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Mark S. Lutz
Vice Chairman
Ann B. Kirol, DDS
Secretary



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

BOARD:
R. Kenyon Wells
Charles M. Joye II, P.E.
L. Clarence Batts, Jr.
John O. Hutto, Sr., MD

**Minutes of the December 12, 2013, meeting of the
South Carolina Board of Health and Environmental Control**

The South Carolina Board of Health and Environmental Control met on Thursday, December 12, 2013, at 10:00 a.m. in the Board Room at the South Carolina Department of Health and Environmental Control building, 2600 Bull Street, Columbia, South Carolina. (Attachment 0-1)

The following members were in attendance:

Allen Amsler, Chairman
Member-At-Large

Mark Lutz, Vice-Chairman
1st District

Ann B. Kirol, DDS, Secretary
5th District

R. Kenyon Wells
2nd District

Charles M. Joye, II, P.E.
3rd District

L. Clarence Batts
4th District

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

Also in attendance were Catherine B. Templeton, Director; W. Marshall Taylor, Jr., General Counsel; Lisa L. Longshore, Clerk; Department staff and members of the public. (Attachment 0-2)

Chairman Amsler called the meeting to order 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: Board Minutes of the November 4 meeting (Attachment 1-1)

Mr. Batts moved, seconded by Mr. Wells, to approve the minutes as submitted for the November 4 meeting. The Board voted and Motion carried.

Item 2: Administrative and Consent Orders issued by Environmental Affairs (Attachment 2-1)

Ms. Robin Stephens, Assistant to the Deputy Director, EQC, stated fifty-one (51) Consent Orders and three (3) Administrative Orders had been issued with total penalties of \$98,758.

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

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

Ms. Melinda Bradshaw, Health Regulation Liaison, stated one (1) Consent Order had been issued with a penalty of \$8,500.

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

Item 4: Public Hearing and Request for Final Approval – Proposed Amendment of R.61-62, Air Pollution Control Regulations and Standards, and the South Carolina Air Quality Implementation Plan (SIP), State Register Document No. 4387, Legislative Review is not required (Attachment 4-1)

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

Under the Clean Air Act, the Department shares authority with the U.S. Environmental Protection Agency (EPA) to implement certain air quality regulations in South Carolina. Thus, when EPA updates its regulations, the Department also updates its regulations so that the two are consistent. These proposed amendments incorporate EPA regulations issued in 2012. The Department incorporates EPA regulations in this manner annually. Regulated industries are already subject to these regulations as a matter of federal law; the regulated community has already incurred the cost of these regulations. There will be no increased cost to the State or its political subdivisions resulting from these revisions, and the environmental benefits are already occurring.

The United States Environmental Protection Agency (EPA) promulgates amendments to 40 CFR Parts 51, 52, 60 and 63 throughout each calendar year. Recent federal amendments include clarification, guidance and technical amendments regarding state implementation plan (SIP) requirements, New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories.

The Department proposed to amend Regulation 61-62.1, Definitions and General Requirements, to incorporate an amendment to the definition of Volatile Organic Compounds (VOCs) promulgated by the federal rule “Revision to Definition of Volatile Organic Compounds-Exclusion of trans-1,3,3,3-tetrafluoropropene” (77 FR 37610, June 22, 2012). The Department also proposes to amend Regulation 61-62.5, Standard No. 7, Prevention of Significant Deterioration, to incorporate a provision in the definition of “Regulated NSR Pollutant,” as required by the federal rule “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}): Amendment to the Definition of “Regulated NSR Pollutant” Concerning Condensable Particulate Matter” (77 FR 65107, October 25, 2012). Additionally, the Department proposes to amend Regulations 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards, and 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, to incorporate by reference recent federal amendments promulgated during the period from January 1, 2012, through December 31, 2012.

The Department also proposed 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. Pursuant to S.C. Code Section 1-23-120(H)(1), the proposed amendments will not be more stringent than current federal requirements and thus do not require legislative review.

