

SENATE AMENDMENTS TO SENATE BILL 1541

By COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

February 15

1 On page 1 of the printed bill, delete lines 5 through 29 and delete pages 2 through 8 and insert:
2 “**SECTION 1. Sections 2 to 7 of this 2018 Act are added to and made a part of ORS**
3 **chapter 468A.**

“DEFINITIONS

4
5 “**SECTION 2. As used in sections 2 to 7 of this 2018 Act:**

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

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

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

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

13 “(a) For a new or reconstructed air contamination source, a benchmark equal to a Haz-
14 ard Index number of 1.

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

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

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

24 “(5) ‘**Reconstructed**’ means an individual project constructed at an air contamination
25 source that, once constructed, increases the hourly capacity of any changed equipment to
26 emit and where the fixed capital cost of new components exceeds 50 percent of the fixed
27 capital cost that would have been required to construct a comparable new source.
28

“INDIVIDUAL AIR CONTAMINATION SOURCE PROGRAM

29
30 “**SECTION 3. (1) The Environmental Quality Commission may adopt a program and rules**
31 **to reduce public health risks from emissions of toxic air contaminants from individual sta-**
32 **tionary industrial and commercial air contamination sources. The program and rules adopted**
33 **under this section may be in addition to any other programs or rules adopted pursuant to**
34
35

1 **ORS chapter 468A.**

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

5 **“(a) The air contamination source is one for which a person is otherwise subject to reg-**
6 **ulation under ORS 468A.040, 468A.050, 468A.055 or 468A.155 or is subject to the federal oper-**
7 **ating permit program pursuant to ORS 468A.310; and**

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

12 **“(3) For purposes of administration by the department of rules adopted under this sec-**
13 **tion, rather than evaluating and regulating the public health risks from toxic air contam-**
14 **inant emissions from an air contamination source based on modeling for the potential to**
15 **emit toxic air contaminants and land use zoning, a person in control of the air contamination**
16 **source may elect to have the emissions from the air contamination source evaluated and**
17 **regulated based on modeling for one or both of the following:**

18 **“(a) Public health risk due to toxic air contaminant emissions from the air contamination**
19 **source’s actual production or, for a new or reconstructed air contamination source, the**
20 **reasonably anticipated actual production by the new or reconstructed air contamination**
21 **source.**

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

26 **“(B) A person in control of an air contamination source subject to rules adopted under**
27 **this section may rebut the presumption in subparagraph (A) of this paragraph by submitting**
28 **to the department documentation that the department determines is adequate to rebut the**
29 **presumption. If the department determines that the documentation is adequate to rebut the**
30 **presumption, the department shall adjust modeling inputs according to the documentation**
31 **submitted.**

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

34 **“(D) Documentation required under this paragraph may include a request by the person**
35 **in control of the air contamination source for the department to exclude certain zoned areas**
36 **from the modeling used for purposes of evaluating the toxic air contaminant emissions from**
37 **the air contamination source. A request under this subparagraph must be based on docu-**
38 **mentation that the area to be excluded is not being used in a manner allowed by the land**
39 **use zoning applicable to the area at the time the modeling is to be performed. If the de-**
40 **partment grants a request under this subparagraph, the person in control of the air con-**
41 **tamination source shall annually submit to the department, as part of the update required**
42 **under subparagraph (C) of this paragraph, documentation showing that the excluded zoned**
43 **areas continue to not be used in a manner allowed by the land use zoning applicable to the**
44 **area.**

45 **“(4)(a) A person in control of an air contamination source subject to a program and rules**

1 adopted under this section may elect to have the public health risks from toxic air contam-
2 inant emissions from the air contamination source evaluated using air monitoring, if:

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

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

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

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

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

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

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

28 “(5)(a) Except as required under ORS 468.115, 468.936, 468.939, 468.951 or 468.996, or fed-
29 eral law, the department may not, pursuant to a program and rules adopted under this sec-
30 tion, require an existing air contamination source that employs toxics best available control
31 technology on all significant emission units to undertake additional measures to limit or re-
32 duce toxic air contaminant emissions.

