



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

May 8, 2014

Heather McTeer Toney
Regional Administrator
US EPA Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street SW
Atlanta, Georgia 30303-8960

Re: South Carolina Air Quality Implementation Plan, Sulfur Dioxide (SO₂) Infrastructure Certification - Final SIP Submittal

Dear Ms. Toney:

On June 2, 2010, the EPA finalized a revised National Ambient Air Quality Standard (NAAQS) for Sulfur Dioxide (75 FR 35520, published June 22, 2010). With this rule, the EPA set a new 1-hour primary SO₂ standard at the level of 75 parts per billion (ppb) and revoked the two previously existing primary standards of 140 ppb evaluated over 24-hours, and 30 ppb evaluated over an entire year. Sections 110(a)(1) and (2) of the Clean Air Act (CAA) require all states to submit plans to provide for the implementation, maintenance, and enforcement of the NAAQS. Sections 110(a)(1) and (2) further require states to address basic State Implementation Plan (SIP) requirements, including, but not limited to, the following elements: emissions limits and other control measures, ambient air quality monitoring, a program for the enforcement of control measures, adequate resources to implement the SIP, and public notification and government consultation. Section 110(a)(1) requires states to submit SIPs within three (3) years after promulgation of a new or revised NAAQS, or June 2, 2013, in this case.

On February 28, 2014, the Department of Health and Environmental Control (Department) published a public notice in the *South Carolina State Register* notifying the public of the proposed SO₂ infrastructure SIP certification, and providing the public the opportunity to request a public hearing on the proposed SO₂ infrastructure SIP certification (Attachment C). The Department received written comments from the Sierra Club and has attached a comment/response document as Attachment G.

As outlined in Attachment A to this letter, the Department is certifying to the EPA that it has addressed the “infrastructure” elements required by Section 110(a)(1) and (2) of the CAA pertaining to the attainment of the 1-hour primary SO₂ NAAQS in South Carolina. We are providing the SIP Submittal Completeness Criteria Checklist as Attachment B; the February 28, 2014 *South Carolina State Register* Notice of Intent to Revise the SIP/Notice of Public Hearing as Attachment C; the South Carolina Pollution Control Act (SC Code Section 48-1-10 et seq.) as Attachment D; State Agency Rule Making and Adjudication of Contested Cases (SC Code Section 1-23-10 et seq.) as Attachment E; and Environmental Protection Fees (SC Regulation 61-30), as Attachment F. The Department also certifies that the hard copy files are identical to the electronic copies. It should be noted that, while the Department has done its best to address the requirements of Section 110(a)(1) and (2) of the CAA, it is difficult to

meet the fundamental goals of an “infrastructure” SIP until the EPA has finalized how to assess the standard, nonattainment area boundaries determination procedures, and other implementation requirements. The Department looks forward to the finalization of the implementation of the 1-hour SO₂ standard through the “Data Requirements Rule” (proposal pre-released April 18, 2014), as well as the development of an effective and legally defensible rule to address transport.

Should you have any questions concerning South Carolina’s SO₂ infrastructure SIP certification, please contact Myra C. Reese of my staff at (803) 898-4102 or reecemc@dhec.sc.gov.

Sincerely,



Elizabeth A. Dieck
Director of Environmental Affairs
SC DHEC

ec: R. Scott Davis III, Chief, Air Planning Branch, EPA Region 4 (full hardcopy + CD)
Lynorae Benjamin, Chief, Regulatory Development Section, EPA Region 4
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Myra Reece, Chief, Bureau of Air Quality, SCDHEC
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Maeve Mason, Manager, Regulation and SIP Management Section, BAQ, SCDHEC

Attachment A - South Carolina Certification Clean Air Act Section 110(a)(1) and (2), SO₂ Requirements

Attachment B - SIP Submittal Completeness Criteria Checklist

Attachment C - *South Carolina State Register* Notice of General Public Interest and Notice of Public Hearing

Attachment D - South Carolina Pollution Control Act (SC Code Section 48-1-10 et seq.)

Attachment E - State Agency Rule Making and Adjudication of Contested Cases (SC Code Section 1-23-10 et seq.)

Attachment F - Environmental Protection Fees (SC Regulation 61-30)

Attachment G - Comments Received and Responses

**Attachment A:
South Carolina Certification
Clean Air Act Section 110(a)(1) and (2).
1-Hour SO₂ NAAQS Requirements**

Each of the basic or infrastructure requirements is listed below, with the corresponding State statute granting the Department the authority to implement each State Implementation Plan (SIP) element.

Emission Limits and Other Control Measures: Section 110(a)(2)(A) of the Clean Air Act (CAA) requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance and other related matters. South Carolina Air Pollution Control Regulation 61-62.5, Standard No. 2, *Ambient Air Quality Standards*, includes the national ambient air quality standard (NAAQS) for SO₂. The 1-hour SO₂ standard will be adopted into R. 61-62.5, Standard No. 2 in the fall of 2014 as part of the Bureau of Air Quality's 2013 end of year revisions. R. 61-62.1, *Definitions and General Requirements*, addresses required control measures, means, and techniques. Section 48-1-50(23) of the 1976 South Carolina Code of Laws, as amended, (S.C. Code Ann.) provides the Department of Health and Environmental Control (Department) with the authority to "Adopt emission and effluent control regulations standards and limitations that are applicable to the entire state, that are applicable only within specified areas or zones of the state, or that are applicable only when a specified class of pollutant is present."

Ambient Air Quality Monitoring/Data System: Section 110(a)(2)(B) of the CAA requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and presentation of these data to the EPA upon request. R. 61-62.5, Standard No. 7, *Prevention of Significant Deterioration* addresses ambient monitoring requirements for major new source review. The *South Carolina Network Description and Ambient Air Network Monitoring Plan* (the 2012 plan, submitted to EPA on July 18, 2011, as revised and superseded), incorporates changes to state Metropolitan Statistical Areas (MSAs), demonstrates compliance with SO₂ monitoring requirements outlined in 40 CFR part 58, and provides for an ambient air quality monitoring system in the State. This Monitoring Plan will be updated as appropriate and the following Monitoring Plans, expected to be finalized each mid-year, will continue to update SO₂ monitoring as required. S.C. Code Ann. § 48-1-50(14) provides the Department with the necessary authority to "Collect and disseminate information on air and water control."

Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources: Section 110(a)(2)(C) of the CAA requires states to include a program that provides for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet prevention of significant deterioration (PSD) and nonattainment new source review (NSR) requirements. R. 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, and R. 61-62.5, Standard 7.1, *Nonattainment New Source Review (NSR)*, apply to the construction of any new major stationary source or any major project at an existing major stationary source. Additionally, South Carolina's PSD permitting program includes the necessary structural permitting requirements covering all regulated NSR Pollutants

including: NO_x as an ozone precursor - SIP approved- June 23, 2011, NSR PM_{2.5} and PM_{2.5} increments - SIP-approved April 12, 2013. R. 61-62.1, Section II, *Permit Requirements* also establishes guidelines for minor source permitting which requires “any person who plans to construct, alter, or add to a source of air contaminants, including installation of any device for the control of air contaminant discharges, shall first obtain a construction permit from the Department prior to commencement of construction” and demonstrate that the project will not contribute to a violation of the NAAQS.

The September 13, 2013 *Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)*, notes that state PSD programs should address greenhouse gases (GHGs). The Department is including the requested statements below only to enable timely EPA approval. By including statements on GHGs, we are neither implying an agreement with EPA that it is appropriate to certify to GHG requirements in a SO₂ SIP, nor are we agreeing that this is a reasonable precedent for other NAAQS pollutants. The South Carolina General Assembly passed a joint resolution, effective June 11, 2010,¹ that makes the provisions of the EPA’s Tailoring Rule (75 FR 31514) effective in South Carolina. This resolution provides South Carolina with the authority to implement the Tailoring Rule thresholds in the Department’s PSD and Title V programs, and the Department is implementing its PSD and Title V programs as modified by the Tailoring Rule. On March 4, 2011, the Department requested that EPA remove from consideration that portion of South Carolina’s SIP from which EPA rescinded its previous approval of the PSD program relating to the Tailoring Rule greenhouse gas thresholds. S.C. Code Ann. § 48-1-50(10) provides the Department with the authority to “Require to be submitted to it and consider for approval plans for disposal system or source or any parts thereof and inspect the construction thereof for compliance with the approved plans.” Further, S.C. Code Ann. § 48-1-50(11) provides the Department with the authority to “Administer penalties as otherwise provided herein for violations of this chapter, including any order, permit, regulation or standards.”

