



Board:

Mark Elam, Chairman Richard (Rick) Toomey, DHA, FACHE
David W. Gillespie, MD, Vice-Chairman Seema Shrivastava-Patel
Charles M. Joye II, P.E., Secretary Jim Creel, Jr.

**Minutes of the November 8, 2018, meeting of the
South Carolina Board of Health and Environmental Control**

The South Carolina Board of Health and Environmental Control met on Thursday, November 8, 2018, at 10:00 a.m. in Peoples Auditorium and the Boardroom (#3420) at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. (Attachment 0-1)

The following members were in attendance:

Mark Elam, Chairman
Richard Toomey, DHA, FACHE, 1st District
Seema Shrivastava-Patel, 2nd District
Charles M. Joye, II, P.E., 3rd District
David W. Gillespie, MD, 6th District
Jim Creel, Jr., 7th District

4th and 5th Congressional District seats are currently vacant.

Also in attendance were David E. Wilson, Acting Director; W. Marshall Taylor, Legal Counsel; Lisa Lucas Longshore, Clerk; Department staff and members of the public. (Attachment 0-2)

Chairman Elam called the meeting to order in Peoples Auditorium and stated notice of this meeting had 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: Public Hearing for the Designation of all of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties as a Capacity Use Area; Groundwater Use and Reporting Act, S.C. Code Title 49, Chapter 5 (Attachment 1-1)

Dr. Mike Marcus, Bureau Chief, Bureau of Water, opened the presentation with a brief overview of the Capacity Use Program, then introduced Mr. Alex Butler, Manager, Water Quantity Permitting, Private Wells and Underground Injection Control, who gave a detailed presentation of the Capacity Use Program and how the Department developed the Western Capacity Use Area. (Attachment 1-2)

In Capacity Use Areas, anyone who withdraws 3 million gallons of groundwater or more in any given month must receive a permit from DHEC. The permitting process allows DHEC to work with users of the groundwater resource to help ensure best management practices are utilized so that only the amount of groundwater necessary for that particular activity is used. The amounts of groundwater withdrawn are reported to DHEC yearly so that usage can be tracked. DHEC annually publishes water use data for the state.

The goal of the program is not to prevent the use of groundwater, but instead to help ensure that this finite and valuable resource is available for everyone to use by implementing best management practices. The legislative policy in the Groundwater Use and Reporting Act states: "The General Assembly declares that the

general welfare and public interest require that the groundwater resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation, in order to conserve and protect these resources, prevent waste, and to provide and maintain conditions which are conducive to the development and use of water resources."

S.C. Code of Laws Section 49-5-60 states "In the State where excessive groundwater withdrawal presents potential adverse effects to the natural resources or poses a threat to public health, safety, or economic welfare or where conditions pose a significant threat to the long-term integrity of a groundwater source, including salt water intrusion, the board, after notice and public hearing, in accordance with the Administrative Procedures Act, shall designate a Capacity Use Area." Department staff concludes that the groundwater conditions in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties satisfy the statutory requirements for Capacity Use Designation.

In a letter dated July 20, 2016, Aiken County Council requested that SCDHEC designate certain portions of Aiken County as a Capacity Use Area. Subsequent to this request and in accordance with the Groundwater Use and Reporting Act, DHEC investigated the available groundwater information for Aiken County and the surrounding area to determine if Capacity Use Area designation is warranted. The following synopsis of the DHEC technical investigation is provided:

- a) The major aquifers in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties used as drinking water supplies, agricultural irrigation, and industry are the Floridan/Gordon, Crouch Branch and McQueen Branch Aquifers.
- b) Comprehensive groundwater investigations in the Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg County area have documented progressive groundwater level declines and an increasing demand on the groundwater resources as a result of growth and climatic stresses. Water levels in the region have dropped between 5 and 15 feet in the Floridan/Gordon, Crouch Branch and McQueen Branch Aquifers.

Based on the technical investigation, Department Staff propose that Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties be incorporated as the Western Capacity Use Area.

