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## ENVIRONMENTAL PROTECTION AGENCY

### Fees

- Requires application fees for state isolated wetlands permits to be credited to the Surface Water Protection Fund, which is used for the administration of surface water protection programs, rather than the Dredge and Fill Fund.
- Abolishes the Dredge and Fill Fund, which is used for the administration of the isolated wetlands permit program.
- Extends from June 30, 2014, to June 30, 2016, the expiration of a \$1 per-ton fee on the transfer or disposal of solid wastes, and revises the distribution of the proceeds to allocate 30% to the Hazardous Waste Facility Management Fund and 70% to the Hazardous Waste Clean-Up Fund rather than 50% to each Fund as in current law.
- Extends to June 30, 2016, the expiration of the following fees on the transfer or disposal of solid wastes:
  - \$1 per ton the proceeds of which are credited to the Solid Waste Fund, which is used for the solid and infectious waste and construction and demolition debris management programs;
  - \$2.50 per ton the proceeds of which are credited to the Environmental Protection Fund, which is used for administering and enforcing environmental protection programs; and
  - \$.25 per ton the proceeds of which are credited to the Soil and Water Conservation District Assistance Fund.
- Extends for three years the sunset of the 50¢ per-tire fee on the sale of tires the proceeds of which are used to fund the scrap tire management program.
- Extends for three years the sunset of an additional 50¢ per-tire fee on the sale of tires the proceeds of which are credited to the Soil and Water Conservation District Assistance Fund.
- Extends all of the following for two years:
  - The sunset of the annual emissions fees for synthetic minor facilities;
  - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law;



--The sunset of the annual discharge fees for holders of national pollutant discharge elimination system permits issued under the Water Pollution Control Law;

--The sunset of license fees for public water system licenses issued under the Safe Drinking Water Law;

--A higher cap on the total fee due for plan approval for a public water supply system under the Safe Drinking Water Law and the decrease of that cap at the end of the two years;

--The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications to take examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law, as applicable; and

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law.

## **Hazardous waste**

- Adds that an action by the Director of Environmental Protection regarding pollution or threats to public health or safety caused by hazardous waste may include the issuance of an order to a violator, and states that the order may include an agreement by the person to pay the costs incurred by the Environmental Protection Agency (EPA) as a result of the violation.
- Specifies that if the Director performs abatement or prevention investigations or measures, the Director's itemized record of the cost of those investigations and measures must include costs incurred by the EPA for labor, materials, and any contract services required rather than just costs for labor, materials, and any contract services required.
- Clarifies that all of the provisions of the statute governing recovery of costs apply to locations where the Director has reason to believe hazardous waste was treated, stored, or disposed of as well as to hazardous and solid waste facilities as in continuing law and to investigations as well as to abatement or prevention measures as in continuing law.



- Adds to the purposes for which the existing Hazardous Waste Clean-up Fund is used administrative expenses of any hazardous waste closure or corrective action program.

### **Construction and demolition debris**

- Allows a board of health to use money in its existing construction and demolition debris fund to abate accumulations of construction and demolition debris if it is the end of the board's fiscal year and the money is not needed for administration and enforcement for the following fiscal year.
- Authorizes a board to use such excess money to abate accumulations of construction and demolition debris only at a location for which a license has not been issued under the Construction and Demolition Debris Law if certain conditions are met, including that the property owner did not participate in or consent to the placement of the construction and demolition debris on the property.

### **Water pollution control**

- Requires federal grant money for nonpoint source water pollution management received by the Director to be credited to the existing Water Quality Protection Fund rather than the Nonpoint Source Pollution Management Fund as in current law, and eliminates the Nonpoint Source Pollution Management Fund.
- Requires the grant money to be used to provide financial assistance, in part, to implement ground and surface water quality protection activities and water quality assessments rather than only ground water quality protection activities and assessments as in current law.
- Authorizes the Director, on behalf of the state, to apply for approval from the U.S. Environmental Protection Agency (USEPA) for the state to assume responsibility for administering the federal section 404 permitting program for the discharge of dredged or fill material into navigable waters.
- Requires the Director, upon approval by USEPA, to administer the program consistent with and in the manner required by the Federal Water Pollution Control Act.
- Authorizes the Director to adopt rules that are necessary to obtain approval to administer the program and to administer it after receiving approval, and specifies the topics to be addressed by the rules, including issuance of permits, notification of the receipt of a permit application, public hearings, authorization for another state



with waters that may be affected by the issuance of a permit to submit written recommendations, and enforcement.