A public hearing was conducted and no one in attendance spoke on this regulation amendment. (Attachment 4-2)

After discussion, *Dr. Hutto moved, seconded by Mr. Batts, to find for the need and reasonableness of the amended regulations and State Implementation Plan and approve them for publication in the State Register. The Board voted and Motion carried.*

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

Item 5: Public Hearing and Request for Final Approval – Proposed Amendment of R.61-62, Air Pollution Control Regulations and Standards, and South Carolina Implementation Plan (SIP), State Register Document No. 4388, Legislative Review is required (Attachment 5-1)

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

The Department also proposed to amend R. 61-62.1, *Definitions and General Requirements*, and the SIP as follows:

(Section I, *Definitions*) to modify the definition for “Commissioner” to include the term “Director;” to add definitions for the terms “Code of Federal Regulations (CFR),” “NAICS Code,” and “SIC Code;” and to strike the majority of the definition for “Volatile Organic Compound” (VOC) which includes an exemptions list. The exemptions list for VOC is amended

on an almost annual basis and requires a SIP amendment. Therefore, the Department proposed to reference 40 CFR 51.100(s) as the federal definition is often amended before the Department is able to complete the regulatory process outlined in the Administrative Procedure Act.

(Section II, *Permit Requirements*) to update the activities list which an owner or operator may undertake prior to obtaining a construction permit; to update and streamline exemption thresholds for construction permits; to outline construction permit requirements for sources of VOCs; to update and clarify construction permit application requirements; to streamline and update general construction permit requirements; to clarify and update operating permit renewal request requirements; to strike the Department's requirement to public notice registration permits; to update and streamline registration permit text; to update and streamline transfer of ownership/operation requirements; and to amend the Department's public participation procedures to allow for posting on the Department's website.

(Section III, *Emissions Inventory*) to incorporate into South Carolina regulatory text and the SIP the Clean Air Act requirement for sources in ozone nonattainment areas to submit an annual emissions statement; and to update and clarify annual and three-year emissions inventory reporting requirements as current regulatory text and format was found by owners and operators to be confusing. No new reporting requirements are included in these changes.

(Section IV, *Source Tests*) to incorporate provisions from two Final Rules published by the Environmental Protection Agency (Restructuring of the Stationary Source Audit Program (SSA) (75 FR 55636) and Protocol Gas Verification Program and Minimum Competency Requirements for Air Emission Testing (PGVP Rule) (76 FR 17288)). This proposal is being made to reflect a change in EPA's SSA program. EPA no longer provides the Department with audit samples for sources. Source owners, operators, and representatives must purchase samples from an Audit Sample Provider when a sample is commercially available. The Department also proposes to clarify air emissions testing and reporting requirements and to add language to reflect federal testing competency requirements as found in the PGVP Rule which does not affect state testing.

The Department proposed to amend R. 61-62.5, Standard 1, *Emissions from Fuel Burning Operations*; R. 61-62.5, Standard 4, *Emissions from Process Industries*; and the SIP to incorporate comments from a previous regulatory action which did not require General Assembly review. The Department evaluated the comments received and determined to propose to exempt sources subject to an opacity standard under 40 CFR 60 from state opacity standards outlined in Standard 1; streamline sulfur dioxide emission standards in Standard 1; change reporting requirements from quarterly to semi-annual periods to reflect federal requirements; update state regulations that have been made obsolete by a National Emission Standard for Hazardous Air Pollutants and/or New Source Performance Standard; and strike total reduced sulfur periodic testing requirements from Standard 4. A summary of the comments received and the Department's response to these comments is submitted as Attachment E.

The Department proposed to amend R. 61-62.63, *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories*, to make the state definition of applicability more consistent with the federal definition found in 40 CFR Section 63.40(b) and to move the "Note" regarding state authority to the beginning of R. 61-62.63 for clarity and usability.

The Department also proposed to amend R. 61-62 to reflect minor revisions aimed at enhancing the clarity and usability of these regulations per the 5-year audit.

Pursuant to S.C. Code Section, 1-23-120(H)(1), the proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the SIP will require legislative review. A public hearing was conducted and no one in attendance spoke on this regulation amendment. (Attachment 5-2)

After discussion, *Mr. Batts moved, seconded by Mr. Joye, to find for the need and reasonableness of the proposed regulation and approve it for submission to the Legislature for review. The Board voted and Motion carried.*

A verbatim transcript of this proceeding is included as part of the permanent record. (Attachment 5-3)

Item 6: Proposed Amendment of Coastal Division Regulations: R.30-1, Statement of Policy; R.30-5, Exception; R.30-9, Other Provisions; R.30-13, Specific Project Standards for Beaches and the Beach/Dune System; R.30-15, Activities Allowed Seaward of the Baseline, State Register Document No. 4386, Legislative Review is required (Attachment 6-1)

Ms. Carolyn Boltin-Kelly, Deputy Director, Office of Ocean and Coastal Resource Management presented this item to the Board.

