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Subject: Environmental Protection Fees

History: 4015

By Date Action Description Jt. Res. No. Expiration Date

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- 01/21/2009 Received by Lt. Gov & Speaker 05/21/2009

H 01/27/2009 Referred to Committee

S 01/27/2009 Referred to Committee

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- 07/23/2010 Withdrawn due to end of two-year session

Document No. 4015

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

Statutory Authority: 1976 Code Sections 48-2-10 et seq.

61-30. Environmental Protection Fees

**Synopsis:**

Regulation 61-81, State Environmental Laboratory Certification,is authorized by S.C. Code Ann. Section 44-55-10 et seq., the State Safe Drinking Water Act; Section 48-1-10 et seq., the S.C. Pollution Control Act; and Section 44-56-10 et seq*.,* the S.C. Hazardous Waste Management Act. This regulation requires the evaluation and certification of environmental laboratories performing environmental testing for regulatory compliance monitoring purposes in South Carolina.

Regulation 61-81 is funded by user fees authorized by statute at S.C. Code Ann. Section 48-2-10 et seq. and provided in Regulation 61-30, Environmental Protection Fees. This amendment of R.61-30 is needed to increase the fees necessary to continue the complete implementation of the Environmental Laboratory Certification Program pursuant to Regulation 61-81. The fee increases will be used according to regulation to process applications, perform certification renewals, perform certification maintenance, perform evaluations, and issue certifications to environmental laboratories. See Discussion of Revisions below for changes and the Statements of Need and Reasonableness and Rationale herein for more detailed information.

Discussion of Revisions:

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

R.61-30.G.4(a)-(k)

(a) Fee increases for Application Fee were revised to include a base fee, metals fee, organics fee, in addition to new fees for renewal applications and additional parameter applications.

(b) Fee increases for Minimum Annual Fee (per laboratory)

(c) Fee increases for Clean Water Act (CWA) Inorganics per parameter

(d) Fee increases for Safe Drinking Water Act (SDWA) Inorganics per parameter

(e) Fee increases for SDWA “Secondary” Inorganics per parameter

(f) Fee increases for CWA Organics

(f)(i) Fee increases for PCBs and Pesticides

(f)(ii) Fee increases for Herbicides

(f)(iii) Fee increases for Volatiles

(f)(iv) Fee increases for Semivolatiles

(f)(v) Fee increases for Dioxins and Furans

(g) Fee increases for SDWA Organics

(g)(i) Fee increases for Trihalomethanes

(g)(ii) Fee increases for Organic Compounds

(g)(iii) Fee increases for Volatiles

(h) Fee increases for Microbiology and clarification of the fee by Act and Method

(h)(i) Fee increases for Total Coliform

(h)(ii) Fee increases for Fecal Coliform

(h)(iii) Fee increases for Streptococci

(i) Fee increases for Biology

(i)(i) Fee increases for Toxicity Testing

(i)(ii) Fee increases for Taxonomy

(j) Fee increases for Solid and Hazardous Wastes (SW-846) and cap was removed for those laboratories which have paid the applicable per parameter fees for CWA tests.

(j)(i) Fee increases for Inorganics (per parameter)

(j)(ii) Fee increases for Organics (per parameter group)

(k) Fee increases for Air Quality Analysis and cap was removed for those laboratories which have paid the applicable per parameter fees for CWA tests.

(k)(i) Fee increases for Inorganics (per parameter)

(k)(ii) Fee increases for Organics (per parameter group)

**Instructions**: Amend Regulation 61-30 by replacing 61-30.G(4) with this amendment.

~~Indicates Matter Stricken~~

Indicates New Matter

**Text:**

**Replace R.61-30.G(4) to read:**

R.61-30.G.4. Laboratory Certification Services.

(a) Application Fee ~~$125~~

(i) Base Fee $250

(ii) Metals Base Fee + $100

(iii) Organics Base Fee + $250

(iv) All (Base + Metals + Organics) $600

(v) Renewal Application $250

Renewal Application required for certification renewal

of laboratories.

