

House Bill 3229

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

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies federal operating permit program fees.

Removes certain elements of federal operating permit program fee schedule. Becomes operative January 1, 2025.

Authorizes Environmental Quality Commission to annually adjust federal operating permit program fees, air contaminant reporting fees and asbestos abatement program fees by no more than three percent.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to fees for air pollution programs; creating new provisions; amending ORS 468A.050,
3 468A.315 and 468A.750; and declaring an emergency.

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

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

6 468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal
7 operating permit program shall be based on a schedule established by rule by the Environmental
8 Quality Commission in accordance with this section. Except for the additional fees under subsection
9 (2)(e) of this section and ORS 468A.345, this fee schedule shall be in lieu of any other fee for a
10 permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable
11 direct and indirect costs of implementing the federal operating permit program and shall consist of:

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

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

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

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

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

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

20 (B) Any activity related to permits required under ORS 468A.040 other than the federal operat-
21 ing permit program.

22 (C) Department of Environmental Quality activities for sources not subject to the federal oper-
23 ating permit program.

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

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

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

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

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

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

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

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

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

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

26 (A) Emission monitoring;

27 (B) Material balances;

28 (C) Emission factors;

29 (D) Fuel use;

30 (E) Production data; or

31 (F) Other calculations.

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

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

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

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

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

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

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

44 468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal
 45 operating permit program shall be based on a schedule established by rule by the Environmental

1 Quality Commission in accordance with this section. Except for the additional fees under subsection
 2 (2)(e) of this section and ORS 468A.345, this fee schedule shall be in lieu of any other fee for a
 3 permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable
 4 direct and indirect costs of implementing the federal operating permit program and shall consist of:

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

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

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

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

11 (C) Department of Environmental Quality activities for sources not subject to the federal oper-
 12 ating permit program.

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

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

18 (c) A base fee of [\$_____] \$_____ for a source subject to the federal operating permit pro-
 19 gram.

20 (2)(a) The fee on emissions of regulated pollutants required under this section shall be based on
 21 the amount of each regulated pollutant emitted during the prior calendar year as documented by
 22 information provided by the source in accordance with criteria adopted by the commission or, if the
 23 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 excess
 26 of 7,000 tons per year of all regulated pollutants. The department may not revise a major source's
 27 plant site emission limit due solely to payment of the fee on the basis of documented emissions.

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

30 (A) Emission monitoring;

31 (B) Material balances;

32 (C) Emission factors;

33 (D) Fuel use;

34 (E) Production data; or

35 (F) Other calculations.

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

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

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

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

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

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

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

9 468A.315. (1) The fee schedule required under ORS 468.065 (2) for a source subject to the federal
 10 operating permit program shall be based on a schedule established by rule by the Environmental
 11 Quality Commission in accordance with this section. Except for the additional fees under [*subsection*
 12 *(2)(e) of this section and*] ORS 468A.345, this fee schedule shall be in lieu of any other fee for a
 13 permit issued under ORS 468A.040, 468A.045 or 468A.155. The fee schedule shall cover all reasonable
 14 direct and indirect costs of implementing the federal operating permit program. [*and shall consist*
 15 *of:*]

16 [(a) An emission fee of \$_____ per ton of each regulated pollutant emitted during the prior cal-
 17 endar year as determined under subsection (2) of this section.]

18 [(b)] **(2) The fee schedule must include** fees for the following specific elements of the federal
 19 operating permit program:

20 [(A)] **(a)** Reviewing and acting upon applications for modifications to federal operating permits.

21 [(B)] **(b)** Any activity related to permits required under ORS 468A.040 other than the federal
 22 operating permit program.

23 [(C)] **(c)** Department of Environmental Quality activities for sources not subject to the federal
 24 operating permit program.

25 [(D)] **(d)** Department review of ambient monitoring networks installed by a source.

26 [(E)] **(e)** Other distinct department activities created by a source or a group of sources if the
 27 commission finds that the activities are unique and specific and that additional rulemaking is nec-
 28 essary and will impose costs upon the department that are not otherwise covered by federal oper-
 29 ating permit program fees.

30 [(c) A base fee of \$_____ for a source subject to the federal operating permit program.]

31 **(3) Not more than once each calendar year, the commission may increase the fees es-**
 32 **tablished under this section. The amount of the annual increase may not exceed the antic-**
 33 **ipated increase in the cost of administering the federal operating permit program or three**
 34 **percent, whichever is lower, unless a larger increase is provided for in the department's**
 35 **legislatively approved budget.**

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

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

44 [(c) The commission shall establish by rule criteria for the acceptability and verifiability of infor-
 45 mation related to emissions as documented, including but not limited to the use of:]

1 [(A) Emission monitoring;]

2 [(B) Material balances;]

3 [(C) Emission factors;]

4 [(D) Fuel use;]

5 [(E) Production data; or]

6 [(F) Other calculations.]

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

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

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

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

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

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

23 **SECTION 6.** ORS 468A.050 is amended to read:

24 468A.050. (1) By rule the Environmental Quality Commission may classify air contamination
25 sources according to levels and types of emissions and other characteristics which cause or tend to
26 cause or contribute to air pollution and may require registration or reporting or both for any such
27 class or classes.

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

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

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

1 (b) Before establishing fees pursuant to this subsection, the commission shall consider the total
 2 fees for each class of sources subject to reporting under this subsection and for which permits are
 3 required under ORS 468A.040 or 468A.155 or the federal operating permit program under ORS
 4 468A.315.

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

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

15 **SECTION 7.** ORS 468A.750 is amended to read:

16 468A.750. (1) By rule and after hearing, the Environmental Quality Commission shall establish
 17 a schedule of fees for:

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

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

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

27 **(4) Not more than once each calendar year, the commission may increase the fees es-**
 28 **tablished under this section. The amount of the annual increase may not exceed the antic-**
 29 **ipated increase in the cost of carrying out the asbestos abatement program or three percent,**
 30 **whichever is lower, unless a larger increase is provided for in the department’s legislatively**
 31 **approved budget.**

32 [(4)] (5) The fees collected under this section shall be paid into the State Treasury and deposited
 33 in the General Fund to the credit of the Department of Environmental Quality. Such moneys are
 34 continuously appropriated to the Department of Environmental Quality to pay the department’s ex-
 35 penses in administering and enforcing the asbestos abatement program.

36 **SECTION 8. This 2023 Act being necessary for the immediate preservation of the public**
 37 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
 38 **on its passage.**