



August 1, 2016

**FIRST CLASS**  
**and CERTIFIED MAIL # 9214 8969 0099 9790 1405 5458 27**

Attn: Britt Poole, Town Administrator  
Town of Lexington  
111 Maiden Lane  
Lexington, S.C. 29072

Re: Administrative Order No. 16-024-W  
Town of Lexington, Designated Management Agency

Dear Mr. Poole:

Enclosed is Administrative Order No. 16-024-W (Order), affecting the Town of Lexington. The Order is being issued based on conclusions of law as stated therein. Please review the Order carefully and comply with its specified requirements. Also, if you choose to appeal the Order, carefully follow the necessary steps, as outlined in the attached document entitled "South Carolina Board of Health and Environmental Control – Guide to Board Review" pursuant to S.C. Code Ann. § 44-1-60.

If you wish to discuss this matter, or if you have any questions regarding the requirements in the Order, please contact me by e-mail at [baizedg@dhec.sc.gov](mailto:baizedg@dhec.sc.gov) or by telephone at (803)-898-4272. If you have any questions regarding an appeal, please call the Clerk of the Board at (803)-898-3309.

Respectfully,

David Baize, Chief  
Bureau of Water

cc: Michael Trayhnam, SCDHEC Office of General Counsel  
Jeff DeBessonnet, SCDHEC Water Facilities Permitting  
Main File

Enclosures: Administrative Order No. 16-024-W  
S.C. Board of Health and Environmental Control – Guide to Board Review

**THE STATE OF SOUTH CAROLINA  
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

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**IN RE: TOWN OF LEXINGTON  
I-20 WWTP  
LEXINGTON COUNTY**

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**ADMINISTRATIVE ORDER**

**1 6 - 0 2 4 - W**

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The Town of Lexington (Lexington) serves as the designated management agency (DMA) under the Central Midlands Council of Governments (CMCOG) regional wastewater plan, approved by the Environmental Protection Agency (EPA) pursuant to Section 208 of the Federal Clean Water Act (208 Plan).

Carolina Water Service, Inc. (CWS) owns and operates a wastewater treatment facility (I-20 WWTF) under National Pollutant Discharge Elimination System Permit Number SC0035564 (NPDES Permit), which is within the geographic area covered by the 208 plan. The I-20 WWTF currently discharges to the Saluda River.

Today, August 1, 2016, the Department denied the application for renewal of the NPDES Permit. The effect of this decision becoming final will be the required cessation of the I-20 WWTP discharge to the Saluda River.

CWS presently provides wastewater service to approximately 2000 customers in or around West Columbia, South Carolina. This Order is issued pursuant to the Department's public health and environmental protection emergency powers, and its authority under the Clean Water Act and South Carolina Pollution Control Act, to require Lexington to fulfill its role as the DMA under the

208 Plan and facilitate an interconnection of the I-20 WWTP system. This Order will become effective upon the Department's denial of the NPDES Permit becoming final.

### **FINDINGS OF FACT**

1. Lexington serves as the DMA under the CMCOG 208 Plan, approved by EPA pursuant to Section 208 of the Federal Clean Water Act. Lexington owns and maintains a sewer collection system serving its wastewater service area.
2. CWS owns and is responsible for the proper operation and maintenance of the I-20 WWTP, located at Laurel Meadows subdivision off Leaphart Road, in Lexington County, South Carolina.
3. On November 17, 1994, the Department issued the NPDES Permit to CWS. The NPDES Permit authorized CWS to discharge treated wastewater into the Saluda River, in accordance with effluent limitations, monitoring requirements, and other permit conditions. The NPDES Permit became effective on January 1, 1995, and expired on September 30, 1999. CWS applied for renewal of the NPDES Permit prior to its expiration. Therefore, all conditions and requirements of that permit remain in effect. The NPDES Permit stated that the I-20 WWTP was considered a temporary treatment facility and was required to be connected to a regional sewer system when such a system became operational.
4. Following the issuance of 1995 NPDES Permit, the Department informed CWS that Lexington's sewer system, which was designated the regional system pursuant to the 208 Plan, was operational.
5. A portion of Lexington's collection system is physically located in proximity to the I-20

WWTP such that no physical or engineering obstacle to constructing an interconnection exists, and the Department has previously issued a permit to construct the connection.

