
ENVIRONMENTAL PROTECTION AGENCY

Fees

- Makes ten types of Ohio Environmental Protection Agency (OEPA) fees (currently set to expire on specified dates in 2022) permanent.
- Eliminates a \$15 application fee for the following:
 - A registration certificate necessary for certain scrap tire collection facilities;
 - A permit, or variance, or plan approval under the Solid and Hazardous Waste Law.
- Eliminates a non-Title V air contaminant source fee schedule that only applied from January 1, 1994, to December 31, 2003.

Scrap tires removed from “no fault” sites

- Increases, from 5,000 to 10,000, the number of scrap tires that can be removed from a person’s property by OEPA at no cost to the property owner if certain conditions apply (i.e., placement of scrap tires was not the fault of the property owner).
- Allows the OEPA Director to increase the 10,000 scrap tire threshold.

“Lead free” definition

- Replaces the current definition of “lead free” that specifies the maximum permissible percentage of lead that any solder, flux, pipes, pipe fittings, plumbing fittings, and plumbing fixtures may contain, with a requirement that the OEPA Director adopt rules establishing the definition of “lead free.”
- Requires the Director, when establishing the definition, to use standards that are not less stringent than those established under the federal Safe Drinking Water Act.

Lead and copper notification rules

- Eliminates a requirement that the OEPA Director adopt rules setting specific administrative penalties that apply to community or nontransient noncommunity water systems for violations of notice requirements regarding lead and copper laboratory results.
- Authorizes the Director to instead assess the administrative penalties under existing statutory guidelines that apply to other violations of the Safe Drinking Water Law.
- Generally shifts reporting and other requirements regarding lead and copper contamination from statute to a rules-based system administered by the Director.
- Increases the timeframe (from two business days to not more than 30 business days after the receipt of lab results) within which the owner or operator of a community or nontransient noncommunity water system must notify residents when a tap sample does not exceed the applicable lead threshold.

- Requires the owner or operator of those systems to update and resubmit maps according to a schedule determined by the Director but no less frequently than required under the Safe Drinking Water Act, rather than every five years as in current law.
- Eliminates a requirement that the Director provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for the purpose of fulfilling the notice and mapping requirements.

Certified and accredited laboratories under the VAP

- Eliminates the OEPA Director’s authority to certify laboratories for purposes of performing analyses under the Voluntary Action Program (VAP).
- Instead, specifies that a laboratory must hold a valid accreditation from a specified outside accreditation body to perform analyses under the VAP.
- Generally requires a person participating in the VAP to use the services of an accredited laboratory to perform analyses, but specifies that data analyzed by a certified laboratory before the bill’s effective date may still be utilized.
- Retains the Director’s authority to enter the property of a certified laboratory and conduct audits for purposes of investigation and extends this authority to accredited laboratories.
- Prohibits the Director from contracting with an accredited laboratory to perform an audit if the laboratory performed any analyses that formed the basis for the issuance of a no further action letter in connection with the audit.
- Eliminates outdated provisions governing the VAP.

Water pollution control: practical qualification level

- Specifies that, for purposes of determining compliance with a pollutant discharge limit set below the practical quantification level (PQL), any reported value below PQL constitutes compliance (instead of any level “at or below”).

Isolated wetland mitigation ratio table reference

- Corrects an incorrect division reference to the Ohio Administrative Code.

Fees

(R.C. 3745.11, 3734.57, and 3734.901)

During the biennial budget process every two years, the Environmental Protection Agency (OEPA) seeks the renewal of certain fees levied on regulated entities. These fees have been continued every budget since their enactment and are currently set to expire on specified dates in 2022. The bill eliminates this two-year renewal cycle and makes these fees permanent. The fees made permanent are as follows:

1. The annual emissions fees for synthetic minor facilities;

2. The annual discharge fees for holders of NPDES permits issued under the Water Pollution Control Law;

3. The application fees for plan approvals for wastewater treatment works under the Water Pollution Control Law;

4. The initial and renewal license fees for public water system licenses issued under the Safe Drinking Water Law;

5. The fee for plan approvals for public water supply systems under the Safe Drinking Water Law;

6. The fees for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;

7. The fees for applications and examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law and the Water Pollution Control Law;

8. The application fees for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law;

9. The 50¢ per tire fee on the sale of tires, deposited in the Scrap Tire Management Fund, and the additional 50¢ per tire fee deposited in the Soil and Water Conservation District Assistance Fund; and

10. The following four fees levied on the transfer or disposal of solid waste:

a. The 90¢ per ton fee, deposited in the Hazardous Waste Facility Fund;

b. The 75¢ per ton fee, deposited in the Waste Management Fund;

c. The \$2.85 per ton fee, deposited in the Environmental Protection Fund;

d. The 25¢ per ton fee, deposited in the Soil and Water Conservation District Assistance Fund.

