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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.

**Synopsis**:

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), exempted these amendments from General Assembly review, as the Department promulgates these amendments for compliance with federal law.

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

**Instructions:**

Amend R.61-9 pursuant to each individual instruction provided with the text of the amendments below.

**Text:**

61‑9. Water Pollution Control Permits.

(Statutory Authority: Sections 48‑1‑10 et seq. and Sections 48‑14‑10 et seq.)

**Amend Table of Contents to read:**

**Table of Contents**

61‑9.3. Cross‑Media Electronic Reporting.

61‑9.122. The National Pollutant Discharge Elimination System.

61‑9.124. Procedures for Decision Making.

61‑9.125. Criteria and Standards for the National Pollutant Discharge Elimination System.

61‑9.127. NPDES Electronic Reporting.

61‑9.129. Toxic Pollutant Effluent Standards and Prohibitions.

61‑9.133. Secondary Treatment Regulation.

61‑9.403. General Pretreatment Regulations for Existing and New Sources of Pollution.

61‑9.503. Standards for the Use or Disposal of Sewage Sludge.

61‑9.504. Standards for the Use or Disposal of Industrial Sludge.

61‑9.505. Land Application Permits and State Permits.

**Add 61‑9.3 to read:**

**61‑9.3. CROSS‑MEDIA ELECTRONIC REPORTING**

Refer to 40 CFR Part 3, which is hereby adopted by reference.

**Amend 61‑9.122.2. to correct a typographical error in the definition of “Discharge of a pollutant” to read:**

 “Discharge of a pollutant”

 (1) means:

 (i) Any addition of any pollutant or combination of pollutants to waters of the State from any point source, or

 (ii) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

 (2) includes additions of pollutants into waters of the State from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

**Amend 61‑9.122.2. to add the following definitions in alphabetical order:**

 “Pesticide discharges to waters of the State from pesticide application” means the discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to waters of the United States. In the context of this definition of pesticide discharges to waters of the United States from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C. 1342(l); 33 U.S.C. 1362(14)).

 “Pesticide residue” for the purpose of determining whether an NPDES permit is needed for discharges to waters of the State from pesticide application, means that portion of a pesticide application that is discharged from a point source to waters of the United States and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

**Amend 61‑9.122.21(a) to read:**

 (a) Duty to apply.

 (1) Any person who discharges or proposes to discharge pollutants or who owns or operates a “sludge‑only facility” whose sewage sludge use or disposal practice is regulated by R.61‑9.503 and who does not have an effective permit, except persons covered by general permits under section 122.28, excluded under section 122.3, or a user of a privately owned treatment works, unless the Department requires otherwise under section 122.44(m), must submit a complete application to the Department in accordance with this section and R.61‑9.124. All concentrated animal feeding operations have a duty to seek coverage under an NPDES permit, as described in section 122.23(d).

 (2) Application Forms:

 (i) All applicants for State‑issued permits must submit applications on EPA permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there. Applications for State‑issued permits must be submitted as follows:

 (A) All applicants, other than POTWs, TWTDS, vessels, and pesticide applicators must submit Form 1.

 (B) Applicants for new and existing POTWs must submit the information contained in paragraph (j) of this section using Form 2A or other form provided by the Department.

 (C) Applicants for concentrated animal feeding operations or aquatic animal production facilities must submit Form 2B.

 (D) Applicants for existing industrial facilities (including manufacturing facilities, commercial facilities, mining activities, and silvicultural activities), must submit Form 2C.

 (E) Applicants for new industrial facilities that discharge process wastewater must submit Form 2D.

 (F) Applicants for new and existing industrial facilities that discharge only nonprocess wastewater must submit Form 2E.

 (G) Applicants for new and existing facilities whose discharge is composed entirely of storm water associated with industrial activity must submit Form 2F, unless exempted by Section 122.26(c)(1)(ii). If the discharge is composed of storm water and non‑storm water, the applicant must also submit Forms 2C, 2D, and/or 2E, as appropriate (in addition to Form 2F).

