

Requested by Senator Girod

**PROPOSED AMENDMENTS TO
SENATE BILL 1541**

1 On page 1 of the printed bill, delete lines 5 through 29 and delete pages
2 2 through 8 and insert:

3 **“SECTION 1. Sections 2 to 5 of this 2018 Act are added to and made
4 a part of ORS chapter 468A.**

5 **“SECTION 2. As used in sections 2 to 5 of this 2018 Act:**

6 **“(1) ‘Benchmark for excess lifetime cancer risk’ means:**

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

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

11 **“(2) ‘Benchmark for excess noncancer risk’ means:**

12 **“(a) For a new or reconstructed air contamination source, a
13 benchmark equal to a Hazard Index of 1.**

14 **“(b) For an existing air contamination source, a benchmark equal
15 to a Hazard Index of 5.**

16 **“(3) ‘Hazard Index’ means a number equal to the sum of the hazard
17 quotients attributable to toxic air contaminants that have noncancer
18 effects on the same target organs or organ systems.**

19 **“(4) ‘Hazard Quotient’ means a calculated numerical value that is
20 used to evaluate noncancer health risk from exposure to a single toxic
21 air contaminant. The calculated numerical value is the ratio of the**

1 air concentration of a toxic air contaminant to the noncancer risk-
2 based concentration at which no serious adverse human health effects
3 are expected to occur.

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

9 **“SECTION 3. (1) The Environmental Quality Commission may adopt**
10 **programs and rules to reduce public health risks from emissions of**
11 **toxic air contaminants from industrial and commercial air contam-**
12 **ination sources. Programs and rules adopted under this section may**
13 **be in addition to any other programs or rules adopted pursuant to ORS**
14 **chapter 468A.**

15 “(2) Except as required by federal law, a program and rules adopted
16 under this section applicable to individual, stationary air contam-
17 ination sources may not require a person in control of an air con-
18 tamination source to reduce risk associated with toxic air
19 contaminants emissions from that source unless:

20 “(a) The air contamination source is one for which a person is
21 otherwise subject to regulation under ORS 468A.040, 468A.050, 468A.055
22 or 468A.155 or is subject to the federal operating permit program pur-
23 suant to 468A.310; and

24 “(b) Subject to periodic review by the Department of Environmental
25 Quality, the total demonstrated public health risk from toxic air con-
26 taminant emissions from the air contamination source exceeds the
27 benchmark for excess lifetime cancer risk or the benchmark for excess
28 noncancer risk.

29 “(3) For purposes of administration by the department of rules
30 adopted to implement subsections (2) to (6) of this section, rather than

1 evaluating and regulating the public health risks from toxic air con-
2 taminant emissions from an air contamination source based on mod-
3 eling for the potential to emit toxic air contaminants and land use
4 zoning, a person in control of the air contamination source may elect
5 to have the emissions from the air contamination source evaluated
6 and regulated based on modeling for one or both of the following:

7 “(a) Public health risk due to toxic air contaminant emissions from
8 the air contamination source’s actual production or, for a new or re-
9 constructed air contamination source, the reasonably anticipated ac-
10 tual production by the new or reconstructed air contamination source.

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

16 “(B) A person in control of an air contamination source subject to
17 rules adopted to implement subsections (2) to (6) of this section may
18 rebut the presumption in subparagraph (A) of this paragraph by sub-
19 mitting to the department documentation that the department deter-
20 mines is adequate to rebut the presumption. If the department
21 determines that the documentation is adequate to rebut the
22 presumption, the department shall adjust modeling inputs according
23 to the documentation submitted.

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

26 “(D) Documentation required under this paragraph may include a
27 request by the person in control of the air contamination source for
28 the department to exclude certain zoned areas from the modeling used
29 for purposes of evaluating the toxic air contaminant emissions from
30 the air contamination source. A request under this subparagraph must

1 be based on documentation that the area to be excluded is not being
2 used in a manner allowed by the land use zoning applicable to the area
3 at the time the modeling is to be performed. If the department grants
4 a request under this subparagraph, the person in control of the air
5 contamination source shall annually submit to the department, as part
6 of the update required under subparagraph (C) of this paragraph,
7 documentation showing that the excluded zoned areas continue to not
8 be used in a manner allowed by the land use zoning applicable to the
9 area.