### **Crediting of application fees for state isolated wetlands permits**

(R.C. 1509.02 and 3745.113; R.C. 6111.029 (repealed))

The bill requires application fees for state isolated wetlands permits to be credited to the Surface Water Protection Fund, which is used for the administration of surface water protection programs, rather than the Dredge and Fill Fund as in current law. It then abolishes the Dredge and Fill Fund, which is used for the administration of the isolated wetlands permit program.

### **Extension of solid waste transfer and disposal fees**

(R.C. 3734.57)

The bill extends, from June 30, 2014, to June 30, 2016, the expiration date of three fees levied on the transfer or disposal of solid wastes that are used to fund programs administered by the Environmental Protection Agency (EPA). The first fee is a \$1 per-ton fee, of which currently one-half of the proceeds must be credited to the Hazardous Waste Facility Management Fund and one-half to the Hazardous Waste Clean-up Fund. The bill revises the distribution of the proceeds by allocating 30% to the Hazardous Waste Facility Management Fund and 70% to the Hazardous Waste Clean-Up Fund. Those funds are used for purposes of the hazardous waste management program. The second fee is another \$1 per-ton fee that is credited to the Solid Waste Fund and used to fund the EPA's solid and infectious waste and construction and demolition debris management programs. The third fee is an additional \$2.50 per-ton fee the proceeds of which must be credited to the Environmental Protection Fund, which is used to pay the EPA's costs associated with administering and enforcing environmental protection programs. The solid waste transfer and disposal fees are collected by the owners and operators of solid waste disposal and transfer facilities as trustees for the state.

The bill also extends from June 30, 2014, to June 30, 2016, the expiration date of a fourth 25¢ per-ton fee on the transfer or disposal of solid wastes the proceeds of which must be credited to the Soil and Water Conservation District Assistance Fund, which is used to assist soil and water conservation districts.



## **Sale of tire fees**

(R.C. 3734.901)

The bill extends until June 30, 2016, the sunset of the 50¢ per-tire fee on the sale of tires the proceeds of which are used to fund the scrap tire management program. The fee is scheduled to expire on June 30, 2013.

The bill also extends until June 30, 2016, the sunset of an additional 50¢ per-tire fee on the sale of tires the proceeds of which are credited to the Soil and Water Conservation District Assistance Fund, which is used to provide money to soil and water conservation districts. Current law requires the additional fee to be collected and so credited until June 30, 2013.

## **Extension of various air and water fees**

### **Synthetic minor facility emissions fees**

(R.C. 3745.11(D))

Under current law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead in accordance with a fee schedule. A synthetic minor facility is a facility for which one or more permits to install or permits to operate have been issued for the air contaminant sources at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under existing law. Current law requires the fee to be paid through June 30, 2014. The bill extends the fee through June 30, 2016.

### **Water pollution control fees and safe drinking water fees**

(R.C. 3745.11(L), (M), and (N) and 6109.21)

Under current law, a person applying for a plan approval for a wastewater treatment works is required to pay a fee of \$100 plus 0.65 of 1% of the estimated project cost, up to a maximum of \$15,000, when submitting an application through June 30, 2014, and a fee of \$100 plus 0.2 of 1% of the estimated project cost, up to a maximum of \$5,000, on and after July 1, 2014. Under the bill, the first tier fee is extended through June 30, 2016, and the second tier applies to applications submitted on or after July 1, 2016.

Current law establishes two schedules for annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits with an



average daily discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public dischargers and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. Under current law, the fees are due by January 30, 2012, and January 30, 2013. The bill extends payment of the fees and the fee schedules to January 30, 2014, and January 30, 2015.

In addition to the fee schedules described above, current law imposes a \$7,500 surcharge to the annual discharge fee applicable to major industrial dischargers that is required to be paid by January 30, 2012, and January 30, 2013. The bill continues the surcharge and requires it to be paid annually by January 30, 2014, and January 30, 2015.

Under current law, one category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of \$180. Under current law, the fee is due annually not later than January 30, 2012, and January 30, 2013. The bill continues the fee and requires it to be paid annually by January 30, 2014, and January 30, 2015.

The Safe Drinking Water Law prohibits anyone from operating or maintaining a public water system without an annual license from the Director of Environmental Protection. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems established in current law. The fee for initial licenses and license renewals is required in statute through June 30, 2014, and has to be paid annually prior to January 31, 2014. The bill extends the initial license and license renewal fee through June 30, 2016, and requires the fee to be paid annually prior to January 31, 2016. The bill also relocates to the statute imposing that fee the provision authorizing a prorated fee for an initial license for a new system.

The Safe Drinking Water Law also requires anyone who intends to construct, install, or modify a public water supply system to obtain approval of the plans from the Director. Ongoing law establishes a fee for such plan approval of \$150 plus 0.35 of 1% of the estimated project cost. Under current law, the fee cannot exceed \$20,000 through June 30, 2014, and \$15,000 on and after July 1, 2014. The bill specifies that the \$20,000 limit applies to persons applying for plan approval through June 30, 2016, and the \$15,000 limit applies to persons applying for plan approval on and after July 1, 2016.

