

Enrolled House Bill 3229

Sponsored by Representative HOLVEY (at the request of Department of Environmental Quality)

CHAPTER

AN ACT

Relating to fees for air pollution programs; creating new provisions; amending ORS 468A.050, 468A.315 and 468A.750; and declaring an emergency.

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

SECTION 1. ORS 468A.315 is amended to read:

468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal operating permit program shall be based on a schedule established by rule by the Environmental Quality Commission in accordance with this section. Except for the additional fees under subsection (2)(e) of this section and ORS 468A.345, this fee schedule shall be in lieu of any other fee for a permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable direct and indirect costs of implementing the federal operating permit program and shall consist of:

(a) An emission fee **of \$95** per ton of each regulated pollutant emitted during the prior calendar year as determined under subsection (2) of this section. [*subject to annual fee increases as set forth in paragraph (d) of this subsection. The following emission fees apply:*]

[*(A) \$27 per ton emitted during the 2006 calendar year.*]

[*(B) \$29 per ton emitted during the 2007 calendar year.*]

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

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

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

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

(C) Department of Environmental Quality activities for sources not subject to the federal operating permit program.

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

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

(c) A base fee **of \$12,504** for a source subject to the federal operating permit program. [*This base fee shall be no more than the fees set forth in subparagraphs (A) to (D) of this paragraph, subject to increases as set forth in paragraph (d) of this subsection:*]

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

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

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

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

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

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

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

(c) The commission shall establish by rule criteria for the acceptability and verifiability of information related to emissions as documented, including but not limited to the use of:

- (A) Emission monitoring;
- (B) Material balances;
- (C) Emission factors;
- (D) Fuel use;
- (E) Production data; or
- (F) Other calculations.

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

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

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

(4) As used in this section,[:]

[(a)] "regulated pollutant" means particulates, volatile organic compounds, oxides of nitrogen, and sulfur dioxide.[: and]

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

SECTION 2. ORS 468A.315, as amended by section 1 of this 2023 Act, is amended to read:

468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal operating permit program shall be based on a schedule established by rule by the Environmental Quality Commission in accordance with this section. Except for the additional fees under subsection (2)(e) of this section and ORS 468A.345, this fee schedule shall be in lieu of any other fee for a permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable direct and indirect costs of implementing the federal operating permit program and shall consist of:

(a) An emission fee of *[\$95] \$121* per ton of each regulated pollutant emitted during the prior calendar year as determined under subsection (2) of this section.

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

- (A) Reviewing and acting upon applications for modifications to federal operating permits.
- (B) Any activity related to permits required under ORS 468A.040 other than the federal operating permit program.

(C) Department of Environmental Quality activities for sources not subject to the federal operating permit program.

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

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

(c) A base fee of [~~\$12,504~~] **\$16,002** for a source subject to the federal operating permit program.

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

(b) The fee required by subsection (1)(a) of this section does not apply to any emissions in excess of 7,000 tons per year of all regulated pollutants. The department may not revise a major source's plant site emission limit due solely to payment of the fee on the basis of documented emissions.

(c) The commission shall establish by rule criteria for the acceptability and verifiability of information related to emissions as documented, including but not limited to the use of:

- (A) Emission monitoring;
- (B) Material balances;
- (C) Emission factors;
- (D) Fuel use;
- (E) Production data; or
- (F) Other calculations.

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

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

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

(4) As used in this section, "regulated pollutant" means particulates, volatile organic compounds, oxides of nitrogen, and sulfur dioxide.

SECTION 3. (1) The amendments to ORS 468A.315 by section 2 of this 2023 Act become operative on January 1, 2024.

(2) The Department of Environmental Quality and the Environmental Quality Commission may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department and the commission to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department and the commission by the amendments to ORS 468A.315 by section 2 of this 2023 Act.

SECTION 4. ORS 468A.315, as amended by sections 1 and 2 of this 2023 Act, is amended to read:

468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal operating permit program shall be based on a schedule established by rule by the Environmental Quality Commission in accordance with this section. Except for the additional fees under subsection [(2)(e)] **(3)(e)** of this section and ORS 468A.345, this fee schedule shall be in lieu of any other fee for a permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable direct and indirect costs of implementing the federal operating permit program and shall consist of:

(a) An emission fee of \$121 per ton of each regulated pollutant emitted during the prior calendar year as determined under subsection [(2)] **(3)** of this section.

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

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

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

(C) Department of Environmental Quality activities for sources not subject to the federal operating permit program.

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

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

(c) A base fee of \$16,002 for a source subject to the federal operating permit program.

(2) Not more than once each calendar year, the commission may increase the fees established under this section. The amount of the annual increase may not exceed the anticipated increase in the cost of administering the federal operating permit program or three percent, whichever is lower, unless a larger increase is provided for in the department's legislatively approved budget.

[2(a)] (3)(a) The fee on emissions of regulated pollutants required under this section shall be based on the amount of each regulated pollutant emitted during the prior calendar year as documented by information provided by the source in accordance with criteria adopted by the commission or, if the source elects to pay the fee based on permitted emissions, the fee shall be based on the emission limit for the plant site of the major source.

(b) The fee required by subsection (1)(a) of this section does not apply to any emissions in excess of 7,000 tons per year of all regulated pollutants. The department may not revise a major source's plant site emission limit due solely to payment of the fee on the basis of documented emissions.

