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.

Document Number: 5103

Proposed in State Register Volume and Issue: 45/12

House Committee: Regulations and Administrative Procedures Committee

Senate Committee: Medical Affairs Committee

120 Day Review Expiration Date for Automatic Approval: 02/11/2023

Final in State Register Volume and Issue: 46/5

Status: Final

Subject: Onsite Wastewater Systems

History: 5103

By Date Action Description Jt. Res. No. Expiration Date

- 12/24/2021 Proposed Reg Published in SR

- 02/14/2022 Received by Lt. Gov & Speaker 02/11/2023

H 02/15/2022 Referred to Committee

S 02/15/2022 Referred to Committee

S 03/08/2022 Resolution Introduced to Approve 1132

S 04/25/2022 Approved by: Ratification No. 1132

- 05/27/2022 Effective Date unless otherwise

provided for in the Regulation

Document No. 5103

**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.

**Synopsis:**

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

The Department amends R.61‑56, Onsite Wastewater Systems, to clarify a definition relating to rippable rock and update procedures for processing applications associated with subdivisions and variances as well as expands the provision for who is allowed to perform soil evaluations and prepare onsite wastewater system layouts. The amendments will bring clarity to the regulation and streamline permitting procedures.

The Department had a Notice of Drafting published in the August 27, 2021, South Carolina State Register.

Section‑by‑Section Discussion of Amendments:

|  |  |  |
| --- | --- | --- |
| **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 subcontractors of the Department to perform soil evaluations and prepare system layouts at a rate limited by the regulation. |
| 102.1 (5) | Addition/Deletion | Amended wording to establish a clear threshold when the Department will not perform soil evaluations or system layouts for a subdivision or portion thereof. |
| 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. |

**Instructions:**

Amend R.61‑56, Onsite Wastewater Systems, pursuant to each individual instruction provided with the text of the amendments below.

**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).

**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) and otherwise deemed qualified by the Department who has contracted with the Department. The contractor may not charge a rate more than three (3) times the Department’s permit fees; or

(c) 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 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.

**Fiscal Impact Statement:**

The fiscal impact of the proposed amendment to expand who is allowed to perform soil evaluations and prepare onsite wastewater system layouts is unclear, because the utilization of subcontractors rather than certified Department staff members to perform soil evaluations and prepare system layouts may provide a costs savings to the Department. There are no anticipated additional fiscal impacts to the Department or state government due to any other 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 processing applications associated with subdivisions and variances as well as expands the provision for who is allowed to perform soil evaluations and prepare onsite wastewater system layouts. 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.

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, Onsite Wastewater Systems. 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:

The utilization of subcontractors rather than certified Department staff members to perform soil evaluations and prepare system layouts may provide a costs savings to the Department. There are no additional internal costs to the Department or state government due to any other requirements of this amendment.

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 soil evaluation and a proposed system layout from an individual deemed qualified and who has subcontracted with the Department. If the applicant chooses to use a Department subcontractor, the subcontractor may charge a rate up to three (3) times the Department’s permit fee for providing these services.

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 Professional Soil Classifer (PSC), a Registered Professional Engineer licensed in South Carolina, or a qualified individual who has subcontracted with the Department. If a PSC performs the soils work, the applicant would then have the option to either have the PSC submit a proposed system layout under one of the system standards established within R.61‑56, Onsite Wastewater Systems, 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 soils work and proposed system layouts.

Benefits:

These amendments improve clarity and consistency, streamline permitting, and clarify existing definitions.

UNCERTAINTIES OF ESTIMATES:

The fiscal impact and costs of the amendment expanding who is allowed to perform soil evaluations and prepare onsite wastewater system layouts is uncertain. The utilization of subcontractors rather than certified Department staff members to perform soil evaluations and prepare system layouts may provide a costs savings to the Department and may increase costs to the applicants.

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 proposed amendments positively impact the environment and public health by providing clarity for industry and efficiency in the Department’s oversight of the disposal of septage and sewage. The failure to implement the proposed amendments would mean a failure to realize this positive impact.

**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.