Agency Name: Department of Health and Environmental Control

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

Document Number: 3210

Proposed in State Register Volume and Issue: 32/3

House Committee: Agriculture, Natural Resources and Environmental Affairs Committee

Senate Committee: Medical Affairs Committee

120 Day Review Expiration Date for Automatic Approval: 05/13/2009

Final in State Register Volume and Issue: 33/6

Status: Final

Subject: Licensing of Onsite Wastewater System Master Contractors

History: 3210

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

- 03/28/2008 Proposed Reg Published in SR

- 01/13/2009 Received by Lt. Gov & Speaker 05/13/2009

H 01/13/2009 Referred to Committee

S 01/13/2009 Referred to Committee

S 03/10/2009 Resolution Introduced to Approve 548

- 05/13/2009 Approved by: Expiration Date

- 06/26/2009 Effective Date unless otherwise

 provided for in the Regulation

Document No. 3210

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

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

61-56.2. Licensing of Onsite Wastewater System Master Contractors

**Synopsis:**

 The Department of Health and Environmental Control is creating a new regulation, entitled R.61-56.2, Licensing of Onsite Wastewater System Master Contractors. South Carolina Act No. 106, passed by the S.C. General Assembly in 2007, and codified at Section 44-55-827 of the S.C. Code of Laws, 1976, authorizes and requires the Department to promulgate a regulation that creates a tiered licensing program for onsite wastewater system contractors. The Act requires that this regulation include eligibility criteria, monitoring, standards for education and training, bonding and insurance requirements, administrative and licensing fees, and enforcement guidelines and penalties. This regulation contains all elements specified and required by the Act.

 Staff initiated the statutory process for the promulgation of R.61-56.2 by publication of a Notice of Drafting in the State Register on January 25, 2008. Notice was also published on the Department’s website in its Regulation Development Update at [www.scdhec.net/co/regs](http://www.scdhec.net/co/regs). Notice of Proposed Regulation was published in the State Register on March 28, 2008, and a Staff Informational Forum was conducted on April 25, 2008. Comments received were considered in formulating the proposed regulation. See the Statements of Need and Reasonableness and Rationale herein.

Sectional Discussion of New Regulation 61-56.2

Section 100. This section is created to describe the purpose of the proposed new regulation.

Section 200. This section is created to define terms used within the proposed new regulation.

Section 300. This section is created to describe who is eligible to be licensed as an onsite wastewater system master contractor.

Section 400. This section is created to describe the continuing education and training requirements for onsite wastewater system master contractors.

Section 500. This section is created to describe the scope of practice for an onsite wastewater system master contractor, the procedure utilized by these contractors, and the quality control procedures utilized by the Department.

Section 600. This section is created to describe the bonding and insurance requirements for onsite wastewater system master contractors.

Section 700. This section is created to establish application and license fees for onsite wastewater system master contractors and the administrative requirements for those fees.

Section 800. This section is created to describe the enforcement penalties, for violations of any provisions of this regulation or an onsite wastewater installation permit, for an onsite wastewater system master contractor.

Section 900. This section is included to disclose the severability rights of this regulation.

**Instructions:** Add new Regulation 61-56.2 to Chapter 61 regulations.

**Text:**

61-56.2. LICENSING OF ONSITE WASTEWATER SYSTEM MASTER CONTRACTORS

CONTENTS

100. PURPOSE

200. DEFINITIONS

300. ELIGIBILITY

400. CONTINUING EDUCATION AND TRAINING

500. PRACTICE, PROCEDURE AND QUALITY CONTROL

600. BONDING AND INSURANCE REQUIREMENTS

700. APPLICATION AND LICENSE FEES

800. ENFORCEMENT

900. SEVERABILITY CLAUSE

100. PURPOSE

The purpose of this regulation is to protect public health and the environment by ensuring the competence of onsite wastewater system master contractors. Proper construction, installation and approval practices for onsite wastewater systems are essential for the safe treatment and disposal of domestic wastewater.

200. DEFINITIONS

ALTERNATIVE SYSTEM - A system incorporating design modifications of the proposed subsurface wastewater infiltration area (drainfield) or absorption trench geometry for the purpose of achieving compliance with required setbacks and offset to the zone of saturation and/or restrictive horizons. No such system shall be utilized unless the Department has established a specific standard.