10 “(4)(a) A person in control of an air contamination source subject
11 to a program and rules adopted to implement subsections (2) to (6) of
12 this section may elect to have the public health risks from toxic air
13 contaminant emissions from the air contamination source evaluated
14 using air monitoring, if:

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

17 “(B) A modeled risk assessment using methods approved by the
18 department is submitted to the department in advance of the com-
19 mencement of the final, approved air monitoring plan.

20 “(b) The department shall work with a person in control of an air
21 contamination source to develop public information concerning an
22 approved air monitoring plan and the timeline for the approved mon-
23 itoring plan.

24 “(c) The department may not require a person in control of an air
25 contamination source that elects to complete air monitoring under an
26 approved air monitoring plan pursuant to this subsection to, pursuant
27 to a program and rules adopted to implement subsections (2) to (6) of
28 this section, reduce public health risk from toxic air contaminants
29 emitted by the air contamination source unless the results of the air
30 monitoring:

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

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

7 “(d) Notwithstanding paragraph (c) of this subsection, if the results
8 of the modeling completed pursuant to subsection (3) of this section
9 indicate that the public health risks from toxic air contaminants
10 emitted by the air contamination source exceed ____ times the
11 benchmark for excess lifetime cancer risk or ____ times the
12 benchmark for excess noncancer risk, a person in control of an air
13 contamination source may not, pending completion of the approved
14 air monitoring plan, delay implementation of any public health risk
15 reduction measures that are required by the department pursuant to
16 a program and rules adopted to implement subsections (2) to (6) of this
17 section.

18 “(5)(a) Except as required under ORS 468.115, 468.936, 468.939, 468.951
19 or 468.996, or federal law, the department may not, pursuant to a
20 program and rules adopted to implement subsections (2) to (6) of this
21 section, require an existing air contamination source that employs
22 toxics best available control technology on all significant emission
23 units to undertake additional measures to limit or reduce toxic air
24 contaminant emissions.

25 “(b) Notwithstanding paragraph (a) of this subsection, the depart-
26 ment may require an existing air contamination source that employs
27 toxics best available control technology on all significant emission
28 units to undertake additional measures to limit or reduce toxic air
29 contaminant emissions if the public health risks from toxic air con-
30 taminants emitted by the air contamination source are greater than

1 four times the benchmark for excess lifetime cancer risk or are
2 greater than four times the benchmark for excess noncancer risk.

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

9 “(A) What has been achieved in practice for:

10 “(i) Air contamination sources in the same class as the air con-
11 tamination source to which the toxic air contaminants emissions lim-
12 itation or control measure will apply, as classified under ORS 468A.050;
13 or

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

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

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

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

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

29 “(d) For an air contamination source that exists as of the date that
30 a program and rules adopted to implement subsections (2) to (6) of this

1 section first become effective, compliance with emission control re-
2 quirements, work practices or limitations established by a major
3 source National Emission Standard for Hazardous Air Pollutants
4 adopted by the United States Environmental Protection Agency after
5 1993 is deemed to be toxics best available control technology, provided
6 that:

7 “(A) The emission control requirements, work practices or limita-
8 tions result in an actual reduction to the emissions of the hazardous
9 air pollutants regulated under the National Emission Standard for
10 Hazardous Air Pollutants; and

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

13 “(i) Are regulated under programs and rules adopted by the Envi-
14 ronmental Quality Commission pursuant to subsection (1) of this sec-
15 tion;

16 “(ii) Are not controlled by the emission control requirements, work
17 practices or limitations established by a major source National Emis-
18 sion Standard for Hazardous Air Pollutants; and

19 “(iii) Materially contribute to public health risks.

20 “(7)(a) The commission may establish under subsection (1) of this
21 section a pilot program for evaluating and controlling public health
22 risks from toxic air contaminant emissions from multiple stationary
23 air contamination sources. The requirements of a pilot program
24 adopted under this subsection shall be in addition to, and not in lieu
25 of, any requirements applicable to a person in control of an air con-
26 tamination source under a program and rules adopted to implement
27 subsections (2) to (6) of this section.