Current law establishes two schedules of fees that the EPA charges for evaluating laboratories and laboratory personnel for compliance with accepted analytical techniques and procedures established under the Safe Drinking Water Law. A schedule with higher fees is applicable through June 30, 2014, and a schedule with lower fees is



applicable on and after July 1, 2014. The bill continues the higher fee schedule through June 30, 2016, and applies the lower fee schedule to evaluations conducted on or after July 1, 2016. The bill continues through June 30, 2016, a provision stating that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay \$1,800 for each additional survey requested.

### **Fees for certification of water supply or wastewater systems operators**

(R.C. 3745.11(O))

Current law requires a person applying to the Director to take an examination for certification as an operator of a water supply system or a wastewater system to pay a fee, at the time an application is submitted, in accordance with a statutory schedule. A higher schedule is established through November 30, 2014, and a lower schedule applies on and after December 1, 2014. The bill extends the higher fee schedule through November 30, 2016, and applies the lower fee schedule beginning December 1, 2016.

### **Application fees – water pollution control and safe drinking water**

(R.C. 3745.11(S))

Current law requires any person applying for a permit, other than a NPDES permit, a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law to pay a nonrefundable fee of \$100 at the time the application is submitted through June 30, 2014, and a nonrefundable fee of \$15 if the application is submitted on or after July 1, 2014. The bill extends the \$100 fee through June 30, 2016, and applies the \$15 fee on and after July 1, 2016.

Similarly, under existing law, a person applying for a NPDES permit through June 30, 2014, must pay a nonrefundable fee of \$200 at the time of application. On and after July 1, 2014, the nonrefundable application fee is \$15. The bill extends the \$200 fee through June 30, 2016, and applies the \$15 fee on and after July 1, 2016.

### **Recovery of costs – hazardous waste pollution**

(R.C. 3734.20)

The bill adds that an action by the Director of Environmental Protection in response to a substantial threat to public health or safety caused by hazardous waste or in response to air pollution, water pollution, or soil contamination to which hazardous waste contributes or that it causes or threatens to cause may include the issuance of an order to a violator. Under the bill, the order may be issued to a violator of the Solid, Hazardous, and Infectious Wastes Law, the Air Pollution Control Law, the Water



Pollution Control Law, any rule adopted under those laws, or any term or condition of a permit, license, variance or order issued under any of those laws. The bill states that the order may include an agreement by the person to pay the costs incurred by the EPA as a result of a violation of those laws. Continuing law authorizes the Director to take appropriate action under the Solid, Hazardous, and Infectious Wastes Law, the Air Pollution Control Law, and the Water Pollution Control Law or to seek any other appropriate legal or equitable remedies to abate the pollution or contamination or to protect public health or safety.

The bill specifies that if the Director performs abatement or prevention investigations or measures, the Director's itemized record of the cost of those investigations and measures must include costs incurred by the EPA for labor, materials, and any contract services required. Current law does not specify that the costs are incurred by the EPA.

Finally, the bill clarifies that all of the provisions of the statute governing recovery of costs apply to locations where the Director has reason to believe hazardous waste was treated, stored, or disposed of as well as to hazardous and solid waste facilities as in continuing law and to investigations as well as to abatement or prevention measures as in continuing law.

### **Use of Hazardous Waste Clean-Up Fund**

(R.C. 3734.28)

The bill adds to the purposes for which the existing Hazardous Waste Clean-up Fund is used administrative expenses of any hazardous waste closure or corrective action program. Currently, the Fund must be used for all of the following, including enforcement expenses:

(1) Specified activities under the hazardous waste provisions of the Solid, Hazardous, and Infectious Wastes Law, including investigations and cleanup of sites contaminated by polychlorinated biphenyls or other hazardous waste;

(2) Costs incurred by the EPA for emergency and remedial actions in response to unauthorized spills, releases, and discharges;

(3) Purposes specified in the Voluntary Action Program Law; and

(4) Payment of the state's long-term operation and maintenance costs or matching share for actions taken under the federal Superfund law.