ALTERNATIVE TILEFIELD PRODUCTS - Products specifically designed to replace or eliminate the aggregate typically utilized in soil absorption trenches. Such products must be approved for use by the Department and must adhere to required equivalency values established herein.

APPLICANT - A property owner, general contractor or agent representing the property owner, or a developer who seeks a permit to construct and operate an onsite wastewater system.

BOND - A sum of money set aside (Surety Bond) to insure completion of work under a contract.

CONVENTIONAL SYSTEM - An onsite wastewater system that utilizes a network of conventional absorption trenches installed in the naturally occurring soil for the treatment and disposal of domestic wastewater.

CONSTRUCT - The installation or repair of an onsite sewage treatment and disposal system.

DEPARTMENT - The South Carolina Department of Health and Environmental Control (DHEC).

DOMESTIC WASTEWATER - The untreated liquid and solid human body waste and the liquids generated by water-using fixtures and appliances, including those associated with food service operations. For the purposes of this regulation, domestic wastewater shall not include industrial process wastewater.

EFFLUENT - The liquid discharged from a septic tank, effluent pump station, or other sewage treatment device.

EXISTING SYSTEM - An onsite wastewater system, which has received final construction approval or has been serving a legally occupied residence or structure.

FAILING ONSITE WASTEWATER SYSTEM - An onsite wastewater system that is discharging effluent in an improper manner or has ceased to function properly.

LICENSE - The official document issued by the Department authorizing a person to provide services for installation, repair, modification or final inspection and approval of onsite wastewater systems that they install.

LICENSED SEPTIC TANK CONTRACTOR - A person authorized under Regulation 61-56.1, License to Construct or Clean Onsite Sewage Treatment and Disposal Systems and Self‑Contained Toilets, to construct, repair or clean onsite sewage disposal systems or self contained toilets.

ONSITE WASTEWATER SYSTEM - A system, generally consisting of a collection sewer, septic tank(s), and soil absorption trenches (subsurface wastewater infiltration area), designed to treat and dispose of domestic wastewater through a combination of natural processes that ultimately result in effluent being transmitted through the soil, renovated, and ultimately discharged to groundwater.

ONSITE WASTEWATER SYSTEM MASTER CONTRACTOR - A person authorized under this regulation to construct, repair, modify, inspect and issue final construction approval for onsite wastewater systems that they install.

PERMIT - A written document issued by the Department authorizing the construction and operation of an onsite wastewater system under Regulation 61-56. The construction and operation permit survives the life of the onsite wastewater system that it authorizes.

REPAIR - Any work performed on an existing onsite wastewater system for the purposes of correcting a surface failure or other unauthorized discharge, enhancing system performance, or relocating the entire system or system components, provided there are no changes in use that would impact the existing system.

REVOCATION - The permanent withdrawal of rights and privileges granted by a license.

SEPTIC TANK - A watertight, covered receptacle designed and constructed to receive the discharge of domestic wastewater from a building sewer, separate solids from the liquid, digest organic matter, store digested solids through a period of detention and biological conditioning of liquid waste, and allow the effluent to discharge for final treatment and disposal.

SOIL ABSORPTION TRENCH - A trench installed in the naturally occurring soil that is utilized for the treatment and disposal of domestic wastewater. A conventional trench is characterized by the following: (a) at least twenty-three (23) inches in depth; (b) thirty-six (36) inches in width; (c) filled with aggregate so that at least six (6) inches is beneath the distribution pipe, with at least five (5) inches on both sides of the pipe, and at least three (3) inches covering the pipe; and (d) at least nine (9) inches of backfill. Other trench configurations are specified in Regulation 61-56 Appendices of Standards for Onsite Wastewater Systems.

STANDARD - A group of requirements developed by the Department that specifies the minimum site conditions and design criteria necessary for the approval of a specific type of onsite wastewater system (i.e., alternative system) that differs from a conventional system. A standard may also address minimum design criteria for certain components of onsite wastewater systems as well as methodologies for determining system sizing.

SUBSURFACE WASTEWATER INFILTRATION AREA (DRAINFIELD) - A specific area where a network of soil absorption trenches or other devices of sewage application are installed to provide the final treatment and disposal of effluent.