In 2010, the Board of Health and Environmental Control appointed a Blue Ribbon Committee on Shoreline Management and charged the Committee with developing specific recommendations to guide the stewardship of South Carolina's beachfront shorelines. Comprised of representative stakeholders, elected officials and leading legal and academic experts, the Committee worked over two years to evaluate the past two decades of experiences under the South Carolina Beachfront Management Act (Section 48-39-250 *et seq.*). The Committee examined current conditions, considered outcomes of an ad hoc technical committee on shoreline change, and made recommendations for improvements in management of the state's beachfront jurisdictional area.

The Department proposed to amend certain Coastal Division regulations related to permitting in the beaches and beach/dune critical areas of the coastal zone. These proposed amendments addressed recommendations made by the Blue Ribbon Committee as supported by the Department's Board.

A public hearing was conducted and no one in attendance spoke on this regulation amendment. (Attachment 6-2)

After discussion, *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. The Board voted and Motion carried.*

A verbatim transcript of this proceeding is included as part of the permanent record. (Attachment 6-3)

Item 7: Proposed Amendment of R.61-9, Water Pollution Control Permits (Land Application of Sludge), Legislative Review is Required (Attachment 7-1)

Mr. David Wilson, Bureau Chief, Bureau of Water, presented this item to the Board.

Regulation 61-9 establishes wastewater and sludge permitting requirements for discharges to the land and surface waters of the state. Related to this agenda item, sections 503 and 504 address land application of sludge, which is a by-product of wastewater treatment systems. Sludge, also known as biosolids, is recycled nationally by farmers because of the nutrient value typically in sludge and because sludge has soil conditioning value. In regulation of this material for beneficial use (recycling), care must be given to pollutants that could impact public health and the environment.

The Department was notified in July 2013 of polychlorinated biphenyls (PCB) contaminated material in three publicly owned treatment works (POTWs) located in upstate South Carolina. Because PCBs were banned in the United States over thirty years ago, they are not expected to be found in wastewater systems. The Department's investigation indicated the materials found in the POTWs were illicitly discharged into the systems and originated from unknown sources. It was believed these illicit discharges were limited to upstate POTWs until September 2013 when PCB contaminated material was detected in a restaurant grease trap in Richland County. Therefore, the Department found there was a significant risk that illicit discharges of PCBs may be occurring statewide, and it was appropriate to take immediate action to prohibit land application of PCB contaminated material via an emergency regulation (September 25, 2013).

PCBs are chemicals that were used as coolants and lubricants in transformers, capacitors, and other electrical equipment before being banned by Congress in 1979 because of evidence that they build up in the environment and can cause adverse health effects. Once in the environment, PCBs do not readily break down and therefore remain in the environment for long periods of time cycling through the air, water, and soil. PCBs are taken up in small organisms and fish. PCBs can accumulate in leaves and the above-ground parts of plants and food crops.

The Department proposed that the amendments to R.61-9 would strengthen and improve the existing regulation and make appropriate revisions to the portions related to land application of sludge by establishing restrictions on land application of sludge with PCBs.

After discussion, *Mr. Batts moved, seconded by Mr. Wells, to grant approval to publish a Notice of Proposed Regulation 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 8: Placement of three synthetic phenethylamines into Schedule I for Controlled Substances (Attachment 8-1)

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

Controlled substances in our state are governed by Title 44, Chapter 53, of the S.C. Code of Laws. Section 44-53-160 is titled "Manner in which changes in schedule of controlled substances shall be made." Pursuant to § 44-53-160, controlled substances are generally designated by the General Assembly, upon recommendation by DHEC, and are listed in § 44-53-190 and the following sections of the Code of Laws. Section 44-53-160(C) provides a process under which DHEC can expeditiously designate a substance as a controlled substance if the federal government has so designated. Section 44-53-160(C) states:

If a substance is added, deleted, or rescheduled as a controlled substance pursuant to federal law or regulation, the department shall, at the first regular or special meeting of the South Carolina Board of Health and Environmental Control within thirty days after publication in the federal register of the final order designating the substance as a controlled substance or rescheduling or deleting the substance, add, delete, or reschedule the substance in the appropriate schedule. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection has the full force of law unless overturned by the General Assembly. The addition, deletion, or rescheduling of a substance by the department pursuant to this subsection must be in substance identical with the order published in the federal register effecting the change in federal status of the substance. Upon the addition, deletion, or rescheduling of a substance, the department shall forward copies of the change to the Chairman of the Medical Affairs Committee and the Judiciary Committee of the Senate, the Medical, Military, Public and Municipal Affairs Committee and the Judiciary Committee of the House of Representatives, and to the Clerks of the Senate and House, and shall post the schedules on the department's website indicating the change and specifying the effective date of the change.

