

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

September 13, 2012

The South Carolina Board of Health and Environmental Control met on Thursday, September 13, 2012 at 10:00 in the Board Room of the South Carolina Department of Health and Environmental Control, 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 Catherine Templeton, Director, W. Marshall Taylor, Jr., General Counsel, Lisa Lucas Longshore, Clerk, 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.

Chairman Amsler stated that Agenda Item 10, the Final Review Conference, Docket No. 12-RFR-40, decision dated July 5, 2012, to issue permits to Pioneer Rural Water District water treatment project and associated components: Construction Permit 28499 WS for Intake System; Construction Permit No. 28500 WS for Treatment Plant; and NPDES General Permit discharge coverage SCG646068, had been continued at the request and consent of all parties.

Item 1: Board Minutes for July 12 meeting, August 21 conference call and August 30 conference call

Mr. Batts moved, seconded by Dr. Kirol, to approve the minutes as submitted for July 12, August 21 and

August 30 meetings. The Board voted and the Motion carried.

Item 2: Update: CON Review Panel

Dr. Kirol stated the CON Review Panel had completed its work and would be holding a public hearing on this matter before coming back to the Board with recommendations. Dr. Hutto stated work on the State Health Plan was complete and it would be coming to Board for approval at the October meeting.

After discussion, *the Board accepted this item as information.*

Item 3: Administrative and Consent Orders issued by Environmental Quality Control (Attachment 3-1)

Ms. Robin Stephens, Assistant to the Deputy Director, EQC, stated forty-two (42) Consent Orders and ten (10) Administrative Orders had been issued with total penalties of \$167,160.

The Board accepted this item as information.

Item 4: Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
(Attachment 4-1)

Ms. Melinda Bradshaw, Health Regulation Liaison, stated one (1) Suspension Order and three (3) Consent Orders had been issued with total penalties of \$800.

The Board accepted this item as information.

Item 5: Orders issued by the Office of Ocean and Coastal Resource Management (Attachment 5-1)

Ms. Carolyn Boltin-Kelly, Deputy Director, Ocean and Coastal Resource Management, stated one (1) Consent Order had been entered with a penalty of \$2,000.

The Board accepted this item as information.

Item 6: Request for a second Board extension of Certificate of Need (“CON”) SC-09-36 issued to Providence Hospital, Columbia, South Carolina for the modernization of the existing facility, resulting in all private patient rooms with the total licensed bed capacity remaining at two hundred fifty-eight (258) general acute care beds. The approved project included the construction of a new patient tower, but this has been deleted due to economic factors. (Attachment 6-1)

Chairman Amsler recused himself from discussion and decision on this matter and asked Mr. Lutz to serve as Chairman on this item. (Attachment 6-2)

Ms. Beverly Brandt, Director, Division of Health Facilities and Services Development, presented this item to the Board.

Providence Hospital, Columbia, South Carolina (“Providence Hospital”) was requesting additional time to implement Certificate of Need SC-09-36. Providence Hospital had provided staff with substantial evidence that they intend to move forward with the project implementation, all design documents have been completed and final pricing has been received from the contractor and subcontractors. The financing plans for the project are

still under review and careful consideration will be given to all options. Mr. George Zara, President and CEO of Providence Hospitals, was in attendance representing Providence Hospital.

After discussion with staff and Mr. Zara, ***Dr. Hutto moved, seconded by Mr. Batts, to go into Executive Session for the purpose of obtaining legal advice on this matter. The Board voted and the Motion carried.***

Vice-Chairman Lutz stated the Board was back in public session. While in Executive Session no actions were taken.

After further discussion, ***Dr. Kirol moved, seconded by Mr. Batts, to find that Providence Hospital has demonstrated substantial progress and to approve an additional nine-month extension to implement Certificate of Need SC-09-36. The Board voted and the Motion carried.***

Item 7: Public Hearing and Request for Final Approval – Amendment of R.61-79, Hazardous Waste Management Regulations, Federally Mandated Regulations, Exempt from Legislative Review, State Register Document No. 4289 (Attachment 7-1)

Mr. Richard Haynes, Director, Division of Waste Management, presented this item to the Board.

