Agency Name: Department of Health and Environmental Control

Statutory Authority: 44-1-140(11), 44-1-150, 44-55-825, 44-55-827, and 48-1-10 et seq.

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**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

Statutory Authority: 1976 Code Sections 44‑1‑140(11), 44‑1‑150, 44‑55‑825, 44‑55‑827, and

48‑1‑10 et seq.

61‑56. Onsite Wastewater Systems.

**Preamble**:

Pursuant to R.61‑56, the Department of Health and Environmental Control (“Department”) provides oversight for safe treatment and disposal of domestic wastewater to protect the health of families and communities. In accordance with R.61‑56, the Department issues onsite wastewater contractor licenses, permits to construct, and approvals to operate for individual onsite wastewater treatment systems (septic systems).

The Department proposes amending R.61‑56 to clarify a definition relating to rippable rock and update procedures for subdivisions and variances. The proposed amendments will bring clarity to the regulation and streamline permitting procedures.

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 August 27, 2021, South Carolina State Register.

Section‑by‑Section Discussion of Proposed Amendments:

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| **Section** | **Type of Change** | **Purpose** |
| 101.1 ‑ Rippable Rock | Deletion | Amended definition of Rippable Rock to remove the reference pertaining to mini excavator. |
| 102.1 (2)(b‑c) & 102.1 (3)(b‑c) | Addition | Amended language to allow the Department to subcontract to qualified individuals. |
| 102.1 (5) | Addition/Deletion | Amended wording pertaining to subdivisions to be specific to subdivisions containing ten (10) or more lots. |
| 104.4 (3) | Addition | Amended wording pertaining to a variance request to include a processing time. Amended wording to reiterate the importance of protecting human health and the environment. |

**Notice of Public Hearing and Opportunity for Public Comment:**

Interested persons may submit comment(s) on the proposed amendments to David Vaughan of the Bureau of Environmental Health Services; S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201; vaughadr@dhec.sc.gov. To be considered, the Department must receive the comment(s) by 5:00 p.m. on January 24, 2022, the close of the comment period.

The S.C. Board of Health and Environmental Control will conduct a public hearing on the proposed amendments during its February 10, 2022, 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/Agenda>. Public hearing procedures are subject to change in response to COVID‑19 protocols. If applicable, the Department will provide notice of these changes twenty‑four (24) hours in advance of the public hearing.

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**

There is no anticipated additional cost to the Department or state government due to any requirements of this amendment.

**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: 61‑56, Onsite Wastewater Systems.

Purpose: The Department proposes amending R.61‑56, Onsite Wastewater Systems, to clarify a definition relating to rippable rock and update procedures for subdivisions and variances. The proposed amendments will bring clarity to the regulation and streamline permitting procedures.

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

Legal Authority: 1976 Code Sections 44‑1‑140(11), 44‑1‑150, 44‑55‑825, 44‑55‑827, and 48‑1‑10 et seq.

Plan for Implementation: The amendments will take legal effect upon General Assembly approval and upon publication in the State Register. Department personnel will then take appropriate steps to inform the regulated community of the amendments. Additionally, a copy of the regulation will be posted on the Department’s website, accessible at [www.scdhec.gov/regulations‑table](http://www.scdhec.gov/regulations-table). Printed copies may also be requested, for a fee, from the Department’s Freedom of Information Office.

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

The proposed amendments are needed and reasonable, as they will provide clarification regarding the requirements contained in R.61‑56. The proposed amendments will also serve to streamline permitting procedures to improve overall effectiveness of the Department’s administration of the regulation.

DETERMINATION OF COSTS AND BENEFITS:

Internal Costs: Implementation of these amendments will not require additional resources. There is no anticipated additional cost to the Department or state government due to any inherent requirements of these revisions.

External Costs: The proposed revisions do not increase any fees charged by the Department under the current regulation. The proposed revisions would expand existing site evaluation options and allow more streamlined permit processing by allowing an applicant to submit a proposed system layout from a licensed Professional Soil Classifier ("PSC"). Under the proposal, applicants desiring to install systems for a subdivision consisting of ten (10) or more lots would be required to submit third‑party soils work from a PSC. The PSC would then have the option to either submit a proposed system layout under one of the system standards established within R.61‑56 or give the soils report to a Registered Professional Engineer to design a specialized septic system through the 610 Standard. Subdivision permit applicants may incur additional costs for the third‑party work performed by a PSC under this process. Outside of the subdivision context, applicants for conventional systems will retain the option to use a PSC or allow the Department to conduct a soil evaluation and prepare a system layout. The expanded options and enhanced involvement of third‑party PSCs will serve to streamline and expedite the permit process for the Department and the regulated community.

Benefits: These amendments upgrade overall quality and practicality, improve clarity and consistency, streamline permitting, and clarify existing definitions.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

There is no anticipated negative environmental or public health effect resulting from the proposed amendments of this regulation.