 (H) Applicants for new and existing TWTDS, subject to paragraph (c)(2)(i) of this section must submit the application information required by paragraph (q) of this section, using Form 2S or other form provided by the Department.

 (ii) The application information required by paragraph (a)(2)(i) of this section may be electronically submitted if such method of submittal is approved by the Department.

 (iii) Applicants can obtain copies of these forms by contacting the Department.

 (3) Applicants for State‑issued permits must use State forms which must require at a minimum the information listed in the appropriate paragraphs of this section.

 (4) A person discharging or proposing to discharge wastes into the waters of the State shall promptly make application for and obtain a valid NPDES Permit and, if required, a valid State Construction Permit.

**Amend 61‑9.122.21(e) to read:**

 (e) Completeness.

 (1) The Department shall not issue a permit before receiving a complete application for a permit except for NPDES general permits. An application for a permit is complete when the Department receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

 (2) A permit application shall not be considered complete if a permitting authority has waived application requirements under paragraphs (j) or (q) of this section and EPA has disapproved the waiver application. If a waiver request has been submitted to EPA more than two hundred ten (210) days prior to permit expiration and EPA has not disapproved the waiver application one hundred eighty‑one (181) days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

 (3) Except as specified in 122.21(e)(3)(ii), a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O.

 (i) For the purposes of this requirement, a method approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O is “sufficiently sensitive” when:

 (A) The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter; or

 (B) The method ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility’s discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

 (C) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

Note to paragraph (e)(3)(i):

Consistent with 40 CFR Part 136, applicants have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of “sufficiently sensitive,” the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the applicant should select a different method from the remaining EPA‑approved methods that is sufficiently sensitive consistent with 40 CFR 122.21(e)(3)(i). Where no other EPA‑approved methods exist, the applicant should select a method consistent with 40 CFR 122.21(e)(3)(ii).

 (ii) When there is no analytical method that has been approved under 40 CFR Part 136, required under 40 CFR chapter I, subchapter N or O, and is not otherwise required by the Department, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method’s precision, accuracy, or resolution may be considered when assessing the performance of the method.

 (4) The Department, at its discretion, or upon request of the Regional Administrator, may request of an applicant any additional information deemed necessary to complete or correct deficiencies in a Refuse Act permit application, before processing the application or issuing or denying the issuance of a permit.

 (5) The Department may take enforcement action as prescribed by the State law or this regulation against any person who fails to file a complete application, if deficiencies are not corrected or complete information is not supplied within sixty (60) days to the Department following its request.

**Amend 61‑9.122.21(f) to read:**

(f) Information requirements. All applicants for NPDES permits, other than POTW and other TWTDS, vessels, and pesticide applicators, must provide the following information to the Department, using the application form provided by the Department. Additional information required of applicants is set forth in paragraphs (g) through (k) of this section.

 (1) The activities conducted by the applicant which require it to obtain an NPDES permit.

 (2) Name, mailing address, and location of the facility for which the application is submitted.

 (3) Up to four SIC codes and up to four NAICS codes which best reflect the principal products or services provided by the facility.

 (4) The operator’s name, address, telephone number, electronic mail address, ownership status, and status as Federal, State, private, public, or other entity.

 (5) Whether the facility is located on Indian lands.

 (6) A listing of all permits or construction approvals received or applied for under any of the following programs:

 (i) Hazardous Waste Management program under RCRA.

 (ii) UIC program under SDWA.

 (iii) NPDES program under CWA.

 (iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

 (v) Nonattainment program under the Clean Air Act.

 (vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

 (vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.

 (viii) Dredge or fill permits under section 404 of CWA.

 (ix) Other relevant environmental permits, including State permits.

 (7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

 (8) A brief description of the nature of the business, activity, or type project.

(9) An indication of whether the facility uses cooling water and the source of the cooling water.

 (10) An indication of whether the facility is requesting any of the variances at Section 122.21(m) if known at the time of application.

