CHAPTER 6

Department of Environmental Services

**SECTION 48-6-10. Department of Environmental Services created.**

 (A) There is created the Department of Environmental Services which shall be headed by a director appointed by the Governor, upon the advice and consent of the Senate. The director is subject to removal by the Governor as provided for in Section 1-3-240.

 (B) As the governing authority of the department, the director is vested with all authorities and duties as provided for in Section 1-30-10.

 (C) The Department of Environmental Services is comprised of:

 (1) the Division of Air Quality;

 (2) the Division of Land and Waste Management;

 (3) the Division of Water;

 (4) the Division of Regional and Laboratory Services, which includes the Office of Emergency Response and the Office of Onsite Wastewater and Enforcement; and

 (5) the Division of Coastal Management.

 (D) The Director of the Department of Environmental Services may realign the bureaus, divisions, offices, and programs to gain additional efficiencies or to better align resources with changes in environmental statutes or regulation.

HISTORY: 2023 Act No. 60 (S.399), § 4, eff July 1, 2024.

**SECTION 48-6-20. Functions, powers, and duties.**

 (A) The Department of Environmental Services is vested with all the functions, powers, and duties of the environmental divisions, offices, and programs of the Department of Health and Environmental Control on the effective date of this act.

 (B) The department may promulgate regulations necessary to implement the provisions of this chapter.

 (C) The department may apply for and accept funds, grants, gifts, and services from the State, the United States government or any of its agencies, or any other public or private source and may use funds derived from these sources to defray clerical and administrative costs, as may be necessary for carrying out the department's duties.

HISTORY: 2023 Act No. 60 (S.399), § 4, eff July 1, 2024.

**SECTION 48-6-30. Procedures regarding decisions on permits, licenses, certificates, and other approvals.**

 (A) All decisions of the Department of Environmental Services involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, certificates, or other actions of the department which may give rise to a contested case, except a decision to establish a baseline or setback line, must be made using the procedures set forth in this section. A department decision referenced in this subsection relating to a poultry facility or another animal facility, except a swine facility, also must comply with the provisions of Section 48-6-40.

 (B) The department shall comply with all requirements for public notice, receipt of public comments, and public hearings before making a decision. To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment, and public hearings.

 (C) In making a decision about a permit, license, certification, or other approval, the department shall take into consideration all material comments received in response to the public notice in determining whether to issue, deny, or condition a permit, license, certification, or other approval. At the time that a decision is made, the department shall issue a written decision and shall base its decision on the administrative record, which must consist of the application and supporting exhibits, all public comments and submissions, and other documents contained in the supporting file for the permit, license, certification, or other approval. The administrative record also may include material readily available at the department, or published materials which are generally available and need not be physically included in the same file as the rest of the record as long as those materials are referred to specifically in the department decision. The department is not required to issue a written decision for issuance of routine permits for which the department has not received adverse public comments.

 (D)(1) The department shall send notice of a decision by certified mail, return receipt requested to the applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail. Notice of decisions for which a department decision is not required pursuant to subsection (C) must be provided by mail, delivery, or other appropriate means to the applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified.

 (2) Within thirty calendar days after the mailing of a decision pursuant to item (1), an applicant, permittee, licensee, certificate holder, or affected person desiring to contest the department decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. Notwithstanding Section 1-23-600(H)(1), the entirety of Section 1-23-600(H) shall apply to timely requests for a contested hearing of decisions from the Department of Environmental Services. The court shall give consideration to the provisions of Section 1-23-330 regarding the department's specialized knowledge.

 (E) If a deadline provided for in this section falls on a Saturday, Sunday, or state holiday, the deadline must be extended until the next calendar day that is not a Saturday, Sunday, or state holiday.

HISTORY: 2023 Act No. 60 (S.399), § 4, eff July 1, 2024.

**SECTION 48-6-40. Decisions based on compliance with applicable department regulations.**

 (A) In making a decision on a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, pursuant to Section 48-6-30(C), the department shall base its decision solely on whether the permit complies with the applicable department regulations governing the permitting of poultry and other animal facilities, other than swine facilities.