There are currently 304 active registered facilities in the Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg County area withdrawing greater than three (3) million gallons per month and reporting their groundwater usage to the Department. These existing facilities will be issued permits based upon historical groundwater usage.

New groundwater withdrawers in Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties exceeding withdrawals of three (3) million gallons or more in any given month will be required to obtain a permit from the Department in accordance with R.61-113, Groundwater Use and Reporting.

To ensure public participation in this process, the results of the DHEC investigation were presented in each county as public stakeholder meetings; and an additional meeting was held in Columbia, SC at the Central DHEC office.

Chairman Elam opened the meeting up for a public hearing on this matter with many in attendance, twenty-five (25) people spoke on this matter. (Attachment 1-3)

Written comments were provided by the members of the public that spoke during the public hearing. (Attachment 1-4)

After discussion between the Board, Department staff and speakers during the public hearing, ***Dr. Gillespie moved, seconded by Ms. Shrivastava-Patel, to go into Executive Session for legal advice pertaining to the matter under discussion. The Board voted and Motion carried.***

Mr. Elam stated the Board was back in public session and that while in Executive Session, no actions were taken.

After further comments by the Board, ***Mr. Toomey moved, seconded by Mr. Creel, that based upon the public hearing and the attached information, to find the need and reasonableness of the proposed designation and approve Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties as the Western Capacity Use Area per the Groundwater Use and Reporting Act. The Board voted, and the Motion carried by unanimous vote.***

A verbatim transcript of these proceedings is included as part of the permanent record. (Attachment 1-5)

The Board took a brief recess and reconvened in the Board Room (#3420).

Item 2: Minutes of the October 12, 2018, meeting (Attachment 2-1)

Mr. Joye moved, seconded by Mr. Toomey, to approve the minutes of the October 12 meeting as presented. The Board voted and Motion carried.

Item 3: Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation (Attachment 3-1)

Ms. Bentley White, Director, Health Regulation Policy and Communications, stated for this reporting period one (1) Administrative Order, ten (10) Consent Orders and one (1) Emergency Suspension Order had been issued with assessed penalties totaling \$25,100.

Ms. White provided a corrected page 6 to the Clerk to update the Board record.

The Board accepted this item as information.

Item 4: Administrative Orders and Consent Orders issued by Environmental Affairs (Attachment 4-1)

Ms. Robin Stephens, Assistant to Deputy Director of Environmental Affairs, stated that for this reporting period ninety (90) Consent Orders had been issued with total penalties totaling \$181,395.

The Board accepted this item as information.

Item 5: Public Hearing for Notice of Proposed Regulation Amending Regulation 61-62, Air Pollution Control Regulations and Standard, Review by General Assembly is required (Attachment 5-1)

Mr. Robbie Brown, Director, Division of Air Assessment and Regulations, presented this item to the Board.

The South Carolina Pollution Control Act authorizes the Department to adopt emission control regulations, standards, and limitations, and take all actions necessary or appropriate to secure to the state the benefits of federal air pollution control laws. General Assembly review is required.

Pursuant to the Federal Clean Air Act ("CAA) and the South Carolina Pollution Control Act, the Department proposed amending South Carolina Regulation 61-62, Air Pollution Control Regulations and Standards, and the SIP, as follows:

- R.61-62.1, Definitions and General Requirements, Section II, Permit Requirements, to expand and improve consistency in language regarding general and registration permits;
- The introductory paragraph to R.61-62.5, Standard No. 2, Ambient Air Quality Standards, to remove the sentence describing the test method for Gaseous Fluorides to improve the accuracy and clarity of the regulation's text;
- R.61-62.5, Standard No. 5.2, Control of Oxides of Nitrogen (NOX), to update applicability and exemptions, as well as to propose corrections for internal consistency, punctuation, codification, and spelling;
- R.61-62.5, Standard No. 7, Prevention of Significant Deterioration, to update applicability and exemptions, as well as to propose corrections for consistency with federal regulations, internal consistency, punctuation, codification, and spelling;
- R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR), to improve the overall clarity and structure of the regulation, as well as to propose corrections for consistency with federal regulations, internal consistency, punctuation, codification, and spelling;
- R.61-62.1, Definitions and General Requirements; R.61-62.5, Standard No. 7, Prevention of Significant Deterioration; R.61-62.5, Standard No. 7.1, Nonattainment New Source Review (NSR); and R.61-62.70, Title V Operating Permit Program, to update public participation procedures;
- R.61-62, Air Pollution Control Regulations and Standards, including definitional updates, clarification of certain permitting provisions, and other changes and additions deemed necessary, as well as corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of R.61-62 as necessary.

