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Statutory Authority: 48-2-10 et seq., and 44-1-60

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Subject: Environmental Protection Fees (Residential Well and Irrigation Program)

History: 4014

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- 01/16/2009 Received by Lt. Gov & Speaker 05/16/2009

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Document No. 4014

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

Statutory Authority: 1976 Code Sections 48-2-10 et seq. and 44-1-60

61-30**.** Environmental Protection Fees

**Synopsis:**

Regulation 61-30, Environmental Protection Fees*,* was promulgated June 23, 1995, pursuant to the Environmental Protection Fund Act of 1993, S.C. Code Ann. Sections 48-2-10 et seq. This regulation prescribes those fees applicable to applicants and holders of licenses, certifications, and permits. This regulation also establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process to contest the calculation of applicability.

(1) This amendment of R.61-30 increases the individual residential and irrigation well application fee associated with the Department’s Individual Residential and Irrigation Well Permitting Program. The fee increase is necessary to ensure the protection of the health of private well users in South Carolina by providing adequate funding to fully support the complete implementation of the program and coverage throughout the State.

(2) This amendment also revises the language in the regulation regarding the appeals process for compliance with the S.C. Administrative Procedures Act.

See Discussion of Revisions below and Statements of Need and Reasonableness and Rationale herein for additional information on the proposed revisions.

Discussion of Revisions

Note: The sections cited in this listing reflect the sections as they are numbered in the underline/overstrike version of the regulation.

SECTION/REVISION

(1) Revision of fees for residential and irrigation well permitting program.

R.61-30.G(10)

Added language to reflect the increase to the fees to be charged.

(2) Revision of existing language on the appeals process to comply with requirements of the S.C. Administrative Procedures Act.

R.61-30.B(3)

Deletion of definition no longer used in the regulation and subsequent renumbering.

R.61-30.B(18)

Deletion of definition no longer used in the regulation and subsequent renumbering.

R.61-30.F.

Revision of language to include the statutory requirements for appeals.

**Instructions:** Amend R.61-30 pursuant to each individual instruction provided below with the text of the amendments.

~~Indicates Matter Stricken~~

Indicates New Matter

**Text:**

**Replace R.61-30.B by removing two definitions and renumbering sections to read:**

R.61-30.B. Definitions.

 (1) “Actual Emissions” As pertains to Air Quality Control, the actual rate of emissions in tons per year of any regulated pollutant, which was emitted over the preceding calendar year or any other period determined by the Department to be representative of normal source operation. Actual emissions must be calculated using the unit's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year or such other time period established by the department.

 (2) “Actual Flow” means (a) aggregate flow as reported on the Discharge Monitoring Reports submitted for the previous year by Industrial dischargers; (b) flow limit as established by NPDES and ND permits for municipal and other non-industrial domestic dischargers.

~~(3) “Adjudicatory Hearing” means a trial-type proceeding conducted by the Department pursuant to the Department's Procedures for Contested Cases, as defined in R.61-72.101.~~

 ~~(4)~~(3) “Administratively Complete” means a determination by the Department that all elements of an application, as specified in the applicable regulation and including but not limited to all required signatures and tender of the application fee, where required, have been received.

 ~~(5)~~(4) “Applicant” means a person who applies for, or who is required to apply for a permit from the Department, or on whose behalf a permit application is made or required.

 ~~(6)~~(5) “Application” means those forms supplied by the Department, properly completed, together with such technical reports, plans and specifications as may be required by statute or regulation to apply for a new permit; to renew an expired permit; or to request a major modification to an existing permit requiring substantial technical review by the Department.

 ~~(7)~~(6) “Consumer Price Index (CPI)” The average of the Consumer Price Index for all-urban consumers published by the U. S. Department of Labor as of the close of the 12-month period ending on August 31 of each calendar year.

 ~~(8)~~(7) “Department” means the Department of Health and Environmental Control.

 ~~(9)~~(8) “Environmental Protection Fund” means a special agency-restricted, interest-bearing account established within the Treasurer's Office in which is deposited all fees as authorized to be collected for the Department's environmental programs.

 ~~(10)~~(9) “Major Activity” As pertains to Coastal Zone Management Program, any construction activity that is not a minor activity. These include, but are not limited to, activities such as marina construction, construction of docks for commercial endeavors, dredging for navigation channels, pipeline construction, and beach renourishment projects.

