

Agency Name: Department of Environmental Services

Statutory Authority: 13-7-40 et seq., 30-4-45, 48-6-10 et seq., 2022 Act No. 119, Section 5, effective January 27, 2022, and 2026 Act No. 146, effective May 15, 2026

Document Number: 5473

Proposed in State Register Volume and Issue: 50/9

Status: Proposed

Subject: Shellfish; Natural Public Swimming Areas; Radioactive Materials (Title A); Solar Energy Systems; and Access to Restricted Information

History: 5473

<u>By</u>	<u>Date</u>	<u>Action Description</u>	<u>Jt. Res. No.</u>	<u>Expiration Date</u>
-	09/25/2026	Proposed Reg Published in SR		

Document No. 5473
DEPARTMENT OF ENVIRONMENTAL SERVICES
CHAPTER 61

Statutory Authority: 1976 Code Sections 13-7-40 et seq., 30-4-45, 48-6-10 et seq., 2022 Act No. 119,
Section 5, effective January 27, 2022, and 2026 Act No. 146, effective May 15, 2026

61-47. Shellfish.
61-50. Natural Public Swimming Areas.
61-63. Radioactive Materials (Title A).
61-107.20. Solar Energy Systems.
61-117. Access to Restricted Information.

Preamble:

On May 19, 2023, Governor McMaster signed 2023 S.C. Act 60 (Act 60), restructuring the South Carolina Department of Health and Environmental Control (DHEC). Pursuant to Act 60, DHEC and the DHEC Board were abolished, and the South Carolina Department of Environmental Services (SCDES) was created, effective July 1, 2024. Pursuant to S.C. Code Ann. Section 48-6-20(A) and Section 14(B) of Act 60, SCDES is vested with all the functions, powers, and duties of the environmental divisions, offices, and programs of DHEC, including the power and duty to promulgate associated regulations.

On May 15, 2026, Governor McMaster signed 2026 S.C. Act 146 (Act 146). Act 146 entails statutory cleanup associated with the restructuring of DHEC to SCDES and the South Carolina Department of Public Health (DPH). Act 146 amended statutory provisions previously associated with DHEC to reflect authorities provided for in the restructuring. Pursuant to S.C. Code Ann. Section 48-6-60(A) and Section 231(B) of Act 146, SCDES is vested with all the functions, powers, and duties, including the power and duty to promulgate associated regulations, for the safety and sanitation in the harvesting, storing, processing, handling, and transportation of mollusks, fin fish, and crustaceans, as well as the safety, safe operation, and sanitation of public swimming pools and other public bathing places, construction, tourist and trailer camps, and fairs.

SCDES proposes amending the above-referenced regulations to reflect the restructuring of DHEC pursuant to Act 60 and Act 146, to revise related references, and to make non-substantive, grammatical changes.

The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

SCDES had a Notice of Drafting published in the July 24, 2026, South Carolina State Register.

Section-by-Section Discussion:

Section	Type of Change	Purpose
R.61-47		
61-47(A)(2)(v)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES
61-47(A)(2)(mm)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES
61-47(A)(2)(kkk)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES

61-47(C)(2)(g)(2)(d)(10)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES
61-47(G)(2)(a)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES
61-47(H)(2)(e)	Revision	Updated citation of S.C. Code to reflect the abolishment of DHEC and creation of SCDES.
61-47(H)(2)(f)	Revision	Updated citation of S.C. Code to reflect the abolishment of DHEC and creation of SCDES.
61-47(P)(2)	Revision	Updated citation of S.C. Code to reflect the abolishment of DHEC and creation of SCDES.
R.61-50		
61-50(B)(4)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES
R.61-63		
61-63, RHA 2.4.8.3.1	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES
R.61-107.20		
61-107.20(B)(2)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES
R.61-117		
61-117(B)(1)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit comments on the proposed amendments to Holly Randolph of the South Carolina Department of Environmental Services at 2600 Bull Street, Columbia, S.C. 29201; or via email at holly.randolph@des.sc.gov. To be considered, SCDES must receive the comment(s) no later than 5:00 p.m. on October 26, 2026, the close of the comment period.