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

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

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

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

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

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

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

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

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

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

23 “(5) In order to obtain a permit or a permit modification that would authorize a signif-
24 icant increase in the public health risks from toxic air contaminants emitted by an air con-
25 tamination source, and except as provided in subsection (6) of this section, a person
26 described in subsection (4)(b) of this section must prepare and submit to the Department of
27 Environmental Quality a risk mitigation plan that includes one or more actions to offset the
28 projected increase in public health risks from toxic air contaminant emissions from the new
29 or modified air contamination source. The plan required by this subsection may include
30 actions to reduce emissions from other sources in the area, including mobile sources. The
31 department shall approve a risk mitigation plan submitted under this subsection if the de-
32 partment determines that the actions described in the plan are reasonably likely to achieve
33 the projected reduction in public health risks necessary to offset the projected increase in
34 public health risks from toxic air contaminant emissions from the new or modified air con-
35 tamination source.

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

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

1 or

2 “(b) Other severe human health effects.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 “(3) ‘Hazard Index number’ means a number equal to the sum of the hazard quotients attribut-
33 able to toxic air contaminants that have noncancer effects on the same target organs or organ sys-
34 tems.

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

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

43 “SECTION 11. The Department of Environmental Quality shall report to the interim
44 committees of the Legislative Assembly related to the environment, no later than September
45 15, 2026, on the costs and benefits of regulating existing air contamination sources based on

1 the benchmark for excess noncancer risk as defined in section 2 of this 2018 Act and based
2 on any adjusted benchmarks for excess noncancer risk that have been applied to existing air
3 contamination sources pursuant to section 7 of this 2018 Act. The report may include rec-
4 ommendations for legislation.

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

6
7 “FEES

8
9 “SECTION 13. (1) The fee schedules required under ORS 468.065 (2) for permits described
10 in subsection (2) of this section shall include a fee that is reasonably calculated to cover the
11 direct and indirect costs of the Department of Environmental Quality and the Environmental
12 Quality Commission in developing and implementing, under section 3 of this 2018 Act, a
13 program and rules to reduce the public health risks of emissions of toxic air contaminants
14 from industrial and commercial air contamination sources.

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

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

19 “(b) Be in addition to, and not in lieu of, any other fee required under ORS 468.065 or
20 468A.315.

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

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

27 “(5)(a) Any rule adopted under ORS 468.065 (2) regarding late payment of emission fees
28 by an air contamination source issued a permit under ORS 468A.040 or 468A.155 shall apply
29 in the same manner to an air contamination source issued a permit under ORS 468A.040 or
30 468A.155 for late payment of fees under this section.

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

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

39
40 “CONFORMING AMENDMENTS

41
42 “SECTION 14. ORS 468.065 is amended to read:

43 “468.065. Subject to any specific requirements imposed by ORS 448.305, 454.010 to 454.040,
44 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B:

45 “(1) Applications for all permits authorized or required by ORS 448.305, 454.010 to 454.040,

1 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468, 468A and 468B shall
2 be made in a form prescribed by the Department of Environmental Quality. Any permit issued by
3 the department shall specify its duration, and the conditions for compliance with the rules and
4 standards, if any, adopted by the Environmental Quality Commission pursuant to ORS 448.305,
5 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755 and ORS chapters 468,
6 468A and 468B.

7 “(2) By rule and after hearing, the commission may establish a schedule of fees for permits is-
8 sued pursuant to ORS 468A.040, 468A.045, 468A.155 and 468B.050. Except as provided in ORS
9 468A.315 and 468B.051 **and section 13 of this 2018 Act**, the fees contained in the schedule shall
10 be based upon the anticipated cost of filing and investigating the application, of carrying out appli-
11 cable requirements of Title V, of issuing or denying the requested permit, and of an inspection pro-
12 gram to determine compliance or noncompliance with the permit. The fee shall accompany the
13 application for the permit. The fees for a permit issued under ORS 468A.040 or 468B.050 may be
14 imposed on an annual basis.

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

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

33 “(5) The department may require periodic reports from persons who hold permits under ORS
34 448.305, 454.010 to 454.040, 454.205 to 454.225, 454.505 to 454.535, 454.605 to 454.755 and ORS chap-
35 ters 468, 468A and 468B. The report shall be in a form prescribed by the department and shall
36 contain such information as to the amount and nature or common description of the pollutant, con-
37 taminant or waste and such other information as the department may require.

