§ 72-0303. Operating permit program fees.

* 1. Commencing January first, two thousand fifteen and every year thereafter, all sources of regulated air contaminants identified pursuant to subdivision one of section 19-0311 of this chapter shall submit to the department an annual base fee of two thousand five hundred dollars. This base fee shall be in addition to the fees listed below. Commencing January first, nineteen hundred ninety-four and every year thereafter all sources of regulated air contaminants identified pursuant to subdivision one of section 19-0311 of this chapter shall submit to the department an annual fee not to exceed the per ton fees described below. The per ton fee is assessed on each ton of emissions up to seven thousand tons annually of each regulated air contaminant as follows: sixty dollars per ton for facilities with total emissions less than one thousand tons annually; seventy dollars per ton for facilities with total emissions of one thousand or more but less than two thousand tons annually; eighty dollars per ton for facilities with total emissions of two thousand or more but less than five thousand tons annually; and ninety dollars per ton for facilities with total emissions of five thousand or more tons annually. Such fee shall be sufficient to support an appropriation approved by the legislature for the direct and indirect costs associated with the operating permit program established in section 19-0311 of this chapter. Such fee shall be established by the department and shall be calculated by dividing the amount of the current year appropriation from the operating permit program account of the clean air fund by the total tons of emissions of regulated air contaminants that are subject to the operating permit program fees from sources subject to the operating permit program pursuant to section 19-0311 of this chapter up to seven thousand tons annually of each regulated air contaminant from each source; provided that, in making such calculation, the department shall adjust their calculation to account for any deficit or surplus in the operating permit program account of the clean air fund established pursuant to section ninety-seven-oo of the state finance law; any loan repayment from the mobile source account of the clean air fund established pursuant to section ninety-seven-oo of the state finance law; and the rate of collection by the department of the bills issued for the fee for the prior year.

Notwithstanding the provisions of the state administrative procedure act, such calculation and fee shall be established as a rule by publication in the Environmental Notice Bulletin no later than thirty days after the budget bills making appropriations for the support of government are enacted or July first, whichever is later, of the year such fee will be effective. In no event shall the fee established herein be any greater than the maximum fee identified pursuant to this section.

* NB Effective until January 1, 2027

* 1. Commencing January first, two thousand twenty-seven and every year thereafter, all sources of regulated air contaminants identified pursuant to subdivision one of section 19-0311 of this chapter shall submit to the department an annual base fee of eight thousand five hundred dollars per facility. This base fee shall be in addition to the fees listed below. Commencing January first, two thousand twenty-seven and every year thereafter, all sources of regulated air contaminants identified pursuant to subdivision one of section 19-0311 of this chapter shall submit to the department an annual fee not to exceed the per ton fees described below. The per ton fee is assessed on each ton of emissions of each regulated air contaminant as follows: two hundred dollars per ton for facilities with total emissions less than one thousand tons annually; two hundred twenty-five dollars per ton for facilities with total emissions of one thousand or more but less than two thousand tons annually; two hundred fifty dollars per ton for facilities with total emissions of two thousand or more but less than five thousand tons annually; and three hundred dollars per ton for facilities with total emissions of five thousand or more tons annually. Such fees shall be sufficient to support an appropriation approved by the legislature for the direct and indirect costs associated with the operating permit program established in section 19-0311 of this chapter. Such fees shall be established by the department and shall be calculated by dividing the amount of the current year appropriation from the operating permit program account of the clean air fund by the total tons of emissions of regulated air contaminants, including hazardous air pollutants, that are subject to the operating permit program fees from sources subject to the operating permit program pursuant to section 19-0311 of this chapter; provided that, in making such calculation, the

department shall adjust their calculation to account for any deficit or surplus in the operating permit program account of the clean air fund established pursuant to section ninety-seven-oo of the state finance law and the rate of collection by the department of the bills issued for the fees for the prior year.

Notwithstanding the provisions of the state administrative procedure act, such calculation and fees shall be established as a rule by publication in the Environmental Notice Bulletin no later than thirty days after the budget bills making appropriations for the support of government are enacted or July first, whichever is later, of the year such fees will be effective. In no event shall the fees established herein be any greater than the maximum fee identified pursuant to this section.