28 “(b) A pilot program adopted under this subsection may apply to
29 no more than one area in the state in a county with a population ex-
30 ceeding 500,000 people, selected based on:

1 **“(A) The degree to which the level of excess lifetime cancer risk in**
2 **the area from all sources of toxic air contaminants exceeds the state-**
3 **wide mean excess lifetime cancer risk from all sources of toxic air**
4 **contaminants; and**

5 **“(B) The degree to which the area contains multiple stationary**
6 **sources of toxic air contaminants, leading to high cumulative public**
7 **health risks from the toxic air contaminants emissions of those air**
8 **contamination sources.**

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

16 **“(d) Paragraph (e) of this subsection applies:**

17 **“(A) If ambient concentrations of toxic air contaminants emissions**
18 **from all stationary air contamination sources within any portion of**
19 **the pilot program area result in an exceedance of ____ times the**
20 **benchmark for excess lifetime cancer risk or ____ times the**
21 **benchmark for excess noncancer risk within that portion of the pilot**
22 **program area; and**

23 **“(B) To persons in control of existing air contamination sources**
24 **that significantly contribute to an exceedance described in subpara-**
25 **graph (A) of this paragraph and to any person in control of a new or**
26 **modified source that is reasonably anticipated to significantly con-**
27 **tribute to an exceedance described in subparagraph (A) of this para-**
28 **graph.**

29 **“(e) In order to obtain a permit or a permit modification that would**
30 **authorize a significant increase in the public health risks from toxic**

1 air contaminants emitted by an air contamination source, and except
2 as provided in paragraph (f) of this subsection, a person described in
3 paragraph (d)(B) of this subsection must prepare a risk mitigation plan
4 that includes one or more actions to offset the projected increase in
5 public health risks from toxic air contaminant emissions from the new
6 or modified air contamination source. The plan required by this sub-
7 section may include actions to reduce emissions from other sources in
8 the area, including mobile sources. The department shall approve a
9 risk mitigation plan submitted under this paragraph if the department
10 determines that the actions described in the plan are reasonably likely
11 to achieve the projected reduction in public health risks necessary to
12 offset the projected increase in public health risks from toxic air con-
13 taminant emissions from the new or modified air contamination
14 source.

15 “(f) Notwithstanding paragraph (e) of this subsection, if the de-
16 partment determines, considering cost and available technology, that
17 a risk mitigation plan is not feasible because reasonable actions to
18 reduce public health risks are not available, the person in control of
19 the air contamination source, in lieu of a risk mitigation plan, shall
20 make a payment into the Clean Communities Fund established under
21 section 4 of this 2018 Act. The amount of the payment required by this
22 paragraph shall be determined by the department based on the fol-
23 lowing considerations:

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

28 “(B) How to best incentivize payments for actions that will most
29 directly offset the increase in public health risks from toxic air con-
30 taminant emissions from the new or modified air contamination

1 source in the portion of the pilot program area where the cumulative
2 public health risks are expected to be the highest.

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

8 “(8) The department shall hold any public meeting required by rules
9 adopted under this section. At least one representative of a person in
10 control of an air contamination source for which a permit or plan will
11 be discussed at a public meeting required by a rule adopted under this
12 section must appear at the meeting.

13 “(9) If the department adopts a program and rules to implement
14 subsections (2) to (6) of this section, the program and rules and their
15 applicability to any air contamination source described in this section
16 do not create a standard of care for imposing liability in any private
17 action. Compliance or noncompliance with the program and rules may
18 not be introduced as evidence in any private action on the issue of
19 negligence, nuisance, trespass, injuries or damages.

20 **“SECTION 4. (1) The Clean Communities Fund is established in the**
21 **State Treasury, separate and distinct from the General Fund. Interest**
22 **earned by the Clean Communities Fund shall be credited to the fund.**

23 “(2) The Clean Communities Fund consists of moneys deposited in
24 the fund pursuant to section 3 of this 2018 Act and any other moneys
25 deposited in the fund from any other public or private source.

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

1 **“SECTION 5. (1) The fee schedules required under ORS 468.065 (2)**
2 **for permits described in subsection (2) of this section shall include a**
3 **fee that is reasonably calculated to cover the direct and indirect costs**
4 **of the Department of Environmental Quality and the Environmental**
5 **Quality Commission in developing and implementing, under section 3**
6 **(2) to (6) of this 2018 Act, a program and rules to reduce the public**
7 **health risks of emissions of toxic air contaminants from industrial and**
8 **commercial air contamination sources.**

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

10 **“(a) Apply for any class of air contamination sources classified**
11 **pursuant to ORS 468A.050 for which a person is required to obtain a**
12 **permit under ORS 468A.040 or 468A.155 or is subject to the federal op-**
13 **erating permit program pursuant to ORS 468A.310; and**

