CHAPTER 2

Environmental Protection Funds

Editor's Note

2000 Act No. 282, Section 2, provides in part as follows:

"Chapter 2, Title 48 of the 1976 Code is renamed 'Environmental Protection Funds'."

ARTICLE 1

Environmental Protection Fund

**SECTION 48‑2‑10.** Short title.

 This article may be cited as the "Environmental Protection Fund Act".

HISTORY: 1993 Act No. 122, Section 2.

**SECTION 48‑2‑20.** Definitions.

 As used in this article:

 (1) "South Carolina Environmental Protection Fund" or "fund" means a special account established within the Treasurer's Office in which is deposited all fees as authorized by this article to be collected for the department's environmental programs.

 (2) "Department" means the South Carolina Department of Health and Environmental Control.

HISTORY: 1993 Act No. 122, Section 2.

**SECTION 48‑2‑30.** Environmental Protection Fund established; sources of funds; accounting; investment and interest; allowable expenditures.

 (A) There is established within the Treasurer's Office an agency‑restricted, interest‑bearing account to be known as the South Carolina Environmental Protection Fund.

 (B) Notwithstanding any provision of law to the contrary, there must be deposited in the fund all fees as authorized by this article to be collected for the following environmental programs administered by the department, including fees for environmental permits, licenses, certificates, and registrations:

 (1) Pollution Control Act;

 (2) Clean Air Act;

 (3) Safe Drinking Water Act;

 (4) Hazardous Waste Management Act;

 (5) Atomic Energy Act;

 (6) Oil and Gas Act;

 (7) any environmental program for which applicable federal law requires the establishment and collection of fees.

 (8) Surface Water Withdrawal, Permitting, Use, and Reporting Act.

 (C) The department shall maintain separate accounting for the monies collected and expended under each of the acts enumerated in subsection (B).

 (D) Unencumbered monies and any unexpended balance of the fund remaining at the end of a fiscal year do not revert to the general fund but must be carried forward and maintained in separate accounts until expended in accordance with this article.

 (E) Interest accruing on investments and deposits of the fund must be credited to the general fund.

 (F) Monies in the fund must be invested by the State Treasurer for the benefit of the fund. The fund must be administered by the appropriate program area within the department.

 (G) Monies in the fund may be expended only in accordance with annual appropriations approved by the General Assembly, except as otherwise authorized under Section 48‑2‑60.

HISTORY: 1993 Act No. 122, Section 2; 2010 Act No. 247, Section 2, eff January 1, 2011.

Effect of Amendment

The 2010 amendment added item (B)(8), relating to the Surface Water Withdrawal, Permitting, Use, and Reporting Act.

**SECTION 48‑2‑40.** Purpose and uses of fund.

 The fund is available to the department to help defray the costs of administering the regulatory programs under each act enumerated in Section 48‑2‑30(B). The monies must be used for improved performance in permitting, certification, licensing, monitoring, investigating, enforcing, and administering the department's functions under these acts. Monies collected pursuant to the Federal Clean Air Act may be used as necessary to administer the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services, contracts with consultants, and program expenses as listed in Title V of the 1990 amendments to the Federal Clean Air Act.

HISTORY: 1993 Act No. 122, Section 2.

**SECTION 48‑2‑50.** Fees.

 (A) In order to facilitate the proper administration of each act listed in Section 48‑2‑30(B), the department shall charge fees for the various services and functions it performs under each of those acts including, but not limited to, application fees, processing fees, permit maintenance fees, certification fees, license fees, registration fees, plan review fees, facility inspection fees, and emission fees.

 (B) All fees in existence before the effective date of this article which implement the acts identified in Section 48‑2‑30(B) must be continued and must be calculated and maintained with any additional fees authorized by this article; however, the existing fees may be used in any manner consistent with the department's authority, the provisions of this article notwithstanding.

