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Promoting and protecting the health of the public and the environment

S.C. BOARD OF HEALTH AND ENVIRONMENTAL CONTROL

Agenda -- November 18, 2009

*Call to Order – 10:00 a.m., Board Room (#3420)
 S.C. Department of Health and Environmental Control,
 2600 Bull Street, Columbia, S.C.*

1. Board Minutes – October 8, 2009 conference call – For Approval
2. Monthly Award for Excellence – November 2009 – C. Earl Hunter
3. Orders issued by the Office of Ocean and Coastal Resource Management – Carolyn Boltin-Kelly
4. Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation – Pamela M. Dukes
5. Administrative and Consent Orders Issued by the Bureau of Environmental Health – Lisa F. Waddell, MD
6. Proposed Amendments to Regulation 61-62.96, Nitrogen Oxides (NOx) and Sulfur Dioxide (SO₂) Budget Trading Program and the South Carolina Implementation Plan (SIP), Legislative review is not required – Robert W. King
7. **Public Hearing and Request for Final Approval** -- Proposed Amendments of Regulation 61-62.1, Definitions and General Requirements, and the South Carolina Implementation Plan (SIP), State Register Document No. 4085, Legislative review is required – Robert W. King, Jr.
8. **Final Review Conference** – Docket No. 09-RFR-71, Beaufort County v. South Carolina Department of Health and Environmental Control and Wilbert Roller
9. Handling of Request for Final Review requiring action by December 10, 2009 (RFR Docket Nos. 09-RFR-84 through 09-RFR-__)

<u>Docket No.</u>	<u>Requestor</u>	<u>Applicant/Permittee/Respondent</u>
09-RFR-84 (BOW)	SCDOT	SCDHEC
09-RFR-85 (OCRM)	Alan Cabading	Alan Cabading
09-RFR-86 (OCRM)	Naomi Peschau	Naomi Peschau
09-RFR-87 (BLWM)	Medical Waste Systems	Medical Waste Systems
09-RFR-88 (HR)	Bellwood Manor	Bellwood Manor

09-RFR-89 (OCRM)	Elizabeth H. Stringfellow	Marie Beckett
09-RFR-90 (CON)	Palmetto Health	Lexington Medical Center
09-RFR-91 (CON)	Georgetown Memorial Hospital (GMH)	GMH/Lighthouse Care Center of Conway
09-RFR-92 (BAQ/HW)	Wood Fabricators, Inc.	Wood Fabricators, Inc.
09-RFR-93 (BOW)	Xanadu II	Xanadu II
09-RFR-94 (OCRM)	Friends of the Kiawah River	Kiawah Development Partners, II <i>Kiawah Island Sheetpile Project</i>
	SC Coastal Conservation League	

10. Agency Affairs – C. Earl Hunter

11. Legal Report – Carlisle Roberts

Executive Session (if needed)

Board Summary Sheet
Office of Ocean and Coastal Resource Management
November 18, 2009

() Action/Decision

(X) Information

- I. Title: Orders issued by the Office of Ocean and Coastal Resource Management.
- II. Subject: Administrative Orders, Consent Orders, and Consent Agreements issued between September 1, 2009, through September 30, 2009, by the Office of Ocean and Coastal Resource Management.
- III. Facts: For the period of September 1, 2009, through September 30, 2009, the Office of Ocean and Coastal Resource Management issued three (3) consent orders and assessed a total of \$2,225.00 in civil penalties.

<u>Consent Orders</u>	3	<u>Penalties</u>	\$2,225.00
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Submitted by: _____
Carolyn Boltin-Kelly, Deputy Commissioner

Office of Ocean and Coastal Resource Management

SUMMARY SHEET
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
November 19, 2009

_____ ACTION/DECISION

 X INFORMATION

- I. TITLE: Administrative Orders, Consent Orders, and Sanction Letters issued by HEALTH REGULATION (HR).
- II. SUBJECT: Sanctions completed during the period September 1, 2009, through September 30, 2009.
- III. FACT: For the period September 1, 2009, through September 30, 2009, Health Regulation issued one (1) License Revocation with no penalties.

<u>Program</u>	<u>License Revocation</u>	<u>Amount</u>
Licensing	1	-0-

- IV. ANALYSIS: 1. Rebecca J. Rennells, Optimal Hearing Systems, Inc., 23 Plantation Park Dr., Suite 102, Bluffton, SC 29910. By letter dated August 19, 2009, the Department notified the individual that her hearing aid specialist license was being revoked. The individual was found to have violated R.61-3, Practice of Selling and Fitting Hearing Aids. Violations included: failure to submit a license application and appropriate fees.

