

Document No. 4887
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 CHAPTER 61
 Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-68. Water Classifications and Standards.

Preamble:

R.61-68 establishes appropriate goals and water uses to be achieved, maintained, and protected, general rules and water quality criteria to protect classified and existing water uses, and an antidegradation policy to protect and maintain the levels of water quality necessary to support and maintain those existing and classified uses. Section 303(c)(2)(B) of the federal Clean Water Act (“CWA”) requires South Carolina’s water quality standards be reviewed and revised, where necessary, at least once every three years. Referred to as the triennial review, this required process consists of reviewing and adopting, where appropriate, the Environmental Protection Agency’s updated numeric and narrative criteria according to Section 304(a) and Section 307(a) of the CWA. The Department of Health and Environmental Control (“Department”) proposes amending R.61-68 to adopt these criteria the Department deemed necessary to comply with federal regulatory recommendations and revisions. The Department proposes to adopt a revised standard for aquatic life ambient water quality criteria for cadmium, a revised recreational water quality criteria for enterococci, a standard for aquatic life ambient water quality criteria for carbaryl, and a standard for human health recreational ambient water quality criteria for microcystins and cylindrospermopsin to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA. The Department proposes stylistic changes for overall improvement of the text of the regulation. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

The Department had a Notice of Drafting published in the February 22, 2019, *South Carolina State Register*.

Section-by-Section Discussion of Proposed Amendments:

Amend 61-68.E.14.c(10) to change the daily maximum enterococci NPDES permit effluent limitation from 501 MPN/100 ml to 104 MPN/100 ml for the protection of uses in Class SB saltwaters.

Add 61-68.E.14.d(7) to include human health recreational ambient water quality criteria for microcystins in freshwater, and to specify when the Department would issue a swimming advisory.

Add 61-68.E.14.d(8) to specify when the Department would list a surface waterbody as impaired for recreational uses due to microcystins.

Add 61-68.E.14.d(9) to include human health recreational ambient water quality criteria for cylindrospermopsin in freshwater, and to specify when the Department would issue a swimming advisory.

Add 61-68.E.14.d(10) to specify when the Department would list a surface waterbody as impaired for recreational uses due to cylindrospermopsin.

Amend 61-68.G.9. and 10. to include standards for both microcystins and cylindrospermopsin to protect the uses of Natural and Put, Grow, and Take trout waters and Freshwaters.

Amend 61-68.G.13. to correct a typographical error and to change the daily maximum enterococci standard from 501 MPN/100 ml to 104 MPN/100 ml for the protection of uses in Class SB saltwaters.

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Amend 61-68 Appendix: Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health “Priority Toxic Pollutants” table and footnotes to correct typographical errors and to adopt a revised standard for aquatic life ambient water quality criteria for cadmium.

Amend 61-68 Appendix: Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health “Priority Toxic Pollutants” table to correct a typographical error for Dimethyl Phthalate.

Amend 61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health, “Non Priority Pollutants” table to adopt a standard for aquatic life ambient water quality criteria for carbaryl.

Amend 61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health, “Attachment 2 – Parameters for Calculating Hardness-Dependent Criteria” to adopt a revised standard for aquatic life ambient water quality criteria for cadmium and to add a footnote.

Amend 61-68 APPENDIX, Water Quality Numeric Criteria for the Protection of Aquatic Life and Human Health, to add “Attachment 4 - Calculation of the Sample Specific Freshwater Acute and Chronic Criterion for Metals.”

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit comment(s) on the proposed amendment to Andrew Edwards, Water Quality Standards Coordinator of the Bureau of Water; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; edwardaj@dhec.sc.gov. To be considered, the Department must receive the comment(s) by 5:00 p.m. on September 23, 2019, the close of the comment period.

The S.C. Board of Health and Environmental Control will conduct a public hearing on the proposed amendment during its November 7, 2019, 10:00 a.m. meeting. Interested persons may make oral and/or submit written comments at the public hearing. Persons making oral comments should limit their statements to five (5) minutes or less. The meeting will take place in the Board Room of the DHEC Building, located at 2600 Bull Street, Columbia, S.C. 29201. Due to admittance procedures, all visitors must enter through the main Bull Street entrance and register at the front desk. The Department will publish a meeting agenda twenty-four (24) hours in advance indicating the order of its scheduled items at: <http://www.scdhec.gov/Agency/docs/AGENDA.PDF>.

The Department publishes a Monthly Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated State Register documents at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>.

Preliminary Fiscal Impact Statement:

No costs to the State or significant cost to its political subdivisions as a whole should be incurred by these amendments.

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: 61-68, Water Classifications and Standards.