Interstate Pollution Transport: Section 110(a)(2)(D) of the CAA addresses transport. Regarding CAA Section 110(a)(2)(D)(i)(I) and (II), the US Court of Appeals for the DC Circuit vacated the Cross State Air Pollution Rule (CSAPR) (*EME Homer City v. EPA*) in August 2012. In this decision, the court declared that a state cannot be required to address interstate transport until EPA has quantified the state’s significant contribution to downwind nonattainment or interference with maintenance. Therefore, the effect of interstate transport cannot be addressed in this infrastructure SIP until the EPA has determined any significant contribution by South Carolina to a downwind nonattainment area or interference with maintenance of the 2010 SO₂ NAAQS.

Further, EPA is currently developing a strategy for accurately identifying ambient SO₂ levels throughout the country which will focus on modeling and/or monitoring sources which emit SO₂ above a certain threshold. Since defining the interstate contribution to nonattainment areas hinges on being able to define nonattainment areas, EPA should delay final approval of this provision of SO₂ infrastructure SIPs until the aforementioned analysis is completed.

¹ H. J. R. 4888, 118th Session (S.C. 2010)

Regarding CAA Section 110(a)(2)(D)(i), relating to PSD, prong 3 South Carolina has a federally approved PSD and Nonattainment NSR program (R. 61-62.5 Standards 7 and 7.1) which provide for new and modified source preconstruction review and permitting. Regarding 110(a)(2)(D)(i), for the fourth prong, related to visibility, South Carolina has a federally approved Region Haze SIP (June 28, 2012, 77 FR 38509) and has submitted to the EPA a periodic update on December 18, 2012, demonstrating that we meet the visibility requirements of the program.

110(a)(2)(D)(ii) – Interstate Pollution Abatement and International Air Pollution
Element 110(a)(2)(D)(ii) is satisfied when an infrastructure SIP ensures compliance with the applicable requirements of CAA sections 126(a), 126(b) and (c), and 115

Requirements of CAA section 126(a) are met by the aforementioned federally approved PSD and NSR regulations R. 61-62.5 Standards 7 and 7.1 (q)(2)(iv) *Public Participation*, which requires the Department to notify air agencies whose lands may be affected by emissions from each new or modified major source if it may significantly contribute to levels of pollution in excess of a NAAQS in any air quality control region outside of the state.

Concerning sections 126 (b), 126(c), and 115, no source or sources within SC are the subject of an active finding under section 126 or 115 of the CAA with respect to any NAAQS.²

Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies :

- Section 110(a)(2)(E)(i) of the CAA requires states to provide for adequate personnel, funding and legal authority under state law to carry out SIP and related issues. The Department is provided its legal authority to establish a SIP and implement related plans, in general, under S.C. Code Ann. Section 48, Title 1. Specifically, S.C. Code Ann. § 48-1-50(12) (et seq.) grants the Department the authority to, “Accept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; accept, receive and receipt for Federal money given by the Federal government under any Federal law to the State of South Carolina for air or water control activities, surveys or programs.” S.C. Code Ann. Section 48, Title 2, grants the Department authority to establish environmental protection funds. Additionally, Regulation 61-30, *Environmental Protection Fees*, provides the Department with the ability to assess fees for environmental permitting programs. The Department implements the SIP in accordance with the provisions on S.C. Code Ann. § 1-23-40 and S.C. Code Ann. Section 48, Title 1.
- Section 110(a)(2)(E)(ii) of the CAA requires that state SIPs include conflict of interest provisions for state boards that oversee CAA permits and enforcement orders. As per the South Carolina Ethics Reform Act of 1991, S.C. Code Ann. Section 8-13-700(B)(1)-(5) provides for disclosure of any conflicts of interest by public official, public members or public employee, which meets the requirement of CAA Section 128(a)(2) that "any potential conflicts of interest ... be adequately disclosed." S.C. Code Ann. Section 8-13-

² The Department certifies that the requirements of 110(a)(2)(D)(ii) also apply and have been met for the lead and 2008 ozone NAAQS infrastructure SIPs, which were submitted on September 20, 2011, and July 17, 2012, respectively..

700(B)(1)-(5) provides for disclosure of any conflicts of interest by public official, public members or public employee, which meets the requirement of CAA Section 128(a)(2) that "any potential conflicts of interest ... be adequately disclosed."

- Section 110(a)(2)(E)(iii) of the CAA requires that state SIPs include necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision. Since SC does not have any local or regional governments responsible for implementing any portion of the CAA, no statutes or regulations are necessary to meet this requirement.

Stationary Source Monitoring Reporting: Section 110(a)(2)(F) of the CAA requires states to establish a system to monitor emissions from stationary sources and to submit periodic emissions reports. R. 61-62.1, Section III, *Emissions Inventory*³ provides for an emission inventory plan that establishes reporting requirements for various pollutants (including SO₂) from permitted facilities on annual or three year cycles, depending on emission levels and nonattainment area status. Further, S.C. Code Ann. § 48-1-22 provides the Department with the necessary authority to "Require the owner of operator of any source or disposal system to establish and maintain such operational records; make reports; install, use and maintain monitoring equipment or methods; samples and analyze emissions or discharges in accordance with prescribed methods, at locations, intervals, and procedures as the Department shall prescribe; and provide such other information as the Department reasonably may require."

Emergency Powers: Section 110(a)(2)(G) of the CAA requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs. R. 61-62.3, *Air Pollution Episodes*, requires that the Department provide for contingency measures when an air pollution episode or an exceedance that may lead to substantial threat to the health or persons in the state or region. S.C. Code Ann. § 48-1-290 grants the Department authority as follows:

"Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or property, the Department, with concurrent notice to the Governor, may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as the Department deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but an application to the Department or by direction of the Governor shall be afforded a hearing within forty-eight hours. On the basis of such hearing the Department shall continue such order in effect, revoke it or modify it. Regardless of whether a hearing is held, the Department shall revoke all emergency orders as soon as conditions or operations change to the extent that an emergency no longer exists."

³ On June 14, 2010, the Department submitted a SIP revision to EPA for amendments to R. 61-62.1 that incorporated the provisions of the rule known as the Air Emissions Reporting Requirements (AERR) (73 FR 76540, December 17, 2008).

S.C. Code Ann. § 1-23-130 provides the Department with the authority to establish emergency regulations.

SIP revisions: Section 110(a)(2)(H) of the CAA requires states to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to an EPA finding that the SIP is substantially inadequate. S.C. Code Ann. Section 48, Title 1, provides the Department the necessary authority to revise the SIP to accommodate changes in the NAAQS.

Plan Revisions for Nonattainment Areas: Section 110(a)(2)(I) of the CAA requires states to meet the requirements of Part D of the CAA if the EPA designates part of the state as nonattainment. S.C. Code Ann. Section 48, Title 1, provides the Department the necessary authority to revise the SIP to accommodate the requirements of Part D of the CAA. Per the September 2013 guidance, states are not required to address the section 110(a)(2)(I) infrastructure requirements related to the nonattainment planning requirements of part D, Title I of the CAA. This element is not governed by the three year submission deadline of section 110(a)(1) but rather section 172.

Consultation with Government Officials: Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments and Federal Land Managers (“FLM”) carrying out NAAQS implementation pursuant to Section 121 of the CAA relating to consultation. R.61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, as well as provisions in separate implementation plans (such as the five-year review process under the Regional Haze Implementation Plan, which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs) provide for continued consultation with government officials. Additionally, S.C. Code § 48-1-50(8) provides the Department with the necessary authority to “Cooperate with the governments of the United States or other states or state agencies or organizations, officials, or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements.”

