

Document No. _____
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 72

Statutory Authority: 1976 Code Sections 48-14-10 et seq., 49-11-240, 48-6-10 et seq., and 2023 Act No. 60, effective July 1, 2024

R.72-1 through 72-9. Dams and Reservoirs Safety Act Regulations.
R.72-300 through 72-316. Standards for Stormwater Management and Sediment Reduction.

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 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 R.72-1 through 72-9, Dams and Reservoirs Safety Act Regulations, and R.72-300 through 72-316, Standards for Stormwater Management and Sediment Reduction, 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.72-1		
72-1(A)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
72-1(B)	Revision	Updated to reflect the abolishment of the DHEC Board.
R.72-2		
72-2(D)(5)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
R.72-9		
72-9(B)	Revision	Updated to reflect newly promulgated S.C. Code of Laws Section 48-6-30 language as well as the abolishment of the DHEC Board.
72-9(C)	Revision	Updated to reflect the abolishment of the DHEC Board.
R.72-301		
72-301(10)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
R.72-304		

72-304(G)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
72-304(K)(2)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
72-304(M)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
R.72-309		
72-309(B)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
72-309(C)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
72-309(D)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
72-309(E)(8)	Revision	Updated to reflect the abolishment of DHEC and creation of SCDES.
R.72-313		
72-313(B) through (Q)	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 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 public 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.72-1 through 72-9, Dams and Reservoirs Safety Act Regulations, and R.72-300 through 72-316, Standards for Stormwater Management and Sediment Reduction.

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 R.72-1 through 72-9, Dams and Reservoirs Safety Act Regulations, and R.72-300 through 72-316, Standards for Stormwater Management and Sediment Reduction, 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 48-14-10 et seq., 49-11-240, 48-6-10 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/regulation-development-update>) provides a summary of and link to these proposed amendments. Additionally, printed copies are available for a fee from the Freedom of Information Office with 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 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

72-1 through 72-9. Dams and Reservoirs Safety Act Regulations.

Statutory Authority: S.C. Code Section 49-11-240, 48-6-10 et seq., and 2023 Act No.60, effective July 1, 2024.

72-1. Definitions.

Regulation 72-1(A) shall be revised as follows:

A. “Department” means the South Carolina Department of ~~Health and Environmental Control~~Services or its staff or agents.

Regulation 72-1(B) shall be revised as follows:

B. ~~“Board” means the Board of Health and Environmental Control~~ Reserved.

72-2. Dam Classifications and Exemptions.

Regulation 72-2(D)(5) shall be revised as follows:

5. Any dam, which in the judgement of the Department, because of its size and location could pose no significant threat of danger to downstream life or property. Upon request, Certificates of Exemption (~~DHEC Form 2601(6/94)~~) are available from the Department for dams in this category.

72-9. Hearings and Hearing Procedures.

Regulation 72-9(B) shall be revised as follows:

B. A hearing may be initiated by any owner, provided that a written request is received within thirty (30) days after notice is given to the owner of the adverse action. The contested case hearing will be held before an Administrative Law Judge. Any request for a hearing shall be filed in accordance with S.C. Code of Laws Section 48-6-30 with the Clerk of the Board of DHEC and shall contain the following:

- ~~— 1. The name of the party requesting the hearing and the issue(s) for which the hearing is requested.~~
- ~~— 2. The caption or other information sufficient to identify the decision, order, or inaction which is the subject of the hearing; and~~
- ~~— 3. The relief requested.~~

Regulation 72-9(C) shall be revised as follows:

C. ~~Board review and a~~Any subsequent judicial review of the order of the Administrative Law Judge shall be allowed in accordance with the South Carolina Administrative Procedures Act and any applicable rules and regulations.

72-300 through 72-316. Standards for Stormwater Management and Sediment Reduction.

Statutory Authority: S.C. Code Sections 48-14-10 et seq., 48-6-10 et seq., and 2023 Act No.60, effective July 1, 2024.

72-301. Definitions.

Regulation 72-301(10) shall be revised as follows:

10. “Designated Watershed” means a watershed designated by a local government and approved by the Commission, Department of ~~Health and Environmental Control~~ Services and the South Carolina Water Resources Commission and identified as having an existing or potential stormwater, sediment control, or nonpoint source pollution problem.

72-304. Criteria for Delegation/Revocation of Programs.

Regulation 72-304(G) shall be revised as follows:

G.If the Commission denies a request for delegation, the local government or conservation district may appeal the decision of the Commission by requesting an administrative hearing within 30 days after receipt of written notification as described in ~~R.72-313~~ S.C. Code of Laws Section 48-6-30.

Regulation 72-304(K)(2) shall be revised as follows:

(2) If the request for delegation of program components are disapproved, the local government may appeal the decision of the Commission by requesting an administrative hearing within 30 days after receiving written notification of the disapproval as described in ~~R.72-313~~ S.C. Code of Laws Section 48-6-30.

Regulation 72-304(M) shall be revised as follows:

M. Upon suspension of the delegation, the implementing agency has the right to file an appeal within 30 days of the notification of the suspension following procedures listed in ~~R.72-313~~S.C. Code of Laws Section 48-6-30. The Commission shall administer the program during the appeal process.

72-309. Criteria for Designated Watersheds.