Should a public hearing on the proposed regulations be requested by qualifying entities or the requisite number of persons pursuant to Section 1-23-110(A)(3) of the 1976 Code, as amended, the South Carolina Administrative Law Court will conduct a public hearing on Friday, November 20, 2026, beginning at 1:00 p.m. at the South Carolina Administrative Law Court, Edgar Brown Building, Second Floor, 1205 Pendleton Street, Columbia, S.C. 29201. If a qualifying request pursuant to Section 1-23-110(A)(3) is not received by 5:00 p.m. on October 26, 2026, the hearing will be cancelled.

Preliminary Fiscal Impact Statement:

There is no anticipated cost increase to the state or its political subdivisions resulting from these proposed revisions. The proposed amendments comply with and implement 2023 Act No. 60 and 2026 Act No. 146. These amendments will benefit the regulated community by clarifying and updating the preexisting DHEC regulations now implemented by SCDES and improving their ease of use.

Statement of Need and Reasonableness:

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: R.61-47, Shellfish, R.61-50, Natural Public Swimming Areas, R.61-63, Radioactive Materials (Title A), R.61-107.20, Solar Energy Systems, R.61-117, Access to Restricted Information.

Purpose: On May 19, 2023, Governor McMaster signed 2023 S.C. Act 60 (Act 60), restructuring the South Carolina Department of Health and Environmental Control (DHEC). Pursuant to Act 60, DHEC and the DHEC Board were abolished, and the South Carolina Department of Environmental Services (SCDES) was created, effective July 1, 2024. Pursuant to S.C. Code Ann. Section 48-6-20(A) and Section 14(B) of Act 60, SCDES was vested with all the functions, powers, and duties of the environmental divisions, offices, and programs of DHEC, including the power and duty to promulgate associated regulations.

On May 15, 2026, Governor McMaster signed 2026 S.C. Act 146 (Act 146). Act 146 entails statutory cleanup associated with the restructuring of DHEC to SCDES and the South Carolina Department of Public Health (DPH). Act 146 amended statutory provisions previously associated with DHEC to reflect authorities provided for in the restructuring. Pursuant to S.C. Code Ann. Section 48-6-60(A) and Section 231(B) of Act 146, SCDES is vested with all the functions, powers, and duties, including the power and duty to promulgate associated regulations, for the safety and sanitation in the harvesting, storing, processing, handling, and transportation of mollusks, fin fish, and crustaceans, as well as the safety, safe operation, and sanitation of public swimming pools and other public bathing places, construction, tourist and trailer camps, and fairs.

SCDES proposes amending R.61-47, Shellfish, R.61-50, Natural Public Swimming Areas, R.61-63, Radioactive Materials (Title A), R.61-107.20, Solar Energy Systems, and R.61-117, Access to Restricted Information, to reflect the restructuring of DHEC pursuant to Act 60 and Act 146, to revise related references, and to make non-substantive, grammatical changes.

Legal Authority: 1976 Code Sections 13-7-40 et seq., 30-4-45, 48-6-10 et seq., 2022 Act No. 119, Section 5, effective January 27, 2022, and 2026 Act No. 146, effective May 15, 2026.

Plan for Implementation: Upon taking legal effect, SCDES personnel will take appropriate steps to inform the regulated community of the amendments and any associated information. The SCDES Regulations Currently Under Amendment and Recently Finalized webpage (accessible at <https://www.des.sc.gov/permits-regulations/regulations-regulatory-updates/regulations-currently-under-a-mendment-recently-finalized>) provides a summary of and link to these proposed amendments. Additionally, printed copies are available for a fee from the Freedom of Information Office within SCDES.

