:

(a) For a new or reconstructed air contamination source, a benchmark equal to a Hazard Index number of 1.

(b) For an existing air contamination source, a benchmark equal to a Hazard Index number of 5.

(3) "Hazard Index number" means a number equal to the sum of the hazard quotients attributable to toxic air contaminants that have noncancer effects on the same target organs

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.

or organ systems.

(4) "Hazard quotient" means a calculated numerical value that is used to evaluate noncancer health risk from exposure to a single toxic air contaminant. The calculated numerical value is the ratio of the air concentration of a toxic air contaminant to the noncancer risk-based concentration at which no serious adverse human health effects are expected to occur.

(5) "Reconstructed" means an individual project constructed at an air contamination source that, once constructed, increases the hourly capacity of any changed equipment to emit and where the fixed capital cost of new components exceeds 50 percent of the fixed capital cost that would have been required to construct a comparable new source.

INDIVIDUAL AIR CONTAMINATION SOURCE PROGRAM

SECTION 3. (1) The Environmental Quality Commission may adopt a program and rules to reduce public health risks from emissions of toxic air contaminants from individual stationary industrial and commercial air contamination sources. The program and rules adopted under this section may be in addition to any other programs or rules adopted pursuant to ORS chapter 468A.

(2) Except as required by federal law, a program and rules adopted under this section may not require a person in control of an air contamination source to reduce risk associated with toxic air contaminant emissions from that source unless:

(a) The air contamination source is one for which a person is otherwise subject to regulation under ORS 468A.040, 468A.050, 468A.055 or 468A.155 or is subject to the federal operating permit program pursuant to ORS 468A.310; and

(b) Subject to periodic review by the Department of Environmental Quality, the total demonstrated public health risk from toxic air contaminant emissions from the air contamination source exceeds the benchmark for excess lifetime cancer risk or the benchmark for excess noncancer risk.

(3) For purposes of administration by the department of rules adopted under this section, rather than evaluating and regulating the public health risks from toxic air contaminant emissions from an air contamination source based on modeling for the potential to emit toxic air contaminants and land use zoning, a person in control of the air contamination source may elect to have the emissions from the air contamination source evaluated and regulated based on modeling for one or both of the following:

(a) Public health risk due to toxic air contaminant emissions from the air contamination source's actual production or, for a new or reconstructed air contamination source, the reasonably anticipated actual production by the new or reconstructed air contamination source.

(b)(A) The impacts by toxic air contaminants on locations where people actually live or normally congregate. There is a presumption that people actually live or normally congregate in locations in the manner allowed by the land use zoning for the location, based on the most recent zoning maps available.

(B) A person in control of an air contamination source subject to rules adopted under this section may rebut the presumption in subparagraph (A) of this paragraph by submitting to the department documentation that the department determines is adequate to rebut the presumption. If the department determines that the documentation is adequate to rebut the

presumption, the department shall adjust modeling inputs according to the documentation submitted.

(C) Documentation required under this paragraph must be updated annually by the person in control of the air contamination source.

(D) Documentation required under this paragraph may include a request by the person in control of the air contamination source for the department to exclude certain zoned areas from the modeling used for purposes of evaluating the toxic air contaminant emissions from the air contamination source. A request under this subparagraph must be based on documentation that the area to be excluded is not being used in a manner allowed by the land use zoning applicable to the area at the time the modeling is to be performed. If the department grants a request under this subparagraph, the person in control of the air contamination source shall annually submit to the department, as part of the update required under subparagraph (C) of this paragraph, documentation showing that the excluded zoned areas continue to not be used in a manner allowed by the land use zoning applicable to the area.

(4)(a) A person in control of an air contamination source subject to a program and rules adopted under this section may elect to have the public health risks from toxic air contaminant emissions from the air contamination source evaluated using air monitoring, if:

(A) The person submits to the department an air monitoring plan and the department approves the submitted air monitoring plan; and

(B) A modeled risk assessment using methods approved by the department is submitted to the department in advance of the commencement of the final, approved air monitoring plan.

(b) The department shall work with a person in control of an air contamination source to develop public information concerning an approved air monitoring plan and the timeline for the approved air monitoring plan.

(c) The department may not require a person in control of an air contamination source that elects to complete air monitoring under an approved air monitoring plan pursuant to this subsection to, pursuant to a program and rules adopted under this section, reduce public health risk from toxic air contaminants emitted by the air contamination source unless the results of the air monitoring:

(A) Validate the modeling completed pursuant to subsection (3) of this section; or

(B) Otherwise lead the department to reasonably conclude that the public health risks from toxic air contaminants emitted by the air contamination source exceed the benchmark for excess lifetime cancer risk or the benchmark for excess noncancer risk.