Public Notification: Section 110(a)(2)(J) of the CAA further requires states to notify the public if NAAQS are exceeded in an area, and to enhance public awareness of measures that can be taken to prevent exceedances. R. 61-62.3, *Air Pollution Episodes*, requires that the Department notify the public of any air pollution episode or exceedance. S.C. Code Ann. § 48-1-60 established that “Classification and standards of quality and purity of the environment [are] authorized after notice and hearing.” In addition, the Department’s website is updated and maintained by staff dedicated to analyzing monitoring values and trends. Daily forecasts for ozone and PM_{2.5} levels are also included on the Department’s website. These features of the website allow the public to monitor current and long term air quality and see how one year compares to previous years. The Regulation and SIP management section in the Department’s Bureau of Air Quality posts regulatory notices and news to the Department’s website as well as sends emails to list serves which can be joined by anyone in the public. Further, the Department remains committed to notifying the public in any instance where NAAQS are exceeded in and area or when pollution levels become dangerous, using outreach efforts to enhance public

awareness of measures that can prevent such exceedances, and of ways in which the public can participate in regulatory and other efforts to improve air quality.

PSD and Visibility Protection: Section 110(a)(2)(J) of the CAA also requires the state to meet applicable requirements of part C related to PSD and visibility protection. R. 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, and the Regional Haze SIP address visibility protection. Our discussion of PSD and visibility under prongs 3 and 4 of Section 110(a)(2)(D) also applies to this section.

Air quality Modeling and Submission of Modeling Data: Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made. R.61-62.1, Definitions and General Requirements, provides for the reporting of all emissions necessary to conduct modeling; R. 61-62.5, Standards No. 2, *Ambient Air Quality Standards*, and R. 61-62.5 and, Standard No. 7, *Prevention of Significant Deterioration*, (as adopted in the SIP) requires that air modeling be conducted to determine permit applicability. This data is submitted to the EPA during the PSD application and review process. As such, the state's permitting and reporting requirements provide the necessary tools to conduct, evaluate, and provide air quality modeling data if necessary. Further S.C. Code Ann. § 48-1-50(14) provides the Department with the necessary authority to "Collect and disseminate information on air and water control." As such, the Department has the infrastructure needed to (1) conduct air quality modeling to predict the effect on ambient air quality of any emissions of any air pollutant for which a NAAQS has been promulgated, and (2) provide such modeling data to the EPA Administrator upon request.

Permitting Fees: Section 110(a)(2)(L) of the CAA requires SIPs to require each major stationary source pay permitting fees to cover the costs of reviewing, approving, implementing, and enforcing a permit. Pursuant to S.C. Code Ann. § 48-2-50 (1993), the Department shall charge fees for environmental programs it administers pursuant to federal and state law and regulations including those that govern the costs to review, implement and enforce PSD and NNSR permits.. R. 61-30, *Environmental Protection Fees*, prescribes fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations, establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process for refuting fees. This regulation may be amended as needed to meet the funding requirements of the state's permitting program.

The state currently has Title V program, R. 61-62.70, *Title V Operating Permit Program*, which implements and enforces the requirements of PSD and NNSR for facilities once they begin operating.⁴

Consultation and Participation by Affected Local Entities: Section 110(a)(2)(M) of the CAA requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. R. 61-62.5, Standard No. 7, *Prevention of Significant Deterioration*, (as adopted by the SIP) requires that the Department notify the public of the

⁴ The Department certifies that the requirements of 110(a)(2)(L) also apply and have been met for the 2008 lead and ozone NAAQS infrastructure SIPs, which were submitted on September 20, 2011, and July 17, 2012, respectively.

application, preliminary determination, degree of incremental consumption, and the opportunity for comment prior to making a final permitting decision. Likewise, S.C. Code Ann. § 48-1-50(8) allows the Department to “Cooperate with the governments of the United States or other states or state agencies or organizations, officials, or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements.” Other provisions regarding public hearings and the regulation-development process are included in S.C. Code Ann. Section 48, Title 1 in general, and S.C. Code Ann. § 1-23-40 (the Administrative Procedures Act).

**Attachment B:
SIP Submittal Completeness Criteria Checklist**

SIP Submitted by: South Carolina

Date Submitted: May 7, 2014

Subject: Confirmation of 110(a)(2)(A)-(M) SO₂ Infrastructure Elements of South Carolina SIP

Section 110(a) element	Element/CAA Text	Statute	How Addressed in SIP
§110(a)(2)(A)	<p>Emissions limits and other control measures</p> <p>“...include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.”</p>	<p><i>Pollution Control Act, S.C. Code Ann. § 48-1-50(23) (et seq.)</i></p>	<p>Regulation 61-62.5, Standard No. 2, <i>Ambient Air Quality and General Requirements</i> (Initial EPA approval: 12/28/78 - 1-hour SO₂ standard to be incorporated in Fall 2014)</p> <p>Regulation 61-62.1, <i>Definitions and General Requirements</i> (Initial EPA approval: 5/31/72)</p> <p>Regulation 61-30, <i>Environmental Protection Fees</i> (Promulgated June 23, 1995)</p>
§110(a)(2)(B)	<p>Ambient air quality monitoring/data system</p> <p>“...provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality, and upon request, make such data available to the Administrator”</p>	<p>S.C. Code Ann. § 48-1-50(14) (<i>et seq.</i>)</p>	<p>Regulation 61-62.5, Standard No. 7, <i>Prevention of Significant Deterioration</i> (Initial EPA approval: 2/10/82)</p> <p>The South Carolina monitoring network (2014 monitoring plan submitted July 2013)</p>

Section 110(a) element	Element/CAA Text	Statute	How Addressed in SIP
§110(a)(2)(C)	<p>Program for enforcement and control measures</p> <p>“...include a program to provide for the enforcement of the measures described in subparagraph (A) and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;”</p> <p>“any person who plans to construct, alter, or add to a source of air contaminants, including installation of any device for the control of air contaminant discharges, shall first obtain a construction permit from the Department prior to commencement of construction” ...and “no permit to construct or modify a source will be issued if emissions interfere with attainment or maintenance of any state or federal standard.”</p>	S.C. Code Ann. § 48-1-50(10) (<i>et seq.</i>)	<p>Regulation 61-62.5, Standard No. 7, <i>Prevention of Significant Deterioration</i> (Initial EPA approval: 2/10/82)</p> <p>Regulation 61-62.5, Standard No. 7.1, <i>Nonattainment New Source Review</i> (Initial EPA approval: 1/14/77)</p> <p>R. 61-62.1, Section II , Permit Requirements</p>

Section 110(a) element	Element/CAA Text	Statute	How Addressed in SIP
§110(a)(2)(D)	<p>Interstate transport</p> <p>“contain adequate provisions—</p> <p>(i) prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the state from emitting any air pollutant in amounts which will--</p> <p>(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard, or</p> <p>(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,</p> <p>(ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement);”</p>	S.C. Code Ann. § 48-1-10 (<i>et seq.</i>)	<p>Regulation 61-62.5, Standard No. 7, <i>Prevention of Significant Deterioration</i> (Initial EPA approval: 2/10/82)</p> <p>Regulation 61-62.5, Standard No. 7.1, <i>Nonattainment New Source Review</i> (Initial EPA approval: 1/14/77)</p> <p>Region Haze SIP (Initial EPA approval: 6/28/2012), periodic update submitted on 12/18/2012</p> <p>no source or sources within SC are the subject of an active finding under section 126 or 115 of the CAA with respect to any NAAQS.</p>
§110(a)(2)(E)(i)	<p>Adequate resources</p> <p>“...provide</p> <p>(i) necessary assurances that the state (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the state or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under state (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal or state law from carrying out such implementation plan or portion thereof);”</p>	<p>S.C. Code Ann. § 48-1-50(12) (<i>et seq.</i>)</p> <p><i>Environmental Protection Fund Act of 1993</i>, S.C. Code Ann. § 48-1-50 (<i>et seq.</i>)</p>	<p>These elements, 110(a)(2)(E)(i-iii), are met when EPA does a completeness determination for each SIP submittal. Each submittal provides for adequate personnel, funding, and legal authority under state law to carry out their SIPs and related issues. This information is understood and contained in all prehearing and final SIP submittal packages in the historical record of the rule. SC does not have any local agencies that these requirements would affect.</p> <p>Regulation 61-30, <i>Environmental Protection Fees</i> (Promulgated 6/23/95 S.C. State Register Document No. 1822).</p>