The U.S. Drug Enforcement Administration (DEA) published on November 15, 2013, a final rule temporarily placing three synthetic phenethylamines, 2-(4-iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5), 2-(4-chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82), and 2-(4-bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36), into Schedule I of the Controlled Substances Act (CSA) [hereinafter 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe], effective on the date of publication. F.R. Volume 78, Number 221, pp. 68716-68719.

According to the DEA, it is necessary to schedule these three synthetic phenethylamines and their optical, positional, and geometric isomers, salts and salts of isomers in Schedule I of the CSA to avoid an imminent hazard to the public safety. "Available data and information for 25I-NBOMe, 25C-NBOMe, and 25B-NBOMe indicate that these three synthetic phenethylamines have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision." Forensic laboratories have reported 959 exhibits of these three synthetic phenethylamines between June 2011 and June 2013 from various states, including South Carolina. The DEA noted that a number of states and

foreign governments have controlled these substances, which are purported to have hallucinogenic properties similar to lysergic acid diethylamide (LSD), and their abuse “has been characterized with acute public health and safety issues domestically and abroad.” Additionally, these substances have been implicated in the death of at least seventeen individuals in the United States.

Since the DEA has issued a final rule designating these three synthetic phenethylamines, 25I–BOMe, 25C–NBOMe, and 25B–NBOMe, as federal controlled substances, it is appropriate for the Board to issue its designation to immediately include these substances as Schedule I controlled substances in South Carolina pursuant to § 44-53-160(C).

After discussion, *Mr. Hutto moved, seconded by Mr. Lutz, to Board adopt the federal temporary scheduling of the following substances into Schedule I of the South Carolina Controlled Substances Act: 25 B, 25 C and 25 I (as defined above). The Board voted and Motion carried.* (Attachment 8-2)

Item 9: Agency Affairs

Director Templeton briefed the Board on the following issues: Dr. Lisa Waddell’s resignation and acceptance of a position within ASTHO; and DHEC is working with Office of Regulatory Staff (ORS) to clarify utility’s use of DHEC regulations in determining rates in Public Service matters.

After discussions, *the Board accepted this as information.*

Item 10: Legal Report

Proposed Revisions to RFR Procedures (Attachment 10-1)

Mr. Taylor stated the proposed revisions and answered questions of the Board.

After discussion, *Mr. Joye moved, seconded by Mr. Batts, to approve the proposed revisions to the Final Review Procedure and the Guide to Board Review. The Board voted and Motion carried.*

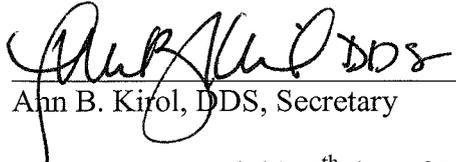
Mr. Lutz moved, seconded by Dr. Hutto, to go into Executive Session for the purpose of receiving legal advice relating to pending litigation (CON matter) under the attorney-client privilege and a personnel matter. The Board voted and the Motion carried.

Chairman Amsler announced the Board was back in session and while in Executive Session no actions were taken.

Chairman Amsler adjourned the meeting.

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

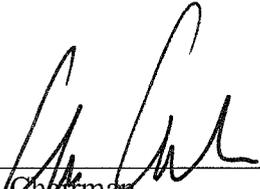
Respectfully submitted,



Ann B. Kirol, DDS, Secretary

Minutes approved this 9th day of January 2014.

ATTEST:



Allen Amsler, Chairman

Attachments

- 0-1 Agenda
- 0-2 Attendance Roster
- 1-1 Minutes of November 4 meeting
- 2-1 Administrative Orders, Consent Orders issued by Environmental Affairs
- 3-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 4-1 Proposed Amendment of R.61-62, Air Pollution Control Regulations and Standards, State Register Document No. 4387
- 4-2 Public hearing sign-in sheet
- 4-3 Verbatim Transcript
- 5-1 Proposed Amendment of R.61-62, Air Pollution Control Regulations and Standards, State Register Document No. 4388
- 5-2 Public hearing sign-in sheet
- 5-3 Verbatim Transcript
- 6-1 Proposed Amendment of Regulation 30, Coastal Division Regulations
- 6-2 Public hearing sign-in sheet
- 6-3 Verbatim Transcript
- 7-1 Proposed Amendment of R.61-9, Water Pollution Control Permits (Land Application of Sludge)
- 8-1 Placement of three synthetic phenethylamines into Schedule I for Controlled Substances
- 8-2 Signed document for placing of three synthetic phenethylamines into Schedule I
- 10-1 Proposed Revisions to RFR Procedures