Chairman Elam opened the meeting up for public comments on this matter, but no one wished to speak. (Attachment 5-2)

After discussion, ***Dr. Gillespie moved, seconded by Ms. Shrivastava-Patel, to find for the need and reasonableness of proposed regulation amending 61-62, Air Pollution Control Regulations and approve Document No. 4815 for submission to the General Assembly for review. The Board voted and Motion carried.***

A verbatim transcript of these proceedings is included as part of the official record. (Attachment 5-3)

Item 6: Notice of Proposed Regulation Amending Regulation 61-62, Air Pollution Control Regulations and Standards, Review by General Assembly is not required (Attachment 6-1)

Mr. Robbie Brown, Director, Division of Air Assessment and Regulations, presented this item to the Board and announced that the Clerk had been provided an addendum to the Notice of Proposed Regulation 61-62, Air Pollution Control Regulations and Standards correcting the official Board record and noted addendums will be made to the filing in the State Register. (Attachment 6-2)

The South Carolina Pollution Control Act, authorizes the Department to adopt emission control regulations, standards, and limitations, and take all actions necessary or appropriate to secure to the state the benefits of federal air pollution control laws. The Department proposes this amendment for compliance with federal air pollution control laws.

Pursuant to the Pollution Control Act and the federal Clean Air Act, the Department must ensure national primary and secondary ambient air quality standards are achieved and maintained in South Carolina. No state may adopt or enforce an emission standard or limitation less stringent than these federal standards or limitations.

The United States Environmental Protection Agency promulgates amendments to the Code of Federal Regulations (CFR) throughout each calendar year. Recent federal amendments to 40 CFR Parts 60, 61, and 63 include revisions to New Source Performance Standards (NSPS) mandated by 42 U.S.C. Section 7411; federal National Emission Standards for Hazardous Air Pollutants (NESHAP) mandated by 42 U.S.C. Section 7412; and federal National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories mandated by 42 U.S.C. Section 7412.

The Department proposed to amend Regulation 61-62 as follows:

- Regulation 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards; Regulation 61-62.61, National Emission Standards for Hazardous Air Pollutants (NESHAP); and Regulation 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, to adopt the federal amendments to these standards promulgated from January 1, 2017, through December 31, 2017;
- Regulation 61-62.68, Chemical Accident Prevention Provisions, which include corrections for internal consistency, clarification, chemical nomenclature, codification, and spelling to improve the overall text as necessary;
- Regulation 61-62.70, Title V Operating Permit Program, by striking paragraph (a)(6) of Section 70.3, Applicability, to maintain state compliance with federal regulations.
- Regulation 61-62.96, Nitrogen Oxides (NOX) and Sulfur Dioxide (SO₂) Budget Trading Program, is based on the federal Clean Air Interstate Rule (CAIR). CAIR has been replaced by the federal Cross-State Air Pollution Rule (CSAPR) Trading Program, adopted by the Department as Regulation 61-62.97 on August 25, 2017. As a result, federal CAIR requirements implemented by Regulation 61-62.96 have sunsetted and are no longer in effect. The Department, therefore, proposes repealing Regulation 61-62.96 in its entirety;
- other changes to Regulation 61-62 that include corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62 as necessary.