 ~~(11)~~(10) “Minor Activity” As pertains to Coastal Zone Management Program, activities which are noncommercial/nonindustrial in nature and provide personal benefits that have no connection with a commercial/industrial enterprise. These include, but are not limited to, activities to construct such structures as private docks, bulkheads to prevent erosion of individual property, beachfront homes seaward of the baseline, and private boat ramps.

 ~~(12)~~(11) “Permit” means any permit, license, certificate, registration, plan approval, variance, or other approval issued by or required by the Department or any of its divisions, pursuant to any statute or regulation.

 ~~(13)~~(12) “Permit Extension” As pertains to Coastal Zone Management critical area permits, is the extension of an existing permit as allowed pursuant to Section 48-39-150(F) and R.30-4(D).

 ~~(14)~~(13) “Permit Reissuance” is the renewal of an existing permit, license, certification or registration at the end of or during the original period of the existing permit, license, certification or registration.

 ~~(15)~~(14) “Permitted Emissions” As pertains to Air Quality, emissions of a regulated pollutant, as specified in a source's air operating permit issued by the Department. Any physical or operational limitation on a source's capacity to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be considered in calculating total emissions.

 ~~(16)~~(15) “Permittee” means any person authorized to conduct any activity or business pursuant to a valid permit issued by or filed with the Department.

 ~~(17)~~(16) “Person” means any individual, trust, firm, public or private corporation, or authority, partnership, association or other entity or any group thereof or any officer, employee, or agent thereof, including the State and the federal government and any agency or authority thereof, and including any city, town, county, or district of the State.

 ~~(18) “Public Hearing” A proceeding, properly noticed in accordance with applicable state and federal laws, during which comments are received and testimony is taken to establish a record of concern prior to an administrative action by the Department.~~

 ~~(19)~~(17) “Public Notice” Notice of application or of proposed agency action published in accordance with applicable statutes and regulations.

 ~~(20)~~(18) “Regulated Pollutant” As pertains to Air Quality, means the actual or permitted emissions from a source for each of the following compounds or substances:

 (a) Except as provided for under G(3)(c), any pollutant regulated by Regulation 61-62.

 (b) Volatile Organic Compounds.

 (c) Except as provided for under G(3)(c), any pollutant for which a National Ambient Air Quality Standard has been promulgated.

 (d) Any pollutant that is addressed by any standard promulgated under Section 111 or 112 of the 1990 Federal Clean Air Act or Regulation 61-62, Standard No. 8.

 ~~(21)~~(19) “Sources Subject to Fees” As pertains to Air Quality Control, all sources operating under a permit issued by the Department.

 ~~(22)~~(20) “Time Schedules” In accordance with S.C. Code Section 48-2-70 and 48-39-150, a “schedule of timely review” for purposes of this regulation shall begin when the applicant is notified that the application is administratively complete or within ten days of receipt of the application, whichever comes first; and end when a final decision is rendered. It will include required technical review, required public notice, and end with a final decision by the Department to issue or deny the permit. The time schedule may be tolled or extended in accordance with the conditions stipulated in Section H(1) of this regulation.

 ~~(23)~~(21) “Transfer of Permits” As pertains to the Coastal Zone Management Program, means the written permission of the Department transferring a permit from one person to another.

**Replace R.61-30.F, Appeals, to read:**

R.61-30.F. Appeals.

 Any person required to pay a fee established pursuant to this regulation, who disagrees with the calculation or applicability of the fee, may ~~submit to the Department a petition for a hearing together with the total amount of the fee assessed by the Department. The petition must comply with the requirements of Section 201 of Regulation 61-72 and must identify the fee, which is challenged and set forth the grounds on which relief is sought. Such petition, and the full amount of the fee due, must be received by the Department no later than thirty days after the due date. The hearing shall be in accordance with Regulation 61-72, Procedures for Contested Cases, and the State Administrative Procedures Act.~~appeal pursuant to applicable law, including S.C. Code Title 44, Chapter 1, and Title 1, Chapter 23, upon payment of the total amount of the fee assessed by the Department as provided in S.C. Code Title 48, Chapter 2. If through the appeals process, it is determined that the fee was improperly assessed, the Department shall return the amount determined to be improperly assessed with interest not to exceed the statutory rate.

**Replace R.61-30.G(10) to read:**

R.61-30.G(10) Individual Residential Wells and Irrigation Wells.