Previous Sanctions: None

Approved By: _____
Pamela M. Dukes, Deputy Commissioner
Health Regulation

**SUMMARY SHEET
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
NOVEMBER 18, 2009**

_____ ACTION/DECISION

 X INFORMATION

- I. TITLE: Administrative and Consent Orders Issued by the Bureau of Environmental Health (BEH).
- II. SUBJECT: Administrative and Consent Orders of the period July 1, 2009 through September 30, 2009.
- III. FACTS: For the period of July 1, 2009 through September 30, 2009, the BEH issued three (3) Consent Orders with total assessed penalties in the amount of \$1,000.00. Fourteen (14) Administrative Orders were issued in this same period with total assessed penalties in the amount of \$9,750.00.

Program	Consent Orders	Assessed Penalties	Administrative Orders	Assessed Penalties	Collected Penalties	Waived Penalties
Food Protection	3	\$ 1,000	12	\$ 8,000	\$ 3,750	\$ 750
Onsite Wastewater	0	0	1	\$ 500	0	\$ 500
General Sanitation	0	0	1	\$ 250	0	0
TOTAL	5	\$ 1,000	12	\$ 7,000	\$ 3,750	\$ 750

IV. ANALYSIS: The BEH utilized Consent Orders along with Administrative Orders. The BEH entered into Consent Orders with three respondents: Bi-Lo Food Stores (Irmo location), Shoney's (Columbia location), and Palm Food Stores d/b/a Li'l Cricket (Mt. Pleasant location). The BEH issued twelve Administrative Orders to retail food establishments, one Administrative Order to an individual property owner for violation of onsite wastewater regulations, and one Administrative Order to an individual property owner for violation of the public health nuisance regulation (breeding mosquitoes in an above-ground swimming pool).

Of the three Consent Orders, all have been complied with and the enforcement case on each has been closed. Of the twelve Administrative Orders on retail food establishments, eight have been complied with and the enforcement cases closed; the remaining four have not reached resolution

and remain open. The Administrative Orders issued for violation of the onsite wastewater regulation is yet to be resolved and remains open. The Administrative Order for violation of the public health nuisance regulation has been placed on hold; the mosquito problem has been addressed by the local health department, and the property is currently in foreclosure.

Submitted by:

Lisa F. Waddell, MD
Deputy Commissioner
Health Services

SUMMARY SHEET
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
November 18, 2009

(X) ACTION
() INFORMATION

I. TITLE: Proposed amendments to Regulation 61-62.96, *Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program*, and the South Carolina State Implementation Plan (SIP). Legislative Review is Not Required.

II. SUBJECT: Request Initial Approval to Publish Notice of Proposed Regulations in the *State Register*
to Provide Opportunity for Public Comment and to Conduct a Staff Informational Forum.

III. FACTS:

1. On March 10, 2005, the EPA finalized the “Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule),” (also referred to as the CAIR). The CAIR was published in the *Federal Register* on May 12, 2005 [70 FR 25162]. This rule affects 28 states and the District of Columbia. In the CAIR, the EPA found that South Carolina is one of the 28 states that contribute significantly to nonattainment of the National Ambient Air Quality Standards (NAAQS) for fine particles (PM_{2.5}) and/or 8-hour ozone in downwind states. The EPA required these states to revise their SIPs to reduce emissions of SO₂ and/or NO_x. Sulfur dioxide is a precursor to PM_{2.5} formation, and NO_x is a precursor to both PM_{2.5} and ozone formation. The EPA determined that electric generating units (EGUs) in South Carolina contributed to nonattainment of PM_{2.5} and 8-hour ozone NAAQS in downwind states.

On June 22, 2007, the Department promulgated revisions to R. 61-62.96, *Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program*, in *State Register* Document 3083.

On August 14, 2007, the Department submitted to the EPA its revision to the SIP and R. 61-62.96, *Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program*. Based upon the EPA recommendation, the Department requested on September 19, 2007, that the EPA act only on a portion of the August 14, 2007, submittal. This request for abbreviated SIP approval included a list of additional changes that the Department would make to R. 61-62.96 and the SIP in order to address the EPA comments.

