

Minutes of
S.C. Board of Health and Environmental Control
Meeting

January 12, 2012

The S.C. Board of Health and Environmental Control met on Thursday, January 12, 2012, at 10:00 a.m. in the S.C. Department of Health and Environmental Control Board Room, 2600 Bull Street, Columbia, S.C. (Attachment 0-1)

The following members were in attendance:

Allen Amsler, Chairman
Member-at-large

Mark S. Lutz, Vice-Chairman
1st District

R. Kenyon Wells
2nd District

L. Clarence Batts
4th District

Ann B. Kirol, DDS
5th District

John O. Hutto, Sr., MD
6th District

Also in attendance were C. Earl Hunter, Commissioner, Carlisle Roberts, Jr., General Counsel, Lisa Longshore, Clerk, department staff and guests. (Attachment 0-2)

Mr. Amsler stated notice of this meeting has been provided to all persons, organizations and news media, which have requested notification, as required by Section 30-4-80(e) of the South Carolina Code of Laws.

Item 1: Board Minutes for December 8, meeting, December 16 conference call, and Personnel Committee Minutes from November 7 conference call, November 10 meeting, November 16 conference call, November 21 conference call, December 5 conference call,

December 13 conference call and December 29 meeting (Attachment 1-1)

Mr. Lutz asked for the minutes of the December 8 meeting be revised to reflect that Chairman Amsler left the meeting prior Agenda Item #7. *Clerk of Board noted these changes had been made to the original document.*

Dr. Kirol moved, seconded by Mr Batts, to approve the minutes for December 8 as amended and the December 16 conference call. Approved.

Mr. Batts moved, seconded by Mr. Lutz, to approve the minutes of the Personnel Committee from November 7 conference call, November 10 meeting, November 16 conference call, November 21 conference call, December 5 conference call, December 13 conference call and December 29 meeting. Approved by the members of the Personnel Committee.

Item 2: Proposed Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina Air Quality Implementation Plan (SIP), Legislative review is not required (Attachment 2-1)

Mr. Robert Brown, Director, Division of Air Assessment, Innovations and Regulations, presented this item to the Board. The United States Environmental Protection Agency (EPA) promulgates amendments to 40 CFR Parts 50, 51, 52, 60, 61, and 63 throughout each calendar year. Federal amendments in 2010 included revisions to the Prevention of Significant Deterioration program for particulate matter 2.5 micrometers in diameter and smaller (PM_{2.5}) to incorporate increments and screening tools, as well as new and revised New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and NESHAP for Source Categories. (1) The Department proposes to amend Regulations 61-62.60, *New Source Performance Standards (NSPS)*; 61-62.61, *National Emission Standards for Hazardous Air Pollutants (NESHAP)*; and 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*; to incorporate by reference recent federal amendments published from January 1, 2010, through December 31, 2010. (2) The Department also proposes to amend R. 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, to incorporate a 2008 rule entitled *National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities* (73 FR 35939; June 25, 2008). (3) The Department also proposes to amend R. 61-62.5, Standard 2, *Ambient Air Quality Standards*, to reformat the Ambient Air Quality Standards table and revise R. 61-62.5, Standard 2, to delete an annual standard for particulate matter 10 micrometers in diameter or smaller (PM₁₀) that the EPA revoked in 2006 (71 FR 61144; October 17, 2006) [2006 PM₁₀ Rule]. (4) The Department also proposes to amend R. 61-62.5, Standard 7, *Prevention of Significant Deterioration*, to incorporate maximum allowable increases in ambient pollutant concentrations (“increments”) required by the rule entitled *Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)* (75 FR 64864; October 20, 2010) [PSD PM_{2.5} Screening Tool Rule]. The Department also proposes other changes to R. 61-62, *Air Pollution Control Regulations and Standards*, which include corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of R. 61-62. Pursuant to the 2006 PM₁₀ Rule [71 FR, at 61215] and the PSD PM_{2.5} Screening Tool Rule [75 FR, at 64898], the proposed

changes are federally mandated; all other rules are being incorporated by reference. Therefore, pursuant to S.C. Code Section 1-23-120(H)(1), legislative review is not required.