**Add 61‑9.122.21(g)(7)(ix) to read:**

 (ix) Where quantitative data are required in paragraphs (g)(7)(i) through (viii) of this section, existing data may be used, if available, in lieu of sampling done solely for the purpose of the application, provided that: All data requirements are met; sampling was performed, collected, and analyzed no more than four and one‑half (4.5) years prior to submission; all data are representative of the discharge; and all available representative data are considered in the values reported.

**Amend 61‑9.122.21(j)(1)(ii) to read:**

 (ii) Applicant information. Name, mailing address, telephone number, and electronic mail address of the applicant, and indication as to whether the applicant is the facility’s owner, operator, or both;

**Amend 61‑9.122.21(j)(1)(viii)(D)(*2*) to read:**

 (*2*) The name, mailing address, contact person, phone number, and electronic mail address of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

**Amend 61‑9.122.21(j)(1)(viii)(D)(*3*) to read:**

 (*3*) The name, mailing address, contact person, phone number, electronic mail address, and NPDES permit number (if any) of the receiving facility; and

**Add 61‑9.122.21(j)(1)(ix) to read:**

 (ix) An indication of whether the applicant is operating under or requesting to operate under a variance as specified at Section 122.21(n), if known at the time of application.

**Amend 61‑9.122.21(j)(4)(i) to read:**

 (i) As provided in paragraphs (j)(4)(ii) through (x) of this section, all applicants must submit to the Department effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the State, except for CSOs. The Department may allow applicants to submit sampling data for only one outfall on a case‑by‑case basis, where the applicant has two or more outfalls with substantially identical effluent. The Department may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone. For POTWs applying prior to commencement of discharge, data shall be submitted no later than twenty‑four (24) months after the commencement of discharge;

**Amend 61‑9.122.21(j)(5)(i) to read:**

 (i) All applicants must provide an identification of any whole effluent toxicity tests conducted during the four and one‑half years prior to the date of the application on any of the applicant’s discharges or on any receiving water near the discharge. For POTWs applying prior to commencement of discharge, data shall be submitted no later than twenty‑four (24) months after the commencement of discharge.

**Amend 61‑9.122.21(j)(6)(i) to read:**

 (i) Number of significant industrial users (SIU) and non‑significant categorical industrial users(NSCIUs), as defined at 40 CFR 403.3(v), including SIUs and NSCIUs that truck or haul waste,

discharging to the POTW; and

**Amend 61‑9.122.21(j)(9) to read:**

 (9) Contractors. All applicants must provide the name, mailing address, telephone number, electronic mail address, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility; and

**Amend 61‑9.122.21(k)(5)(vi) to read:**

 (vi) No later than twenty‑four (24) months after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of NPDES application Form 2C (see section 122.21(g)). However, the applicant need not complete those portions of Item V requiring tests which have already been performed and reported under the discharge monitoring requirements of the NPDES permit.

**Amend 61‑9.122.21(q)(2)(i) to read:**

 (i) The name, mailing address, telephone number, and electronic mail address of the applicant; and

**Amend 61‑9.122.21(q)(8)(vi)(A) to read:**

 (A) The name, mailing address, and electronic mail address of the receiving facility;

**Amend 61‑9.122.21(q)(9)(iii)(D) to read:**

 (D) The name, mailing address, telephone number, and electronic mail address of the site owner, if different from the applicant;

**Amend 61‑9.122.21(q)(9)(iii)(E) to read:**

 (E) The name, mailing address, telephone number, and electronic mail address of the person who applies sewage sludge to the site, if different from the applicant;

**Amend 61‑9.122.21(q)(9)(iv)(A) to read:**

 (A) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to section 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to section 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name, phone number, and electronic mail address if available, of a contact person at the permitting authority;

**Amend 61‑9.122.21(q)(10)(ii)(A) to read:**

 (A) The site name or number, contact person, mailing address, telephone number, and electronic mail address for the surface disposal site and

**Amend 61‑9.122.21(q)(10)(iii)(K)(*1*) to read:**

 (*1*) The name, contact person, mailing address, and electronic mail address of the facility and

**Amend 61‑9.122.21(q)(11)(ii)(A) to read:**

 (A) The name and/or number, contact person, mailing address, telephone number, and electronic mail address of the sewage sludge incinerator and