(d) Notwithstanding paragraph (c) of this subsection, if the results of the modeling completed pursuant to subsection (3) of this section indicate that the public health risks from toxic air contaminants emitted by the air contamination source exceed four times the benchmark for excess lifetime cancer risk or four times the benchmark for excess noncancer risk, a person in control of an air contamination source may not, pending completion of the approved air monitoring plan, delay implementation of any public health risk reduction measures that are required by the department pursuant to a program and rules adopted under this section.

(5)(a) Except as required under ORS 468.115, 468.936, 468.939, 468.951 or 468.996, or federal law, the department may not, pursuant to a program and rules adopted under this section,

require an existing air contamination source that employs toxics best available control technology on all significant emission units to undertake additional measures to limit or reduce toxic air contaminant emissions.

(b) Notwithstanding paragraph (a) of this subsection and subsection (6)(d) of this section, the department may require an existing air contamination source that employs toxics best available control technology on all significant emission units to undertake additional measures to limit or reduce toxic air contaminant emissions if the public health risks from toxic air contaminants emitted by the air contamination source are greater than four times the benchmark for excess lifetime cancer risk or are greater than two times the benchmark for excess noncancer risk.

(6)(a) Toxics best available control technology described in subsection (5) of this section must be a toxic air contaminant emissions limitation or emissions control measure or measures based on the maximum degree of reduction of toxic air contaminants that is feasible, determined for each air contamination source on a case-by-case basis, taking into consideration:

(A) What has been achieved in practice for:

(i) Air contamination sources in the same class as the air contamination source to which the toxic air contaminant emissions limitation or control measure will apply, as classified under ORS 468A.050; or

(ii) Processes or emissions similar to the processes or emissions of the air contamination source;

(B) Energy and health or environmental impacts not related to air quality; and

(C) Economic impacts and cost-effectiveness, including the costs of changing existing processes or equipment or adding equipment or controls to existing processes and equipment.

(b) Toxics best available control technology may be based on a design standard, equipment standard, work practice standard or other operational standard, or a combination thereof.

(c) In assessing the cost-effectiveness of any measure for purposes of determining toxics best available control technology for an air contamination source, the department must assess only the economic impacts and benefits associated with controlling toxic air contaminants.

(d) For an air contamination source that exists as of the date that a program and rules adopted under this section first become effective, compliance with emission control requirements, work practices or limitations established by a major source National Emission Standard for Hazardous Air Pollutants adopted by the United States Environmental Protection Agency after 1993 is deemed to be toxics best available control technology, provided that:

(A) The emission control requirements, work practices or limitations result in an actual reduction to the emissions of the hazardous air pollutants regulated under the National Emission Standard for Hazardous Air Pollutants; and

(B) There are no other toxic air contaminants emitted by the air contamination source that:

(i) Are regulated under a program and rules adopted by the Environmental Quality Commission pursuant to subsection (1) of this section;

(ii) Are not controlled by the emission control requirements, work practices or limita-

tions established by a major source National Emission Standard for Hazardous Air Pollutants; and

(iii) Materially contribute to public health risks.

PILOT PROGRAM

SECTION 4. (1)(a) The Environmental Quality Commission may establish by rule a pilot program for evaluating and controlling public health risks from toxic air contaminant emissions from multiple stationary air contamination sources. The requirements of a pilot program adopted under this section shall be in addition to, and not in lieu of, any requirements applicable to a person in control of an air contamination source under a program and rules adopted under section 3 of this 2018 Act.

(b) Rules adopted for purposes of evaluating and regulating the public health risks from toxic air contaminant emissions from air contamination sources subject to the pilot program must be consistent with, and administered subject to the provisions of, section 3 (3) and (4) of this 2018 Act.

(2) The pilot program adopted under this section may apply to no more than one area in this state in a county with a population exceeding 500,000 people, selected based on:

(a) The degree to which the level of excess lifetime cancer risk in the area from all sources of toxic air contaminants exceeds the statewide mean excess lifetime cancer risk from all sources of toxic air contaminants; and

(b) The degree to which the area contains multiple stationary sources of toxic air contaminants, leading to high cumulative public health risks from the toxic air contaminant emissions of those air contamination sources.

(3) In determining the boundary of the pilot program area, the department shall consider the degree to which the level of cumulative risk resulting from the toxic air contaminant emissions of existing stationary air contamination sources within the area exceeds the benchmark for excess lifetime cancer risk or the benchmark for excess noncancer risk. The pilot program area may not be larger than a circle measuring 2.5 miles in diameter.

