

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 89

Statutory Authority: 1976 Code Sections 48-6-10 et seq., 48-20-10 et seq., and 2023 Act No. 60, effective July 1, 2024

R.89-10 through 89-350. Office of the Governor – Mining Council of South Carolina.

Preamble:

On May 19, 2023, Governor McMaster signed 2023 S.C. Act 60 (Act), restructuring the South Carolina Department of Health and Environmental Control (DHEC). Pursuant to that legislation, 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 the Act, 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.

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

These amendments will require legislative review pursuant to S.C. Code Ann. Section 1-23-120(A) (Supp. 2023).

SCDES had a Notice of Drafting published in the August 23, 2024, *South Carolina State Register*.

Section-by-Section Discussion of Proposed Amendments:

Section	Type of Change	Purpose
R.89-170		
89-170.B	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
R. 89-330		
89-330.D(3)(d)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
89-330.I	Revision	Updated in two instances to reflect the abolishment of DHEC and creation of SCDES.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit comment(s) on the proposed amendments to Mary Peyton Wall of the South Carolina Department of Environmental Services at 2600 Bull Street, Columbia, S.C. 29201; or via email at marypeyton.wall@des.sc.gov. To be considered, SCDES must receive the comment(s) no later than 5:00 p.m. on November 25, 2024, the close of the comment period.

Should a hearing be requested 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 Monday, December 9, 2024, beginning at 10:00 a.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 November 25, 2024, the hearing will be cancelled. Should the public hearing be

cancelled, SCDES will post the notice of cancellation at <https://des.sc.gov/permits-regulations/laws-regulations-regulatory-updates/regulation-development-update>.

SCDES publishes a Regulation Development Update tracking the status of its proposed new regulations, amendments, and repeals and providing links to associated State Register documents at <https://des.sc.gov/permits-regulations/laws-regulations-regulatory-updates/regulation-development-update>.

Preliminary Fiscal Impact Statement

There is no anticipated increase in costs to the state or its political subdivisions resulting from these proposed revisions. The proposed amendments comply with and implement 2023 Act No. 60. 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.89-10 through 89-350. Office of the Governor – Mining Council of South Carolina.

Purpose: On May 19, 2023, Governor McMaster signed 2023 S.C. Act 60 (Act), restructuring the South Carolina Department of Health and Environmental Control (DHEC). Pursuant to that legislation, DHEC and the DHEC Board were abolished, and 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 the Act, 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. SCDES proposes amending the above-referenced regulations to reflect the restructuring of DHEC to reflect the restructuring of DHEC pursuant to the Act, to revise related references, and to make non-substantive, grammatical changes.

Legal Authority: 1976 Code Sections 48-6-10 et seq., 48-20-10 et seq., and 2023 Act No. 60, effective July 1, 2024

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 Regulation Development Update (accessible at <https://des.sc.gov/permits-regulations/laws-regulations-regulatory-updates>) 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:

On May 19, 2023, Governor McMaster signed the Act, restructuring DHEC. Pursuant to that legislation, DHEC and the DHEC Board were abolished, and SCDES was created, effective July 1, 2024. Pursuant to S.C. Code Ann. Section 48-6-20(A) and Section 14(B) of the Act, 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. SCDES proposes these amendments to reflect the restructuring

of DHEC pursuant to the Act, to revise related references, and to make non-substantive, grammatical changes. These amendments are necessary and reasonable to implement the agency restructuring.

DETERMINATION OF COSTS AND BENEFITS:

There is no anticipated increase in costs to the state or its political subdivisions resulting from these proposed revisions. The proposed amendments are consistent with the Act, and these amendments will benefit the regulated community by clarifying and updating the regulations 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.89-10 through 89-350 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:

On May 19, 2023, Governor McMaster signed 2023 S.C. Act 60 (Act), restructuring the South Carolina Department of Health and Environmental Control (DHEC). Pursuant to that legislation, DHEC and the DHEC Board were abolished, and 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 the Act, 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. SCDES proposes these amendments to reflect the restructuring of DHEC pursuant to the Act, to revise related references, and to make non-substantive, grammatical changes.

Text:

~~Indicates Matter Stricken~~

Indicates New Matter

Regulation 89-10 through 89-350. Office of the Governor – Mining Council of South Carolina.

Statutory Authority: 1976 Code Section(s) 48-6-10 et seq., 48-20-10 et seq., and 2023 Act No. 60, effective July 1, 2024

Regulation 89-170. Departmental Procedure for Granting a Permit.

Regulation 89-170.B, shall be revised as follows:

B. The Department may refer copies of the Application for a Mining Permit to the State Water Resources Commission, Department of ~~Health and Environmental Control~~Services, Wildlife and Marine Resources Department, Coastal Council, Department of Archives and History, Institute of Archeology and Anthropology, Department of Highways and Public Transportation, appropriate County Council or County Administrator's office, appropriate town or municipal government office or other state or local agencies for review and comment. The Department may request the assistance of other state agencies or local agencies in evaluating the application and the reclamation plan or in developing the terms and conditions.

Regulation 89-330. Criteria for Approval of Reclamation Plan and Completed Land Reclamation.

Regulation 89-330.D(3)(d), shall be revised as follows:

(d) All waters shall conform to standards set forth by the South Carolina Department of ~~Health and Environmental Control~~Services for surface waters in South Carolina. The specified standards will not be considered violated when values outside the established limits are caused by natural conditions and when no significant environmental harm would result;

Regulation 89-330.I, shall be revised as follows:

I. Minimum standards for reclamation involving a sanitary landfill or other waste disposal.

The Department will refer this type of reclamation over to the South Carolina Department of ~~Health and Environmental Control~~Services for permitting, administration and enforcement of operational and monitoring requirements. When the Department receives notice that the South Carolina Department of ~~Health and Environmental Control's~~Services' requirements have been met, the Department will then release all or the appropriate portion of the operator's surety bond or other security, provided that the operator has established on a continuing basis the vegetative or other ground cover necessary to control or prevent erosion, the soil stability, and the water and safety conditions, appropriate to the area as required by these regulations.