Section 110(a) element	Element/CAA Text	Statute	How Addressed in SIP
§110(a)(2)(E)(ii)	“(ii) requirements that the state comply with the requirements respecting state boards under section 128, and”	S.C. Code Ann. § 48-1-10 (<i>et seq.</i>)	
§110(a)(2)(E)(iii)	“(iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision;”		Not applicable. SC has no local or regional governments implementing the requirements of the CAA
§110(a)(2)(F)	<p>Stationary source monitoring system</p> <p>“...require, as may be prescribed by the Administrator—</p> <p>(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps by owners or operators of stationary sources to monitor emissions from such sources,</p> <p>(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and</p> <p>(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;”</p>	S.C. Code Ann. § 48-1-50 (22) (<i>et seq.</i>)	<p>Regulation 61-62.1, <i>Definitions and General Requirements</i> (Initial EPA approval: 5/31/72)</p> <p>On June 14, 2010, the Department submitted a SIP revision to EPA for amendments to R. 61-62.1 that incorporated the provisions of the rule known as the Air Emissions Reporting Requirements (AERR) (73 FR 76540, December 17, 2008).</p>
§110(a)(2)(G)	<p>Emergency power</p> <p>“...provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority;”</p>	<p>S.C. Code Ann. § 48-1-290 (<i>et seq.</i>)</p> <p><i>Administrative Procedures Act</i>, S.C. Code Ann. § 1-23-130 (<i>et seq.</i>)</p>	Regulation 61-62.3, <i>Air Pollution Episodes</i> (Initial EPA approval: 5/31/72)

Section 110(a) element	Element/CAA Text	Statute	How Addressed in SIP
§110(a)(2)(H)	<p>Future SIP revisions</p> <p>“...provide for revision of such plan— (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (iii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements, or to otherwise comply with any additional requirements established under this Act;”</p>	S.C. Code Ann. § 48-1-10 (<i>et seq.</i>)	This information typically comes in the cover letter of each SIP submission and is verified under the completeness criteria for SIP submittals.
§110(a)(2)(I)	<p>Nonattainment</p> <p>“...in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D (relating to nonattainment areas);”</p>	S.C. Code Ann. § 48-1-10 (<i>et seq.</i>)	<p>Extant SIPs meet this requirement, through (1) the SIP submittals and subsequent approval of those plans redesignating areas to attainment, and (2) updates to maintenance plans.</p> <p>There have been no previous nonattainment areas for SO₂ in South Carolina.</p>
§110(a)(2)(J) (§ 121 consultation)	<p>Consultation with government officials</p> <p>“...meet the applicable requirements of section 121 (relating to consultation);”</p>	S.C. Code Ann. § 48-1-50(8) (<i>et seq.</i>)	Regulation 61-62.5, Standard No. 7, <i>Prevention of Significant Deterioration</i> (Initial EPA approval: 2/10/82)
§110(a)(2)(J) (Section 127 public notification)	<p>Public notification</p> <p>“...meet the applicable requirements of section 127 of this title;”</p>	S.C. Code Ann. § 48-1-60 (<i>et seq.</i>)	<p>Regulation 61-62.3, <i>Air Pollution Episodes</i> (Initial EPA approval: 5/31/72)</p> <p>SCDHEC Website, email listserves, and outreach efforts</p>

Section 110(a) element	Element/CAA Text	Statute	How Addressed in SIP
§110(a)(2)(J) (PSD)	<p>PSD and visibility protection</p> <p>“...meet the applicable requirements of ... part C (relating to prevention of significant deterioration of air quality and visibility protection);”</p>	S.C. Code Ann. § 48-1-10 (<i>et seq.</i>)	Regulation 61-62.5, Standard No. 7, <i>Prevention of Significant Deterioration</i> (EPA approval: 2/10/82)
§110(a)(2)(K)	<p>Air quality modeling/data</p> <p>“...provide for:</p> <p>(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and</p> <p>(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;”</p>	S.C. Code Ann. § 48-1-10 (<i>et seq.</i>)	<p>Regulation 61-62.1, <i>Definitions and General Requirements</i> (Initial EPA approval: 5/31/72)</p> <p>Regulation 61-62.5, Standard No. 2, <i>Ambient Air Quality Standards</i> (Initial EPA approval (12/28/78)</p> <p>Regulation 61-62.5, Standard No. 7, <i>Prevention of Significant Deterioration</i> (Initial EPA approval: 2/10/82)</p> <p>S.C. Code Ann. § 48-1-50(14)</p>
§110(a)(2)(L)	<p>Permitting fees</p> <p>“...require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover—</p> <p>(i) the reasonable costs of reviewing and acting upon any application for such a permit, and</p> <p>(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator’s approval of a fee program under title V;”</p>	S.C. Code Ann. § 48-2-50 (<i>et seq.</i>)	<p>State only Regulation 61-30, <i>Environmental Protection Fees</i> (Promulgated 6/23/95 S.C. State Register Document No. 1822)</p> <p>Regulation 61-62.70, Title V Operating Permit Program</p>

Section 110(a) element	Element/CAA Text	Statute	How Addressed in SIP
§110(a)(2)(M)	<p>Consultation/participation by affected local entities</p> <p>“...provide for consultation and participation by local political subdivisions affected by the plan.”</p>	<p>S.C. Code Ann. § 48-1-50(8) (<i>et seq.</i>)</p> <p>S.C. Code Ann. § 1-23-40 (<i>et seq.</i>)</p>	<p>Regulation 61-62.5, Standard No. 7, <i>Prevention of Significant Deterioration</i> (EPA approval: 2/10/82)</p>
§§110(a)(2)(C) & 110(a)(2)(J)	<p>§110(a)(2)(J) “meet the applicable requirements of ... part C (relating to prevention of significant deterioration of air quality and visibility protection);”</p> <p>§110(a)(2)(C) ... “regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;”</p>	<p>S.C. Code Ann. § 48-1-10 (<i>et seq.</i>)</p>	<p>Regulation 61-62.5, Standard No. 7, <i>Prevention of Significant Deterioration</i> (Initial EPA approval: 2/10/82)</p> <p>Regulation 61-62.3, <i>Air Pollution Episodes</i> (Initial EPA approval: 5/31/72)</p>

close of the comment period, 5:00 p.m. on March 31, 2014, the Department will cancel the public hearing. If the Department cancels the public hearing, then the Department will notify the public at least one week prior to the scheduled hearing via the Scheduled Public Hearings webpage:

http://www.scdhec.gov/environment/baq/Regulation-SIPManagement/public_hearings.asp. Interested persons may also contact Anthony T Lofton, Regulation and SIP Management Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or via phone at (803) 898-7217 or email at loftonat@dhec.sc.gov for more information, or to find out if the Department will hold the public hearing.

Synopsis:

On February 9, 2010, the EPA published a revised NAAQS for Nitrogen Dioxide (75 FR 6474). With this rule, the EPA set a new 1-hour primary NO₂ standard at the level of 100 parts per billion (ppb) and retained the current annual average NO₂ standard of 53 ppb. Sections 110(a)(1) and (2) of the CAA require all states to submit plans to provide for the implementation, maintenance, and enforcement of the NAAQS. Sections 110(a)(1) and (2) further require states to address basic SIP requirements, including but not limited to the following elements: emissions limits and other control measures, ambient air quality monitoring, a program for the enforcement of control measures, adequate resources to implement the SIP, and public notification and government consultation. Section 110(a)(1) requires states to submit SIPs within three (3) years after promulgation of a new or revised NAAQS, or January 22, 2013, in this case. The Department delayed preparing its NO₂ infrastructure SIP until the EPA published the necessary infrastructure SIP guidance document on September 13, 2013.

On August 11, 2011, the Department submitted a request to EPA Region 4 that the EPA designate each county in the State of South Carolina as “attainment” for the 1-hour primary NO₂ NAAQS. On February 17, 2012, the EPA published designations for the revised NO₂ NAAQS (77 FR 9532). Based on air quality monitoring data, the EPA designated all areas of the country as “unclassifiable/attainment” for the 2010 NO₂ NAAQS. The Department is proposing to certify that it has addressed the aforementioned “infrastructure” elements pertaining to the NO₂ attainment areas in South Carolina. Pending the receipt of a request for a public hearing and/or any comments received, this Final Amendment to the SIP will take effect 30 days following publication of this Notice in the *South Carolina State Register* on March 31, 2014, at which time the Department will submit a final SIP certification package to the EPA for approval.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

NOTICE OF FINAL AMENDMENT TO AIR QUALITY STATE IMPLEMENTATION PLAN

Statutory Authority: S.C. Code Sections 48-1-10 et seq.