(4) Subsection (5) of this section applies:

(a) If ambient concentrations of toxic air contaminant emissions from all stationary air contamination sources within any portion of the pilot program area result in an exceedance of two times the benchmark for excess lifetime cancer risk or two times the benchmark for excess noncancer risk within that portion of the pilot program area; and

(b) To persons in control of existing air contamination sources that significantly contribute to an exceedance described in paragraph (a) of this subsection and to any person in control of a new or modified source that is reasonably anticipated to significantly contribute to an exceedance described in paragraph (a) of this subsection.

(5) In order to obtain a permit or a permit modification that would authorize a significant increase in the public health risks from toxic air contaminants emitted by an air contamination source, and except as provided in subsection (6) of this section, a person described in subsection (4)(b) of this section must prepare and submit to the Department of Environmental Quality a risk mitigation plan that includes one or more actions to offset the projected increase in public health risks from toxic air contaminant emissions from the new or modified air contamination source. The plan required by this subsection may include

actions to reduce emissions from other sources in the area, including mobile sources. The department shall approve a risk mitigation plan submitted under this subsection if the department determines that the actions described in the plan are reasonably likely to achieve the projected reduction in public health risks necessary to offset the projected increase in public health risks from toxic air contaminant emissions from the new or modified air contamination source.

(6) Notwithstanding subsection (5) of this section, if the department determines, considering cost and available technology, that a risk mitigation plan is not feasible because reasonable actions to reduce public health risks are not available, the person in control of the air contamination source, in lieu of a risk mitigation plan, shall make a payment into the Clean Communities Fund established under section 5 of this 2018 Act. The amount of the payment required by this subsection shall be determined by the department based on the following considerations:

(a) The expected cost of actions to achieve the projected reduction in public health risks necessary to offset the increase in public health risks from toxic air contaminant emissions from the new or modified air contamination source; and

(b) How to best incentivize payments for actions that will most directly offset the increase in public health risks from toxic air contaminant emissions from the new or modified air contamination source in the portion of the pilot program area where the cumulative public health risks are expected to be the highest.

(7) The department may enter into a contract or agreement for services to implement a program for investing moneys deposited in the Clean Communities Fund in actions to reduce public health risks from toxic air contaminants emitted by air contamination sources located within the pilot program area.

SECTION 5. (1) The Clean Communities Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Clean Communities Fund shall be credited to the fund.

(2) The Clean Communities Fund consists of moneys deposited in the fund pursuant to section 4 of this 2018 Act and any other moneys deposited in the fund from any other public or private source.

(3) Moneys in the Clean Communities Fund are continuously appropriated to the Department of Environmental Quality to be used for actions to reduce public health risks from toxic air contaminants emitted by air contamination sources located within the pilot program area designated by the department under section 4 of this 2018 Act.

PUBLIC MEETINGS; PRIVATE ACTIONS

SECTION 6. (1) The Department of Environmental Quality shall hold any public meeting required by rules adopted pursuant to sections 2 to 7 of this 2018 Act. At least one representative of a person in control of an air contamination source for which a permit or plan will be discussed at a public meeting required by a rule adopted under sections 2 to 7 of this 2018 Act must appear at the meeting.

(2) If the Environmental Quality Commission adopts a program and rules pursuant to section 3 of this 2018 Act or a pilot program pursuant to section 4 of this 2018 Act, the programs and rules and their applicability to any air contamination source described in this

section do not create a standard of care for imposing liability in any private action. Compliance or noncompliance with the programs and rules may not be introduced as evidence in any private action on the issue of negligence, nuisance, trespass, injuries or damages.

TEMPORARY PROVISIONS RELATED TO BENCHMARKS FOR EXCESS NONCANCER RISK FOR EXISTING AIR CONTAMINATION SOURCES

SECTION 7. (1) Notwithstanding section 2 (2)(b) of this 2018 Act, the Department of Environmental Quality may regulate an existing air contamination source pursuant to section 3 or 4 of this 2018 Act based on a benchmark for excess noncancer risk that is adjusted to equal a Hazard Index number other than 5, if the department determines that the existing air contamination source emits a material amount of one or more toxic air contaminants that are identified by the Environmental Quality Commission by rule to be toxic air contaminants that are expected to have:

(a) Developmental human health effects associated with prenatal or postnatal exposure; or

(b) Other severe human health effects.

(2) The adjusted benchmark for excess noncancer risk applicable to an air contamination source described in subsection (1) of this section may be equal to a Hazard Index number determined by the department based on standards and criteria set forth by the commission in rule, but may be no less than a Hazard Index number of 3.

(3)(a) The commission shall adopt rules necessary to implement this section. The rules must, at a minimum:

(A) Identify toxic air contaminants for which the department may apply an adjusted benchmark for excess noncancer risk under subsection (1) of this section; and

(B) Establish standards and criteria for determining the degree to which the department may adjust the benchmark for excess noncancer risk applicable to an individual air contamination source described in subsection (1) of this section.