**Amend 61‑9.122.21(q)(12)(i) to read:**

 (i) The name, contact person, mailing address, electronic mail address, location, and all applicable permit numbers of the MSWLF;

**Amend 61‑9.122.21(q)(13) to read:**

 (13) Contractors. All applicants must provide the name, mailing address, telephone number, electronic mail address, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

**Add 61‑9.122.22(e) to read:**

 (e) Electronic Reporting*.* If documents described in paragraph (a) or (b) of this section are submitted electronically by or on behalf of the NPDES‑regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all cases, subpart D to Part 3) (Cross‑Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission.

**Add 61‑9.122.26(b)(15)(i)(C) to read:**

 (C) As of December 21, 2020, all certifications submitted in compliance with paragraphs (b)(15)(i)(A) and (B) of this section must be submitted electronically by the owner or operator to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, owners or operators may be required to report electronically if specified by a particular permit or if required to do so by State law.

**Amend 61‑9.122.26(g)(1)(iii) to read:**

 (iii) Submit the signed certification to the NPDES permitting authority once every five (5) years. As of December 21, 2020, all certifications submitted in compliance with this section must be submitted electronically by the owner or operator to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, owners or operators may be required to report electronically if specified by a particular permit or if required to do so by State law.

**Amend 61‑9.122.28(b)(2)(i) and (ii) to read:**

 (i) Except as provided in paragraphs (b)(2)(v) and (b)(2)(vi) of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Department a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (b)(2)(v) of this section, contains a provision that a notice of intent is not required or the Department notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph (b)(2)(vi) of this section. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of sections 122.6, 122.21 and 122.26. As of December 21, 2020, all notices of intent submitted in compliance with this section must be submitted electronically by the discharger (or treatment works treating domestic sewage) to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, discharger (or treatment works treating domestic sewage) may be required to report electronically if specified by a particular permit or if required to do so by State law.

 (ii) The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s), and other required data elements as identified in appendix A to 40 CFR Part 127. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with section 122.22. Notices of intent for coverage under a general permit for concentrated animal feeding operations (CAFO) must include the information specified in section 122.21(i)(1), including a topographic map.

**Amend 61‑9.122.34(g)(3) to read:**

 (3) Reporting. Unless you are relying on another entity to satisfy your NPDES permit obligations under section 122.35(a), you must submit annual reports to the Department for your first permit term. For subsequent permit terms, you must submit reports in year two and four unless the Department requires more frequent reports. As of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the small MS4 to the Department as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, the owner, operator, or the duly authorized representative of the small MS4 may be required to report electronically if specified by a particular permit or if required to do so by State law. Your report must include:

**Amend 61‑9.122.41(l) to read:**

 (l) Reporting requirements.

**Amend 61‑9.122.41(l)(4)(i) to read:**

 (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016, all reports and forms submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.

**Amend 61‑9.122.41(l)(6)(i) to read:**

 (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty‑four (24) hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery), as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by State law. The Department may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

**Amend 61‑9.122.41(l)(7) to read:**

 (7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (l)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph (l)(6) and the applicable required data in appendix A to 40 CFR Part 127. As of December 21, 2020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by State law. The Department may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

**Add 61‑9.122.41(l)(9) to read:**

 (9) Identification of the initial recipient for NPDES electronic reporting data. The owner, operator, or the duly authorized representative of an NPDES‑regulated entity is required to electronically submit the required NPDES information (as specified in appendix A to 40 CFR Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in Section 127.2(b) of this chapter. EPA will identify and publish the list of initial recipients on its website and in the Federal Register, by State and by NPDES data group [see Section 127.2(c) of this chapter]. EPA will update and maintain this listing.

**Amend 61‑9.122.41(m)(3)(i) and (ii) to read:**

 (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten (10) days before the date of the bypass. As of December 21, 2020, all notices submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.

 (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24‑hour notice). As of December 21, 2020, all notices submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.