The South Carolina Department of Health and Environmental Control (Department) is publishing this Notice of General Public Interest to provide interested persons the opportunity to comment on the Department’s response to meet obligations to the U.S. Environmental Protection Agency (EPA) for the National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide (SO₂). The Department proposes to address the requirements under sections 110(a)(1) and (2) of the Clean Air Act (CAA) for State Implementation Plans (SIP) known as infrastructure SIP certification. These requirements were developed to assure attainment and maintenance of the NAAQS. To be considered, the Department must receive comments by 5:00 p.m. on March 31, 2014, the close of the comment period.

The Department is also providing the public with the opportunity to request a public hearing on the issue. If requested, the Department will hold a public hearing on April 7, 2014, at 10:00 a.m., in the Wallace Room of the Sims Building, 2600 Bull Street, Columbia, South Carolina. The Department invites the public to attend.

However, pursuant to 40 CFR 51.102, if the Department does not receive a request for a public hearing by the close of the comment period, 5:00 p.m. on March 31, 2013, the Department will cancel the public hearing. If the Department cancels the public hearing, then the Department will notify the public at least one week prior to the scheduled hearing via the Scheduled Public Hearings webpage:

http://www.scdhec.gov/environment/baq/Regulation-SIPManagement/public_hearings.asp. Interested persons may also contact Andrew Hollis, Regulation and SIP Management Section, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or via phone at (803) 898-4196 or email at hollisao@dhec.sc.gov for more information, or to find out if the Department will hold the public hearing.

Synopsis:

On June 2, 2010, the EPA finalized a revised NAAQS for Sulfur Dioxide (75 FR 35520, published June 22, 2010). With this rule, the EPA set a new 1-hour primary SO₂ standard at the level of 75 parts per billion (ppb) and revoked the two previously existing primary standards of 140 ppb evaluated over 24- hours, and 30 ppb evaluated over an entire year. Sections 110(a)(1) and (2) of the CAA require all states to submit plans to provide for the implementation, maintenance, and enforcement of the NAAQS. Sections 110(a)(1) and (2) further require states to address basic SIP requirements, including but not limited to the following elements: emissions limits and other control measures, ambient air quality monitoring, a program for the enforcement of control measures, adequate resources to implement the SIP, and public notification and government consultation. Section 110(a)(1) requires states to submit SIPs within three (3) years after promulgation of a new or revised NAAQS, or June 2, 2013, in this case. The Department delayed submittal of this SIP until necessary federal implementation guidance was released. This guidance was released by EPA on September 13, 2013.

On June 2, 2011, the Department submitted a request to EPA Region 4 that the EPA designate each county in the State of South Carolina as “attainment” for the 1-hour primary SO₂ NAAQS. On February 7, 2013, EPA issued a letter to SC indicating that it would not designate any areas of the state for the new 1-hour SO₂ National Ambient Air Quality Standard (standard) until an updated strategy for accurately identifying SO₂ levels throughout the country could be finalized.

The Department is proposing to certify that it has addressed the aforementioned “infrastructure” elements pertaining to the SO₂ attainment areas in South Carolina. Pending the receipt of a request for a public hearing and/or any comments received, this Final Amendment to the SIP will take effect 30 days following publication of this Notice in the *South Carolina State Register* on March 31, 2014, at which time the Department will submit a final SIP certification package to the EPA for approval.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE OF GENERAL PUBLIC INTEREST

DHEC-Bureau of Land and Waste Management, File #6203
Woven Electronics, Inc Site

NOTICE OF VOLUNTARY CLEANUP CONTRACT, CONTRIBUTION PROTECTION, AND COMMENT PERIOD

PLEASE TAKE NOTICE that the South Carolina Department of Health and Environmental Control (DHEC) intends to enter into a Voluntary Cleanup Contract (VCC) with Woven Electronics, LLC (Responsible Party). The VCC provides that the Responsible Party, with DHEC’s oversight, will fund and perform future response actions at the Woven Electronics facility located in Greenville County, at 1001 Old Stage Road, Simpsonville, South Carolina, and any surrounding area impacted by the migration of hazardous substances, pollutants, or contaminants.

Attachment D
South Carolina Pollution Control Act (SC Code Section 48-1-10 et seq.)

DISCLAIMER

The South Carolina Legislative Council is offering access to the unannotated South Carolina Code of Laws on the Internet as a service to the public. The unannotated South Carolina Code on the General Assembly's website is now current through the 2013 session. The unannotated South Carolina Code, consisting only of Code text, numbering, and history may be copied from this website at the reader's expense and effort without need for permission.

The Legislative Council is unable to assist users of this service with legal questions. Also, legislative staff cannot respond to requests for legal advice or the application of the law to specific facts. Therefore, to understand and protect your legal rights, you should consult your own private lawyer regarding all legal questions.

While every effort was made to ensure the accuracy and completeness of the unannotated South Carolina Code available on the South Carolina General Assembly's website, the unannotated South Carolina Code is not official, and the state agencies preparing this website and the General Assembly are not responsible for any errors or omissions which may occur in these files. Only the current published volumes of the South Carolina Code of Laws Annotated and any pertinent acts and joint resolutions contain the official version.

Please note that the Legislative Council is not able to respond to individual inquiries regarding research or the features, format, or use of this website. However, you may notify the Legislative Services Agency at LSA@scstatehouse.gov regarding any apparent errors or omissions in content of Code sections on this website, in which case LSA will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

CHAPTER 1.

POLLUTION CONTROL ACT

SECTION 48-1-10. Short title; definitions.

This chapter may be cited as the "Pollution Control Act" and, when used herein, unless the context otherwise requires:

(1) "Person" means any individual, public or private corporation, political subdivision, government agency, municipality, industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever;

(2) "Waters" means lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the State and all other bodies of surface or underground water, natural or artificial, public or private, inland or coastal, fresh or salt, which are wholly or partially within or bordering the State or within its jurisdiction;

(3) "Marine district" means the waters of the Atlantic Ocean within three nautical miles from the coast line and all other tidal waters within the State;

(4) "Sewage" means the water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present and the admixture with sewage of industrial wastes or other wastes shall also be considered "sewage";

(5) "Industrial waste" means any liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business or from the development of any natural resources;

(6) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, clay, lime, cinders, ashes, offal, oil, gasoline, other petroleum products or by-products, tar, dye stuffs, acids, chemicals, dead animals, heated substances and all other products, by-products or substances not sewage or industrial waste;

(7) "Pollution" means (1) the presence in the environment of any substance, including, but not limited to, sewage, industrial waste, other waste, air contaminant, or any combination thereof in such quantity and of such characteristics and duration as may cause, or tend to cause the environment of the State to be contaminated, unclean, noxious, odorous, impure or degraded, or which is, or tends to be injurious to human health or welfare; or which damages property, plant, animal or marine life or use of property; or (2) the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of water;

(8) "Standard" or "standards" means such measure of purity or quality for any waters in relation to their reasonable and necessary use as may after hearing be established;

(9) "Department" means the Department of Health and Environmental Control;

(10) "Sewage system" or "sewerage system" means pipelines and conductors, pumping stations, force mains and all other construction, devices and appliances appurtenant thereto used for conducting sewage, industrial waste or other wastes to a point of ultimate discharge;

(11) "Treatment works" means any plant, disposal field, lagoon, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary land fills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes;

(12) "Disposal system" means a system for disposing of sewage, industrial waste or other wastes, including sewerage systems and treatment works;

(13) "Outlet" means the terminus of a sewer system or the point of emergence of any water-borne sewage, industrial waste or other wastes, or the effluent therefrom, into the waters of the State;

(14) "Shellfish" means oysters, scallops, clams, mussels and other aquatic mollusks and lobsters, shrimp, crawfish, crabs and other aquatic crustaceans;

(15) "Ambient air" means that portion of the atmosphere outside of buildings and other enclosures, stacks, or ducts which surrounds human, plant, or animal life, water or property;

(16) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor, or any combination thereof produced by processes other than natural;

(17) "Source" means any and all points of origin of air contaminants whether privately or publicly owned or operated;

(18) "Undesirable level" means the presence in the outdoor atmosphere of one or more air contaminants or any combination thereof in sufficient quantity and of such characteristics and duration as to be injurious to human health or welfare, or to damage plant, animal or marine life, to property or which unreasonably interfere with enjoyment of life or use of property;

(19) "Emission" means a release into the outdoor atmosphere of air contaminants;

(20) "Environment" means the waters, ambient air, soil and/or land;

(21) "Effluent" means the discharge from a waste disposal system;

(22) "Effluent limitations" means restrictions or prohibitions of chemical, physical, biological, and other constituents which are discharged from point sources into State waters, including schedules of compliance;

(23) "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel, or other floating craft, from which pollutants are or may be discharged.