Mr. Batts moved, seconded by Mr. Lutz, to grant initial approval to publish a Notice of Proposed Regulation in the State Register, to provide opportunity for public comment, to conduct a staff informational forum and proceed with a public hearing before the Board. Approved.

Item 3: Public Hearing and Request for Final Approval – Proposed Amendment of R.61-24, Licensed Midwives, State Register Document No. 4210, Legislative Review is required
(Attachment 3-1)

Ms. Gwen Thompson, Director, Division of Health Licensing, presented this item to the Board. The regulation was last amended in July 1993 and included a comprehensive revision. Since that date, numerous changes in the practice of midwifery to improve standards of care have been adopted by the regulated community. The regulation must be updated to reflect those improvements. Standards have been established for the practice of midwifery and have been accepted nationwide. The North American Registry of Midwives (NARM), has established minimum standards including education, skills testing and written examination for evaluating candidates. Candidates who have met the credentialing standards earn the designation of Certified Professional Midwife (CPM). The process used to create and administer the Certified Professional Midwife examination has been evaluated and accredited by the National Commission for Certifying Agencies, the same organization that credentials Certified Nurse Midwives and many other advanced practice nursing credentials. The process used to evaluate the midwife candidates' education and skills verification is more comprehensive than the oral examination currently in use. Adoption of nationally recognized standards will provide reciprocity for CPMs that seek to be licensed in South Carolina. The Department seeks also to incorporate significant changes to policy on requirements for licensure, educational requirements, revocation criteria, provision of intrapartum care, record keeping and reporting, prenatal care, care of the newborn, incident reporting, tuberculosis testing, and to prohibit licensed midwives from assisting in vaginal births after caesarian section. Ms. Thompson provided the Board with an Addendum to the Board Package. (Attachment 3-2)

A public hearing was conducted. (Attachment 3-3 with comments presented in writing)

Mr. Batts moved, seconded by Dr. Kirol, to delay decision on this item and to ask staff to consider comments received during the public hearing and report back to the Board with its recommendation at a future date. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 3-4)

Item 4: Public Hearing and Request for Final Approval – Proposed Amendment of R.61-68, Water Classifications and Standards, and R.61-69, Classified Waters, State Register Document No. 4212, Legislative review is required (Attachment 4-1)

Ms. Heather Preston, Director, Division of Water Quality, presented this item to the Board.

R.61-68 and R.61-69 were promulgated pursuant to Section 48-1-10 of the 1976 Code. R.61-68 establishes appropriate goals and water uses to be achieved, maintained, and protected; general rules and water quality criteria to protect classified and existing water uses; and an antidegradation policy to protect and maintain the levels of water quality necessary to support and maintain those existing and classified uses. Section 303(c)(2)(B) of the Federal Clean Water Act (CWA) requires that the Department review, and amend as necessary, this regulation in order to incorporate the most recently published Federal criterion recommendations and guidance. R.61-69 provides a compilation of the State's named waterbodies, their specific classifications and designations, counties of their location and a description of the waters, and any site-specific water quality standards or designations that may apply to the waterbody. R.61-69 was last amended on June 23, 2006. R.61-68 was last proposed for amendment and submitted to the S.C. Legislature for approval on February 17, 2011 as Document No. 4161, where it was referred to House Committee on February 22, 2011 and referred to the Senate Committee on February 23, 2011. Document No. 4161 now awaits an automatic approval date of January 24, 2012. In the promulgation process for Document No. 4161, the Department had originally included a change of the indicator species used for protection of recreational uses in freshwaters. After several meetings and discussions with multiple stakeholders, the Department decided to withdraw this issue for further deliberation with the understanding that we would continue the proposal in the coming year. Hence, the Department has continued with the process this year and now is proposing the amendment to the freshwater bacterial indicator species for protection of recreational uses. The Department also included the issue of amendment to sections of R.61-68 that specify how bacterial indicators will be used in Department activities such as, but not limited to, permitting and assessments. To ensure consistency throughout the State, this issue was inclusive of marine waters. The Department is seeking to amend R.61-69 in order to improve the regulation overall by making several corrections, adding waterbodies and sections of waterbodies that were previously not listed or missing through error or oversight, reformatting from tabbed columns to a table format, adding consistent language throughout the text, adding any missing codification, and amending other language to make it consistent with other State regulations, specifically R.61-68. We are proposing to remove and replace the regulation in its entirety.