38 “(6) Any fee collected under a schedule of fees established pursuant to this section or ORS
39 468A.315 **or section 13 of this 2018 Act** shall be deposited in the State Treasury to the credit of
40 an account of the department. The fees are continuously appropriated to meet the expenses of the
41 program for which they are collected, except as follows:

42 “(a) The federal operating permit program shall include a commensurate amount of the fee for
43 any permit specified in this section for which the department incurs costs associated with the re-
44 quirements of Title V and any fees collected under ORS 468A.315. Fees collected for the federal
45 operating permit program in any biennium that exceed the legislatively approved budget, including

1 amounts authorized by the Emergency Board for the federal operating permit program for such
2 biennium, shall be credited toward the federal operating permit program budget for the following
3 biennium.

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

8 “(c) The fees collected under a schedule of fees established pursuant to this section or ORS
9 468A.315 **or section 13 of this 2018 Act** by a regional air pollution control authority pursuant to
10 a permit program authorized by the commission shall be retained by and shall be income to the re-
11 gional authority except as provided in ORS 468A.155 (2)(c). Such fees shall be accounted for and
12 expended in the same manner as are other funds of the regional authority. However, if the depart-
13 ment finds after hearing that the permit program administered by the regional authority does not
14 conform to the requirements of the permit program approved by the commission pursuant to ORS
15 468A.155, such fees shall be deposited and expended as are permit fees submitted to the department.

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

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

18 “468A.300. As used in ORS 468.065, 468A.040, 468A.300 to 468A.330, 468A.415, 468A.420 and
19 468A.460 to 468A.515 **and section 13 of this 2018 Act**:

20 “(1) ‘Administrator’ means the administrator of the United States Environmental Protection
21 Agency.

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

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

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

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

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

28 “468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the fed-
29 eral operating permit program shall be based on a schedule established by rule by the Environ-
30 mental Quality Commission in accordance with this section. Except for the additional [*fee*] **fees**
31 under subsection (2)(e) of this section **and section 13 of this 2018 Act**, this fee schedule shall be
32 in lieu of any other fee for a permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee
33 schedule shall cover all reasonable direct and indirect costs of implementing the federal operating
34 permit program and shall consist of:

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

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

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

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

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

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

43 “(B) Any activity related to permits required under ORS 468A.040 other than the federal oper-
44 ating permit program.

45 “(C) Department of Environmental Quality activities for sources not subject to the federal op-

1 erating permit program.

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

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

7 “(c) A base fee for a source subject to the federal operating permit program. This base fee shall
8 be no more than the fees set forth in subparagraphs (A) to (D) of this paragraph, subject to increases
9 as set forth in paragraph (d) of this subsection:

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

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

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

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

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

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

25 “(b) The fee required by subsection (1)(a) of this section does not apply to any emissions in ex-
26 cess of 4,000 tons per year of any regulated pollutant through calendar year 2010 and in excess of
27 7,000 tons per year of all regulated pollutants for each calendar year thereafter. The department
28 may not revise a major source’s plant site emission limit due solely to payment of the fee on the
29 basis of documented emissions.

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

32 “(A) Emission monitoring;

33 “(B) Material balances;

34 “(C) Emission factors;

35 “(D) Fuel use;

36 “(E) Production data; or

37 “(F) Other calculations.

38 “(d) The department shall accept reasonably accurate information that complies with the crite-
39 ria established by the commission as documentation of emissions.

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

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

44 “(4) As used in this section:

45 “(a) ‘Regulated pollutant’ means particulates, volatile organic compounds, oxides of nitrogen,

1 and sulfur dioxide; and

2 “(b) ‘Consumer Price Index’ has the meaning given in 42 U.S.C. 7661a(b), as in effect on June
3 20, 2007.

4 “**SECTION 17.** (1) Notwithstanding section 13 (4) of this 2018 Act, a source that has been
5 issued, on or before the effective date of this 2018 Act, a permit under ORS 468A.040 or
6 468A.155 or under the federal operating permit program pursuant to ORS 468A.310 to emit
7 air contaminants during the period beginning July 1, 2018, and ending June 30, 2019, shall pay
8 to the Department of Environmental Quality the fee required under section 13 of this 2018
9 Act no later than 30 days after the date of the invoice issued by the department for the fee.

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

16
17 “CAPTIONS

18
19 “**SECTION 18.** The unit captions used in this 2018 Act are provided only for the conven-
20 ience of the reader and do not become part of the statutory law of this state or express any
21 legislative intent in the enactment of this 2018 Act.

22
23 “EMERGENCY CLAUSE

24
25 “**SECTION 19.** This 2018 Act being necessary for the immediate preservation of the public
26 peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect
27 on its passage.”.