

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 7 of this 2018 Act are added to and made  
4 a part of ORS chapter 468A.**

5

6

**“DEFINITIONS**

7

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

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

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

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

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

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

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

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

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

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

12  
13               **“INDIVIDUAL AIR CONTAMINATION SOURCE PROGRAM**

14  
15       **“SECTION 3. (1) The Environmental Quality Commission may adopt**  
16 **a program and rules to reduce public health risks from emissions of**  
17 **toxic air contaminants from individual stationary industrial and com-**  
18 **mercial air contamination sources. The program and rules adopted**  
19 **under this section may be in addition to any other programs or rules**  
20 **adopted pursuant to ORS chapter 468A.**

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

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

29       **“(b) Subject to periodic review by the Department of Environmental**  
30 **Quality, the total demonstrated public health risk from toxic air con-**

1 **taminant emissions from the air contamination source exceeds the**  
2 **benchmark for excess lifetime cancer risk or the benchmark for excess**  
3 **noncancer risk.**

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

12 **“(a) Public health risk due to toxic air contaminant emissions from**  
13 **the air contamination source’s actual production or, for a new or re-**  
14 **constructed air contamination source, the reasonably anticipated ac-**  
15 **tual production by the new or reconstructed air contamination source.**

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

21 **“(B) A person in control of an air contamination source subject to**  
22 **rules adopted under this section may rebut the presumption in sub-**  
23 **paragraph (A) of this paragraph by submitting to the department**  
24 **documentation that the department determines is adequate to rebut**  
25 **the presumption. If the department determines that the documenta-**  
26 **tion is adequate to rebut the presumption, the department shall adjust**  
27 **modeling inputs according to the documentation submitted.**

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

30 **“(D) Documentation required under this paragraph may include a**

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

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

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

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

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

27 “(c) The department may not require a person in control of an air  
28 contamination source that elects to complete air monitoring under an  
29 approved air monitoring plan pursuant to this subsection to, pursuant  
30 to a program and rules adopted under this section, reduce public

1 health risk from toxic air contaminants emitted by the air contam-  
2 ination source unless the results of the air monitoring:

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

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

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

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

25 “(b) Notwithstanding paragraph (a) of this subsection and sub-  
26 section (6)(d) of this section, the department may require an existing  
27 air contamination source that employs toxics best available control  
28 technology on all significant emission units to undertake additional  
29 measures to limit or reduce toxic air contaminant emissions if the  
30 public health risks from toxic air contaminants emitted by the air

1 **contamination source are greater than four times the benchmark for**  
2 **excess lifetime cancer risk or are greater than two times the**  
3 **benchmark for excess noncancer risk.**

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

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

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

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

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

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

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

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

30 **“(d) For an air contamination source that exists as of the date that**

1 a program and rules adopted under this section first become effective,  
2 compliance with emission control requirements, work practices or  
3 limitations established by a major source National Emission Standard  
4 for Hazardous Air Pollutants adopted by the United States Environ-  
5 mental Protection Agency after 1993 is deemed to be toxics best avail-  
6 able control technology, provided 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 a program 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

21 **“PILOT PROGRAM**

22

23 **“SECTION 4. (1)(a) The Environmental Quality Commission may**  
24 **establish by rule a pilot program for evaluating and controlling public**  
25 **health risks from toxic air contaminant emissions from multiple sta-**  
26 **tionary air contamination sources. The requirements of a pilot pro-**  
27 **gram adopted under this section shall be in addition to, and not in lieu**  
28 **of, any requirements applicable to a person in control of an air con-**  
29 **tamination source under a program and rules adopted under section 3**  
30 **of this 2018 Act.**

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

6       **“(2) The pilot program adopted under this section may apply to no**  
7 **more than one area in this state in a county with a population ex-**  
8 **ceeding 500,000 people, selected based on:**

9       **“(a) The degree to which the level of excess lifetime cancer risk in**  
10 **the area from all sources of toxic air contaminants exceeds the state-**  
11 **wide mean excess lifetime cancer risk from all sources of toxic air**  
12 **contaminants; and**

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

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

24       **“(4) Subsection (5) of this section applies:**

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

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

6       **“(5) In order to obtain a permit or a permit modification that would**  
7 **authorize a significant increase in the public health risks from toxic**  
8 **air contaminants emitted by an air contamination source, and except**  
9 **as provided in subsection (6) of this section, a person described in**  
10 **subsection (4)(b) of this section must prepare and submit to the De-**  
11 **partment of Environmental Quality a risk mitigation plan that in-**  
12 **cludes one or more actions to offset the projected increase in public**  
13 **health risks from toxic air contaminant emissions from the new or**  
14 **modified air contamination source. The plan required by this sub-**  
15 **section may include actions to reduce emissions from other sources in**  
16 **the area, including mobile sources. The department shall approve a**  
17 **risk mitigation plan submitted under this subsection if the department**  
18 **determines that the actions described in the plan are reasonably likely**  
19 **to achieve the projected reduction in public health risks necessary to**  
20 **offset the projected increase in public health risks from toxic air con-**  
21 **taminant emissions from the new or modified air contamination**  
22 **source.**

