

B-Engrossed Senate Bill 1541

Ordered by the Senate March 1
Including Senate Amendments dated February 15 and March 1

Sponsored by Senators GIROD, ROBLAN, WINTERS, DEMBROW, 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 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 **or pilot program. Provides that fees first become due and payable no earlier than July 1, 2019. Places temporary limits on fee increases. Sunsets temporary limits on January 2, 2024.**

Requires certain air contamination sources to pay to department one-time supplemental fee to pay expenses of department and commission in developing and implementing individual air contamination source program or pilot program. Sets forth supplemental fee to be paid based on permit type applicable to source.

Limits certain biennial expenditures.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to toxic air contaminants; creating new provisions; amending ORS 468.065, 468A.300 and
3 468A.315; and declaring an emergency.

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

5 **SECTION 1. Sections 2 to 7, 13, 14 and 16 of this 2018 Act are added to and made a part**
6 **of ORS chapter 468A.**

DEFINITIONS

7
8
9
10 **SECTION 2. As used in sections 2 to 7 of this 2018 Act:**

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

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

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

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

17 **(a) For a new or reconstructed air contamination source, a benchmark equal to a Hazard**

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 **Index number of 1.**

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

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

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

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

15
16 **INDIVIDUAL AIR CONTAMINATION SOURCE PROGRAM**
17

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

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

26 **(a) The air contamination source is one for which a person is otherwise subject to regu-**
27 **lation under ORS 468A.040, 468A.050, 468A.055 or 468A.155 or is subject to the federal oper-**
28 **ating permit program pursuant to ORS 468A.310; and**

29 **(b) Subject to periodic review by the Department of Environmental Quality, the total**
30 **demonstrated public health risk from toxic air contaminant emissions from the air contam-**
31 **ination source exceeds the benchmark for excess lifetime cancer risk or the benchmark for**
32 **excess noncancer risk.**

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

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

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

1 recent zoning maps available.

2 (B) A person in control of an air contamination source subject to rules adopted under
3 this section may rebut the presumption in subparagraph (A) of this paragraph by submitting
4 to the department documentation that the department determines is adequate to rebut the
5 presumption. If the department determines that the documentation is adequate to rebut the
6 presumption, the department shall adjust modeling inputs according to the documentation
7 submitted.

8 (C) Documentation required under this paragraph must be updated annually by the per-
9 son in control of the air contamination source.

10 (D) Documentation required under this paragraph may include a request by the person
11 in control of the air contamination source for the department to exclude certain zoned areas
12 from the modeling used for purposes of evaluating the toxic air contaminant emissions from
13 the air contamination source. A request under this subparagraph must be based on doc-
14 umentation that the area to be excluded is not being used in a manner allowed by the land
15 use zoning applicable to the area at the time the modeling is to be performed. If the de-
16 partment grants a request under this subparagraph, the person in control of the air con-
17 tamination source shall annually submit to the department, as part of the update required
18 under subparagraph (C) of this paragraph, documentation showing that the excluded zoned
19 areas continue to not be used in a manner allowed by the land use zoning applicable to the
20 area.

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

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

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

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

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

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

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

41 (d) Notwithstanding paragraph (c) of this subsection, if the results of the modeling com-
42 pleted pursuant to subsection (3) of this section indicate that the public health risks from
43 toxic air contaminants emitted by the air contamination source exceed four times the
44 benchmark for excess lifetime cancer risk or four times the benchmark for excess noncancer
45 risk, a person in control of an air contamination source may not, pending completion of the

1 approved air monitoring plan, delay implementation of any public health risk reduction
2 measures that are required by the department pursuant to a program and rules adopted
3 under this section.

4 (5)(a) Except as required under ORS 468.115, 468.936, 468.939, 468.951 or 468.996, or federal
5 law, the department may not, pursuant to a program and rules adopted under this section,
6 require an existing air contamination source that employs toxics best available control
7 technology on all significant emission units to undertake additional measures to limit or re-
8 duce toxic air contaminant emissions.

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

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

21 (A) What has been achieved in practice for:

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

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

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

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

30 (b) Toxics best available control technology may be based on a design standard, equip-
31 ment standard, work practice standard or other operational standard, or a combination
32 thereof.

33 (c) In assessing the cost-effectiveness of any measure for purposes of determining toxics
34 best available control technology for an air contamination source, the department must as-
35 sess only the economic impacts and benefits associated with controlling toxic air contam-
36 inants.

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

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

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

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

5 (ii) Are not controlled by the emission control requirements, work practices or limita-
6 tions established by a major source National Emission Standard for Hazardous Air
7 Pollutants; and

8 (iii) Materially contribute to public health risks.