 (C) No permit, certificate, license, or registration and no renewal or modification of a permit, certificate, license, or registration may be issued to an applicant under the acts enumerated in Section 48‑2‑30(B) until all fees are paid in full. The department shall develop a schedule by regulation for the collection of delinquent accounts and the amounts to be applied to delinquent accounts.

 (D) The department shall develop regulations which set annual levels of fees as authorized by this article. The level of these fees must be determined after careful consideration of the direct and indirect costs incurred by the department in performing its various functions and services under each of the acts enumerated in Section 48‑2‑30(B). Any subsequent increase in the level of these fees must be justified by an assessment report compiled in accordance with Section 1‑23‑115. All fees and procedures for collecting fees must be adopted pursuant to procedures as are set forth in the Administrative Procedures Act. In promulgating these regulations, the department shall consider detailed information regarding other costs to be funded by the proposed fee schedule or fee increases and the current and proposed average response time to permit applications under that program.

 (E) In the third, and all subsequent years, the fee schedule promulgated by the department may not, when added to its individual program fund balance from prior years, exceed one hundred fifty percent of the fees collected in the previous year.

 (F) The total fees assessed under this article and listed in subsection (H) to be paid by a single permitted facility under any one act enumerated in Section 48‑2‑30(B) may not exceed five percent of the total of all fees assessed under that act, except for those fees collected pursuant to the Clean Air Act and the Atomic Energy Act.

 (G) On January 1, 1994, and January first of every even‑numbered year after 1994, the department shall evaluate the implementation of the permit fee program and provide this evaluation in writing to the Senate Finance Committee and the House Ways and Means Committee. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the department, the department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

 (H) For the following categories, the fees shall not exceed the maximum amounts listed below. The department is encouraged to use graduated fees to reflect the volume of waste, population served, or other factors determined necessary to fairly apportion the fees:

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|  |  |  |  |  |  |  |  |  |
|   | (1) | Water Pollution Control |   |   |
|   |   | (a) | Annual fees for NPDES Permits and State Construction Permits for Land Application Systems; however, annual operating fees for both major and minor facilities must be calculated based on the previous year's actual flow as reported to the department: |   |   |
|   |   |   |   | Type of Facility |   |   |
|   |   |   | (i) | Major Facility (Flow greater than 2,000,000 gal/day) | $ | 5,400 |
|   |   |   | (ii) | Major Facility (Flow 1,000,000‑1,999,999 gal/day) | $ | 4,050 |
|   |   |   | (iii) | Minor Facility (Flow 500,000‑999,999 gal/day) | $ | 3,375 |
|   |   |   | (iv) | Minor Facility (Flow 100,000‑499,999 gal/day) | $ | 2,700 |
|   |   |   | (v) | Minor Facility (Flow 50,000‑99,999 gal/day) | $ | 2,025 |
|   |   |   | (vi) | Minor Facility (Flow 0‑49,999 gal/day) | $ | 1,350 |
|   |   |   | (vii) | Multiple Discharged Permits | $ | 4,050 |
|   |   |   |   | (More than 5 discharge points) per discharged over 5 | $ | 1,520 |
|   |   |   | (viii) | General Permits | $ | 170 |
|   |   | (b) | Water Quality Certification Application Fees: |   |   |
|   |   |   | (i) | Certification of major activities requiring federal or state permits | $ | 1,688 |
|   |   |   | (ii) | Certification of minor activities requiring federal or state permits | $ | 255 |
|   |   | (c) | Construction Permit Fees: |   |   |
|   |   |   | (i) | Pretreatment Systems: |   |   |
|   |   |   |   | 1. | Oil/water separators or Air Stripper Systems only | $ | 1,013 |
|   |   |   |   | 2. | All other Pretreatment Systems | $ | 3,038 |
|   |   |   | (ii) | Collection Systems: |   |   |
|   |   |   |   | 1. | 1000 ft. or less | $ | 338 |
|   |   |   |   | 2. | 1,001 to 10,000 ft. | $ | 845 |
|   |   |   |   | 3. | 10,000 ft. or more | $ | 1,688 |
|   |   |   |   | 4. | Delegated Program | $ | 170 |
|   |   |   | (iii) | Wastewater Treatment Facilities, provided that fees for modifications without expansions for both major and minor facilities must be assessed by the department only for those modifications which require the actual submission of plans and specifications to the department for engineering review |   |   |
|   |   |   |   | 1. | Major Facilities (1,000,000 gal/day or greater) |   |   |
|   |   |   |   |   | a. | New | $ | 5,400 |
|   |   |   |   |   | b. | Expansion | $ | 4,050 |
|   |   |   |   |   | c. | Modification w/o expansion | $ | 2,700 |
|   |   |   |   | 2. | Minor Facilities (0 to 999,999 gal/day) |   |   |
|   |   |   |   |   | a. | New | $ | 3,375 |
|   |   |   |   |   | b. | Expansion | $ | 2,700 |
|   |   |   |   |   | c. | Modification w/o expansion | $ | 2,025 |
|   | (2) | Water Supply Operating Permit |   |   |
|   |   | (a) | Major Facility (Serving more than 10,000 people) | $ | 4,050 |
|   |   | (b) | Major Facility (Serving 5,000‑10,000 people) | $ | 3,038 |
|   |   | (c) | Minor Facility (Serving 1,000‑4,900 people) | $ | 761 |
|   |   | (d) | Minor Facility (Serving less than 1,000 people) | $ | 255 |
|   | (3) | Air Quality Control |   |   |
|   |   | (a) | Permit fees for air quality operating permits must be based on an annual fee of $25.00 per ton of each regulated pollutant based on actual emissions, up to a maximum 4,000 tons a year a regulated pollutant. "Actual emissions" means 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. |   |   |
|   |   | (b) | New sources or any source without sufficient data to be able to determine actual emissions must be assessed the above $25.00 a ton fee with appropriate CPI adjustment calculated on a prorata basis for their months of operation. The fee must be based on permitted emissions, until such time as "Actual emissions" can be calculated, and must be paid before the operating permit is issued. |   |   |
|   |   | (c) | Pursuant to the 1990 Federal Clean Air Act, fees for air emissions or for air emission permits may be adjusted to reflect any increase in the Consumer Price Index (CPI) for the year before the billing month over the 1989 CPI. The CPI for any calendar year is the average of CPI for all urban consumers published by the Department of Labor, as of the close of the twelve‑month period ending on August thirty‑first of each calendar year. |   |   |
|   | (4) | Laboratory Certification Services |   |   |
|   |   | (a) | Application fee | $ | 507 |
|   |   | (b) | Minimum Annual Fee (per laboratory) | $ | 507 |
|   |   | (c) | Clean Water Act Inorganics (per parameter) | $ | 102 |
|   |   | (d) | Safe Drinking Water Act Inorganics (per parameter) | $ | 102 |
|   |   | (e) | SDWA "Secondary" Inorganics (per parameter) | $ | 102 |
|   |   | (f) | CWA Organics |   |   |
|   |   |   | (i) | PCB's and Pesticides (per Sub‑Group) | $ | 1,268 |
|   |   |   | (ii) | Herbicides (per Sub‑Group) | $ | 1,268 |
|   |   |   | (iii) | Volatiles (per Sub‑Group) | $ | 1,268 |
|   |   |   | (iv) | Semi‑Volatiles (per Sub‑Group) | $ | 1,268 |
|   |   |   | (v) | Dioxins and Furans (per Sub‑Group) | $ | 1,268 |
|   |   | (g) | SDWA Organics |   |   |
|   |   |   | (i) | Trihalomethanes | $ | 1,268 |
|   |   |   | (ii) | Synthetic Organic Compounds | $ | 2,532 |
|   |   |   | (iii) | Volatiles | $ | 2,532 |
|   |   | (h) | Microbiology |   |   |
|   |   |   | (i) | Total Coliform | $ | 255 |
|   |   |   | (ii) | Fecal Coliform | $ | 255 |
|   |   |   | (iii) | Fecal Steptococci | $ | 255 |
|   |   | (i) | Biology |   |   |
|   |   |   | (i) | Toxicity Testing | $ | 2,532 |
|   |   |   | (ii) | Taxonomy | $ | 2,268 |
|   |   | (j) | Solid and Hazardous Wastes (SW 846 Methods) | $ | 2,532 |
|   |   | (k) | Air Quality Analysis | $ | 2,532 |
|   | (5) | Radioactive Material Licenses |   |   |
|   |   | (a) | Low level Radioactive Waste Disposal | $ | 275,000 |
|   |   | (b) | Radioactive Material Manufact/processing | $ | 27,000 |
|   |   | (c) | Decontamination Facil. | $ | 3,000 |
|   |   | (d) | Industrial Radiography under Reciprocity | $ | 500 |
|   |   | (e) | Low Level Waste Consolidation | $ | 25,000 |
|   |   | (f) | Low Level Waste Processing | $ | 50,000 |
|   | (6) | Radioaction Waste Transportation Permits | $ | 10,000 |
|   | (7) | Hazardous Waste Units | $ | 3,038 |
|   |   |   |   |   |