## **Use of money by boards of health – construction and demolition debris**

(R.C. 3714.07 and 3714.074)

The bill allows a board of health to use money in its construction and demolition debris fund, which under current law is used for administration and enforcement, to abate accumulations of construction and demolition debris. A board may do so only if it is the end of the board's fiscal year and the money is not needed for administration and enforcement for the following fiscal year. Furthermore, a board may use such excess money to abate accumulations only at a location for which a license has not been issued under the Construction and Demolition Debris Law if all of the following apply to the property on which the accumulations are located:

(1) The construction and demolition debris was placed on the property either after the owner of the property acquired title to it or before the owner of the property acquired title to it if the owner acquired title by bequest or devise;

(2) The property owner did not have knowledge that the construction and demolition debris was being placed on the property, or the owner posted on the property signs prohibiting dumping or took other action to prevent the placing of construction and demolition debris on the property;

(3) The property owner did not participate in or consent to the placement of the construction and demolition debris on the property;

(4) The property owner did not receive any financial benefit from the placement of the construction and demolition debris on the property or from having that debris on the property;

(5) Title to the property was not transferred to the owner of that property for the purpose of avoiding liability for violations of the Construction and Demolition Debris Law or rules adopted under it; and

(6) The person responsible for the placement of the construction and demolition debris on the property, in placing it there, was not acting as an agent for the property owner.

## **Federal grants for nonpoint source pollution management**

(R.C. 6111.037)

The bill requires federal grant money for nonpoint source water pollution management received by the Director of Environmental Protection to be credited to the existing Water Quality Protection Fund rather than the Nonpoint Source Pollution



Management Fund as in current law. It also eliminates the Nonpoint Source Pollution Management Fund.

The bill requires the grant money to be used to provide financial assistance, in part, to implement ground and surface water quality protection activities that include in pertinent part water quality assessments rather than only ground water quality protection activities that include in pertinent part ground water assessments as in current law. Under law unchanged by the bill, the Director must periodically prepare and establish a priority system for identifying activities that are eligible for assistance from the grant money. The priority system must ensure that the financial assistance is first provided to assist in certain activities. One of the activities is to implement the water quality protection activities discussed above that the Director determines are part of a comprehensive nonpoint source pollution control program.

### **State administration of federal section 404 permitting program for discharge of dredged or fill material**

(R.C. 6111.32)

The bill authorizes the Director of Environmental Protection, on behalf of the state, to apply to the U.S. Environmental Protection Agency (USEPA) for the state to assume responsibility for administering the section 404 permitting program for the discharge of dredged or fill material into navigable waters under the Federal Water Pollution Control Act. Currently, the program is federally administered in Ohio.

Under the bill, upon USEPA approval of the Director's application, the Director must administer the permitting program consistent with and in the manner required by the Federal Water Pollution Control Act. The bill authorizes the Director to adopt rules in accordance with the Administrative Procedure Act that are necessary to obtain approval from USEPA and to administer the program after receiving that approval. The bill requires the rules to govern or establish all of the following:

(1) The issuance of permits, including rules that require compliance with applicable federal law, require a permit to be issued for a fixed term not to exceed five years, and specify that a permit may be terminated or modified for cause, including at least a violation of any condition of the permit, obtaining a permit by misrepresentation or failure to fully disclose all relevant facts related to the permit, or a change in any condition that requires a temporary or permanent reduction or elimination of the permitted discharge;

(2) Requirements ensuring compliance with federal law, including requirements for the inspection of, monitoring of, and right to enter property that is subject to a permit and requirements governing the content and submission of reports;



(3) The provision of notice regarding the receipt of an application for a permit to the public, any other state with waters that may be affected by the issuance of the permit, and the USEPA Administrator;

(4) The opportunity for a public hearing regarding an application for a permit to be conducted prior to its issuance or denial;

(5) Requirements authorizing any other state with waters that may be affected by the issuance of a section 404 permit by the Director to submit written recommendations to the Director and the USEPA Administrator with respect to the permit application, including requirements that the Director notify the other state if any or all of the recommendations are not accepted and the reason and requirements that the notice be in writing and a copy provided to the Administrator;

(6) Requirements that the Director ensure that a permit is not issued if anchorage and any navigation of navigable waters would be substantially impaired based on the judgment of the Secretary of the U.S. Army after consultation with the Secretary of the federal department that is responsible for overseeing the U.S. Coast Guard at the time the application for the permit is submitted;

(7) Enforcement of a violation of the terms of a permit or of the permit program, including rules establishing requirements governing abatements of violations, civil and criminal penalties, and other means of enforcement; and

(8) Coordination with federal and state water-related planning and review processes.

The bill states that the above provisions cannot be construed as preempting, modifying, or amending federal law and are intended solely to authorize the Environmental Protection Agency to assume the role of the U.S. Corps of Army Engineers in the regulation of the navigable waters of Ohio. The bill also states that the provisions cannot be enforced as an expansion of federal laws, regulations, or regulatory authority and that any rule, policy, or permit adopted or issued by the Director under the provisions cannot conflict with existing federal law or exceed the limitations placed by Congress on the U.S. Army Corps of Engineers.