HISTORY: 1962 Code Section 63-195; 1952 Code Section 70-101; 1950 (45) 2153; 1965 (54) 687; 1970 (56) 2512; 1973 (58) 788; 1975 (59) 241.

SECTION 48-1-20. Declaration of public policy.

It is declared to be the public policy of the State to maintain reasonable standards of purity of the air and water resources of the State, consistent with the public health, safety and welfare of its citizens, maximum employment, the industrial development of the State, the propagation and protection of terrestrial and marine flora and fauna, and the protection of physical property and other resources. It is further declared that to secure these purposes and the enforcement of the provisions of this chapter, the Department of Health and Environmental Control shall have authority to abate, control and prevent pollution.

HISTORY: 1962 Code Section 63-195.1; 1952 Code Section 70-102; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-30. Promulgation of regulations; approval of alternatives.

The Department shall promulgate regulations to implement this chapter to govern the procedure of the Department with respect to meetings, hearings, filing of reports, the issuance of permits and all other matters relating to procedure. The regulations for preventing contamination of the air may not specify any particular method to be used to reduce undesirable levels, nor the type, design, or method of installation or type of construction of any manufacturing processes or other kinds of equipment. Except where the Department determines that it is not feasible to prescribe or enforce an emission standard or standard of performance, it may, by regulation, specify equipment, operational practice, or emission control method, or combination thereof. The Department may grant approval for alternate equipment, operational practice, or emission control method, or combination thereof, where the owner or operator of a source can demonstrate to the Department that such alternative is substantially equivalent to that specified.

HISTORY: 1962 Code Section 63-195.6; 1952 Code Section 70-108; 1950 (46) 2153; 1965 (54) 687; 1970 (56) 2512; 1978 Act No. 557, Section 1.

SECTION 48-1-40. Adoption of standards for water and air.

The Department, after public hearing as herein provided, shall adopt standards and determine what qualities and properties of water and air shall indicate a polluted condition and these standards shall be promulgated and made a part of the rules and regulations of the Department. The Department, in determining standards and designing the use of streams shall be guided by the provisions of this chapter.

HISTORY: 1962 Code Section 63-195.7; 1952 Code Section 70-109; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-50. Powers of department.

The Department may:

(1) Hold public hearings, compel attendance of witnesses, make findings of fact and determinations and assess such penalties as are herein prescribed;

(2) Hold hearings upon complaints or upon petitions in accordance with Section 48-1-140 or as otherwise provided in this chapter;

(3) Make, revoke or modify orders requiring the discontinuance of the discharge of sewage, industrial waste or other wastes into any waters of the State, or the discharge of air contaminants into the ambient air so as to create an undesirable level, resulting in pollution in excess of the applicable standards established. Such orders shall specify the conditions and time within which such discontinuance must be accomplished;

(4) Institute or cause to be instituted, in a court of competent jurisdiction, legal proceedings, including an injunction, to compel compliance with the provisions of this chapter or the determinations, permits and permit conditions and orders of the Department. An injunction granted by any court shall be issued without bond;

(5) Issue, deny, revoke, suspend or modify permits, under such conditions as it may prescribe for the discharge of sewage, industrial waste or other waste or air contaminants or for the installation or operation of disposal systems or sources or parts thereof; provided, however, that no permit shall be revoked without first providing an opportunity for a hearing;

(6) Conduct studies, investigations and research with respect to pollution abatement, control or prevention. Such studies shall include but not be limited to, air control, sources, disposal systems and treatment of sewage, industrial waste or other wastes, by all scientific methods and, if necessary, of the use of mobile laboratories;

(7) Settle or compromise any action or cause of action for the recovery of a penalty or damages under this chapter as it may deem advantageous to the State;

(8) Cooperate with the governments of the United States or other states or State agencies or organizations, official or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements;

(9) Prepare and develop a general comprehensive program for the abatement, control and prevention of air and water pollution;

(10) Require to be submitted to it and consider for approval plans for disposal systems or sources or any parts thereof and inspect the construction thereof for compliance with the approved plans;

(11) Administer penalties as otherwise provided herein for violations of this chapter, including any order, permit, regulation or standards;

(12) Accept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; accept, receive and receipt for Federal money given by the Federal

government under any Federal law to the State of South Carolina for air or water control activities, surveys or programs;

(13) Encourage voluntary cooperation by persons, or affected groups in restoration and preservation of a reasonable degree of purity of air and water;

(14) Collect and disseminate information on air or water control;

(15) Approve projects for which applications for loans or grants under the Federal Water Pollution Control Act or the Federal Air Quality Act are made by any municipality (including any city, town, district, or other public body created by or pursuant to the laws of this State and having jurisdiction over disposal of sewage, industrial wastes or other wastes) or agency of this State or by an interstate agency;

(16) Participate through its authorized representatives in proceedings under the Federal Water Pollution Control Act or the Federal Air Quality Act to recommend measures for abatement of water pollution originating in this State;

(17) Take all action necessary or appropriate to secure to this State the benefits of the Federal Water Pollution Control Act or the Federal Air Quality Act and any and all other Federal and State acts concerning air and water pollution control;

(18) Consent on behalf of the State to request by the Federal Security Administrator to the Attorney General of the United States for the bringing of suit for abatement of such pollution;

(19) Consent to the joinder as a defendant to such suit of any person who is alleged to be discharging matter contributing to the pollution, abatement of which is sought in such suit;

(20) Conduct investigations of conditions in the air or waters of the State to determine whether or not standards are being contravened and the origin of materials which are causing the polluted condition;

(21) Establish the cause, extent and origin of damages from waste including damages to the fish, waterfowl, and other aquatic animals and public property which result from the discharge of wastes to the waters of the State;

(22) Require the owner or operator of any source or disposal system to establish and maintain such operational records; make reports; install, use, and maintain monitoring equipment or methods; sample and analyze emissions or discharges in accordance with prescribed methods, at locations, intervals, and procedures as the Department shall prescribe; and provide such other information as the Department reasonably may require;

(23) Adopt emission and effluent control regulations, standards and limitations that are applicable to the entire State, that are applicable only within specified areas or zones of the State, or that are applicable only when a specified class of pollutant is present;

(24) Enter at all times in or upon any property, public or private, for the purpose of inspecting and investigating conditions relating to pollution or the possible pollution of the environment of the State. Its authorized agents may examine and copy any records or memoranda pertaining to the operation of a disposal system or source that may be necessary to determine that the operation thereof is in compliance with the performance as specified in the application for a permit to construct; provided, however, that if such entry or inspection is denied or not consented to, and no emergency exists, the Department is empowered to and shall obtain from the magistrate from the jurisdiction in which such property, premise or place is located, a warrant to enter and inspect any such property, premise or place prior to entry and inspection. The magistrate of such jurisdiction is empowered to issue such warrants upon a proper showing of the needs for such entry and inspection. The results of any such inspection and investigation conducted by the Department shall be reduced to writing and a copy shall be furnished to the owner or operator of the source or disposal system; and

(25) Issue orders prohibiting any political entity having the authority to issue building permits from issuing such permits when the political entity has been ordered to correct a condition which has caused or is causing pollution. Provided, that no such order shall be issued until the State is capable of participating in Federal, State and local cost-sharing arrangements for municipal waste treatment facilities as set forth in the Clean Water Restoration Act of 1966.

HISTORY: 1962 Code Section 63-195.8; 1952 Code Sections 70-110, 70-111; 1950 (46) 2153; 1965 (54) 687; 1969 (56) 764; 1970 (56) 2512; 1973 (58) 788; 1974 (58) 2334; 1975 (59) 241.

SECTION 48-1-55. Use of local personnel to monitor water quality in county where oyster factory located.

On any navigable river in this State where an oyster factory is located, the Department of Health and Environmental Control may utilize qualified personnel of the county or municipality in whose jurisdiction the factory operates to assist with the monitoring of water quality and other environmental standards the department is required to enforce. The assistance may be provided at the request of the department and upon the consent of the county or municipality concerned.

HISTORY: 2009 Act No. 22, Section 1, eff May 19, 2009.