(vi) Additional Parameter Application $250

Additional Parameter Applications would be submitted for the addition of inorganic parameters covered under the base fee or additional metals and/or organic analytes for currently certified analytical methods. This fee also applies to applications for certification for failure to meet Proficiency Testing (PT) requirements according to Regulation 61-81, State Environmental Laboratory Certification Regulation*.*

(b) Minimum Annual Fee (per laboratory) ~~$125~~$325

(c) Clean Water Act (CWA)Inorganics per parameter ~~$20~~ $40

(d) Safe Drinking Water Act (SDWA) Inorganics per parameter ~~$20~~ $40

(e) SDWA “Secondary” Inorganics per parameter ~~$20~~ $40

(f) CWA Organics:

(i) PCBs and Pesticides ~~$350~~$425

(ii) Herbicides ~~$350~~$425

(iii) Volatiles ~~$350~~$425

(iv) Semi-Volatiles ~~$350~~$425

(v) Dioxins and Furans ~~$350~~$425

(g) SDWA Organics:

(i) Trihalomethanes ~~$350~~$425

(ii) Synthetic Organic Compounds ~~$350~~$425

(iii) Volatiles ~~$350~~$425

(h) Microbiology: $125

The fee will be assessed for each microorganism certified by Act (SDWA, CWA, and RCRA) and method.

~~(i) Total Coliform~~ ~~$75~~

~~(ii) Fecal Coliform~~ ~~$75~~

~~(iii) Fecal Streptococci~~ ~~$75~~

(i) Biology:

(i) Toxicity Testing ~~$500~~$600/Species

(ii) Taxonomy ~~$250~~$300

(j) Solid and Hazardous Wastes (SW-846 Methods):

(i) Inorganics (per parameter) ~~$20~~ $40

(ii) Organics (per parameter group) ~~$350~~$425

~~Note: SW-846 certification fees shall be capped at $1,500 for those laboratories which have paid the applicable per-parameter fees for CWA tests.~~

(k) Air Quality Analysis:

(i) Inorganics (per parameter) ~~$20~~ $40

(ii) Organics (per parameter group) ~~$350~~$425

~~Note: Air Quality Certification fees shall be capped at $1,500~~~~for those laboratories which have paid the applicable per-parameter fees for CWA tests.~~

**Fiscal Impact Statement:**

No additional costs will be incurred by the State or its political subdivisions by implementation of this amendment. (See Determination of Costs and Benefits in the Statement of Need and Reasonableness below)

**Statement of Need and Reasonableness:**

The statement of need and reasonableness, preliminary assessment report information, and rationale 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: This amendment of R.61-30 is needed to increase the fees necessary to continue the complete implementation of the Environmental Laboratory Certification Program pursuant to Regulation 61-81. The fee increases will be used according to regulation to process applications, perform certification renewals, perform certification maintenance, perform evaluations, and issue certifications to environmental laboratories.

Legal Authority: S.C. Code Ann. Sections 48-2-10 et seq.

Plan for Implementation: This amendment would be incorporated within R.61-30 upon approval of the Board of Health and Environmental Control, the General Assembly and publication in the *State Register*. The amendment 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:

Regulation 61-81, State Environmental Laboratory Certification*,* requires the evaluation and certification of environmental laboratories performing environmental testing for regulatory compliance monitoring purposes in South Carolina. Proper funding will enable the program to help ensure the validity and quality of the data being generated by laboratories for compliance with State regulations and also ensure that they are performing testing in accordance with pertinent Federal and State environmental regulations. The Department is mandated by law to carry out the provisions of this regulation.