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

Pursuant to S.C. Code Ann. Sections 48-6-10 et seq. and Section 231(B) of 2026 S.C. Act 146 (Act 146), the South Carolina Department of Environmental Services (SCDES) is vested with all the functions, powers, and duties, including the power and duty to promulgate associated regulations, of the environmental divisions, offices, and programs of the South Carolina Department of Health and Environmental Control (DHEC), including the safety and sanitation in the harvesting, storing, processing, handling, and transportation of mollusks, fin fish, and crustaceans, as well as the safety, safe operation, and sanitation of public swimming pools and other public bathing places, construction, tourist and trailer camps, and fairs. Additionally, pursuant to S.C. Code Ann. Sections 13-7-40 et seq., 30-4-45, and Section 5 of 2022 S.C. Act No. 119, SCDES is vested with the authority to promulgate regulations related to the control of ionizing and nonionizing radiation, to regulate access to information in accordance with S.C.

Code Ann. Section 30-4-45, and to guide all South Carolinians invested in, selling, installing, and using photovoltaic modules and energy storage system batteries in the management of end-of-life photovoltaic modules and energy storage system batteries on solar projects and the decommissioning of solar projects in excess of thirteen acres.

SCDES proposes these amendments to reflect the restructuring of DHEC pursuant to Act 60 and Act 146, to revise related references, and to make non-substantive, grammatical changes. These amendments are necessary and reasonable to implement the agency restructuring. These amendments will benefit the regulated community by clarifying and updating the preexisting DHEC regulations now implemented by SCDES and improving their ease of use.

DETERMINATION OF COSTS AND BENEFITS:

There is no anticipated cost increase to the state or its political subdivisions resulting from these proposed revisions. The proposed amendments comply with and implement 2023 Act No. 60 and 2026 Act No. 146. These amendments will benefit the regulated community by clarifying and updating the preexisting DHEC regulations now implemented by SCDES and improving their ease of use.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the state or its political subdivisions.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the proposed amendments to R.61-47, R.61-50, R.61-63, R.61-107.20, and R.61-117, will provide continued protection of the environment and public health.

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

The state's regulations must be amended to reflect the restructuring of DHEC and the creation of SCDES. These regulations are beneficial to the public health and environment, and their clarity would be compromised if these amendments were not adopted.

Statement of Rationale:

SCDES proposes amendments to R.61-47, R.61-50, R.61-63, R.61-107.20, and R.61-117 to reflect the restructuring of DHEC pursuant to 2023 S.C. Act 60 and 2026 S.C. Act 146, to revise related references, and to make non-substantive, grammatical changes. The state's regulations must be amended to reflect the restructuring of DHEC and the creation of SCDES. These amendments are necessary and reasonable to implement the agency restructuring.

~~Indicates Matter Stricken~~

Indicates New Matter

Text:

61-47. Shellfish.

Statutory Authority: 1976 Code Sections ~~44-1-140~~48-6-10 et seq. and 2026 Act No. 146, effective May 15, 2026

R.61-47(A)(2)(v) shall be revised as follows:

(v) Department means the South Carolina Department of ~~Health and Environmental Control~~Services or agents thereof having responsibility for enforcing these regulations.

R.61-47(A)(2)(mm) shall be revised as follows:

(mm) National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish means the 2015 version of the United States Food and Drug Administration document with that title that consists of a Model Ordinance, supporting guidance documents, recommended forms, and other related materials associated with the National Shellfish Sanitation Program. Portions of the document are incorporated by reference herein and such referenced sections shall have effect as if fully recited within the text of this regulation. Copies can be obtained through the U.S. Food and Drug Administration or the S.C. Department of ~~Health and Environmental Control~~Services, 2600 Bull Street, Columbia, SC 29201.

R.61-47(A)(2)(kkk) shall be revised as follows:

(kkk) State Shellfish Control Authority or Authority means the South Carolina Department of ~~Health and Environmental Control~~Services or, if in reference to another state, the state agency having the primary authority to implement public health-related shellfish regulations.