SURETY AGREEMENT - Through this agreement, the surety agrees to uphold - for the benefit of the obligee - the contractual promises (obligations) made by the principal if the principal fails to uphold its promises to the obligee.

SUSPENSION - The temporary or indefinite withdrawal of rights and privileges granted by a license.

300. ELIGIBILITY

An onsite wastewater systems contractor currently licensed under R. 61.56.1, who meets the following criteria, is eligible to be licensed as an onsite wastewater systems master contractor:

 (1) a licensed onsite wastewater systems contractor who has been actively installing for three (3) years immediately preceding the date of application with no disciplinary action pending involving septic tank contracting; or

 (2) an onsite wastewater systems contractor licensee from another state with affidavits from the regulatory authority supporting five (5) years of experience with no pending disciplinary action involving septic tank contracting; and

 (3) the ability to pass an examination administered by the Department with a minimum score of eighty percent (80 %); and

 (4) a properly completed application with supporting documents (if required); and

 (5) proof of required bond and insurance coverage; and

 (6) payment of applicable fees.

400. CONTINUING EDUCATION AND TRAINING

400.1. The master contractor will be required to complete six (6) contact hours of training and continuing education every year from the date of licensing to renew the master contractor license. The Department will provide a listing of approved training providers and courses to meet this requirement.

400.2. The master contractor who fails to meet the training and continuing education requirements will lose the rights and privileges granted under that license until such time as these requirements have been met.

400.3. If the master contractor fails to meet the training and education requirement within the next licensing period, the license will be considered void.

400.4. If a master contractor completes more than the required six (6) hours in a licensing period, as many as three (3) hours can be rolled over into the requirement for the next licensing period.

500. PRACTICE, PROCEDURE AND QUALITY CONTROL

500.1. Practice

 (1) Onsite wastewater systems installed and approved by master contractors must be installed pursuant to, and in compliance with, construction and operation permits issued by the Department.

 (2) The master contractor does not have the authority to change an issued permit without first obtaining Department approval.

 (3) A master contractor authorized under this regulation will be able to install, inspect and approve any system permitted by the Department under Regulation 61-56 that the master contractor installs himself except those systems designed by a Licensed Professional Engineer.

 (4) The master contractor, after giving the Department the opportunity to do a final inspection of the installed system, may record and document the necessary measurements on a form approved by the Department, issue final approval, and cover the installation.

 (5) The as-built drawings, along with the master contractor’s signature and license number, must be submitted to the Department, with a copy being provided to the property owner for whom the system was installed.

500.2. Procedure

 (1) The master contractor shall arrange a time, for the final inspection of an onsite wastewater system that is being installed, with a representative of the Department. If, after thirty (30) minutes of that arranged time, the Department representative has not arrived for the inspection, the master contractor may:

 (a) inspect the system;

 (b) record the findings on a form approved by the Department;

 (c) grant final construction approval to the installation; and

 (d) cover the system.

 (2) The as-built drawings containing the required measurements and other documentation shall be submitted to the Department no later than the close of business on the next business day. A copy of this document(s) must also be furnished to the property owner for whom the system was installed.

500.3. Quality Control

The Department is required to conduct random final inspections on no less than three percent (3%) annually of the total number of systems installed during the preceding fiscal year. The Department will also conduct field reviews of the as-built drawings submitted by the master contractor compared with the actual installations those drawings represent.

600. BONDING AND INSURANCE REQUIREMENTS

600.1. Proof of both insurance and bond coverage shall be furnished to the Department prior to licensure as a master contractor and upon annual license renewal.

600.2. The onsite wastewater system master contractor shall be responsible for obtaining and maintaining both insurance and bond coverage for as long as the contractor is operating as a master contractor.

600.3. Failure to maintain both insurance and bond coverage shall result in the suspension or revocation of the master contractor license.

700. APPLICATION AND LICENSE FEES

700.1. The application fee for an onsite wastewater systems master contractor license shall be seventy-five dollars ($75.00); this fee must be submitted with the completed application. The application fee is non-refundable.

700.2. Upon successful completion of the application and examination requirements, each licensee shall pay a licensing fee of two hundred dollars ($200.00).