Regulation 61-81 is funded by user fees authorized by S.C. Code Ann. Section 48-2-10 et seq. and provided in Regulation 61-30, Environmental Protection Fees. The fee increases of this amendment of Regulation 61-30 are designed to cover the operating costs of the program at the current staffing level. The costs include, but are not limited to, the processing of applications for certification, performing certification renewals, performing certification maintenance procedures, performing evaluations, and issuing certification to environmental laboratories certified under Regulation 61-81. Due to the complexity of metal and organic testing applications, additional fees are included for these in addition to the base fee for general applications. A renewal application fee is also included to cover the costs associated with application renewals of in-state and out-of-state laboratories. Also, an additional parameter application fee was included for the addition of inorganic parameters covered under the base fee or additional metals and/or organic analytes for currently certified analytical methods. The additional parameter application fee would also apply to applications for recertification for Proficiency Testing (PT) failures. All other parameter fees reflect an increase. A clarification has been added for the Microbiology to state that the fee is assessed for each microorganism by Act (SDWA, CWA, and RCRA) and Method. The $1500.00 cap for Solid and Hazardous Waste (SW-846) and Air Quality certification fees for those laboratories that have paid the applicable per parameter fees for Clean Water Act tests has been removed. The current fees collected are insufficient to cover the costs associated with the program.

Notification of stakeholder meetings was mailed to approximately 600 laboratories currently certified by the program, and Department websites were provided to access information on the proposed regulations. Stakeholder meetings were held on July 30, 2008 in Charleston, SC; August 6, 2008 in Greenville, SC; and on August 7, 2008 in Columbia, SC, and notices and regulations were published in the State Register as required by law. These amended fees represent the Department’s consideration of public comments and adjustments that were made accordingly to the fee schedule.

DETERMINATION OF COSTS AND BENEFITS:

Since 1993 fees to support this program were provided by legislative annual proviso until the fees were promulgated into Regulation 61-30 in 1995 pursuant to the Environmental Protection Fund Act. In the 15 years since the fee rate was first established, only one fee increase has been approved. With inflation and the continued consolidation of the commercial laboratories along with the impact from new federal regulations, the fees collected by the program have decreased. There is a shortage of funding, and the program has not seen a reduction in the workload. The complexity of the current methodology used for environmental testing requires that laboratory certification officers have the necessary training and experience with the environmental analyses being reviewed. With a continuing shortfall in the amount of fees collected, fee increases are necessary to provide adequate funding to fully support the complete implementation of the Environmental Laboratory Certification Program as required by R.61-81.

It is important that the program maintain experienced certification officers to perform the duties associated with the certification of laboratories. It takes many years of experience and training for laboratory certification officers to become proficient in the analyses they must evaluate. They must also have knowledge of the regulations for the analyses being performed. Costs for personnel comprise the majority of costs to the program.

Certification maintenance procedures have increased because of the annual Proficiency Testing (PT) requirement, EPA’s DMR-QA Study for major dischargers, and notification of regulation and methodology changes related to the Safe Drinking Water Act (SDWA), Clean Water Act (CWA), and Resource Conservation and Recovery Act (RCRA). The EPA’s Methods Update Rule released March 12, 2007, resulted in numerous changes to the SDWA and CWA analysis and sampling procedures. Requests for technical assistance from the regulatory community and the citizens of South Carolina have also increased due to new federal regulations incorporating additional monitoring and methodology.

Since FY 2001, the last time fees were increased, the fees have generated less money than needed to operate the program. Surplus funds from other areas were used to make up the shortfall but the surplus funds are no longer available, leaving the program under funded and unable to carry out statutory mandates.

The additional cost to the regulated community is a result of the requirements that the Department must recover all costs associated with the program through user fees as mandated by state law.

UNCERTAINTIES OF ESTIMATES:

Minimal.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The certification of environmental laboratories is necessary to protect both the natural resources of South Carolina and the health of its citizens. Proper funding will enable the program to help ensure the validity and quality of the data being generated by laboratories for compliance with State regulations and also ensure that they are performing testing in accordance with pertinent Federal and State environmental regulations.

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

Without sufficient funding to maintain the program at the current staffing level and continue the required actions according to R.61-81, the Department will no longer be able to ensure the validity of the data submitted for regulatory compliance analyses for drinking water, wastewater, groundwater, hazardous waste, etc. The Department will not be able to maintain adequately trained certification officers to perform the duties associated with certifying environmental laboratories and there will be a reduction in services to the in-state and out-of-state laboratories, regulatory community, and to other citizens of South Carolina. The health of citizens of the State of South Carolina along with the protection of our natural resources will be at risk.

**Statement of Rationale:**

After consultation with the regulated community and the public, this was ultimately 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.