23       **“(6) Notwithstanding subsection (5) of this section, if the depart-**  
24 **ment determines, considering cost and available technology, that a**  
25 **risk mitigation plan is not feasible because reasonable actions to re-**  
26 **duce public health risks are not available, the person in control of the**  
27 **air contamination source, in lieu of a risk mitigation plan, shall make**  
28 **a payment into the Clean Communities Fund established under section**  
29 **5 of this 2018 Act. The amount of the payment required by this sub-**  
30 **section shall be determined by the department based on the following**

1 **considerations:**

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

6 **“(b) How to best incentivize payments for actions that will most**  
7 **directly offset the increase in public health risks from toxic air con-**  
8 **taminant emissions from the new or modified air contamination**  
9 **source in the portion of the pilot program area where the cumulative**  
10 **public health risks are expected to be the highest.**

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

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

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

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

27

28 **“PUBLIC MEETINGS; PRIVATE ACTIONS**

29

30 **“SECTION 6. (1) The Department of Environmental Quality shall**

1 hold any public meeting required by rules adopted pursuant to sections  
2 2 to 7 of this 2018 Act. At least one representative of a person in con-  
3 trol of an air contamination source for which a permit or plan will be  
4 discussed at a public meeting required by a rule adopted under sections  
5 2 to 7 of this 2018 Act must appear at the meeting.

6 “(2) If the Environmental Quality Commission adopts a program  
7 and rules pursuant to section 3 of this 2018 Act or a pilot program  
8 pursuant to section 4 of this 2018 Act, the programs and rules and  
9 their applicability to any air contamination source described in this  
10 section do not create a standard of care for imposing liability in any  
11 private action. Compliance or noncompliance with the programs and  
12 rules may not be introduced as evidence in any private action on the  
13 issue of negligence, nuisance, trespass, injuries or damages.

14

15 “TEMPORARY PROVISIONS RELATED TO BENCHMARKS  
16 FOR EXCESS NONCANCER  
17 RISK FOR EXISTING AIR CONTAMINATION SOURCES

18

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

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

30 “(b) Other severe human health effects.

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

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

8       “(A) Identify toxic air contaminants for which the department may  
9 apply an adjusted benchmark for excess noncancer risk under sub-  
10 section (1) of this section; and

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

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

19       “SECTION 8. Section 7 of this 2018 Act is repealed on January 1,  
20 2029.

21       “SECTION 9. The amendments to section 2 of this 2018 Act by sec-  
22 tion 10 of this 2018 Act become operative on January 1, 2029.

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

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

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

26       “(a) For a new or reconstructed air contamination source, an excess life-  
27 time cancer risk level of 10 in one million.

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

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

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

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

6       “(3) ‘Hazard Index number’ means a number equal to the sum of the haz-  
7 ard quotients attributable to toxic air contaminants that have noncancer ef-  
8 fects on the same target organs or organ systems.

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

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

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

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

29

30

“FEES

1       **“SECTION 13. (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 **of this 2018 Act, a program and rules to reduce the public health risks**  
7 **of emissions of toxic air contaminants from industrial and commercial**  
8 **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

9 **“CONFORMING AMENDMENTS**

10

11 **“SECTION 14.** ORS 468.065 is amended to read:

12 “468.065. Subject to any specific requirements imposed 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:

15 “(1) Applications for all permits authorized or required by ORS 448.305,  
16 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and  
17 ORS chapters 468, 468A and 468B shall be made in a form prescribed by the  
18 Department of Environmental Quality. Any permit issued by the department  
19 shall specify its duration, and the conditions for compliance with the rules  
20 and standards, if any, adopted by the Environmental Quality Commission  
21 pursuant to ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to  
22 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B.

23 “(2) By rule and after hearing, the commission may establish a schedule  
24 of fees for permits issued pursuant to ORS 468A.040, 468A.045, 468A.155 and  
25 468B.050. Except as provided in ORS 468A.315 and 468B.051 **and section 13**  
26 **of this 2018 Act**, the fees contained in the schedule shall be based upon the  
27 anticipated cost of filing and investigating the application, of carrying out  
28 applicable requirements of Title V, of issuing or denying the requested per-  
29 mit, and of an inspection program to determine compliance or noncompliance  
30 with the permit. The fee shall accompany the application for the permit. The

1 fees for a permit issued under ORS 468A.040 or 468B.050 may be imposed on  
2 an annual basis.