On October 9, 2007, the EPA published a direct final rule [72 FR 57209] approving the abbreviated CAIR SIP for South Carolina, effective December 10, 2007. Via a letter dated February 20, 2008, the EPA required certain additional changes to R. 61-62.96 to receive full SIP approval. The Department revised R.61-62.96 and the SIP, in *State Register* Document 3224, effective October 24, 2008, in order to address the comments contained in the September 19, 2007, letter.

On July 11, 2008, the U.S. Court of Appeals for the D.C. Circuit (Court of Appeals) vacated the CAIR. Following petitions filed by parties in the litigation the Court of Appeals issued a subsequent opinion on December 23, 2008, wherein it remanded the CAIR to the EPA without vacatur. The CAIR is now in effect while the EPA develops a replacement rule.

On October 8, 2009, the Department submitted a letter to the EPA committing the Department to make the remaining changes to the CAIR SIP. The EPA required this letter from the Department to obtain direct final approval of the CAIR SIP.

On October 16, 2009, the EPA published a direct final rule [72 FR 53167] approving the CAIR SIP for South Carolina effective November 30, 2009. The EPA published this direct final rule based on the October 8, 2009, letter from the Department agreeing to make the remaining changes to the CAIR SIP.

Pursuant to the *Clean Air Act*, U.S.C. § 7401(k)(5) (2008), and the aforementioned *Federal Register* Notices, the changes are Federally mandated, therefore, pursuant to S.C. Code Ann. § 1-23-120(H)(1), General Assembly review is not required.

2. The Department now proposes to amend R. 61-62.96, *Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program* and the SIP to address the outstanding requests made by the EPA in order to obtain full SIP approval. These proposed revisions will address the requirements of the CAIR NO_x Annual Allowance Allocations, the requirements of recordation of the CAIR NO_x Annual Allowance Allocations, the definition of “fossil-fuel-fired,” the definition of “Non-EGU Applicability,” the timing requirements of the CAIR NO_x Ozone Season Allocations, the requirements of the CAIR NO_x Ozone Seasons Allowance Allocations, and the requirements of recordation of the CAIR NO_x Ozone Season Allowances. The Department also proposes to make typographical corrections and clarifications to R.61-62.96, as necessary.

3. A Summary of Revisions and Text of Proposed Amendment are submitted as Attachments B and C.

4. A Notice of Drafting was published in the *State Register* on September 25, 2009. No comments were received. A Copy of the Drafting Notice is submitted as Attachment D.

5. A copy of the applicable law is submitted as Attachment G.

6. The proposed regulation has been internally reviewed by all appropriate staff.

7. Department staff is requesting Board initial approval to publish a Notice of Proposed Regulation in the *State Register* to provide opportunity for public comment and to conduct a staff informational forum. If approved, a notice will be published in the *State Register* on December 25, 2009, a staff informational forum will be conducted on January 25, 2010, and a public hearing before the Board will be scheduled for March 11, 2010. A copy of the draft Notice of Proposed Regulation is submitted as Attachment E.

IV. ANALYSIS:

The proposed amendments are necessary to comply with Federal requirements to secure final approval for South Carolina’s CAIR SIP.

See the Statement of Need and Reasonableness submitted as Attachment A.

V. RECOMMENDATION:

Department staff recommends that the Board grant initial approval to publish a Notice of Proposed Regulation in the *State Register* to provide opportunity for public comment, to hold a staff-conducted informational forum, to receive and consider comments, and allow staff to proceed with a public hearing before the Board.

Myra C. Reece
Chief
Bureau of Air Quality

Robert W. King, Jr., P.E.
Deputy Commissioner
Environmental Quality Control

Attachments

- A. Statement of Need and Reasonableness
- B. Summary of Revisions
- C. Text of Proposed Amendments
- D. *State Register* Notice of Drafting Published September 25, 2009
- E. Draft of *State Register* Notice of Proposed Regulation
- F. Copy of applicable law

SUMMARY SHEET
BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
November 18, 2009

- (X) ACTION
() INFORMATION

I. TITLE: Public Hearing Before the Board and Consideration for Final Approval.
Proposed Amendments to Regulation 61-62.1, *Definitions and General Requirements*, and the South Carolina State Implementation Plan (SIP), *State Register* Document No. 4085.
Legislative Review is Required.