9
10 **PILOT PROGRAM**

11
12 **SECTION 4. (1)(a)** The Environmental Quality Commission may establish by rule a pilot
13 program for evaluating and controlling public health risks from toxic air contaminant emis-
14 sions from multiple stationary air contamination sources. The requirements of a pilot pro-
15 gram adopted under this section shall be in addition to, and not in lieu of, any requirements
16 applicable to a person in control of an air contamination source under a program and rules
17 adopted under section 3 of this 2018 Act.

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

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

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

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

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

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

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

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

44 (5) In order to obtain a permit or a permit modification that would authorize a significant
45 increase in the public health risks from toxic air contaminants emitted by an air contam-

1 ination source, and except as provided in subsection (6) of this section, a person described
2 in subsection (4)(b) of this section must prepare and submit to the Department of Environ-
3 mental Quality a risk mitigation plan that includes one or more actions to offset the
4 projected increase in public health risks from toxic air contaminant emissions from the new
5 or modified air contamination source. The plan required by this subsection may include
6 actions to reduce emissions from other sources in the area, including mobile sources. The
7 department shall approve a risk mitigation plan submitted under this subsection if the de-
8 partment determines that the actions described in the plan are reasonably likely to achieve
9 the projected reduction in public health risks necessary to offset the projected increase in
10 public health risks from toxic air contaminant emissions from the new or modified air con-
11 tamination source.

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

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

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

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

30 **SECTION 5.** (1) The Clean Communities Fund is established in the State Treasury, sepa-
31 rate and distinct from the General Fund. Interest earned by the Clean Communities Fund
32 shall be credited to the fund.

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

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

40
41 **PUBLIC MEETINGS; PRIVATE ACTIONS**

42
43 **SECTION 6.** (1) The Department of Environmental Quality shall hold any public meeting
44 required by rules adopted pursuant to sections 2 to 7 of this 2018 Act. At least one repre-
45 sentative of a person in control of an air contamination source for which a permit or plan

1 will be discussed at a public meeting required by a rule adopted under sections 2 to 7 of this
2 2018 Act must appear at the meeting.

3 (2) If the Environmental Quality Commission adopts a program and rules pursuant to
4 section 3 of this 2018 Act or a pilot program pursuant to section 4 of this 2018 Act, the pro-
5 grams and rules and their applicability to any air contamination source described in this
6 section do not create a new standard of care or otherwise alter an existing standard of care
7 for imposing liability in any private action.

8
9 **TEMPORARY PROVISIONS RELATED TO BENCHMARKS**
10 **FOR EXCESS NONCANCER**
11 **RISK FOR EXISTING AIR CONTAMINATION SOURCES**
12

13 **SECTION 7.** (1) Notwithstanding section 2 (2)(b) of this 2018 Act, the Department of En-
14 vironmental Quality may regulate an existing air contamination source pursuant to section
15 3 or 4 of this 2018 Act based on a benchmark for excess noncancer risk that is adjusted to
16 equal a Hazard Index number other than 5, if the department determines that the existing
17 air contamination source emits a material amount of one or more toxic air contaminants
18 that are identified by the Environmental Quality Commission by rule to be toxic air con-
19 taminants that are expected to have:

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

22 (b) Other severe human health effects.

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

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

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

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

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

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

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

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

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

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

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

45 (b) For an existing air contamination source, an excess lifetime cancer risk level [*of 50 in one*

1 *million.] established by the Environmental Quality Commission by rule, but no less than 25*
2 **in one million.**

3 (2) “Benchmark for excess noncancer risk” means:

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

6 (b) For an existing air contamination source, a benchmark equal to a Hazard Index number [*of*
7 **5] established by the commission by rule.**

8 (3) “Hazard Index number” means a number equal to the sum of the hazard quotients attribut-
9 able to toxic air contaminants that have noncancer effects on the same target organs or organ sys-
10 tems.