**Amend 61‑9.122.42(c) to read:**

 (c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department under section 122.26(a)(1)(v) of this regulation must submit an annual report by the anniversary of the date of the issuance of the permit for such system. As of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically by the owner, operator, or the duly authorized representative of the MS4 to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, the owner, operator, or the duly authorized representative of the MS4 may be required to report electronically if specified by a particular permit or if required to do so by State law. The report shall include:

**Amend 61‑9.122.42(e)(4) to read:**

 (4) Annual reporting requirements for CAFO. The permittee must submit an annual report to the Department. As of December 21, 2020, all annual reports submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, the permittee may be required to report electronically if specified by a particular permit or if required to do so by State law. The annual report must include:

**Amend 61‑9.122.42(e)(4)(vi) to read:**

 (vi) Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous twelve (12) months, including for each discharge, the date of discovery, duration of discharge, and approximate volume; and

**Amend 61‑9.122.43(a) to read:**

 (a) In addition to conditions required in all permits (sections 122.41 and 122.42), the Department shall establish conditions, as required on a case‑by‑case basis, to provide for and ensure compliance with all applicable requirements of CWA and PCA and regulations. These shall include conditions under section 122.46 (duration of permits), section 122.47(a) (schedules of compliance), and section 122.48 (monitoring), and electronic reporting requirements of 40 CFR Part 3 (Cross‑Media Electronic Reporting Regulation) and 40 CFR Part 127 (NPDES Electronic Reporting).

**Amend 61‑9.122.44(i)(1) to read:**

 (1) To ensure compliance with the permit and protection of the environment, requirements to monitor:

**Amend 61‑9.122.44(i)(1)(iv) to read:**

 (iv) According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 for the analyses of pollutants or pollutant parameters or required under 40 CFR chapter I, subchapter N or O.

 (A) For the purposes of this paragraph, a method is “sufficiently sensitive” when:

 (1) The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or

 (2) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

Note to paragraph (i)(1)(iv)(A):

Consistent with 40 CFR Part 136, applicants or permittees have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant or permittee can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of “sufficiently sensitive,” the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the Department should select a different method from the remaining EPA‑approved methods that is sufficiently sensitive consistent with 40 CFR 122.44(i)(1)(iv)(A). Where no other EPA‑approved methods exist, the Department should select a method consistent with Section 122.44(i)(1)(iv)(B).

 (B) In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136 or methods are not otherwise required under 40 CFR chapter I, subchapter N or O, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

**Amend 61‑9.122.44(i)(2) to read:**

 (2) Except as provided in paragraphs (i)(4) and (i)(5) of this section, requirements to report monitoring results shall be established on a case‑by‑case basis with a frequency dependent on the nature and effect of the discharge but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case‑by‑case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in R.61‑9.503 (where applicable) but in no case less than once a year. All results must be electronically reported in compliance with 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127.

**Amend 61‑9.122.44(k)(4) to read:**

 (4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

Note to paragraph (k)(4):

Additional technical information on BMPs, and the elements of BMPs, is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B‑93‑004, NTIS No. PB 94‑178324, ERIC No. W498); Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R‑92‑005, NTIS No. PB 92‑235951, ERIC No. N482); Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R‑92‑001, NTIS No. PB 93‑223550; ERIC No. W139; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA 832/R‑92‑006, NTIS No. PB 92‑235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA 833/R‑92‑002, NTIS No. PB 94‑133782; ERIC No. W492. These and other EPA guidance documents can be obtained through the National Service Center for Environmental Publications (NSCEP) at http://www.epa.gov/​nscep. In addition, States may have BMP guidance documents. These EPA guidance documents are listed here only for informational purposes; they are not binding and EPA does not intend that these guidance documents have any mandatory, regulatory effect by virtue of their listing in this note.

**Add 61‑9.122.48(c) to read:**

 (c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in 40 CFR Part 3 (Cross‑Media Electronic Reporting Regulation), Section 122.44, and 40 CFR Part 127 (NPDES Electronic Reporting). Reporting shall be no less frequent than specified in Section 122.44. EPA will maintain the start dates for the electronic reporting of monitoring results for each State on its website.