* NB Effective January 1, 2027

* 2. Bills issued for the fee shall be based on actual emissions for the prior calendar year, as demonstrated to the department's satisfaction, or in the absence of such demonstration, on permitted emissions, or, where there is no permit, on potential to emit. Persons required to submit an emissions statement to the department shall use such statement to demonstrate actual emissions under this section.

* NB Effective until January 1, 2027

* 2. Bills issued for the fees established by subdivision one of this section shall be based on actual emissions for the prior calendar year, as demonstrated to the department's satisfaction, or in the absence of such demonstration, on permitted emissions, or, where there is no permit, on potential to emit. Persons required to submit an emissions statement to the department shall use such statement to demonstrate actual emissions under this section.

* NB Effective January 1, 2027

3. Effective January first, nineteen hundred ninety-seven through December thirty-first, nineteen hundred ninety-eight, and notwithstanding the requirements of the state administrative procedure act, the cap of twenty-five dollars per ton shall increase by the percentage, if any, by which the consumer price index exceeds the consumer price index for the calendar year nineteen hundred eighty-nine.

a. The consumer price index for any calendar year is the average of the consumer price index for all urban consumers published by the United States department of labor, as of the close of the twelve-month period ending on August thirty-first of each calendar year.

b. The revision of the consumer price index for the calendar year nineteen hundred eighty-nine shall be used in the event the department of labor revises its method of determining the consumer price index.

4. The fees established pursuant to this section shall not be assessed on emissions of carbon monoxide or any class I or II substance subject to a standard promulgated pursuant to section 7671 of the Act.

5. Any regulated air contaminant subject to the fees imposed pursuant to this section which qualifies as both a volatile organic compound and a hazardous air pollutant regulated pursuant to section 7412 of the Act shall not be counted under both categories for the purpose of assessing fees.

6. On or before April first, nineteen hundred ninety-four, and biennially thereafter, the department of audit and control shall prepare and submit to the governor and the legislature an audit on the fiscal status of the operating permit program created pursuant to section 19-0311 of this chapter. Such audit shall include:

a. an assessment of the actual direct and indirect costs of the operating permit program incurred, and the revenues received from fees imposed pursuant to this section and penalties imposed pursuant to subdivision twelve of section 72-0201 of this article during the previous fiscal year;

b. an estimate of the direct and indirect costs of the operating permit program that will be incurred, and the revenues estimated to be received from fees imposed pursuant to this section and penalties imposed pursuant to subdivision twelve of section 72-0201 of this article during the current fiscal year; and

c. an estimate of any balance in the account that will be available at the end of the current fiscal year.

7. The department may reduce the fee charged for categories of stationary sources, taking into account the financial resources of such sources, consistent with the provisions of section 7661f(f) of the Act.

8. If a city or county shall be delegated the authority to administer the operating permit program established pursuant to section 19-0311 of this chapter it may collect the fees established pursuant to this section and no additional liability for fees under this section shall accrue for any such source.

9. No later than September thirtieth, nineteen hundred ninety-four and before September thirtieth of each subsequent year, the department shall report to the governor, the legislature and the department of audit and control on: (i) the actual direct and indirect costs of the operating permit program incurred, and the revenues received pursuant to fees imposed by this section, during the previous fiscal year; (ii) the estimated direct and indirect costs of the operating permit program that will be incurred, and the anticipated revenues received or anticipated to be received pursuant to fees imposed by this section, during the current fiscal year; (iii) an estimate of the direct and indirect costs of the operating permit program that will be incurred, and the tonnages of pollutants anticipated to be subject to the fees imposed by this section, during the subsequent fiscal year; (iv) an estimate of any balance in the operating permit program account of the clean air fund that will be available at the end of the current fiscal year; (v) a recommendation regarding adjustments to the fees imposed under this section necessary to assure that the operating permit program account has adequate funds to finance the direct and indirect cost of the operating permit program during future fiscal years; and (vi) the number of operating permit applications upon which the department has taken final action in the previous fiscal year, the average review time per permit, the number of person hours spent per permit, and the number of completed permit applications which are pending final action. Reports

and accountings required to be filed with the administrator of the United States environmental protection agency may serve to satisfy this requirement.