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

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

19 **SECTION 11. The Department of Environmental Quality shall report to the interim**
20 **committees of the Legislative Assembly related to the environment, no later than September**
21 **15, 2026, on the costs and benefits of regulating existing air contamination sources based on**
22 **the benchmark for excess noncancer risk as defined in section 2 of this 2018 Act and based**
23 **on any adjusted benchmarks for excess noncancer risk that have been applied to existing air**
24 **contamination sources pursuant to section 7 of this 2018 Act. The report may include rec-**
25 **ommendations for legislation.**

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

27
28 **FEES**

29
30 **SECTION 13. (1) The fee schedules authorized under ORS 468.065 (2) for permits described**
31 **in subsection (2) of this section may include fees that are reasonably calculated to cover the**
32 **direct and indirect costs of the Department of Environmental Quality and the Environmental**
33 **Quality Commission in developing and implementing, under sections 2 to 7 of this 2018 Act,**
34 **a program and rules described in section 3 of this 2018 Act or a pilot program described in**
35 **section 4 of this 2018 Act.**

36 (2) The fees authorized by subsection (1) of this section shall:

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

40 (b) Be in addition to, and not in lieu of, any other fee required under ORS 468.065 or
41 468A.315.

42 (3) Not more than once each calendar year, the Environmental Quality Commission may
43 increase the fees authorized under this section. The amount of the annual increase may not
44 exceed the anticipated increase in the cost of implementing sections 2 to 7 of this 2018 Act,
45 or three percent, whichever is lower, unless a larger increase is provided for in the Depart-

1 **ment of Environmental Quality’s legislatively approved budget.**

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

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

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

14 **SECTION 14. (1) Fees imposed pursuant to section 13 of this 2018 Act shall first become**
15 **due and payable no earlier than July 1, 2019.**

16 **(2) The Environmental Quality Commission may not increase the fees established under**
17 **section 13 of this 2018 Act pursuant to section 13 (3) of this 2018 Act before January 1, 2020.**
18 **Increased fees imposed pursuant to this subsection shall first become due and payable no**
19 **earlier than July 1, 2020.**

20 **(3)(a) A fee imposed under section 13 of this 2018 Act may not exceed an amount equal**
21 **to 35 percent of the fee imposed on a person during the 2018 calendar year, pursuant to ORS**
22 **468.065 (2), for an air contamination source classified pursuant to ORS 468A.050 for which the**
23 **person is required to obtain a permit under ORS 468A.040 or 468A.155 or is subject to the**
24 **federal operating permit program pursuant to ORS 468A.310.**

25 **(b) For purposes of administering this subsection, the commission shall exclude from the**
26 **fee imposed on a person during the 2018 calendar year that portion of the fee that was im-**
27 **posed to cover the costs to the Department of Environmental Quality for any greenhouse**
28 **gas emissions registration and reporting requirements adopted by the commission by rule.**

29 **SECTION 15. Section 14 of this 2018 Act is repealed on January 2, 2024.**

30 **SECTION 16. (1) In addition to and not in lieu of any other fee required by law, an air**
31 **contamination source that has been issued or that applies for a permit pursuant to ORS**
32 **468A.040 or 468A.310 that authorizes the source to emit air contaminants during the period**
33 **beginning January 1, 2019, and ending December 31, 2019, shall pay to the Department of**
34 **Environmental Quality a one-time supplemental fee as provided in subsections (3) and (4) of**
35 **this section.**

36 **(2) Supplemental fees collected under this section shall be deposited into the State**
37 **Treasury to the credit of an account of the Department of Environmental Quality. Moneys**
38 **deposited under this subsection are continuously appropriated to the department for the**
39 **payment of expenses of the department and the Environmental Quality Commission in de-**
40 **veloping and implementing, under sections 2 to 7 of this 2018 Act, a program and rules de-**
41 **scribed in section 3 of this 2018 Act or a pilot program described in section 4 of this 2018 Act.**

42 **(3) The one-time supplemental fee required under this section for a source subject to the**
43 **federal operating permit program established pursuant to ORS 468A.310 shall be a base**
44 **amount of \$2,013 plus an additional amount equal to \$15.22 per ton of each regulated**
45 **pollutant emitted during the 2017 calendar year as determined under ORS 468A.315 (2).**

1 (4) The one-time supplemental fee required under this section for a source subject to the
2 following permitting requirements under ORS 468A.040 and rules adopted pursuant to ORS
3 468A.040 shall be as follows:

4 (a) For a source subject to a permit regulating basic air contaminant discharges, a sup-
5 plemental fee of \$106.

6 (b) For a source subject to a permit regulating general, class I, air contaminant dis-
7 charges, a supplemental fee of \$213.

8 (c) For a source subject to a permit regulating general, class II, air contaminant dis-
9 charges, a supplemental fee of \$383.

10 (d) For a source subject to a permit regulating general, class III, air contaminant dis-
11 charges, a supplemental fee of \$553.

12 (e) For a source subject to a permit regulating general, class IV, air contaminant dis-
13 charges, a supplemental fee of \$106.