Mr. Creel moved, seconded by Dr. Gillespie, to grant approval to publish the Notice of Proposed Regulation amending Regulation 61-62, Air Pollution Control Regulations and Standards, in the State Register, to provide opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted, and Motion carried.

Item 7: Request for a nine month extension by the Board of Certificate of Need (CON) SC-15-26 issued to Medical University Hospital Authority d/b/a Medical University of South Carolina (MUSC) for renovation of existing facility for the addition of fifty-two (52) acute hospital beds for a total of six hundred fifty-six (656) acute hospital beds, the purchase of a Siemens Artis Q Biplane, and the renovation of the existing inpatient pharmacy (Attachment 7-1)

Ms. Margaret (Maggie) Murdock, Director, Certificate of Need, presented this item to the Board.

Certificate of Need SC-15-26 was issued to MUSC on June 30, 2015 for the referenced project. The original Certificate of Need had an expiration date of June 30, 2016. MUSC requested a first staff extension of the

Certificate of Need on May 19, 2016, which was more than 30 days prior to expiration. MUSC received Certificate of Need SC-15-26-EXT-1 on June 8, 2016, which extended the expiration date of the Certificate of Need until March 30, 2017. MUSC requested a second staff extension of the Certificate of Need on February 6, 2017, which was more than 30 days prior to expiration. MUSC received CON SC15-26-EXT-2 on March 6, 2017, which extended the expiration date of the Certificate of Need until January 1, 2018. MUSC requested a third (Board) extension of the Certificate of Need on August 4, 2017, which was more than 90 days prior to expiration. MUSC received Certificate of Need SC-15-26-EXT-3 on January 8, 2018, which extended the expiration date of the Certificate of Need until October 1, 2018. In accordance with R. 61-15, Section 601, MUSC submitted a fourth extension request to the Department on June 29, 2018, which is more than 90 days prior to expiration. Department staff have reviewed all relevant information concerning this fourth extension request and find that construction timelines beyond the control of MUSC have contributed to the need for further extension of CON SC-15-26. While parts of the project have been implemented in accordance with the CON, there are several approved beds which cannot be implemented until MUSC's new children's hospital and women's pavilion is complete and licensed. Staff expect that additional extensions by the Board will be necessary until that larger project is complete in late 2019.

After discussion, ***Dr. Gillespie moved, seconded by Mr. Toomey, to find Medical University Hospital Authority d/b/a Medical University of South Carolina has demonstrated substantial progress and approve the nine-month extension request for CON SC-15-26. The Board voted, and Motion carried.***

Item 8: Request for a nine-month extension by the Board of Certificate of Need (CON) SC-16-19 issued to Trident Medical Center d/b/a Berkeley Medical Center (Trident) for construction of a new 50-bed hospital to include an MRI and CT Scanner (Attachment 8-1)

Ms. Margaret (Maggie) Murdock, Director, Certificate of Need, presented this item to the Board.

Certificate of Need SC-16-19 was issued to Berkeley Medical Center on May 26, 2016 for the referenced project. The original Certificate of Need had an expiration date of May 26, 2017. Berkeley Medical Center requested a first staff extension of the Certificate of Need on April 24, 2017, which was more than 30 days prior to expiration. Berkeley Medical Center received Certificate of Need SC-16-19-EXT-1 on May 17, 2017, and it was valid until February 26, 2018, a period of nine months from original expiration of the Certificate of Need. Berkeley Medical Center requested a second staff extension of the Certificate of Need on January 26, 2018, which was 30 days prior to expiration. Berkeley Medical Center received Certificate of Need SC-16-19-EXT-2 on March 5, 2018, and it will expire on November 26, 2018. In accordance with R. 61-15, Section 601, Berkeley Medical Center submitted a third extension request to the Department on August 24, 2018, which is more than 90 days prior to expiration.