700.3. The annual renewal fee for each license shall be two hundred dollars ($200.00).

700.4. Failure to pay the annual renewal fee shall result in the suspension or revocation of the master contractor license.

700.5. Licenses issued in accordance with this regulation shall not be transferable.

800. ENFORCEMENT

800.1. Deviation from the installation design and conditions in onsite wastewater permits may be considered a violation of this regulation.

800.2. Violation of an onsite wastewater system installation permit, or any provisions of this regulation, by a master contractor, must be enforced in accordance as follows:

 (1) First offense violations may be enforced under S.C. Code Section 44‑1‑150 or by suspension of the installer’s license for a period not to exceed one (1) year.

 (2) Second offense violations may be enforced under S.C. Code Section 44‑1‑150 or by suspension of the installer’s license for a period not to exceed three (3) years.

 (3) Third offense violations may be enforced under S.C. Code Section 44‑1‑150 or by permanent revocation of the installer’s license.

800.3. A Department decision involving the issuance, denial, renewal, modification, suspension, or revocation of a permit or license may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.

900. SEVERABILITY CLAUSE

This regulation is issued under the authority of Sections 44‑1‑140(11), 44-1-150, 44-55-827, and 48‑1‑10 et seq. of the 1976 Code of Laws, as amended. It shall be enforced in accordance with interpretations and public health reasons approved by the Department. Should any section, paragraph, sentence, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of this regulation shall not be affected thereby.

**Fiscal Impact Statement:**

The Department estimates there will be no new costs imposed on the State or its political subdivisions by this regulation. There will be additional costs in application and licensing fees for those who choose to participate in the master contractor program.

**Statement of Need and Reasonableness:**

 The Statement of Need and Reasonableness was determined by staff analysis pursuant to S.C. Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION:

Purpose: The purpose of this regulation is to protect public health and the environment by ensuring the competence of onsite wastewater system master contractors. Proper construction, installation and approval practices for onsite wastewater systems are essential for the safe treatment and disposal of domestic wastewater. Act No. 106, passed by the General Assembly in 2007 and codified at S.C. Code Section 44-55-827, authorizes and requires the Department to promulgate a regulation that creates a tiered licensing program for onsite wastewater system contractors. This regulation contains all elements specified and required by the Act.

 Legal Authority: The legal authority for R.61-56.2 is Sections 44-1-140(11), 44-1-150, 44-55-827, and 48‑1‑10 et seq. of the S.C. Code of Laws, 1976, as amended.

 Plan for Implementation: The regulation will take effect upon approval by the General Assembly and publication in the *State Register*. The regulated community will be provided copies of the regulation.

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

 R.61-56.2 protects the health and environment of South Carolina’s citizens by ensuring that onsite wastewater system master contractors are licensed and qualified to carry out the responsibilities of the master contractor designation. The regulation creates a tiered licensing program for onsite wastewater system contractors that includes eligibility criteria, monitoring, standards for education and training, bonding and insurance requirements, administrative and licensing fees, and enforcement guidelines and penalties. The regulation contains all elements specified and required by Act 106.

DETERMINATION OF COSTS AND BENEFITS:

 There are no anticipated new costs associated with the implementation of this regulation for the state or any political subdivisions. There will be additional costs in application and licensing fees for those who choose to participate in the master contractor program.

 There will be a benefit to South Carolina by ensuring that the regulation and the Department continue to protect the health and environment of South Carolina’s citizens by ensuring that onsite wastewater system master contractors are licensed and qualified to carry out the responsibilities of the master contractor designation.

UNCERTAINTIES OF ESTIMATES:

 None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

 The regulation will protect the health and environment of South Carolina’s citizens by ensuring that onsite wastewater system master contractors are licensed and qualified to carry out the responsibilities of the master contractor designation.

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

 Not implementing the regulation will prevent continued assurance that onsite wastewater system master contractors are licensed and qualified to carry out the responsibilities of the master contractor designation.

**Statement of Rationale:**

 This regulation was promulgated in response to the requirements set forth by Act 106 passed by the S.C. General Assembly in 2007. It creates a tiered licensing program for onsite wastewater system contractors that includes all elements specified and required by the Act.