**Add 61‑9.122.63(i) to read:**

 (i) Require electronic reporting requirements (to replace paper reporting requirements) including those specified in 40 CFR Part 3 (Cross‑Media Electronic Reporting Regulation) and 40 CFR Part 127 (NPDES Electronic Reporting).

**Add 61‑9.122.64 (c) to read:**

 (c) Permittees that wish to terminate their permit must submit a Notice of Termination (NOT) to their permitting authority. If requesting expedited permit termination procedures, a permittee must certify in the NOT that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. As of December 21, 2020, all NOTs submitted in compliance with this section must be submitted electronically by the permittee to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), Section 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, the permittee may be required to report electronically if specified by a particular permit or if required to do so by State law.

**Add and reserve 61‑9.124.10(c)(2)(iii) to read:**

 (iii) [Reserved]

**Add 61‑9.124.10(c)(2)(iv) to read:**

 (iv) For NPDES major permits and NPDES general permits, in lieu of the requirement for publication of a notice in a daily or weekly newspaper, as described in paragraph (c)(2)(i) of this section, the Department may publish all notices of activities described in paragraph (a)(1) of this section to the Department’s public website. If the Department selects this option for a draft permit, as defined in Section 122.2, in addition to meeting the requirements in paragraph (d) of this section, the Department must post the draft permit and fact sheet on the website for the duration of the public comment period.

Note to paragraph (c)(2)(iv):

The Department is encouraged to ensure that the method(s) of public notice effectively informs all interested communities and allows access to the permitting process for those seeking to participate.

**Amend 61‑9.125.3(a)(1)(ii) to read:**

 (ii) [Reserved]

**Add 61‑9.127 to read:**

**61‑9.127. NPDES ELECTRONIC REPORTING**

Refer to 40 CFR Part 127, which is hereby adopted by reference.

**Amend 61‑9.403.12(e)(1) to read:**

 (1) Any Industrial User subject to a categorical Pretreatment Standard (except a Non‑Significant Categorical User as defined in section 403.3(o)(2)), after the compliance date of such Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the POTW, shall submit to the Control Authority during the months of June and December, unless required more frequently in the Pretreatment Standard or by the Control Authority or the Department, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical Pretreatment Standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the Discharge reported in paragraph (b)(4) of this section, except that the Control Authority may require more detailed reporting of flows. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the User shall submit documentation required by the Control Authority or the Pretreatment Standard necessary to determine the compliance status of the User. At the discretion of the Control Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Control Authority may modify the months during which the above reports are to be submitted. For Industrial Users for which EPA or the authorized State, tribe, or territory is the Control Authority, as of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically by the industrial user to the Control Authority or initial recipient, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, the Industrial Users for which EPA or the authorized State, tribe, or territory is the Control Authority may be required to report electronically if specified by a particular control mechanism or if required to do so by State law.

**Amend 61‑9.403.12(h) and (i) to read:**

 (h) Reporting requirements for Industrial Users not subject to categorical Pretreatment Standards. The Control Authority must require appropriate reporting from those Industrial Users with Discharges that are not subject to categorical Pretreatment Standards. Significant Non‑categorical Industrial Users must submit to the Control Authority at least once every six (6) months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the Control Authority to determine the compliance status of the User. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in Part 136 and amendments thereto. This sampling and analysis may be performed by the Control Authority in lieu of the significant non‑categorical Industrial User. For Industrial Users for which EPA or the authorized State, tribe, or territory is the Control Authority, as of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically by the industrial user to the Control Authority or the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, the Industrial Users for which EPA or the authorized State, tribe, or territory is the Control Authority may be required to report electronically if specified by a particular control mechanism or if required to do so by State law.