(c) The commission shall establish by rule criteria for the acceptability and verifiability of information related to emissions as documented, including but not limited to the use of:

- (A) Emission monitoring;
- (B) Material balances;
- (C) Emission factors;
- (D) Fuel use;
- (E) Production data; or
- (F) Other calculations.

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

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

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

[4] (5) As used in this section, "regulated pollutant" means particulates, volatile organic compounds, oxides of nitrogen, and sulfur dioxide.

SECTION 5. (1) The amendments to ORS 468A.315 by section 4 of this 2023 Act become operative on January 1, 2025.

(2) The Department of Environmental Quality and the Environmental Quality Commission may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department and the commission to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department and the commission by the amendments to ORS 468A.315 by section 4 of this 2023 Act.

SECTION 6. (1) The Department of Environmental Quality shall evaluate and make recommendations for alternative fee structures for Oregon's federal operating permit program. In conducting the evaluation, the department shall:

(a) Identify fee structures that require the owners or operators of facilities subject to the federal operating permit program to pay fees that are commensurate with the regulatory complexity of the facility or permit.

(b) Ensure that any recommended fee structures would result in fees that are sufficient to cover all reasonable direct and indirect costs of the federal operating permit program, as required by section 502(b) of the federal Clean Air Act.

(c) Review the fee structures of other state and local government agencies that administer a federal operating permit program.

(d) Solicit and consider input from owners or operators of facilities subject to the federal operating permit program and program stakeholders.

(2) No later than December 31, 2023, the department shall submit its findings and recommendations in a report, in the manner provided by ORS 192.245, and may include recommendations for legislation, to the interim committees of the Legislative Assembly related to the environment.

(3) As used in this section, “Clean Air Act” and “federal operating permit program” have the meanings given those terms in ORS 468A.300.

SECTION 7. ORS 468A.050 is amended to read:

468A.050. (1) By rule the Environmental Quality Commission may classify air contamination sources according to levels and types of emissions and other characteristics which cause or tend to cause or contribute to air pollution and may require registration or reporting or both for any such class or classes.

(2) Any person in control of an air contamination source of any class for which registration and reporting is required under subsection (1) of this section shall register with the Department of Environmental Quality and make reports containing such information as the commission by rule may require concerning location, size and height of air contaminant outlets, processes employed, fuels used and the amounts, nature and duration of air contaminant emissions and such other information as is relevant to air pollution.

(3) By rule the commission may establish a schedule of fees for the registration of any class of air contamination sources classified pursuant to subsection (1) of this section for which a person is required to obtain a permit under ORS 468A.040 or 468A.155 but chooses instead to register if allowed by the commission by rule. The commission shall base the fees on the anticipated cost of developing and implementing programs related to the different classes, including but not limited to the cost of processing registrations, compliance inspections and enforcement. A registration must be accompanied by any fee specified by the commission by rule, and a subsequent annual registration fee is payable as prescribed by rule of the commission.

(4)(a) By rule the commission may establish a schedule of fees for reporting of any class of air contamination sources classified pursuant to subsection (1) of this section for which a person is required to obtain permits under ORS 468A.040 or 468A.155 or is subject to the federal operating permit program pursuant to ORS 468A.310.

(b) Before establishing fees pursuant to this subsection, the commission shall consider the total fees for each class of sources subject to reporting under this subsection and for which permits are required under ORS 468A.040 or 468A.155 or the federal operating permit program under ORS 468A.315.

(c) The commission shall limit the fees established under this subsection to the anticipated cost of developing and implementing reporting programs. Any fees collected under this subsection for any air contamination source issued a permit under ORS 468A.040 or 468A.155 or sources subject to the federal operating permit program under ORS 468A.310 must be collected as part of the fee for that specific permit.

(5) **Not more than once each calendar year, the commission may increase the fees established under this section. The amount of the annual increase may not exceed the anticipated increase in the cost of administering the reporting program or three percent, whichever is lower, unless a larger increase is provided for in the department’s legislatively approved budget.**

SECTION 8. ORS 468A.750 is amended to read:

468A.750. (1) By rule and after hearing, the Environmental Quality Commission shall establish a schedule of fees for:

- (a) Licenses issued under ORS 468A.720;
- (b) Worker certification under ORS 468A.730;
- (c) Training course accreditation under ORS 468A.740; and
- (d) Notices of intent to perform an asbestos abatement project under ORS 468A.745 (7).

(2) The fees established under subsection (1) of this section shall be based upon the costs of the Department of Environmental Quality in carrying out the asbestos abatement program established under ORS 468A.707.

(3) In adopting the schedule of fees under this section the commission shall include provisions and procedures for granting a waiver of a fee.

(4) Not more than once each calendar year, the commission may increase the fees established under this section. The amount of the annual increase may not exceed the anticipated increase in the cost of carrying out the asbestos abatement program or three percent, whichever is lower, unless a larger increase is provided for in the department’s legislatively approved budget.

[(4)] (5) The fees collected under this section shall be paid into the State Treasury and deposited in the General Fund to the credit of the Department of Environmental Quality. Such moneys are continuously appropriated to the Department of Environmental Quality to pay the department’s expenses in administering and enforcing the asbestos abatement program.

SECTION 9. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by House June 22, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 25, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State