 (8) Surface Water Withdrawals:

 (a) Existing surface water withdrawal permit application processing fee $1,000;

 (b) New surface water withdrawal permit application processing fee $7,500;

 (c) Modification of surface water withdrawal permit application processing fee $2,000;

 (d) Renewal of surface water withdrawal permit with modifications application processing fee $1,000;

 (e) Surface water withdrawal annual operating fee per permitted intake $1,000.

HISTORY: 1993 Act No. 122, Section 2; 2010 Act No. 247, Section 3.A, eff January 1, 2011; 2012 Act No. 248, Section 1, eff January 1, 2013.

Code Commissioner's Note

At the direction of the Code Commissioner, the 2010 version of subsection (H)(8), is replaced by the 2012 version of subsection (H)(8), effective January 1, 2013; the two versions are substantially identical.

Editor's Note

2010 Act No. 247, Section 3.C, provides as follows:

"The new item added to Section 48‑2‑50(H) by this SECTION is repealed January 1, 2013. No new fees may be charged for Surface Water Withdrawal applications following that date without an act of the General Assembly setting the fee schedule."

2012 Act No. 248, Section 3, provides as follows:

"SECTION 3. Section 3C of Act 247 of 2010, which reads as stated below, is repealed:

"C. The new item added to Section 48‑2‑50 by this SECTION is repealed January 1, 2013. No new fees may be charged for Surface Water Withdrawal applications following that date without an act of the General Assembly setting the fee schedule."

Effect of Amendment

The 2010 amendment added subsection (H)(8), relating to surface water withdrawals.

The 2012 amendment added subsection (H)(8), relating to surface water withdrawals.

**SECTION 48‑2‑60.** Challenges to fees; petition, hearing, and determination of challenge.

 A person required to pay the fees set forth in this article who disagrees with the calculation or applicability of the fee may petition the department for a hearing by submitting a petition setting forth the fee which is challenged, the grounds on which relief is sought, and the total amount of the fee due. The petition and the fee must be received by the department no later than thirty days after the due date. The hearing must be conducted in accordance with contested case provisions set forth in the Administrative Procedures Act and department regulations. If it is finally determined that the amount in dispute was improperly assessed, the department shall return the amount determined to be improperly assessed with interest not to exceed the statutory rate.

HISTORY: 1993 Act No. 122, Section 2.

**SECTION 48‑2‑70.** Processing of permit applications; maximum time for review.

 Under each program for which a permit processing fee is established pursuant to this article, the promulgating authority also shall establish by regulation a schedule for timely action by the Department of Health and Environmental Control on permit applications under that program. These schedules shall contain criteria for determining in a timely manner when an application is complete and the maximum length of time necessary and appropriate for a thorough and prompt review of each category of permit applications and shall take into account the nature and complexity of permit application review required by the act under which the permit is sought. If the department fails to grant or deny the permit within the time frame established by regulation, the department shall refund the permit processing fee to the permit applicant.