 In accordance with R.61-44, Permitting of Individual Residential Wells and Irrigation Wells, the Department is authorized to collect a fee for each application to install an individual residential well and irrigation well. The fee collected must be returned to the Department for the purposes of developing and implementing the Individual Residential Well and Irrigation Well Program, including proposed well construction review, compliance inspections, technical assistance, enforcement; and for providing bacteriological analytical services for new individual residential wells. The fee shall be as follows:

 (a) Individual Residential Well $~~70~~95

 (b) Irrigation Well $~~50~~95

**Fiscal Impact Statement:**

No costs to the State or significant cost to its political subdivisions as a whole should be incurred by these amendments. See Statement of Need and Reasonableness below.

**Statement of Need and Reasonableness:**

The statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Ann. Sections 1-23-115(C)(1)-(3) and (9)-(11) and 48-2-50.

DESCRIPTION OF REGULATION: Amendment of Regulation R.61-30, Environmental Protection Fees.

Purpose:

(1) This amendment of R.61-30 revises the individual residential and irrigation well fees associated with the Department’s Individual Residential and Irrigation Well Permitting Program.

(2) This amendment revises the appeals language of the regulation to comply with recent changes in the S.C. Administrative Procedures Act (APA).

Legal Authority: S.C. Code Sections 48-2-10 et seq., 44-1-60.

Plan for Implementation: The amendments will be incorporated within R.61-30 upon approval by the Board of Health and Environmental Control, the General Assembly, and publication in the *State Register*. These amendments will be implemented in the same manner in which the present regulation is implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

(1) In accordance with R.61-44, Individual Residential Well and Irrigation Well Permitting, the Department is authorized to collect a fee for each application to install individual residential wells and irrigation wells in order to develop and implement well construction review, compliance inspections, enforcement, technical assistance, and bacteriological analytical services for new individual residential wells. The current fee is insufficient to cover the costs associated with the program. The fee increase is necessary to ensure the protection of the health of private well users in South Carolina by providing adequate funding to fully support the complete implementation of the program and coverage throughout the State.

(2) Amendments that revise the language regarding the appeals process are needed and reasonable because the revisions will comply with state law.

DETERMINATION OF COSTS AND BENEFITS:

This section addresses cost to regulated community and State.

(1) Additional staff and resources are necessary to fully implement the existing program as was originally intended when the regulation and associated fees were developed in the mid 1990’s. The well inspection and recordkeeping portion of this program was to be exclusively supported by the application fees. The Department, working with the regulated community, determined that twelve inspectors are needed statewide to conduct site visits and inspect the construction of the wells.

Presently, approximately 9500 wells are installed each year, and the fee revenue generated by this number of wells is approximately $600,000. The current revenue amount is sufficient to support only 6.5 inspectors, resulting in fewer inspections with some areas of the State inadequately inspected. The funding shortfall can be attributed to inflation and increased fuel prices over the past decade. To address this shortfall in funding, approximately $880,000 will be required to ensure that the Department adequately implements the residential and irrigation well permitting program as was intended. This fee increase will allow the Department to reach the original goal of twelve inspectors, replace vehicles as they age, and provide for other essential program operating costs, such as gasoline. If this fee increase is approved by the General Assembly, no additional cost will be incurred by the State.

(2) There will be no costs to the state or political subdivisions related to the revision of the appeals language.

UNCERTAINTIES OF ESTIMATES:

Minimal.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

(1) Implementation of these amendments will not compromise the protection of the environment or the health and safety of the citizenry of the State. These amendments will promote and protect human health by ensuring that a necessary program is fully funded throughout the State and thereby ensuring safe and healthy individual residential and irrigation wells

(2) Implementation of these amendments will not compromise the protection of the environment or the health and safety of the citizenry of the State. These amendments will provide consistency with S.C. statutory requirements.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

(1) Failure by the Department to increase the fee for construction of an individual residential wells or irrigation wells will result in an unacceptable percentage of these wells being poorly constructed thereby increasing the risk to the health of the individual residents and the potential of contamination to the groundwater aquifers.

(2) Failure by the Department to amend this regulation will result in inconsistency between the State statute and its implementation of the regulation.

**Statement of Rationale:**

After consultation with the regulated community and the public, amendment of R.61-30 was an administrative decision by the Department to amend R.61-30 to adjust existing fees to more accurately reflect the actual costs incurred by the Department in implementation of the regulatory program. See Statement of Need and Reasonableness above.