Regulation 72-309(B) shall be revised as follows:

B. Included with the recommendation of a watershed for Designated Watershed status to the Commission shall be an identification of the specific problems that exist in the watershed so that the pursuit of a watershed study is warranted. Designation as a Designated Watershed requires approval by the Commission, the South Carolina Water Resources Commission and the South Carolina Department of ~~Health and Environmental Control~~Services. A significant water quantity or water quality problem must exist that would support this designation. Also, inclusion of a watershed as a Designated Watershed will necessitate a public hearing process. The process of designating a watershed shall be based on the following information:

Regulation 72-309(C) shall be revised as follows:

C. Following an adequate review of the recommendation, staff of the Commission, South Carolina Water Resources Commission, and the South Carolina Department of ~~Health and Environmental Control~~Services shall meet to review and discuss their decision regarding designation. The staff shall prepare a statement in support of, or objection to, the proposed designation within 120 days following receipt of the recommendation by the Commission. The statement shall be voted upon by the appointed commissioners of each respective agency. Ex-officio members of the South Carolina Water Resources Commission representing the Land Resources Conservation Commission and the South Carolina Department of ~~Health and Environmental Control~~Services shall abstain from voting regarding designation at the meeting of the South Carolina Water Resources Commission. Approval by each of the three agencies shall constitute designation.

Regulation 72-309(D) shall be revised as follows:

D. Upon approval of designation, a Watershed Advisory Committee shall be established to advise and provide guidance in the development and conduct of the watershed master plan. The Commission, South Carolina Water Resources Commission, and the South Carolina Department of ~~Health and Environmental Control~~Services will appoint the Watershed Advisory Committee which shall include State, District, local government representatives, and also representatives of the regulated community within the watershed and other persons which may be affected by the plan.

Regulation 72-309(E)(8) shall be revised as follows:

(8) A public hearing prior to final Commission, S.C. Water Resources Commission and S.C. Department of ~~Health and Environmental Control~~Services approval of the watershed study.

72-313. Hearings and Hearings Procedures.

B. Requests for administrative hearings and appeals may be made to local governments when program elements are delegated by the Commission or to the Commission when the Commission functions as the implementing agency. In addition, administrative hearings and appeals may be held by the Commission regarding decisions or actions of local implementing agencies. Procedures for acting on appeals and conducting administrative hearings by local implementing agencies will be specified in their request for

delegation of program element. The Commission procedures for conducting administrative hearings is specified in R.72-313C through R.72-313QS.C. Code of Laws Section 48-6-30.

~~—C. A hearing may be requested by any person. If an adverse action is involved, the hearing may be requested provided that the written request is received within thirty (30) days after the notice is given to the person.~~

~~—D. All hearings shall be initiated via correspondence approved by the Commission which shall give notice to all parties of the hearing.~~

~~—(1) All parties must receive notice of the hearing of not less than thirty (30) days;~~

~~—(2) The notice shall be sent by the designated hearing officer(s);~~

~~—(3) The notice shall include:~~

~~—(a) A statement of the time, place, and nature of the hearing;~~

~~—(b) A statement of the legal authority and jurisdiction under which the hearing is to be held;~~

~~—(c) A reference to the particular sections of the statutes and rules involved;~~

~~—(d) A short and plain statement of the matters asserted. If the hearing officer(s) is/are unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.~~

~~—E. All hearings shall be conducted by a hearing officer(s) appointed by the Commission.~~

~~—F. All hearings shall be conducted in accordance with Section 1-23-10 et seq. of the 1976 South Carolina Code of Laws.~~

~~—G. The hearing officer(s) shall issue a proposal for decision which shall be mailed to the parties.~~

~~—H. Within twenty (20) days after mailing of the proposal for decision, any party may file exceptions to the hearing officer's proposal for decision.~~

~~—(1) Such exceptions shall be in written form, addressed to the Chairman of the Commission, and served upon all adverse parties;~~

~~—(2) The exceptions shall list all the grounds upon which the exceptions are based.~~

~~—I. If no exceptions are received by the Commission within the twenty (20) day period following the mailing of the proposal for decision, the Commission shall issue a final decision.~~

~~—J. If timely exceptions are received, the Commission shall send notice to the parties that the appealing party(s) has thirty (30) days to submit a brief. Following the service of the appealing party's brief, or upon the expiration of the thirty (30) day period, whichever shall occur first, the other party shall have thirty (30) days to submit a brief. All briefs must be served on the opposing parties and filed with the Commission.~~

~~—K. Following receipt of all briefs, the Commission shall schedule an oral argument if requested to do so by either party.~~

~~—L. The request for an oral argument must be in writing, addressed to the Chairman of the Commission, and submitted with that party's brief.~~

~~—M. The oral argument shall be scheduled for the next regular Commission meeting following the filing of the last brief.~~

~~—N. The oral argument shall be heard by the members of the Commission present at the Commission meeting and shall be held in accordance with the following format:~~

~~—(1) The appealing party shall be given twenty minutes to present his case;~~

~~—(2) The opposing party shall be given twenty minutes to present his case;~~

~~—(3) The appealing party shall be given a rebuttal period of five minutes.~~

~~—O. The parties by written stipulation may agree that the hearing officer's decision shall be final and binding upon the parties.~~

~~—P. The final order shall be issued by the Commission, and the decision of the Commission shall represent the view of a majority of the Commission members voting on the appeal.~~

~~—Q. The final order shall be written and shall comply with the provisions of Section 1-23-10 et. seq. of the 1976 South Carolina Code of Laws.~~