The bill also eliminates a \$15 application fee for both of the following:

1. A registration certificate necessary for certain scrap tire collection;

2. A permit, or variance, or plan approval under the Solid and Hazardous Waste Law.

Finally, the bill eliminates an obsolete non-Title V air contaminant source fee schedule that applied from 1994 to 2003.

Scrap tires removed from “no fault” sites

(R.C. 3734.85)

The bill increases, from 5,000 to 10,000 (or more if the OEPA Director approves a larger amount), the number of scrap tires that can be removed from a person’s property by OEPA at no cost to the property owner. The bill maintains the stipulation that all of the following conditions apply:

1. The tires were placed on the property *after* the property owner acquired title to the property, or the tires were placed on the property *before* the owner acquired title to the property by bequest or devise;

2. The property owner did not have knowledge that the tires were being placed on the property, or the property owner posted the property signs prohibiting dumping or took other action to prevent the placing of tires on the property;

3. The property owner did not participate in or consent to the placing of the tires on the property;

4. The property owner received no financial benefit from the placing of the tires on the property or otherwise having the tires on the property;

5. Title to the property was not transferred to the property owner for evading scrap tire abatement liability; and

6. The person responsible for placing the tires on the property, in doing so, was not acting as an agent for the property owner.

Lead free definition

(R.C. 6109.10)

The bill eliminates the current definition of “lead free” that specifies the maximum permissible percentage of lead that any solder, flux, pipes, pipe fittings, plumbing fittings, and plumbing fixtures may contain. Instead, it requires the OEPA Director adopt rules establishing the definition of “lead free.” The Director, in establishing the new definition, must use standards that are not less stringent than those established under the federal Safe Drinking Water Act.

Under current law, by definition, the following items are lead free:

1. Solder or flux that contains no more than 0.2% lead; and
2. Wetted surfaces of pipes, pipe fittings, or plumbing fittings or fixtures that contain no more than a weighted average of 0.025% lead.

Current law prohibits a person from doing any of the following:

1. Using any pipe, pipe fitting, plumbing fitting, plumbing fixture, including a drinking water fountain, solder, or flux that is not lead free in the installation or repair of a public water system or in any plumbing in a residential or nonresidential facility providing water for human consumption;

2. Introducing into commerce any pipe, pipe fitting, plumbing fitting, or plumbing fixture, including a drinking water fountain, that is not lead free;

3. Selling solder or flux that is not lead free while engaged in the business of selling plumbing supplies; and

4. Introducing into commerce any solder or flux that is not lead free unless the solder or flux has a prominent label stating that it is illegal to use the solder or flux in the installation or repair of any plumbing providing water for human consumption.

The penalty for violating these prohibitions varies depending on the *mens rea* (culpable state of mind) of the offender and other factors.

Lead and copper notification rules

(R.C. 6109.121; R.C. 6109.01 and 6109.23, not in the bill)

The bill eliminates a requirement that the OEPA Director adopt rules setting specific administrative penalties that apply to community or nontransient noncommunity water systems for violations of notice requirements regarding lead and copper laboratory results. Instead, the bill authorizes the Director to establish the administrative penalties under existing statutory guidelines that apply to other violations of the Safe Drinking Water Law.

In general, the bill shifts reporting and other requirements that the owner or operator of such water systems must follow regarding lead and copper contamination from statute to rule. This shift includes requirements concerning the following subjects:

1. Administrative penalties, as discussed above;
2. Laboratory sampling and reporting requirements;
3. Notification requirements that the owner or operator of a community or nontransient noncommunity water system must follow regarding laboratory results;
4. Certification requirements concerning the notification requirements;
5. OEPA Director notifications where a system fails to make required notices; and
6. System mapping requirements that show areas of a system that are known or likely to contain lead service lines and lead fixtures.