(b) Before adopting rules under this section, the commission shall establish and consider the recommendations of an advisory committee composed, at a minimum, of persons with technical expertise in toxic air contaminant risk assessment.

SECTION 8. Section 7 of this 2018 Act is repealed on January 1, 2029.

SECTION 9. The amendments to section 2 of this 2018 Act by section 10 of this 2018 Act become operative on January 1, 2029.

SECTION 10. Section 2 of this 2018 Act is amended to read:

Sec. 2. As used in sections 2 to 7 of this 2018 Act:

(1) "Benchmark for excess lifetime cancer risk" means:

(a) For a new or reconstructed air contamination source, an excess lifetime cancer risk level of 10 in one million.

(b) For an existing air contamination source, an excess lifetime cancer risk level of 50 in one million.

(2) "Benchmark for excess noncancer risk" means:

(a) For a new or reconstructed air contamination source, a benchmark equal to a Hazard Index number of 1.

(b) For an existing air contamination source, a benchmark equal to a Hazard Index number [*of 5*] **established by the Environmental Quality Commission by rule**.

(3) "Hazard Index number" means a number equal to the sum of the hazard quotients attributable to toxic air contaminants that have noncancer effects on the same target organs or organ systems.

(4) "Hazard quotient" means a calculated numerical value that is used to evaluate noncancer health risk from exposure to a single toxic air contaminant. The calculated numerical value is the ratio of the air concentration of a toxic air contaminant to the noncancer risk-based concentration at which no serious adverse human health effects are expected to occur.

(5) "Reconstructed" means an individual project constructed at an air contamination source that, once constructed, increases the hourly capacity of any changed equipment to emit and where the fixed capital cost of new components exceeds 50 percent of the fixed capital cost that would have been required to construct a comparable new source.

SECTION 11. The Department of Environmental Quality shall report to the interim committees of the Legislative Assembly related to the environment, no later than September 15, 2026, on the costs and benefits of regulating existing air contamination sources based on the benchmark for excess noncancer risk as defined in section 2 of this 2018 Act and based on any adjusted benchmarks for excess noncancer risk that have been applied to existing air contamination sources pursuant to section 7 of this 2018 Act. The report may include recommendations for legislation.

SECTION 12. Section 11 of this 2018 Act is repealed January 2, 2027.

FEES

SECTION 13. (1) The fee schedules required under ORS 468.065 (2) for permits described in subsection (2) of this section shall include a fee that is reasonably calculated to cover the direct and indirect costs of the Department of Environmental Quality and the Environmental Quality Commission in developing and implementing, under section 3 of this 2018 Act, a program and rules to reduce the public health risks of emissions of toxic air contaminants from industrial and commercial air contamination sources.

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

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

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

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

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

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

468A.155 for late payment of fees under this section.

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

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

CONFORMING AMENDMENTS

SECTION 14. ORS 468.065 is amended to read:

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

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

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

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

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

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

(6) Any fee collected under a schedule of fees established pursuant to this section or ORS 468A.315 **or section 13 of this 2018 Act** shall be deposited in the State Treasury to the credit of an account of the department. The fees are continuously appropriated to meet the expenses of the program for which they are collected, except as follows:

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

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

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

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

SECTION 15. ORS 468A.300 is amended to read:

468A.300. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330, 468A.415, 468A.420 and 468A.460 to 468A.515 **and section 13 of this 2018 Act**:

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

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

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

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

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

SECTION 16. 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 by rule by the Environmental

Quality Commission in accordance with this section. Except for the additional [*fee*] **fees** under subsection (2)(e) of this section **and section 13 of this 2018 Act**, 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 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 17. (1) Notwithstanding section 13 (4) of this 2018 Act, a source that has been issued, on or before the effective date of this 2018 Act, a permit under ORS 468A.040 or 468A.155 or under the federal operating permit program pursuant to ORS 468A.310 to emit air contaminants during the period beginning July 1, 2018, and ending June 30, 2019, shall pay to the Department of Environmental Quality the fee required under section 13 of this 2018 Act no later than 30 days after the date of the invoice issued by the department for the fee.

(2) If, on or after the effective date of this 2018 Act, a source submits an application for a permit under ORS 468A.040 or 468A.155 or under the federal operating permit program pursuant to ORS 468A.310 that, if issued by the department, would authorize the air contamination source to emit air contaminants during the period beginning July 1, 2018, and ending June 30, 2019, the applicable supplemental fee required by section 13 of this 2018 Act shall accompany the application for the permit.

CAPTIONS

SECTION 18. The unit captions used in this 2018 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2018 Act.

EMERGENCY CLAUSE

SECTION 19. This 2018 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect on its passage.