SECTION 48-1-60. Classification and standards of quality and purity of the environment authorized after notice and hearing.

It is recognized that, due to variable factors, no single standard of quality and purity of the environment is applicable to all ambient air, land or waters of the State. In order to attain the objectives of this chapter, the Department, after proper study and after conducting a public hearing upon due notice, shall adopt rules and regulations and classification standards. The classification and the standards of quality and purity of the environment shall be adopted by the Department in relation to the public use or benefit to which such air, land or waters are or may, in the future, be put. Such classification and standards may from time to time be altered or modified by the Department.

The adoption of a classification of the waters and the standards of quality and purity of the environment shall be made by the Department only after public hearing on due notice as provided by this chapter.

HISTORY: 1962 Code Section 63-195.9; 1952 Code Section 70-112; 1950 (46) 2153; 1970 (56) 2512; 1973 (58) 788.

SECTION 48-1-70. Matters which standards for water may prescribe.

The standards for water adopted pursuant to this chapter may prescribe:

- (1) The extent, if any, to which floating solids may be permitted in the water;
- (2) The extent to which suspended solids, colloids or a combination of solids with other substances suspended in water may be permitted;
- (3) The extent to which organisms of the coliform group (intestinal bacilli) or any other bacteriological organisms may be permitted in the water;
- (4) The extent of the oxygen which may be required in receiving waters; and
- (5) Such other physical, chemical or biological properties as may be necessary for the attainment of the objectives of this chapter.

HISTORY: 1962 Code Section 63-195.10; 1952 Code Section 70-113; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-80. Considerations in formulating classification and standards for water.

In adopting the classification of waters and the standards of purity and quality, consideration shall be given to:

- (1) The size, depth, surface area covered, volume, direction, rate of flow, stream gradient and temperature of the water;

(2) The character of the district bordering such water and its peculiar suitability for the particular uses and with a view to conserving it and encouraging the most appropriate use of the lands bordering on such water for residential, agricultural, industrial or recreational purposes;

(3) The uses which have been made, are being made or may be made of such waters for transportation, domestic and industrial consumption, irrigation, bathing, fishing and fish culture, fire prevention, sewage disposal or otherwise; and

(4) The extent of present defilement or fouling of such waters which has already occurred or resulted from past discharges therein.

HISTORY: 1962 Code Section 63-195.11; 1952 Code Section 70-114; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-83. Dissolved oxygen concentration depression; procedures to obtain site-specific effluent limit.

(A) The department shall not allow a depression in dissolved oxygen concentration greater than 0.1 mg/l in a naturally low dissolved oxygen waterbody unless the requirements of this section are all satisfied by demonstrating that resident aquatic species shall not be adversely affected. The provisions of this section apply in addition to any standards for a dissolved oxygen depression in a naturally low dissolved oxygen waterbody promulgated by the department by regulation.

(B) A party seeking a site-specific effluent limit related to dissolved oxygen pursuant to this section must notify the department in writing of its intent to obtain the depression. Upon receipt of the written notice of this intent, the department shall within thirty days publish a public notice indicating the party seeking the dissolved oxygen depression and the specific site for which the dissolved oxygen depression is sought in addition to the department's usual public notice procedures. The notice shall be in the form of an advertisement in a newspaper of statewide circulation and in the local newspaper with the greatest general circulation in the affected area. If within thirty days of the publication of the public notice the department receives a request to hold a public hearing from at least twenty citizens or residents of the county or counties affected, the department shall conduct such a hearing. The hearing must be conducted at an appropriate location near the specific site for which the dissolved oxygen depression is sought and must be held within ninety days of the publication of the initial public notice by the department.

(C) The department, in consultation with the Department of Natural Resources and the Environmental Protection Agency, shall provide a general methodology to be used for consideration of a site-specific effluent limit related to dissolved oxygen.

(D) The party seeking a site-specific effluent limit related to dissolved oxygen must conduct a study:

(1) to determine natural dissolved oxygen conditions at the specific site for which the depression is sought. The study must use an appropriate reference site. The reference site is not restricted to the State but must have similar geography, environmental setting, and climatic conditions. However, if an appropriate reference site cannot be located, the party may use a site-specific dynamic water quality model or, if available, a site-specific multidimensional dynamic water quality model.

(2) to assess the ability of aquatic resources at the specific site for which the dissolved oxygen depression is sought to tolerate the proposed dissolved oxygen depression.

(E) The department shall provide the following agencies sixty days in which to review and provide comments on the design of the scientific study required in subsection (D):

(1) the United States Fish & Wildlife Service of the United States Department of the Interior;

(2) the United States Geological Survey of the United States Department of the Interior;

(3) the National Ocean Service of the United States Department of Commerce and the National Marine Fisheries Service of the United States Department of Commerce; and

(4) The Department of Natural Resources.

The department and the Department of Natural Resources shall select and convene a science peer review committee to review the design of the study as required by subsection (D). The department and the

Environmental Protection Agency must concur on the final design before a study is initiated. Justification of any objection to the study design must be based solely on scientific considerations. Objections to the study design must be provided in writing by the department to the party seeking a site-specific effluent limit related to dissolved oxygen.

(F) The department shall provide the following agencies sixty days to review and comment on the results of the studies required in subsection (D):

- (1) the United States Fish and Wildlife Service of the United States Department of the Interior;
- (2) the United States Geological Survey of the United States Department of the Interior; and
- (3) the National Ocean Service of the United States Department of Commerce and the National Marine Fisheries Service of the United States Department of Commerce.

In order for a site-specific effluent limit related to dissolved oxygen to be implemented pursuant to this section, the department, the Department of Natural Resources and the Environmental Protection Agency must concur that the results of the study required in subsection (D) justify its implementation. In reaching a decision on the study results, the department and the Department of Natural Resources must base their decision upon the entire record, taking into account whatever in the record detracts from the weight of the decision, and must be supported by evidence that a reasonable mind might accept as adequate to support the decision. Objections to the acceptance of the results of the study must be provided in writing by the department to the party seeking a site-specific effluent limit related to dissolved oxygen.

HISTORY: 1999 Act No. 106, Section 1; 2010 Act No. 134, Section 1, eff March 30, 2010.

SECTION 48-1-85. Requirements for houseboats with marine toilets.

(A) It is unlawful for a person to operate or float a houseboat on the waters of this State unless it has a marine toilet that discharges only into a holding tank.

(B) As used in this section:

(1) "Holding tank" means a container designed to receive and hold sewage and other wastes discharged from a marine toilet and constructed and installed in a manner so that it may be emptied only by pumping out its contents.

(2) "Houseboat" means watercraft primarily used as habitation and not used primarily as a means of transportation.

(3) "Marine toilet" includes equipment for installation on board a houseboat designed to receive, retain, treat, or discharge sewage. A marine toilet must be equipped with a holding tank.

(C) When an owner of a houseboat having a marine toilet applies to the Department of Natural Resources for a certificate of title pursuant to Section 50-23-20, he shall certify in the application that the toilet discharges only into a holding tank.

(D) Houseboat holding tanks may be emptied only by a pump-out system permitted by the South Carolina Department of Health and Environmental Control.

(E) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars for each day's violation or imprisoned not more than thirty days, or both.

HISTORY: 1992 Act No. 334, Section 1; 1993 Act No. 181, Section 1172; 2007 Act No. 33, Section 2, eff upon approval (became law without the Governor's signature on May 24, 2007).

SECTION 48-1-87. Aquatic Life Protection Act.

(A) In order to provide for the survival and propagation of a balanced community of aquatic flora and fauna as set forth in Regulation 61-68 in a manner consistent with Section 48-1-20, the department shall, where necessary to protect aquatic life, impose NPDES permit limitations for whole effluent toxicity (WET) based on the mixing zone authorized in subsection (C), where the department determines that a

discharge causes or has the reasonable potential to cause or contribute to an excursion of a water quality criterion in Regulation 61-68, other than numeric criteria for specific pollutants, that apply to the protection of aquatic organisms.

(B) As directed by this section, the department may promulgate regulations to implement WET tests that calibrate EPA's standard toxicity testing species and methods to the natural water chemistry representative of the lakes, streams, groundwater, and stormwater runoff of this State. In developing these regulations the department may use the findings of any scientifically defensible study it may conduct and may use other pertinent peer reviewed studies or conclusions. In the interim, this section shall not be construed to limit the department's authority to impose WET limits.