 (i) Annual POTW reports. POTWs with approved Pretreatment Programs shall provide the Department with a report that briefly describes the POTW’s program activities, including activities of all participating agencies, if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one (1) year after approval of the POTW’s Pretreatment Program, and at least annually thereafter, and shall include, at a minimum, the applicable required data in appendix A to 40 CFR Part 127. The report required by this section must also include a summary of changes to the POTW’s pretreatment program that have not been previously reported to the Department and any other relevant information requested by the Department. As of December 21, 2020, all annual reports submitted in compliance with this section must be submitted electronically by the POTW Pretreatment Program to the Department, as defined in 40 CFR 127.2(b), in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, the Department may also require POTW Pretreatment Programs to electronically submit annual reports under this section if specified by a particular permit or if required to do so by State law.

**Amend 61‑9.503.18(a) to read:**

 (a) Any generator of sewage sludge that is applied to the land, any person who prepares sewage sludge that is applied to the land, or any person who applies sewage sludge to the land, including Class I sludge management facilities, POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit a report on February 19 of each year. As of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to the start dates for electronic reporting (see Table 1 in 40 CFR 127.16), the Department may also require operators to electronically submit annual reports under this section if required to do so by State law.

 (1) The information in section 503.17(a), except the information in section 503.17(a)(3)(ii), section 503.17(a)(4)(ii) and in section 503.17(a)(5)(ii), for the appropriate requirements on or before February 19 of each year, for the period of January 1 through December 31 of the previous calendar year.

 (2) The information in section 503.17(a)(5)(ii)(A) through (a)(5)(ii)(G) on or before February 19 of each year, for the period of January 1 through December 31 of the previous calendar year when 90 percent or more of any of the cumulative pollutant loading rates in Table 2 of section 503.13 is reached at a land application site.

**Amend 61‑9.503.28(a) to read:**

 (a) Any generator of sewage sludge disposed of at a surface disposal site, any person who prepares sewage sludge that is disposed of at a surface disposal site, or any person who disposes of sewage sludge at a surface disposal site, including Class I sludge management facilities, POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve 10,000 people or more shall submit a report with the information in section 503.27(a) to the Department on or before February 19 of each year, for the period of January 1 through December 31 of the previous calendar year. As of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to the start dates for electronic reporting (see Table 1 in 40 CFR 127.16), the Department may also require operators to electronically submit annual reports under this section if required to do so by State law.

**Amend 61‑9.503.48(a) to read:**

 (a) Any generator of sewage sludge when sewage sludge is incinerated, any person who prepares sewage sludge that is incinerated, or any person who incinerates sewage sludge, including Class I sludge management facilities, POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater shall submit the information in section 503.47(b) through section 503.47(h) to the Department on or before February 19 of each year, for the period of January 1 through December 31 of the previous calendar year. Reports required by this regulation do not exclude any person from submitting reports required by other Department regulations or by other applicable EPA regulations. As of December 21, 2020, all reports submitted in compliance with this section must be submitted electronically in compliance with this section and 40 CFR Part 3 (including, in all cases, subpart D to Part 3), 40 CFR 122.22, and 40 CFR Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to the start dates for electronic reporting (see Table 1 in 40 CFR 127.16), the Department may also require operators to electronically submit annual reports under this section if required to do so by State law.

**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: 61‑9, Water Pollution Control Permits.

Purpose: Proposed amendments of R.61‑9 to adopt portions of three federal Clean Water Act rules issued by the United States Environmental Protection Agency (“EPA”) required for State program implementation.

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 these proposed amendments. 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 amendments and any associated information.

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

The Department proposes amending R.61‑9 to adopt portions of three federal Clean Water Act rules issued by the EPA. Adoption of these federal regulations is necessary for State program implementation. The regulations include 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.

DETERMINATION OF COSTS AND BENEFITS:

The proposed amendments will save time and resources for the State and regulated permittees by transitioning from paper to electronic reporting. The amendments will also increase data accuracy, which will result in improved compliance to provide better protection of the waters of the State.

UNCERTAINTIES OF ESTIMATES:

The uncertainties associated with the estimation of benefits and burdens are minimal.

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.61‑9 seek to maintain compliance with federal law, which promotes the protection of water quality and public health.

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

Failure by the Department to incorporate the required revisions in R.61‑9 would result in the established NPDES Program to maintain inaccurate representations of the water quality of the State’s waters.