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

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

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

23 **“(5)(a) Any rule adopted under ORS 468.065 (2) regarding late pay-**
24 **ment of emission fees by an air contamination source issued a permit**
25 **under ORS 468A.040 or 468A.155 shall apply in the same manner to an**
26 **air contamination source issued a permit under ORS 468A.040 or**
27 **468A.155 for late payment of fees under this section.**

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

1 **federal operating permit program for late payment of fees under this**
2 **section.**

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

8 **“SECTION 6.** ORS 468.065 is amended to read:

9 “468.065. Subject to any specific requirements imposed by ORS 448.305,
10 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and
11 ORS chapters 468, 468A and 468B:

12 “(1) Applications for all permits authorized or required by ORS 448.305,
13 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and
14 ORS chapters 468, 468A and 468B shall be made in a form prescribed by the
15 Department of Environmental Quality. Any permit issued by the department
16 shall specify its duration, and the conditions for compliance with the rules
17 and standards, if any, adopted by the Environmental Quality Commission
18 pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to
19 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

20 “(2) By rule and after hearing, the commission may establish a schedule
21 of fees for permits issued pursuant to ORS 468A.040, 468A.045, 468A.155 and
22 468B.050. Except as provided in ORS 468A.315 and 468B.051 **and section 5**
23 **of this 2018 Act**, the fees contained in the schedule shall be based upon the
24 anticipated cost of filing and investigating the application, of carrying out
25 applicable requirements of Title V, of issuing or denying the requested per-
26 mit, and of an inspection program to determine compliance or noncompliance
27 with the permit. The fee shall accompany the application for the permit. The
28 fees for a permit issued under ORS 468A.040 or 468B.050 may be imposed on
29 an annual basis.

30 “(3) An applicant for certification of a project under ORS 468B.040 or

1 468B.045, and any person submitting a notice of intent to seek reauthori-
2 zation, a preliminary application or an application for reauthorization of a
3 water right for a hydroelectric project under ORS 543A.030, 543A.035,
4 543A.075, 543A.080 or 543A.095 shall pay as a fee all expenses incurred by the
5 commission and department related to the review and decision of the Direc-
6 tor of the Department of Environmental Quality and commission. These ex-
7 penses may include legal expenses, expenses incurred in evaluating the
8 project, issuing or denying certification and expenses of commissioning an
9 independent study by a contractor of any aspect of the proposed project.
10 These expenses shall not include the costs incurred in defending a decision
11 of either the director or the commission against appeals or legal challenges.
12 The department shall bill applicants for costs incurred on a monthly basis,
13 and shall provide a biennial report describing how the moneys were spent.
14 An applicant may arrange with the department to pay the fee on a quarterly
15 basis. The department shall not charge a fee under the fee authority in this
16 subsection if the holder is being charged a fee under ORS 543.088 and 543.090
17 or 543A.405. In no event shall the department assess fees under this section
18 and under ORS 543A.405 for performance of the same work.

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

23 “(5) The department may require periodic reports from persons who hold
24 permits under ORS 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.505 to
25 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B. The report
26 shall be in a form prescribed by the department and shall contain such in-
27 formation as to the amount and nature or common description of the
28 pollutant, contaminant or waste and such other information as the depart-
29 ment may require.

30 “(6) Any fee collected under a schedule of fees established pursuant to

1 this section or ORS 468A.315 **or section 5 of this 2018 Act** shall be depos-
2 ited in the State Treasury to the credit of an account of the department. The
3 fees are continuously appropriated to meet the expenses of the program for
4 which they are collected, except as follows:

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

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

18 “(c) The fees collected under a schedule of fees established pursuant to
19 this section or ORS 468A.315 **or section 5 of this 2018 Act** by a regional
20 air pollution control authority pursuant to a permit program authorized by
21 the commission shall be retained by and shall be income to the regional au-
22 thority except as provided in ORS 468A.155 (2)(c). Such fees shall be ac-
23 counted for and expended in the same manner as are other funds of the
24 regional authority. However, if the department finds after hearing that the
25 permit program administered by the regional authority does not conform to
26 the requirements of the permit program approved by the commission pursu-
27 ant to ORS 468A.155, such fees shall be deposited and expended as are permit
28 fees submitted to the department.

