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Document No. 4425

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

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

61-68. Water Classifications and Standards

**Synopsis**

These amendments will strengthen and improve the existing regulation and make appropriate revisions of the State’s water quality standards in accordance with Section 303(c)(2)(B) of the Federal Clean Water Act (CWA). Section 303(c)(2)(B) requires that South Carolina’s water quality standards be reviewed and revised, where necessary, to comply with Federal regulatory revisions and recommendations. These revisions will clarify the use of flow and resolve potential inconsistencies with R.61-119, Surface Water Withdrawal, Permitting, Use and Reporting. These changes limit the uses of flow in the regulation. The Department is also adopting a methylmercury standard to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA.

A Notice of Drafting was published in the *State Register* on February 22, 2013.

**Discussion of Revisions**

**(1) Stylistic changes to correct readability, clarity, grammar, punctuation, typography, codification, references, consistency, and language style.**

R.61-68.C.4 - The added language clarifies how critical flows will be utilized to determine permit limits or conditions, as was requested by stakeholders.

R.61-68.C.4.a(3) and b(3) - The removal of language that is no longer needed with the clarification that is proposed.

R.61-68.C.4.a(4) - The change in numbering to accommodate the removal of language from the previous sections.

**(2) Revision of Federal toxics criteria to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA.**

R.61-68.E.18 and 19. - The language is added to reflect the EPA’s most recent recommendations and guidance concerning methylmercury and implementation language for derivation of permit limits.

**Instructions:** Amend R.61-68 pursuant to each individual instruction provided with the text of the amendments below.

**Text:**

**R.61-68.C, Applicability of Standards**

**Amend R.61-68.C.4, introductory only; C.4.a(1) and (2) remain the same.**

4. Critical flows for determining permit effluent limitations and/or permit conditions or requirements, including permit development such as wasteload allocations or load allocations in TMDL’s, will be calculated in accordance with the following:

**Delete R.61-68.C.4.a(3).**

 **Renumber R.61-68.C.4.a(4) to C.4.a(3) to adjust outline for deletion of R.61-68.C.4.a.(3) to read.**

 (3) NPDES Permit conditions shall be based on a critical condition analysis (e.g., critical flow, temperature or pH, or a combination of factors which would represent a critical conditions). Regarding ambient water temperature as a component of a critical conditions analysis, the department may consider less stringent limits during November through February based on a critical ambient water temperature during November through February.

**Delete R.61-68.C.4.b(3).**

**R.61-68.E, General Rules and Standards Applicable to All Waters**

**Add R.61-68.E.18 and 19 to read.**

18. For the protection of human health, methlymercury concentration in fish or shellfish shall not exceed 0.3 mg/kg in wet weight of edible tissue.

 a. NPDES permit implementation for methlymercury will require mercury monitoring, assessment and minimization for discharges that meet the following conditions;

 (1) The receiving stream is impaired for methylmercury in fish or shellfish tissue, and;

 (2) The discharge or proposed discharge has consistently quantifiable levels of mercury.

 b. The need for a total mercury effluent limit, for the protection of aquatic life and/or human health, pursuant to R.61-9.122.44(d), shall be based on a reasonable potential analysis of the discharge compared to the mercury standards for ambient waters.

19. The assessment of methylmercury in fish or shellfish for purposes of Section 303(d) listing determinations shall be based on the Department’s Fish Consumption Advisories.

**Fiscal Impact Statement:**

No costs to the State or significant cost to its political subdivisions as a whole should be incurred by these amendments. See Statement of Need and Reasonableness below.

**Statement of Need and Reasonableness:**

The statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Ann. Section 1-23-115(C)(1)-(3) and (9)-(11) (2005):

DESCRIPTION OF REGULATIONS: Amendment of Regulation 61-68, *Water Classifications and Standards*.

Purpose: These amendments of R.61-68 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 Section 303(c)(2)(B) of the Federal Clean Water Act (CWA).

Legal Authority: S.C. Code Ann. Sections 48-1-40, 48-1-60, and 48-1-80 (2008), implementing the CWA.

Plan for Implementation: The amendments will be incorporated within R.61-68 upon approval of the General Assembly and publication as final regulations in the State Register. These amendments will be implemented in the same manner in which the present regulation is implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATIONS BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT:

The amendment to R.61-68 is required to comply with Federal requirements of Section 303(c)(2)(B) of the CWA. The proposed amendments to R.61-68 include the following:

Addition and adoption of methylmercury criteria to reflect the most current final published criteria in accordance with Sections 304(a) and 307(a) of the CWA.

The changes to R.61-68 relating to methylmercury criteria are reasonable because the stated criteria in the amendment are based on sound scientific principles and are required in order to comply with the goals of Section 101(a)(2) and 303(c) of the CWA for protection and maintenance of the uses of the waters of the State. These changes reflect the EPA’s most recent criteria.

Modification and adoption of changes to R.61-68 to address potential inconsistencies with R.61-119, Surface Water Withdrawal, Permitting, Use and Reporting. These changes are necessary to clarify the uses of flow in the regulation.

DETERMINATION OF COSTS AND BENEFITS:

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

In reviewing the potential for significant economic impact of the proposed amendment to R.61-68, the Department specifically evaluated situations in which costs would most likely be incurred by the regulated community. These estimates addressed the specific revisions by issue after determining those of greatest potential impact. The Department found that the overall impact to the State’s political subdivisions or the regulated community as a whole was not likely to be significant in that the existing standards would have incurred similar cost or the fact that the standards required under the amendment will be substantially consistent with the current guidelines and review guidelines utilized by the Department.

UNCERTAINTIES OF ESTIMATES:

Minimal.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Implementation of these amendments will not compromise the protection of the environment or the health and safety of the citizenry of the State. The amendments to R.61-68 will 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 REGULATIONS ARE 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:**

The statement of rationale was determined by staff analysis pursuant to S.C. Code Ann. Section 1-23-110(A)(3)(h) (2005).

The first issue contained in the amendment of R.61-68 is a requirement of the CWA and is necessary for compliance with EPA’s recommendations for the triennial review of the water quality standards to ensure consistency with the CWA. The second issue serves to resolve any potential conflict with R.61-119 and limits the use of flow in the regulation.