Department staff have reviewed all relevant information concerning this third extension request and find that circumstances beyond the control of Berkeley Medical Center have contributed to the need for further extension of Certificate of Need SC-16-19. Specifically, the second staff extension of Certificate of Need SC-16-19 is the subject of a pending action in the SC Administrative Law Court brought by Medical University Hospital Authority (MUHA), the parent of MUSC. Berkeley Medical Center has explained in its extension request that they believe it prudent to toll the project until such time as that case is resolved, and staff do not disagree. Staff expect that additional extensions by the Board will be necessary until such time as valid construction contract is executed between Berkeley Medical Center and its contractor sometime in 2019, or upon the resolution of the pending litigation.

After discussion, ***Dr. Toomey moved, seconded by Ms. Shrivastava-Patel, to find Trident Medical Center d/b/a Berkeley Medical Center has demonstrated substantial progress and approve the nine-month***

extension request for CON SC-16-19 to allow time for resolution of wetlands issues and litigation of the 2nd extension request. The Board voted, and Motion carried.

Item 9: Agency Affairs

Acting Director Wilson provided the Board with copies of the FY 2018 Annual Report. (Attachment 9-1)

Chairman Elam asked for a Motion to go into Executive Session to discuss a personnel matter.

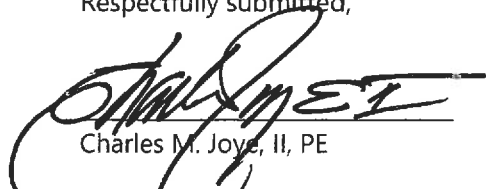
Mr. Creel moved, seconded by Mr. Toomey to go into Executive Session to discuss a personnel issue. The Board voted, and Motion carried.

Chairman Elam stated the Board was back in public session and while in Executive Session no actions were taken.

Being no further business, the meeting adjourned.

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

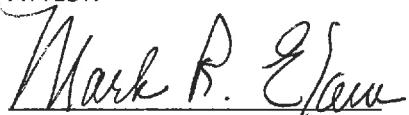
Respectfully submitted,



Charles M. Joyce, II, PE

Minutes approved this 13th day of December 2018.

ATTEST:



Mark Elam, Chairman

Attachments

- 0-1 Agenda
- 0-2 Attendance Roster
- 1-1 **Public Hearing** for the Designation of all of Aiken, Allendale, Bamberg, Barnwell, Calhoun, Lexington, and Orangeburg Counties as a Capacity Use Area; Groundwater Use and Reporting Act, S.C. Code Title 49, Chapter 5
- 1-2 Capacity Use Powerpoint Presentation
- 1-3 Sign-in Sheet for public hearing
- 1-4 Written Comments by presenters at public hearing
- 1-5 Verbatim Transcript of public hearing proceedings
- 2-1 Minutes of October 12, 2018 meeting
- 3-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 3-2 Corrected page 6 of the Board package
- 4-1 Administrative Orders and Consent Orders issued by Environmental Affairs
- 5-1 **Public Hearing** - Notice of Proposed Regulation Amending Regulation 61-62, Air Pollution Control Regulations and Standards, Document No. 4815, Review by General Assembly is required
- 5-2 Public Hearing Sign-in Sheet
- 5-3 Verbatim Transcript of public hearing proceedings
- 6-1 Notice of Proposed Regulation Amending Regulation 61-62, Air Pollution Control Regulations and Standards, Review by General Assembly is not required
- 6-2 Amendment to Board package
- 7-1 Request for a nine month extension by the Board of Certificate of Need (CON) SC-15-26 issued to Medical University Hospital Authority d/b/a Medical University of South Carolina (MUSC) for renovation of existing facility for the addition of fifty-two (52) acute hospital beds for a total of six hundred fifty-six (656) acute hospital beds, the purchase of a Siemens Artis Q Biplane, and the renovation of the existing inpatient pharmacy
- 8-1 Request for a nine-month extension by the Board of Certificate of Need (CON) SC-16-19 issued to Trident Medical Center d/b/a Berkeley Medical Center (Trident) for construction of a new 50-bed hospital to include an MRI and CT Scanner
- 9-1 FY 2018 Annual Report