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

The negative effect on the environment and public health if the proposed amendment of this regulation is not implemented would be less efficiency and clarity for industry and reduced effectiveness and efficiency in the Department’s oversight of the disposal of septage and sewage.

**Statement of Rationale:**

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

The Department proposes amending R.61‑56, Onsite Wastewater Systems, to clarify a definition relating to rippable rock and update procedures for subdivisions and variances. The proposed amendments will streamline permitting procedures.

~~Indicates Matter Stricken~~

Indicates New Matter

**Text:**

61‑56. Onsite Wastewater Systems.

(Statutory Authority: S.C. Code Sections 44‑1‑140(11), 44‑1‑150, 44‑55‑825, 44‑55‑827, and 48‑1‑10 et seq.)

**Amend Section 101.1, definition of Rippable Rock, to read:**

Rippable Rock ‑ The rippability of rock material is a measure of its ability to be excavated with conventional excavation equipment (e.g., rubber‑tired backhoe ~~or mini excavator~~).

**Amend Section 102.1 to read:**

**102. Onsite Wastewater System Site Evaluation and Fees.**

102.1. Site Evaluations.

 (1) An applicant for a permit to construct an onsite wastewater system, nonwater‑carried sewage treatment system, wastewater combustion system, or gray water subsurface reuse system shall, at the time an application for a permit to construct is submitted to the Department, pay to the Department the site evaluation fee set forth in Section 102.2.

 (2) Soil evaluations shall be conducted only by:

 (a) A certified Department staff member;

 (b) A licensed Professional Soil Classifier~~;~~ or other licensed person qualified to practice soil classifying under S.C. Code 40‑65‑40(7) or otherwise deemed qualified by the Department who has subcontracted with the Department. The subcontractor may not charge a rate more than three (3) times the Department’s permit fees; or

 (c) ~~Another~~A privately hired licensed Professional Soil Classifier or other licensed person qualified to practice professional soil classifying under S.C. Code Section 40‑65‑40(7), provided that the burden of documenting qualification under S.C. Code Section 40‑65‑40(7) is on the licensed professional. The licensed professional shall provide to the Department verification of licensure and confirmation from their licensing board that the person is qualified to practice professional soil classifying within the scope of their license. The Department will disallow a soil evaluation from any person not able to provide verification to the Department’s satisfaction.

 (3) Except as provided in Section 102.1(4) and 102.1(5), an onsite wastewater system layout in accordance with Section 400, Appendices of Standards for Permitted Systems, may be prepared by:

 (a) A certified Department staff member;

 (b) A Registered Professional Engineer licensed in South Carolina who is not Department staff and has subcontracted with the Department to prepare onsite wastewater system layouts at a rate not more than three (3) times the Department’s permit fee; or

 (c) A privately hired Registered Professional Engineer licensed in South Carolina or ~~T~~the same licensed person under Section 102.1(2)(b) or (c) who conducted the soil evaluation for the site.

 (4) Only a Registered Professional Engineer may design a system and prepare a system layout for Standard 610/611 – Specialized Onsite Wastewater Systems, Standard 150 – Large and Community Onsite Wastewater Systems, nonwater‑carried sewage treatment systems, wastewater combustion systems, and gray water subsurface reuse systems.

 (5) The Department will not perform a soil evaluation or prepare a system layout for any subdivision or portion of a subdivision with ten (10) or more lots without access to all available utilities. Soil evaluations for any lots that are part of a subdivision with ten (10) or more lots without access to all available utilities must be conducted by a licensed person meeting the criteria of Section 102.1(2)(b) or (c). Proposed system layouts for any lots that are part of a subdivision must be prepared by a third‑party Registered Professional Engineer or Professional Soil Classifier meeting the criteria under Section 102.1(3)(b) or (c). The Soils Report and proposed system layout must be submitted with the onsite wastewater system permit application for the purpose of the Department review and issuance of a permit to construct.

**Amend Section 104.4 to read:**

104.4. Variances and Exemptions.

 (1) The Department may, on a case‑by‑case basis, approve and issue a variance or exemption from one or more requirements of this regulation upon a finding that:

 (a) The granting of the variance or exemption will not compromise protection to human health and the environment.

 (b) Because of the characteristics of the site, it is not practical or feasible for the onsite wastewater system to meet the requirements of this regulation without taking into account the current science and best technology available.

 (2) A request for variance or exemption must be in writing and include the following:

 (a) A detailed description of the regulatory requirements for which the variance or exemption is sought.

 (b) Sufficient data to demonstrate to the satisfaction of the Department that compliance with the regulatory requirement will not be practical or feasible.

 (3) The Department may request additional information to evaluate the request. A complete variance request will be processed within three (3) business days of receiving the request. If approved, the variance or exemption will be issued in writing and may contain conditions. The Department may revoke issued variances as it deems appropriate to protect human health and the environment.