3 “(3) An applicant for certification of a project under ORS 468B.040 or  
4 468B.045, and any person submitting a notice of intent to seek reauthori-  
5 zation, a preliminary application or an application for reauthorization of a  
6 water right for a hydroelectric project under ORS 543A.030, 543A.035,  
7 543A.075, 543A.080 or 543A.095 shall pay as a fee all expenses incurred by the  
8 commission and department related to the review and decision of the Direc-  
9 tor of the Department of Environmental Quality and commission. These ex-  
10 penses may include legal expenses, expenses incurred in evaluating the  
11 project, issuing or denying certification and expenses of commissioning an  
12 independent study by a contractor of any aspect of the proposed project.  
13 These expenses shall not include the costs incurred in defending a decision  
14 of either the director or the commission against appeals or legal challenges.  
15 The department shall bill applicants for costs incurred on a monthly basis,  
16 and shall provide a biennial report describing how the moneys were spent.  
17 An applicant may arrange with the department to pay the fee on a quarterly  
18 basis. The department shall not charge a fee under the fee authority in this  
19 subsection if the holder is being charged a fee under ORS 543.088 and 543.090  
20 or 543A.405. In no event shall the department assess fees under this section  
21 and under ORS 543A.405 for performance of the same work.

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

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

1 pollutant, contaminant or waste and such other information as the depart-  
2 ment may require.

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

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

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

21 “(c) The fees collected under a schedule of fees established pursuant to  
22 this section or ORS 468A.315 **or section 13 of this 2018 Act** by a regional  
23 air pollution control authority pursuant to a permit program authorized by  
24 the commission shall be retained by and shall be income to the regional au-  
25 thority except as provided in ORS 468A.155 (2)(c). Such fees shall be ac-  
26 counted for and expended in the same manner as are other funds of the  
27 regional authority. However, if the department finds after hearing that the  
28 permit program administered by the regional authority does not conform to  
29 the requirements of the permit program approved by the commission pursu-  
30 ant to ORS 468A.155, such fees shall be deposited and expended as are permit

1 fees submitted to the department.

2 “(7) As used in this section, ‘Title V’ has the meaning given in ORS  
3 468A.300.

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

5 “468A.300. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330,  
6 468A.415, 468A.420 and 468A.460 to 468A.515 **and section 13 of this 2018**  
7 **Act:**

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

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

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

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

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

17 **“SECTION 16.** ORS 468A.315 is amended to read:

18 “468A.315. (1) The fee schedule required under ORS 468.065 (2) for a  
19 source subject to the federal operating permit program shall be based on a  
20 schedule established by rule by the Environmental Quality Commission in  
21 accordance with this section. Except for the additional [*fee*] **fees** under  
22 subsection (2)(e) of this section **and section 13 of this 2018 Act**, this fee  
23 schedule shall be in lieu of any other fee for a permit issued under ORS  
24 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable  
25 direct and indirect costs of implementing the federal operating permit pro-  
26 gram and shall consist of:

27 “(a) An emission fee per ton of each regulated pollutant emitted during  
28 the prior calendar year as determined under subsection (2) of this section,  
29 subject to annual fee increases as set forth in paragraph (d) of this sub-  
30 section. 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  
4 year thereafter.

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

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

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

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

13       “(D) Department review of ambient monitoring networks installed by a  
14 source.

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

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

24       “(A) \$2,700 for the period of November 15, 2007, through November 14,  
25 2008.

26       “(B) \$2,900 for the period of November 15, 2008, through November 14,  
27 2009.

28       “(C) \$3,100 for the period of November 15, 2009, through November 14,  
29 2010.

30       “(D) \$4,100 for the period of November 15, 2010, through November 14,

1 2011, and for each annual period thereafter.

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

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

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

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

23 “(A) Emission monitoring;

24 “(B) Material balances;

25 “(C) Emission factors;

26 “(D) Fuel use;

27 “(E) Production data; or

28 “(F) Other calculations.

29 “(d) The department shall accept reasonably accurate information that  
30 complies with the criteria established by the commission as documentation

1 of emissions.

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

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

7 “(4) As used in this section:

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

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

12 **“SECTION 17. (1) Notwithstanding section 13 (4) of this 2018 Act, a**  
13 **source that has been issued, on or before the effective date of this 2018**  
14 **Act, a permit under ORS 468A.040 or 468A.155 or under the federal op-**  
15 **erating permit program pursuant to ORS 468A.310 to emit air con-**  
16 **taminants during the period beginning July 1, 2018, and ending June**  
17 **30, 2019, shall pay to the Department of Environmental Quality the fee**  
18 **required under section 13 of this 2018 Act no later than 30 days after**  
19 **the date of the invoice issued by the department for the fee.**

20 **“(2) If, on or after the effective date of this 2018 Act, a source sub-**  
21 **mits an application for a permit under ORS 468A.040 or 468A.155 or**  
22 **under the federal operating permit program pursuant to ORS 468A.310**  
23 **that, if issued by the department, would authorize the air contam-**  
24 **ination source to emit air contaminants during the period beginning**  
25 **July 1, 2018, and ending June 30, 2019, the applicable supplemental fee**  
26 **required by section 13 of this 2018 Act shall accompany the application**  
27 **for the permit.**

28

29

“CAPTIONS

30

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

5

6

**“EMERGENCY CLAUSE**

7

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

11

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