HISTORY: 1993 Act No. 122, Section 2.

**SECTION 48‑2‑80.** Fees do not reduce general fund appropriations; limitation on amount of fees that may be collected in any fiscal year.

 Fees collected pursuant to Section 48‑2‑50 do not supplant or reduce in any way the general fund appropriation to the department from the state or federal program; and the total amount of fees authorized by this article collected in any fiscal year, may not exceed thirty‑three and one‑third percent of the "Total Funds" appropriated to the Office of Environmental Quality Control in the annual appropriations act.

HISTORY: 1993 Act No. 122, Section 2.

**SECTION 48‑2‑90.** Department may establish applicable federal requirements; use of federal fee caps; federal requirements prevail over conflicting provisions of article.

 If the requirements of this article are not in agreement with applicable federal requirements pertaining to the establishment and collection of fees as authorized by this article, the federal requirements take precedence. The department has the authority to establish, by regulation, applicable federal requirements. A permissible maximum fee or cap on a fee authorized by federal law or regulation, or both, must be used by the department.

HISTORY: 1993 Act No. 122, Section 2.

ARTICLE 3

Emergency Environmental Fund

**SECTION 48‑2‑310.** Citation of act.

 This article may be cited as the "Environmental Emergency Fund Act".

HISTORY: 2000 Act No. 282, Section 1.

**SECTION 48‑2‑320.** Definitions.

 As used in this article:

 (1) "Commissioner" means the Commissioner of the Department of Health and Environmental Control.

 (2) "Department" means the Department of Health and Environmental Control.

 (3) "Environmental Emergency" means a situation, to be determined by the commissioner, that constitutes an immediate threat to the environment or public health, or both, and providing immediate, but temporary relief to the situation may require the expenditure of funds to effect a solution, provide temporary relief, or retain the services of appropriate technical personnel or contractors.

 (4) "Fund" means the "Environmental Emergency Fund" established pursuant to this article.

 (5) "Responsible party" means a person determined to be legally responsible for any environmental pollution or threat to public health which requires expenditures from the fund.

HISTORY: 2000 Act No. 282, Section 1.

**SECTION 48‑2‑330.** Fund created; deposit of fines and penalties; maximum; interest.

 (A) There is created within the Department of Health and Environmental Control a restricted account to be known as the Environmental Emergency Fund.

 (B) The fund must be financed through the collection and deposit of fines and penalties levied by the department. However, a fine or penalty collected under any statute which provides explicitly for distribution of the fine or penalty, other than to the general fund including, but not limited to, those penalties distributed to the counties pursuant to Section 48‑1‑350, must not be deposited in the fund.

 (C) Fines and penalties must be credited to the fund until the fund reaches two hundred fifty thousand dollars, at which time all subsequent fines and penalties must be deposited to the general fund or as otherwise prescribed by law. At no time shall the balance in the fund exceed two hundred fifty thousand dollars, and no more than two hundred fifty thousand dollars may be deposited to the fund in any fiscal year.

 (D) Interest accruing to the fund must be remitted to the general fund of the State.

HISTORY: 2000 Act No. 282, Section 1.

**SECTION 48‑2‑340.** Certification of necessity of funding for specific emergency; accounting; recovery of costs.

 (A) The department, through the commissioner or the commissioner's designee, shall certify that funding for a specific emergency was necessary to protect the environment or public health, or both. Annually, the department shall prepare an independent accounting of all revenue in the fund. The report must be submitted to the chairman of the Board of the Department of Health and Environmental Control and must be made available to the public upon request.

 (B) Nothing in this section precludes the department from seeking appropriate enforcement action, including civil penalties and recovery of costs expended from the fund, against a party determined to be responsible for the environmental emergency. Costs recovered pursuant to an enforcement action must be deposited in the fund in accordance with the limitation prescribed in Section 48‑2‑330.

HISTORY: 2000 Act No. 282, Section 1.