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

1 **“SECTION 7.** ORS 468A.300 is amended to read:

2 “468A.300. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330,
3 468A.415, 468A.420 and 468A.460 to 468A.515 **and section 5 of this 2018**
4 **Act:**

5 “(1) ‘Administrator’ means the administrator of the United States Envi-
6 ronmental Protection Agency.

7 “(2) ‘Clean Air Act’ means P.L. 88-206 as amended.

8 “(3) ‘Federal operating permit program’ means the program established
9 by the Environmental Quality Commission and the Department of Environ-
10 mental Quality pursuant to ORS 468A.310.

11 “(4) ‘Major source’ has the meaning given in section 501(2) of the Clean
12 Air Act.

13 “(5) ‘Title V’ means Title V of the Clean Air Act.

14 **“SECTION 8.** ORS 468A.315 is amended to read:

15 “468A.315. (1) The fee schedule required under ORS 468.065 (2) for a
16 source subject to the federal operating permit program shall be based on a
17 schedule established by rule by the Environmental Quality Commission in
18 accordance with this section. Except for the additional [*fee*] **fees** under
19 subsection (2)(e) of this section **and section 5 of this 2018 Act**, this fee
20 schedule shall be in lieu of any other fee for a permit issued under ORS
21 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable
22 direct and indirect costs of implementing the federal operating permit pro-
23 gram and shall consist of:

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

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

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

30 “(C) \$31 per ton emitted during the 2008 calendar year and each calendar

1 year thereafter.

2 “(b) Fees for the following specific elements of the federal operating per-
3 mit program:

4 “(A) Reviewing and acting upon applications for modifications to federal
5 operating permits.

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

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

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

12 “(E) Other distinct department activities created by a source or a group
13 of sources if the commission finds that the activities are unique and specific
14 and that additional rulemaking is necessary and will impose costs upon the
15 department that are not otherwise covered by federal operating permit pro-
16 gram fees.

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

21 “(A) \$2,700 for the period of November 15, 2007, through November 14,
22 2008.

23 “(B) \$2,900 for the period of November 15, 2008, through November 14,
24 2009.

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

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

29 “(d) An annual increase in the fees set forth in paragraphs (a) to (c) of
30 this subsection by the percentage, if any, by which the Consumer Price Index

1 exceeds the Consumer Price Index as of the close of the 12-month period
2 ending on August 31, 1989, if the commission determines by rule that the
3 increased fees are necessary to cover all reasonable direct and indirect costs
4 of implementing the federal operating permit program.

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

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

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

20 “(A) Emission monitoring;

21 “(B) Material balances;

22 “(C) Emission factors;

23 “(D) Fuel use;

24 “(E) Production data; or

25 “(F) Other calculations.

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

29 “(e) The rules adopted under this section shall require an additional fee
30 for failure to pay, substantial underpayment of or late payment of emission

1 fees.

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

4 “(4) As used in this section:

5 “(a) ‘Regulated pollutant’ means particulates, volatile organic compounds,
6 oxides of nitrogen, and sulfur dioxide; and

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

9 **“SECTION 9. (1) Notwithstanding section 5 (4) of this 2018 Act, a**
10 **source that has been issued, on or before the effective date of this 2018**
11 **Act, a permit under ORS 468A.040 or 468A.155 or under the federal op-**
12 **erating permit program pursuant to ORS 468A.310 to emit air con-**
13 **taminants during the period beginning July 1, 2018, and ending June**
14 **30, 2019, shall pay to the Department of Environmental Quality the fee**
15 **required under section 5 of this 2018 Act no later than 30 days after**
16 **the date of the invoice issued by the department for the fee.**

17 **“(2) If, on or after the effective date of this 2018 Act, a source sub-**
18 **mits an application for a permit under ORS 468A.040 or 468A.155 or**
19 **under the federal operating permit program pursuant to ORS 468A.310**
20 **that, if issued by the department, would authorize the air contam-**
21 **ination source to emit air contaminants during the period beginning**
22 **July 1, 2018, and ending June 30, 2019, the applicable supplemental fee**
23 **required by section 5 of this 2018 Act shall accompany the application**
24 **for the permit.**

25 **“SECTION 10. This 2018 Act being necessary for the immediate**
26 **preservation of the public peace, health and safety, an emergency is**
27 **declared to exist, and this 2018 Act takes effect on its passage.”.**

28