Specifically, the bill requires the rules to include requirements that the owner or operator of a community or nontransient noncommunity water system do both of the following:

1. When a tap sample for lead or copper is *below* the applicable lead threshold, provide notice of the results to residents within a time period specified in rules that is not more than 30 days after the receipt of lab results, rather than within two business days as in current law;
2. Under rules concerning mapping requirements, update and resubmit the maps according to a schedule determined by the Director, but no less frequently than required under the Safe Drinking Water Act, rather than every five years as in current law.

The bill eliminates a requirement that the Director provide financial assistance from the Drinking Water Assistance Fund to community and nontransient noncommunity water systems for the purpose of fulfilling the notice and mapping requirements.

Under current law, a community water system is a public water system that has at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents. A nontransient noncommunity water system is a public water system that regularly serves at least 25 of the same persons over six months per year and is not a community water system.

Certified and accredited laboratories under the VAP

(R.C. 3746.01, 3746.04, 122.65, 3746.07, repealed; R.C. 3746.071 (3746.07), 3746.09, 3746.10, 3746.11, 3746.12, 3746.13, 3746.17, 3746.18, 3746.19, 3746.20, 3746.21, 3746.31, and 3746.35)

Current law establishes the Voluntary Action Program (VAP) administered by OEPA. Under the VAP, a person may undertake cleanup of a contaminated property to specific standards. When those standards are met, a certified professional (a person certified by OEPA to assess the cleanup) may issue a “no further action letter.” This letter verifies that the property, in the view of the certified professional and based on an analysis performed by a certified laboratory, has been remediated and meets appropriate standards. After the issuance of a no further action letter, the OEPA Director may issue a covenant not to sue. This covenant releases the person who undertook a voluntary action from all civil liability to the state to:

1. Perform investigational activities at the property that was the subject of the voluntary action; and
2. Perform remedial activities to address a release of hazardous substances or petroleum at the property (with certain conditions).

The bill eliminates a requirement that OEPA certify laboratories for purposes of assessing whether cleanup standards have been met under the VAP. Instead, it requires each laboratory to hold a valid accreditation from an outside accreditation body, as follows:

1. For analysis of asbestos:
 - a. The American Industrial Hygiene Association, Asbestos Analysts Registry;
 - b. The National Institute of Standards Technology, National Voluntary Laboratory Accreditation Program (NELAP) for asbestos fiber analysis; or
 - c. An accreditation body recognized by the National Environmental Laboratory Accreditation Conference (NELAC).
2. For analysis of any constituents other than asbestos:
 - a. An accreditation body recognized by NELAC;
 - b. A NELAP accreditation from an accreditation body recognized by NELAC.

The bill generally requires a person participating in a voluntary action to use the services of an accredited laboratory to perform analyses. But, it specifies that data analyzed by a laboratory certified by OEPA before the bill’s effective date may still be used for a voluntary action. Because this data may still be utilized, the bill retains the Director’s authority to audit any work performed by a certified laboratory before the bill’s effective date. For these purposes, the Director may do any of the following:

1. Enter the property of a certified laboratory for purposes of investigation;
2. Conduct a special audit when a no further action letter was issued under the VAP but the analyses were performed by a certified laboratory for which certification was suspended or revoked before the bill’s effective date; and

3. Audit work performed by a certified laboratory to determine if the laboratory's performance of its duties has resulted in the issuance of a no further action letter that is not consistent with cleanup standards.

The bill expands the Director's investigation and auditing authority so that it also applies to accredited laboratories. It also prohibits the Director from contracting with an accredited laboratory to perform an audit if the laboratory performed any analyses that formed the basis for the issuance of a no further action letter in connection with the audit. This prohibition is a continuation of a prohibition that applies to certified laboratories. Finally, the bill eliminates outdated provisions governing the VAP that applied before the Director adopted the rules governing the VAP.

Water pollution control: practical qualification level

(R.C. 6111.13)

The bill specifies that, for purposes of determining compliance with a water pollutant discharge limit set below the practical quantification level (PQL), any reported value below PQL (instead of any level "at or below" PQL) constitutes compliance. A PQL is the minimum concentration of an analyte (substance whose chemical constituents are being measured) that can be measured with a high degree of confidence that the analyte is present at the reported concentration.

Isolated wetland mitigation ratio table reference

(R.C. 6111.027)

The bill corrects an incorrect division reference to the Ohio Administrative Code in the law governing isolated wetlands. Current law references mitigation ratios established under division (F) of rule 3745-1-54 of the Administrative Code. However, after the most recent revision to that rule, that reference is no longer accurate. The bill corrects this by instead only referring to rule 3745-1-54.