II. SUBJECT: Request for Finding of Need and Reasonableness Pursuant to S.C. Code Section 1-23-111.

III. FACTS:

1. The United States Environmental Protection Agency (EPA) promulgated a final rule referred to as the Air Emissions Reporting Requirements (AERR) in the *Federal Register* on December 17, 2008 [73 FR 76540]. Pursuant to its authority under section 110 of Title I of the Clean Air Act (CAA), the EPA has long required SIPs to provide for the submission by states to the EPA of emission inventories containing information regarding the emissions of criteria pollutants and their precursors.

2. The purpose of the AERR is to harmonize reporting requirements under the NO_x SIP Call, Clean Air Interstate Rule (CAIR), and Consolidated Emissions Reporting Rule (CERR). It also removes and simplifies some existing emissions reporting requirements, which the EPA believes are not necessary or appropriate; allows states to better track changes in source emissions, shutdowns, and startups over time by using the 40 CFR 70 definition of major source for point source reporting; deletes a requirement for states to report biogenic emissions; and offers states the option of reporting emissions for certain source categories.

3. The Department proposes to amend Regulation 61-62.1, *Definitions and General Requirements*, and the South Carolina State Implementation Plan (SIP) to make the necessary revisions to comply with the new Federal emissions reporting requirements. The Department is also proposing to amend state level reporting requirements to facilitate the collection of more detailed process level emissions inventory data (to include hazardous air pollutants (HAP) data) to insure that the National Emissions Inventory (NEI) maintained by the EPA contains the best available data.

4. A Summary of Revisions and Text of Proposed Amendment are submitted as Attachments B and C.

5. A Notice of Drafting was published in the *State Register* on April 24, 2009. No comments were received. A copy of the Drafting Notice is submitted as Attachment D.

6. The Department met with stakeholders on June 30, 2009, to discuss the proposed regulation and to develop a draft that represents the best possible regulation to take out for public comment. All comments received from the stakeholder meeting have been considered by staff and responses were provided to the stakeholders.

7. The proposed amendments were reviewed internally by the appropriate Department staff.

8. On August 13, 2009, the Board granted staff initial approval to public notice the proposed amendments in the *State Register* to provide opportunity for public comment and to conduct a staff informational forum. A Notice of Proposed Regulation was published in the *State Register* on August 28, 2009 (Document No. 4085). An excerpt of the Notice of Proposed Regulation is submitted as Attachment F.

9. Due to the rescheduling of the November Board meeting from November 12, 2009, to November 18, 2009, a notice to reschedule the public hearing was published in the *State Register* on September 25, 2009. A Copy of the Notice of Cancellation and Rescheduling of Public Hearing is submitted as Attachments G.

10. A staff-conducted informational forum was held on September 28, 2009. No comments were received at the forum. Public comments were received during the comment write-in period. Due to the nature of the comments received, the Department again met with stakeholders on October 12, 2009. Public comments and Department responses are submitted as Attachment H.

11. Based on concerns from industries concerning the shortening of reporting dates from March 31st to March 1st for the previous years emissions inventories as proposed in August 28, 2008 Notice of Proposed Regulation, the Department has decided to rescind this requirement and continue with the March 31st reporting date.

12. Department staff request that the Board find for the need and reasonableness of the proposed amendments to Regulation 61-62.1, *Definitions and General Requirements*, and the SIP. If approved, the proposed amendment will be submitted to the legislature for review.

IV. ANALYSIS:

The majority of the proposed amendments are necessary to comply with new Federal emissions reporting requirements. In addition, the Department is proposing to revise existing State specific reporting requirements to maintain accuracy with the NEI.

See the Statement of Need and Reasonableness submitted as Attachment A.

V. RECOMMENDATION:

Department staff recommend that, based upon the public hearing and attached information, the Board find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review.

Myra C. Reece
Chief
Bureau of Air Quality

Robert W. King, Jr., P.E.
Deputy Commissioner
Environmental Quality Control

Attachments

- A. Statement of Need and Reasonableness
- B. Summary of Revisions
- C. Text of Proposed Amendments
- D. *State Register* Notice of Drafting Published April 24, 2009
- E. Comments received from June 30, 2009, Stakeholder Meeting and Department Responses
- F. *State Register* Notice of Proposed Regulation Published August 28, 2009
- G. *State Register* Notice of Cancellation and Rescheduling of Public Hearing Published September 25, 2009
- H. Summary of Public Comments and Department Responses
- I. Copy of Applicable Law