R.61-47(C)(2)(g)(2)(d)(10) shall be revised as follows:

(10) All shellstock intended for raw consumption shall include a consumer advisory. The following statement, based upon guidance provided in Section 3-603.11 of the United States Food and Drug Administration 2013 Food Code (Copies can be obtained through the U.S. Food and Drug Administration or the S.C. Department of ~~Health and Environmental Control~~Services, 2600 Bull Street, Columbia, SC 29201.), or an equivalent statement, shall be included on all shellstock: “RETAILERS, INFORM YOUR CUSTOMERS: Consuming raw or undercooked meats, poultry, seafood, shellfish or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.”;

R.61-47(G)(2)(a) shall be revised as follows:

(a) Application for certificates and permits shall be made on forms provided by the Department. Application forms may be obtained by contacting the S.C. Department of ~~Health and Environmental Control~~Services, ~~Environmental Quality Control~~ Bureau of Water, 2600 Bull St., Columbia, S.C. 29201.

R.61-47(H)(2)(e) shall be revised as follows:

(e) Suspension or Revocation of Permits or Certificates.

(1) If the Department has evidence that an operator of a shellfish activity or facility has created or is responsible for conditions that may cause shellfish to become adulterated, the permit or certificate may be suspended or revoked.

(2) Serious or repeated violations of any of the requirements of this Regulation, failure to cooperate, or interference with Department personnel in the performance of their duties shall be cause for a permit or certificate to be revoked.

(3) Decisions involving the issuance, denial, renewal, modification, suspension, or revocation of permits, licenses, certification, or other actions of the Department shall be in accordance with the provisions of S.C. Code Section ~~44-1-60~~48-6-30, 1976 Code of Laws, as amended.

R.61-47(H)(2)(f) shall be revised as follows:

(f) Appeal. A Department decision involving the issuance, denial, renewal, modification, suspension, or revocation of permits, licenses, certification, or other actions of the Department may be appealed by the affected person with standing pursuant to applicable law, including S.C. Code Title ~~44~~44, Chapter ~~16~~48; and Title 1, Chapter 23.

R.61-47(P)(2) shall be revised as follows:

2. Criminal Liability. Violation of any provision of this Regulation shall be punishable in accordance with ~~Section 44-1-150 and~~ Section 44-1-151, Code of Laws of South Carolina, 1976, and any subsequent amendments.

61-50. Natural Public Swimming Areas.

Statutory Authority: 1976 Code Sections 48-6-10 et seq. and 2026 Act No. 146, effective May 15, 2026

R.61-50(B)(4) shall be revised as follows:

4. “Department” means the South Carolina Department of ~~Health and Environmental Control~~Services.

61-63. Radioactive Materials (Title A).

Statutory Authority: 1976 Code Sections 13-7-40, and 48-6-10 et seq., ~~2023 Act No. 60, effective July 1, 2024, and 2026 Act No. 146, effective May 15, 2026~~

R.61-63, RHA 2.4.8.3.1 shall be revised as follows:

2.4.8.3.1 Shall notify the Department should there be any indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event; and the remedial action taken; must be furnished to the Director of the Division of Waste Management, South Carolina Department of ~~Health & Environmental Control~~Services, 2600 Bull Street, Columbia, SC, 29201 within 30 days.

61-107.20. Solar Energy Systems.

Statutory Authority: 2022 Act No. 119, Section 5, effective January 27, 2022

R.61-107.20(B)(2) shall be revised as follows:

2. “Department” means the South Carolina Department of ~~Health and Environmental Control~~Services.

61-117. Access to Restricted Information.

Statutory Authority: ~~1976 Code~~ Section 30-4-45, ~~S.C. Code of Laws, 1976, as amended~~

R.61-117(B)(1) shall be revised as follows:

1. “Department” means the Department of Health and Environmental Control Services.