The Department proposed to amend R.61-79, Hazardous Waste Management Regulations by promulgating regulations to adopt three final rules published in the Federal Register by the United States Environmental Protection Agency between July 1, 2009 and June 30, 2010 and is also proposing to correct errors and omissions in the language of the previously adopted National Manifest Final Rule as follows:

- 1) proposed to adopt the “Revisions to the Requirements for Transboundary Shipments of Hazardous Wastes Between Organization for Economic Cooperation and Development (OECD) Member Countries, Export Shipments of Spent Lead-Acid Batteries, Submitting Exception Reports for Export Shipments of Hazardous Wastes, and Imports of Hazardous Wastes,” Final Rule, (OECD Rule) published on January 8, 2010 at 75 FR 1236;
- 2) proposed to adopt the “Withdrawal of the Emission Comparable Fuel Exclusion Under RCRA,” Final Rule, published on June 15, 2010 at 75 FR 33712;
- 3) proposed to amend R.61-79 to adopt parts of the “Hazardous Waste Technical Corrections and Clarifications Final Rule,” published on March 18, 2010 at 75 FR 12989;
- 4) proposed to amend R.61-79 to correct errors and omissions in the previously adopted National Manifest Final Rule at 70 FR 10776 (March 4, 2005), which was published as a final regulation in the S.C. State Register on May 28, 2010 in Document 4080.

Adoption of these federal amendments is required to comply with federal law and will bring Regulation 61-79 into conformity with the federal regulation. Legislative review of these amendments will not be required pursuant to S.C. Code Section 1-23-120(H).

A public hearing was held and no one asked to comment. (Attachment 7-2)

After discussion, ***Mr. Lutz moved, seconded by Mr. Batts, to find, based upon the public hearing and attached information, for the need and reasonableness of the proposed amendments and approve them for publication***

as final in the State Register. The Board voted and the Motion carried.

A transcript of this proceeding is included as part of the permanent record. (Attachment 7-3)

Item 8: Proposed Amendment of R.61-4, Controlled Substances, Legislative Review is Required
(Attachment 8-1)

Ms. Regina Erving, Director, Bureau of Drug Control, presented this item to the Board.

The Department proposed revisions to the Regulation as follows:

The Department proposed to remove obsolete language and references to functions no longer performed by the Bureau of Drug Control.

The Department proposed to clarify the following:

The procedures for reporting the theft or loss of controlled substances;

The inventory requirements for controlled substances;

The method for recording refills of schedules III, IV and V controlled substances;

Who may dispense controlled substances;

The partial fill of schedule II controlled substances prescriptions for terminally ill patients or patients in long term care facilities;

The quantity limitations for controlled substances prescriptions;

How long a schedule II controlled substance prescription is valid; and

The definition of a Long Term Care Facility.

The amended Regulation would also address the method of payment of registration fees and provide for certain fee exemptions.

The Department proposed to provide for registration, installation, and operation of automated dispensing systems at long term care facilities.

The proposed amendments would provide for consistency with state and federal laws. For example, the Regulation would provide for electronic prescriptions for controlled substances in accordance with current U.S. Drug Enforcement Administration (DEA) regulations at 21 C.F.R. § 1311, and permit the faxing of schedule III, IV and V controlled substances prescriptions to pharmacies consistent with S.C. Code Section 44-53-360(b).

Mr. Batts moved, seconded by Mr. Lutz, to grant approval to publish a Notice of Proposed Regulations in the State Register, and to allow staff to proceed with a public hearing before the Board.

Mr. Taylor requested Mr. Batts consider the entire staff recommendation in regard to his motion. Mr. Batts withdrew his initial motion, with concurrence by Mr. Lutz.