6. On August 1, 2016, the Department denied the renewal of the NPDES Permit.
7. CWS provides wastewater service to over 2000 customers in the area and cessation of the I-20 WWTF discharge without a plan for continuity of wastewater service to these customers will create a public health and environmental emergency. This action is taken to avert such an emergency.

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the Department reaches the following

#### **Conclusions of Law:**

1. S.C. Code Regulations 61-9-122.64(a)(5) and 33 USC §1288(e) (Clean Water Act Section 208) preclude the reissuance of the NPDES Permit.
2. Based on the South Carolina Pollution Control Act, including but not limited to S.C. Code Ann. §§ 48-1-50 (3), 48-1-50 (17) and 48-1-290 and S.C. Code Ann. §§ 44-1-140, the Department is authorized to issue orders addressing the discontinuation of discharges into waters of the State, securing for this State the benefits of the Clean Water Act, and averting emergencies to protect the public life, health, and the environment. The action ordered herein is taken pursuant to these provisions of law.
3. S.C. Code Ann. § 48-1-330 provides that “[a]ny person violating any of the provisions of this chapter, or any rule or regulation, permit or permit condition, final determination or order of the Department, shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation.”

**NOW, THEREFORE, IT IS ORDERED**, pursuant to the provisions set forth above, Lexington shall:

1. Within sixty (60) days after the NPDES Permit denial becomes final, submit to the Department for approval, a plan coordinated with CWS which provides for CWS to interconnect the wastewater discharge from the I-20 WWTP to Lexington's collection system without interruption in service to existing CWS customers. This plan shall include periodic benchmarks for any necessary engineering, construction, and regulatory approvals by the Department or any other agency. Upon written notification that the Department does not approve the proposed plan, the plan must be corrected and resubmitted to the Department within fifteen (15) days. Upon approval by the Department, the plan shall become an enforceable part of this Order.
2. Within twelve (12) months of the execution date of this Order, effect the complete elimination of the discharge from the I-20 WWTP through connection to the regional system.

**PURSUANT TO THIS ORDER**, all communication regarding this Order and its requirements shall be addressed as follows:

David Baize  
SCDHEC  
2600 Bull Street  
Columbia, S.C. 29201

**IT IS FURTHER ORDERED** that failure to comply with any provision of this Order shall be grounds for further enforcement action pursuant to the Pollution Control Act, S.C. Code Ann. § 48-1-330 (2008), to include the assessment of civil penalties.

**FOR THE SOUTH CAROLINA DEPARTMENT  
OF HEALTH AND ENVIRONMENTAL CONTROL**

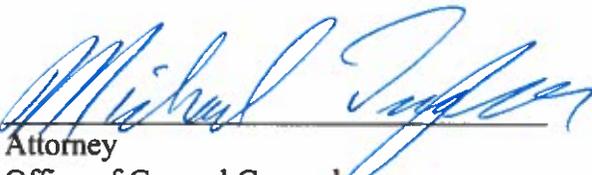
  
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Myra C. Reece  
Director of Environmental Affairs

Date: 8/1/2016

  
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David Baize  
Chief, Bureau of Water

Date: 8/1/14

Reviewed By:

  
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Attorney  
Office of General Counsel

Date: 8/1/16

# South Carolina Board of Health and Environmental Control

## Guide to Board Review

### Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

#### I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15<sup>th</sup> day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
  - The grounds for amending, modifying, or rescinding the staff decision;
  - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
  - the relief requested;
  - a copy of the decision for which review is requested; and
  - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:

South Carolina Board of Health and Environmental Control  
Attention: Clerk of the Board  
2600 Bull Street  
Columbia, South Carolina 29201

Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15<sup>th</sup> day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

*NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.*

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

## **II. Final Review Conference Scheduling**

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
  - include the place, date and time of the Conference;
  - state the presentation times allowed in the Conference;
  - state evidence may be presented at the Conference;
  - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
  - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

## **III. Final Review Conference and Decision**

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
  - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
    - Type of decision (permit, enforcement, etc.) and description of the program.
    - Parties
    - Description of facility/site
    - Applicable statutes and regulations
    - Decision and materials relied upon in the administrative record to support the staff decision.
  - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
  - Rebuttal by Department staff [15 minutes]
  - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

**The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.**