Purpose: Proposed amendments of R.61-68, as the triennial review, will clarify, strengthen, and improve the overall quality of the existing regulation and make appropriate revisions of the State’s water quality standards in accordance with 33 U.S.C. Section 303(c)(2)(B) of the federal CWA.

Legal Authority: 1976 Code Sections 48-1-10 et seq.

Plan for Implementation: The DHEC Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to this proposed amendment. Additionally, printed copies are available for a fee from the Department’s Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendment and any associated information.

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

Section 303(c)(2)(B) of the federal CWA requires South Carolina’s water quality standards be reviewed and revised, where necessary, at least once every three years. Referred to as the triennial review, this required process consists of reviewing and adopting, where appropriate, the Environmental Protection Agency’s updated numeric and narrative criteria according to Section 304(a) and Section 307(a) of the CWA. The Department proposes amending R.61-68 to adopt these criteria as the Department deemed necessary to comply with federal regulatory recommendations and revisions.

DETERMINATION OF COSTS AND BENEFITS:

Existing Department staff and resources will be utilized to implement these amendments to the regulation. No anticipated additional cost will be incurred by the State if the revisions are implemented, and no additional State funding is being requested.

Overall cost impact to the State’s political subdivisions and regulated community is not likely to be significant. Existing standards would have incurred similar cost. Furthermore, standards required under the amendments will be substantially consistent with the current guidelines and review guidelines utilized by the Department.

UNCERTAINTIES OF ESTIMATES:

The uncertainties associated with the estimation of benefits and burdens are minimal to moderate, due to possible differences in the extent to which Municipal Separate Storm Sewer Systems (“MS4s”) currently meet the lower standard.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

Implementation of these amendments will not compromise the protection of the environment or the health and safety of the citizens of the State. The proposed amendments to R.61-68 seek to promote and protect aquatic life and human health by the regulation of pollutants into waters of the State.

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

Failure by the Department to incorporate appropriately protective water quality standards in R.61-68 that are the basis for issuance of National Pollutant Discharge Elimination System (“NPDES”) permits, stormwater permits, wasteload and load allocations, groundwater remediation plans, and multiple other program areas will lead to contamination of the waters of the State with detrimental effects on the health of flora and fauna in the State, as well as the citizens of South Carolina.

Statement of Rationale:

Here below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(A)(3)(h):

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R.61-68 establishes appropriate goals and water uses to be achieved, maintained, and protected; general rules and water quality criteria to protect classified and existing water uses; and an antidegradation policy to protect and maintain the levels of water quality necessary to support and maintain those existing and classified uses. Section 303(c)(2)(B) of the federal CWA requires South Carolina's water quality standards be reviewed and revised, where necessary, at least once every three years. Referred to as the triennial review, this required process consists of reviewing and adopting, where appropriate, the Environmental Protection Agency's updated numeric and narrative criteria according to Section 304(a) and Section 307(a) of the CWA. The Department proposes amending R.61-68 to adopt these criteria the Department deemed necessary to comply with federal regulatory recommendations and revisions. The Department proposes to adopt a revised standard for aquatic life ambient water quality criteria for cadmium, a revised recreational water quality criteria for enterococci, a standard for aquatic life ambient water quality criteria for carbaryl, and a standard for human health recreational ambient water quality criteria for microcystins and cylindrospermopsin to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.gov/regnsrch.php>. Full text may also be obtained from the promulgating agency.

Document No. 4888

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-9. Water Pollution Control Permits.

Preamble:

The Department of Health and Environmental Control ("Department") proposes amending R.61-9 to adopt portions of three federal Clean Water Act rules promulgated by the United States Environmental Protection Agency ("EPA") required for State program implementation. These federal regulations include National Pollutant Discharge Elimination System ("NPDES") Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting (79 FR 49001, August 19, 2014), NPDES Electronic Reporting Rule (80 FR 64063, October 22, 2015), and NPDES Applications and Program Updates (84 FR 3324, February 12, 2019). Incorporating these rules into R.61-9 modifies existing NPDES regulations, which clarifies that permit applicants must use "sufficiently sensitive" analytical test methods, requires the electronic reporting and sharing of NPDES program information, and revises NPDES application and public notice requirements consistent with electronic reporting. The Administrative Procedures Act, S.C. Code Section 1-23-120(H)(1), exempts these amendments from General Assembly review, as the Department proposes these amendments for compliance with federal law.

The Department had a Notice of Drafting published in the April 26, 2019, *South Carolina State Register*.

Section-by-Section Discussion of Proposed Amendments:

Amend 61-9 Table of Contents to add 61-9.3 and 61-9.127.

Add 61-9.3 in accordance with NPDES Electronic Reporting Rule.

Amend 61-9.122.2 to correct a typographical error in the definition of "Discharge of a pollutant."