A public hearing was conducted. (Attachment 4-2)

Mr. Lutz moved, seconded by Mr. Batts, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 4-3)

Item 6: Certificate of Need Review Panel

Agenda Item 6 was moved ahead of Item 5.

Ms. Pam Dukes, Deputy Commissioner for Health Regulation, presented the Board with the list of members for the CON ad hoc committee to review the Certificate of Need program.

Chairman Amsler asked Dr. Kirol, the Board representative to the committee, to serve as

Chairperson of the CON Review Panel.

Mr. Wells moved, seconded by Mr. Batts, to approve the membership list as presented, with Dr. Kirol serving as chairperson of the committee. (Attachment 6-1)

Item 5: Handling of Requests for Final Review requiring action before February 9, 2012
(Attachment 5-1)

Dr. Hutto moved, seconded by Mr. Lutz, to go into Executive Session for the purpose of receiving legal advice under the attorney-client privilege pertaining to the pending RFRs and a matter in litigation and for the purpose of discussing the appointment of an employee. Approved.

While in Executive Session, no actions were taken.

After discussion, *Mr. Lutz moved, seconded by Mr. Batts, to conduct a Final Review Conference on Docket No. 11-RFR-73, The City Marina Company. Approved.*

Mr. Lutz recused himself on Docket No. 11-RFR-74. (Attachment 5-2)

After discussion, *Mr. Batts moved, seconded by Dr. Hutto, not to conduct a Final Review Conference on Docket No. 11-RFR-74, Kiawah Development Partners. Approved.*

Item 7: Agency Affairs

Commissioner Hunter reported that the Division of Communication Resources had won seven out of fifteen national awards given by National Public Health Information Coalition. The winners were as follows:

Brochures:

Silver: Snacks for Super Kids

Bronze: Family Mealtime

Posters:

Gold: Can the Tan

Newsletters:

Bronze: Word of Mouth - Oral Health

Health Literacy:

Gold: 5 Steps to a Good Latch

Silver: Hazard vs. Harm

Bronze: Can the Tan Flier

Commissioner Hunter stated this was his last meeting as Commissioner and that he had enjoyed working for the agency for the past 31 years, with the last ten being served as Commissioner and working with the Board.

Mr. Lutz, on behalf of the Board, thanked Commissioner Hunter for his service to the agency and to the State of South Carolina.

Item 15: Legal Report

No further legal report was given.

There being no further business, Chairman Amsler declared the meeting adjourned.

All referenced attachments are made a permanent part of these minutes.

Respectfully submitted,

Mark S. Lutz, Vice-Chairman

Minutes approved this 9th day of February 2012.

ATTEST:

Allen Amsler, Chairman

Attachments

- 0-1 Agenda
- 0-2 Sign-in Sheet
- 1-1 Board Minutes
- 2-1 Proposed Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards
- 3-1 Public Hearing – Proposed Amendment of R.61-24, Licensed Midwives
- 3-2 Addendum to board package
- 3-3 Public Hearing Sign-in Sheet
- 3-4 Verbatim Transcript
- 4-1 Public Hearing – Proposed Amendment of R.61-68, Water Classifications and Standards
- 4-2 Public Hearing Sign-in Sheet
- 4-3 Verbatim Transcript
- 5-1 Handling of Request for Final Review requiring action by February 9, 2012
- 5-2 Statement of Recusal – Mark Lutz
- 6-1 Certificate of Need Review Panel Members