Mr. Batts moved, seconded by Mr. Lutz, to grant approval to publish a Notice of Proposed Regulations in the State Register, to provide opportunity for public comment and to allow staff to proceed with a public hearing before the Board. The Board voted and the Motion carried.

Item 9: Handling of Requests for Review requiring action by October 11, 2012 (Attachment 9-1)

Chairman Amsler asked for an Executive Session for the purpose of obtaining legal advice under the attorney-client privilege about the matters at hand. Mr. Batts moved, seconded by Mr. Lutz, to go into Executive Session. The Board voted and the Motion carried.

Chairman Amsler stated the Board was back in public session. While in Executive Session no actions were taken.

Mr. Amsler stated that for discussion and action, Docket Nos. 12-RFR-36 and 12-RFR-37 would be considered together. Ms. Elizabeth Potter served as legal counsel to the Board for discussion on Docket Nos. 12-RFR-36 and 12-RFR-37.

After discussion, Mr. Lutz moved, seconded by Mr. Batts, to deny a final review conference on Docket No. 12-RFR-36 and 12-RFR-37, Arcadia Woods Lake Dam Inspection and Repair Order. The Board voted and the Motion carried.

After discussion, Mr. Batts moved, seconded by Dr. Kirol, to deny a final review conference on Docket No. 12-RFR-42, David E. Murray and Roberd M. Bostick dock permit. The Board voted and the Motion carried.

After discussion, Mr. Batts moved, seconded by Dr. Hutto, not to conduct a final review conference on Docket No. 12-RFR-43, Ashlan Village. The Board vote was 4-1 in favor, the Motion carried.

After discussion, Dr. Hutto moved, seconded by Mr. Lutz, to conduct a final review conference on Docket No. 12-RFR-44, Robert Lesslie, SCDHEC Permit SCR10Q591. The Board voted and the Motion carried.

After discussion, Mr. Batts moved, seconded by Mr. Wells, to conduct a final review conference on Docket No. 12-RFR-45, Three Rivers Behavioral Health. The Board voted and the Motion carried.

After discussion, Dr. Kirol moved, seconded by Dr. Hutto, to conduct a final review conference on Docket No. 12-RFR-46, Chiquola Maison Skilled Nursing Facility. The Board vote was 4-1 in favor, the Motion carried.

Item 10: Agency Affairs

Director Templeton updated the Board on agency affairs as follows:

2013-2014 Budget being prepared for the Governor's office;
Management issues and realization of a \$5 million deficient in the administration area budget.

After brief discussion, *the Board accepted this item as information.*

Item 11: Legal Report

Mr. Taylor updated the Board on the latest activity in the Savannah Harbor Expansion Project litigation.

Mr. Amsler asked for an Executive Session for the purpose of discussing a Personnel matter. Mr. Lutz moved, seconded by Mr. Wells, to go into Executive Session. The Board voted and the Motion carried.

Chairman Amsler stated the Board was back in public session. While in Executive Session no actions were taken.

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

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

Respectfully submitted,

Mark Lutz, Vice-Chairman

Minutes approved this 11th day of October 2012.

ATTEST:

Allen Amsler, Chairman

Attachments

Agenda

Attendance Roster

Minutes for July 12, August 9, August 21 and August 30

3-1 Administrative and Consent Orders issued by EQC

4-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation

5-1 Orders issued by Ocean and Coastal Resource Management

6-1 Providence Hospital CON Extension Request

6-2 Statement of Recusal

7-1 Public Hearing and Request for Final Approval – Proposed Amendment of R.61-79, Hazardous Waste Management Regulations

7-2 Public Hearing Sign-in Sheet

7-3 Verbatim Transcript

8-1 Proposed Amendment of R.61-4, Controlled Substances

9-1 Handling of Requests for Review requiring action by October 11, 2012