 (B) For purposes of permitting, licensing, certification, or other approval of a poultry facility or another animal facility, other than a swine facility:

 (1) only an applicant, permittee, licensee, or affected person may request a contested case hearing pursuant to Section 48-6-30(D)(2);

 (2) only an applicant, permittee, licensee, or affected person may become a party to a contested case hearing; and

 (3) only an applicant, permittee, licensee, or affected person is entitled as of right to be admitted as a party pursuant to Section 1-23-310(5) of the Administrative Procedures Act.

 (C)(1) In determining whether to issue a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, the department only may take into consideration the existing development on and use of property owned or occupied by an affected person on the date the department receives the applicant's complete application package as prescribed by regulation. The department must not take into consideration any changes to the development or use of property after receipt of the application including, but not limited to, the construction of a residence.

 (2) If a property owner signs a setback waiver of the right to contest the issuance of a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, including waiver of the right to notice and a public hearing on a permit, license, certification, or other approval and to file a contested case or other action, then the affected person has seventy-two hours to provide in writing a withdrawal or rescission of the waiver.

 (D)(1) An applicant, permittee, licensee, or affected person who is aggrieved by a decision to issue or deny a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act.

 (2) Notwithstanding any other provision of law, a decision to issue a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, may not be contested if the proposed building footprint is located eight hundred feet or more from the facility owner's property line or located one thousand feet or more from an adjacent property owner's residence.

 (E) For purposes of this section, "affected person" means a property owner with standing within a one mile radius of the proposed building footprint or permitted poultry facility or other animal facility, except a swine facility, who is challenging on his own behalf the permit, license, certificate, or other approval for the failure to comply with the specific grounds set forth in the applicable department regulations governing the permitting of poultry facilities and other animal facilities, other than swine facilities.

HISTORY: 2023 Act No. 60 (S.399), § 4, eff July 1, 2024.

**SECTION 48-6-50. Rules and regulations of department must be approved by General Assembly.**

 All rules and regulations promulgated by the department shall be null and void unless approved by a concurrent resolution of the General Assembly at the session of the General Assembly following their promulgation.

HISTORY: 2023 Act No. 60 (S.399), § 4, eff July 1, 2024.

**SECTION 48-6-60. Department may promulgate and enforce rules and regulations.**

 (A) The Department of Environmental Services may make, adopt, promulgate, and enforce reasonable rules and regulations from time to time requiring and providing for:

 (1) the classification of waters;

 (2) the control of disease-bearing insects, including the impounding of waters;

 (3) the control of industrial plants, including the protection of workers from fumes, gases, and dust, whether obnoxious or toxic;

 (4) the use of water in air humidifiers;

 (5) the regulation of the methods of disposition of garbage or sewage and any like refuse matter in or near any village, town, or city of the State, incorporated or unincorporated, and to abate obnoxious and offensive odors caused or produced by septic tank toilets by prosecution, injunction, or otherwise; and

 (6) the alteration of safety glazing material standards and the defining of additional structural locations as hazardous areas, and for notice and hearing procedures by which to effect these changes.

 (B) The department may make separate orders and rules to meet any emergency not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the environment.

HISTORY: 2023 Act No. 60 (S.399), § 4, eff July 1, 2024.

**SECTION 48-6-70. Penalties for violating rules of department.**

 (A) A person who after notice violates, disobeys, or refuses, omits, or neglects to comply with a regulation of the Department of Environmental Services, made by the department pursuant to Section 48-6-60, is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for thirty days.

 (B) A person who after notice violates a rule, regulation, permit, permit condition, final determination, or order of the department issued pursuant to Section 48-6-60 is subject to a civil penalty not to exceed one thousand dollars a day for each violation.

 (C) Fines collected pursuant to subsection (B) must be remitted by the department to the State Treasurer for deposit in the state general fund.

 (D) The term "notice" as used in this section means either actual notice or constructive notice.

 (E) This section does not apply to fines levied pursuant to Section 48-6-60(3) or any other areas regulated by the South Carolina Occupational Health and Safety Act, Section 41-12-10, et seq.

HISTORY: 2023 Act No. 60 (S.399), § 4, eff July 1, 2024.

**SECTION 48-6-80. Proceedings against a person maintaining a nuisance.**

 Nothing contained in Section 48-6-60 in any way abridges or limits the right of a person to maintain or prosecute a civil or criminal proceeding against a person maintaining a nuisance.

HISTORY: 2023 Act No. 60 (S.399), § 4, eff July 1, 2024.