14 (f) For a source subject to a permit regulating general, class V, air contaminant dis-
15 charges, a supplemental fee of \$35.

16 (g) For a source subject to a permit regulating general, class VI, air contaminant dis-
17 charges, a supplemental fee of \$71.

18 (h) For a source that is subject to a permit regulating simple air contaminant discharges
19 and that qualifies to pay a low fee under rules adopted by the Environmental Quality Com-
20 mission under ORS 468.065, a supplemental fee of \$568.

21 (i) For a source that is subject to a permit regulating simple air contaminant discharges
22 and that qualifies to pay a high fee under rules adopted by the commission under ORS
23 468.065, a supplemental fee of \$1,136.

24 (j) For a source subject to a permit regulating standard air contaminant discharges, a
25 supplemental fee of \$2,271.

26 (5)(a) A source that has been issued, on or before the effective date of this 2018 Act, a
27 permit under ORS 468A.040 or 468A.310 to emit air contaminants during the period beginning
28 January 1, 2019, and ending December 31, 2019, shall pay to the Department of Environmental
29 Quality the applicable supplemental fee required under this section no later than 30 days af-
30 ter the date of the invoice issued by the department for the supplemental fee.

31 (b) If, on or after the effective date of this 2018 Act, a source submits an application to
32 the department for a permit under ORS 468A.040 or 468A.310 that, if issued by the depart-
33 ment, would authorize the source to emit air contaminants during the period beginning
34 January 1, 2018, and ending December 31, 2018, the applicable supplemental fee required by
35 this section shall accompany the application for the permit.

36 (6)(a) Any rule adopted under ORS 468A.315 regarding late payment of emission fees shall
37 apply to sources described in subsection (3) of this section in the same manner applicable to
38 sources subject to the fee schedule adopted under ORS 468A.315.

39 (b) Any rule adopted under ORS 468.065 (2) regarding late payment of emission fees shall
40 apply to sources described in subsection (4) of this section in the same manner applicable to
41 sources subject to the fee schedule adopted under ORS 468.065 (2) for permits issued under
42 ORS 468A.040.

43 (7) The Department of Environmental Quality may, in the manner provided in ORS
44 468.070, refuse to issue, suspend, revoke or refuse to renew a permit issued pursuant to ORS
45 468A.040 or 468A.310 for failure to comply with the provisions of this section.

SECTION 17. Section 16 of this 2018 Act is repealed on January 2, 2020.

CONFORMING AMENDMENTS

SECTION 18. 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.

1 (6) Any fee collected under a schedule of fees established pursuant to this section or ORS
 2 468A.315 **or section 13 of this 2018 Act** shall be deposited in the State Treasury to the credit of
 3 an account of the department. The fees are continuously appropriated to meet the expenses of the
 4 program for which they are collected, except as follows:

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

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

16 (c) The fees collected under a schedule of fees established pursuant to this section or ORS
 17 468A.315 **or section 13 of this 2018 Act** by a regional air pollution control authority pursuant to
 18 a permit program authorized by the commission shall be retained by and shall be income to the re-
 19 gional authority except as provided in ORS 468A.155 (2)(c). Such fees shall be accounted for and
 20 expended in the same manner as are other funds of the regional authority. However, if the depart-
 21 ment finds after hearing that the permit program administered by the regional authority does not
 22 conform to the requirements of the permit program approved by the commission pursuant to ORS
 23 468A.155, such fees shall be deposited and expended as are permit fees submitted to the department.

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

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

26 468A.300. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330, 468A.415, 468A.420 and
 27 468A.460 to 468A.515 **and section 13 of this 2018 Act**:

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

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

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

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

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

35 **SECTION 20.** ORS 468A.315 is amended to read:

36 468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal
 37 operating permit program shall be based on a schedule established by rule by the Environmental
 38 Quality Commission in accordance with this section. Except for the additional [*fee*] **fees** under sub-
 39 section (2)(e) of this section **and section 13 of this 2018 Act**, this fee schedule shall be in lieu of
 40 any other fee for a permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall
 41 cover all reasonable direct and indirect costs of implementing the federal operating permit program
 42 and shall consist of:

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

- 1 (A) \$27 per ton emitted during the 2006 calendar year.
- 2 (B) \$29 per ton emitted during the 2007 calendar year.
- 3 (C) \$31 per ton emitted during the 2008 calendar year and each calendar year thereafter.
- 4 (b) Fees for the following specific elements of the federal operating permit program:
- 5 (A) Reviewing and acting upon applications for modifications to federal operating permits.
- 6 (B) Any activity related to permits required under ORS 468A.040 other than the federal operat-
- 7 ing permit program.
- 8 (C) Department of Environmental Quality activities for sources not subject to the federal oper-
- 9 ating permit program.
- 10 (D) Department review of ambient monitoring networks installed by a source.
- 11 (E) Other distinct department activities created by a source or a group of sources if the com-
- 12 mission finds that the activities are unique and specific and that additional rulemaking is necessary
- 13 and will impose costs upon the department that are not otherwise covered by federal operating
- 14 permit program fees.
- 15 (c) A base fee for a source subject to the federal operating permit program. This base fee shall
- 16 be no more than the fees set forth in subparagraphs (A) to (D) of this paragraph, subject to increases
- 17 as set forth in paragraph (d) of this subsection:
- 18 (A) \$2,700 for the period of November 15, 2007, through November 14, 2008.
- 19 (B) \$2,900 for the period of November 15, 2008, through November 14, 2009.
- 20 (C) \$3,100 for the period of November 15, 2009, through November 14, 2010.
- 21 (D) \$4,100 for the period of November 15, 2010, through November 14, 2011, and for each annual
- 22 period thereafter.
- 23 (d) An annual increase in the fees set forth in paragraphs (a) to (c) of this subsection by the
- 24 percentage, if any, by which the Consumer Price Index exceeds the Consumer Price Index as of the
- 25 close of the 12-month period ending on August 31, 1989, if the commission determines by rule that
- 26 the increased fees are necessary to cover all reasonable direct and indirect costs of implementing
- 27 the federal operating permit program.
- 28 (2)(a) The fee on emissions of regulated pollutants required under this section shall be based on
- 29 the amount of each regulated pollutant emitted during the prior calendar year as documented by
- 30 information provided by the source in accordance with criteria adopted by the commission or, if the
- 31 source elects to pay the fee based on permitted emissions, the fee shall be based on the emission
- 32 limit for the plant site of the major source.
- 33 (b) The fee required by subsection (1)(a) of this section does not apply to any emissions in excess
- 34 of 4,000 tons per year of any regulated pollutant through calendar year 2010 and in excess of 7,000
- 35 tons per year of all regulated pollutants for each calendar year thereafter. The department may not
- 36 revise a major source's plant site emission limit due solely to payment of the fee on the basis of
- 37 documented emissions.
- 38 (c) The commission shall establish by rule criteria for the acceptability and verifiability of in-
- 39 formation related to emissions as documented, including but not limited to the use of:
- 40 (A) Emission monitoring;
- 41 (B) Material balances;
- 42 (C) Emission factors;
- 43 (D) Fuel use;
- 44 (E) Production data; or
- 45 (F) Other calculations.

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

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

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

7 (4) As used in this section:

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

10 (b) "Consumer Price Index" has the meaning given in 42 U.S.C. 7661a(b), as in effect on June
11 20, 2007.

12
13 **EXPENDITURE LIMITATIONS**

14
15 **SECTION 21.** Notwithstanding any other law limiting expenditures, the amount of
16 \$2,000,156 is established for the biennium ending June 30, 2019, as the maximum limit for
17 payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts,
18 collected or received by the Department of Environmental Quality for the purpose of imple-
19 menting and administering the provisions of this 2018 Act.

20 **SECTION 22.** Notwithstanding any other law limiting expenditures, the limitation on
21 expenditures established by section 2 (1), chapter 545, Oregon Laws 2017, for the biennium
22 ending June 30, 2019, as the maximum limits for payment of expenses from fees, moneys or
23 other revenues, including Miscellaneous Receipts, tobacco tax receipts, recreational
24 marijuana tax receipts, provider taxes, Medicare receipts and federal funds for indirect cost
25 recovery, Supplemental Security Income recoveries, Women, Infants and Children Program
26 food rebates, the Coordinated School Health Program, the Edward Byrne Memorial State and
27 Local Law Enforcement Assistance Grant Program and emergency preparedness and re-
28 sponse services, but excluding lottery funds and federal funds not described in this section,
29 collected or received by the Oregon Health Authority, for programs, is increased by \$365,000
30 to implement the provisions of this 2018 Act.

31
32 **CAPTIONS**

33
34 **SECTION 23.** The unit captions used in this 2018 Act are provided only for the conven-
35 ience of the reader and do not become part of the statutory law of this state or express any
36 legislative intent in the enactment of this 2018 Act.

37
38 **EMERGENCY CLAUSE**

39
40 **SECTION 24.** This 2018 Act being necessary for the immediate preservation of the public
41 peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect
42 on its passage.
43