(C) For purposes of performing WET reasonable potential determinations for a specific discharge and, where justified, setting WET permit limitations for that discharge, the department, notwithstanding any other provision of law shall:

(1) develop procedures to allow up to one hundred percent dilution in waterbodies, based on the 7Q10 flow as defined by Regulation 61-68, where justified by the permittee or permit applicant and approved by the department;

(2) use stream flow conditions other than those described in item (1) where justified by hydrological controls that are capable of ensuring critical flow conditions higher than the respective ten-year flows identified in item (1), to evaluate acute and chronic exposure;

(3) use, for stormwater discharges, a representative flow greater than 7Q10 flow, as demonstrated on a site-specific basis, with any resulting WET permit limitations comprising only those expressed in terms of acute survival endpoints;

(4) consider such mixing calculations as described in items (1), (2), and (3) to be consistent with its policy set forth in Regulation 61-68 for minimizing mixing zones;

(5) give consideration to compliance with numeric criteria and actual instream biological conditions, in the absence of a valid scientific correlation between sublethal WET test results and the biological integrity of representative lakes, streams, and estuaries in this State, wherein biological integrity includes the richness, abundance, and balanced community structure of indigenous aquatic organisms;

(6) allow, at the request of the permittee, the use of ambient receiving waters as control and dilution waters in WET tests;

(7) exempt once-through, noncontact cooling water, which contains no additives, from toxicity requirements; and

(8) allow dischargers to use WET testing protocols that utilize alternative species in accordance with applicable EPA regulations and guidance.

(D) No part of this section shall be construed to limit the department's authority to adopt water quality criteria, to impose permit limits for specific chemical pollutants, to obligate the department to revalidate existing water quality criteria, or to establish additional water quality criteria for specific chemical pollutants. The department, whenever appropriate, shall utilize the flexibility of interpretation concerning WET testing and the use of WET test results provided by EPA.

(E) For the purpose of implementing Section 48-1-20 and Regulation 61-68:

(1) "propagation" is defined in Regulation 61-68;

(2) "biological integrity" means a measure of the health of an aquatic or marine ecosystem using the richness and abundance of species as the primary indicator, and "biological integrity" is a key component of an "instream bioassessment";

(3) "sublethal toxicity tests" means laboratory experiments that measure the nonlethal biological effects, including, but not limited to, growth or reproduction, of effluents or receiving waters on aquatic organisms;

(4) "calibrate" means a process to establish the baseline control condition based on the normal range of biological responses likely to occur when standard test organisms are exposed to various nontoxic waters sampled from streams and lakes throughout the State.

(F) For any NPDES permit that was taken over by EPA due to provisions of Act 258 of 2004 from July 1, 2004, through the effective date of this subsection as revised by the provisions of this 2005 act, the

department shall convey to EPA, through the certification process (40 C.F.R. Part 124.53), any additional requirements mandated under state law. Moreover, notwithstanding any other provision of law or regulation, the requirement for a counterpart state permit for any such discharge is waived. Alternatively, at the request of the permittee, the department may waive the certification process and issue a state permit. However, affected permittees shall submit applications for reissuance to the department in accordance with Regulation 61-9, at least one hundred eighty days in advance of the expiration of the federal permits. At the discretion of the department, the annual fees for NPDES permits in Regulation 61-30 may continue to be charged, when certifying a federal permit, if the department waives the certification fee.

(G) The department shall reduce or eliminate WET monitoring requirements, as appropriate, in accordance with permit modification processes contained in Regulation 61-9, where dischargers demonstrate that their effluents do not demonstrate reasonable potential.

HISTORY: 2004 Act No. 258, Section 2; 2005 Act No. 25, Section 1.

SECTION 48-1-90. Causing or permitting pollution of environment prohibited; remedies.

(A)(1) It is unlawful for a person, directly or indirectly, to throw, drain, run, allow to seep, or otherwise discharge into the environment of the State organic or inorganic matter, including sewage, industrial wastes, and other wastes, except in compliance with a permit issued by the department.

(2) The permit requirements of subsection (A)(1), Section 48-1-100, and Section 48-1-110 do not apply to:

(a) discharges in a quantity below applicable threshold permitting requirements established by the department;

(b) discharges for which the department has no regulatory permitting program;

(c) discharges exempted by the department from permitting requirements; or

(d) normal farming, silviculture, aquaculture, ranching, and wildlife habitat management activities that are not prohibited by or otherwise subject to regulation.

(3) Subsection (A)(2) must not be construed to:

(a) impair or affect common law rights;

(b) repeal prohibitions or requirements of other statutory law or common law; or

(c) diminish the department's authority to abate public nuisances or hazards to public health or the environment, to abate pollution as defined in Section 48-1-10(7), or to respond to accidental discharges or spills.

(4) A person must first petition the department in writing for a declaratory ruling as to the applicability of a specific, existing regulatory program to a proposed or existing discharge into the environment, provided that the proposed or existing discharge is not exempt or excluded from permitting as is set forth in subsection (A)(2). The person proposing to emit or emitting such discharge must be named on and served with the petition. The department must, within sixty days after receipt of such petition, issue a declaratory ruling as to the applicability of such program to such discharge. If the department determines a permit is required under such program and that no exception or exclusion exists, including, but not limited to, the exceptions set forth in subsection (A)(2), the department must issue a declaration requiring the submission of an application to permit such discharge pursuant to the applicable permitting program. If the department further determines that immediate action is necessary to protect the public health or property due to such unpermitted discharge, the department may further declare the existence of an emergency and order such action as the department deems necessary to address the emergency. Any person to whom such emergency order is directed may apply directly to the Administrative Law Court for relief and must be afforded a hearing within forty-eight hours. Regardless of whether a hearing is held, the department must revoke all emergency orders as soon as conditions or operations change to the extent that an emergency no longer exists. A party contesting any department decision on a petition may request a contested case hearing in the Administrative Law Court.

Notwithstanding the administrative remedy provided for in this section, no private cause of action is created by or exists under this chapter.

(B)(1) A person who discharges organic or inorganic matter into the waters of this State as described in subsection (A) to the extent that the fish, shellfish, aquatic animals, wildlife, or plant life indigenous to or dependent upon the receiving waters or property is damaged or destroyed is liable to the State for the damages. The action must be brought by the State in its own name or in the name of the department.

(2) The amount of a judgment for damages recovered by the State, less costs, must be remitted to the agency, commission, department, or political subdivision of the State that has jurisdiction over the fish, shellfish, aquatic animals, wildlife, or plant life or property damaged or destroyed.

(3) The civil remedy provided in subsection (B)(2) is not exclusive, and an agency, commission, department, or political subdivision of the State with appropriate authority may undertake in its own name an action to recover damages independent of this subsection.

HISTORY: 1962 Code Section 63-195.12; 1952 Code Section 70-116; 1950 (46) 2153; 1969 (56) 764; 1970 (56) 2512; 1975 (59) 241; 2012 Act No. 198, Section 1, eff June 6, 2012.

SECTION 48-1-95. Wastewater utilities; procedures for significant spills.

(A) As used in this section:

(1) "Action plan" or "plan" means a schedule for implementing and completing repairs, upgrades, and improvements needed to minimize future repetitive significant spills of untreated or partially treated domestic sewage.

(2) "Capacity, Management, Operation, and Maintenance or 'CMOM' plan" means a comprehensive, dynamic framework for wastewater utilities to identify and incorporate widely accepted wastewater industry practices to:

- (a) better manage, operate, and maintain collection systems;
- (b) investigate capacity constrained areas of the collection system; and
- (c) respond to sanitary sewer overflow events.

(3) "Comprehensive review" or "review" means a complete technical assessment of the components and operation of a sewage system or its treatment works that are contributing to, or may be contributing to, repetitive significant spills of untreated or partially treated domestic sewage.

(4) "Department" means the Department of Health and Environmental Control.

(5) "Significant spill" means a net discharge from a wastewater utility of at least five thousand gallons of untreated or partially treated domestic sewage that could cause a serious adverse impact on the environment or public health. "Significant spill" does not include spills caused by a natural disaster, direct act of a third party, or other act of God.

(6) "Wastewater utility" or "utility" means the operator or owner of a sewage collection system or its treatment works providing sewer service to the public. "Wastewater utility" does not include manufacturers, electric utilities, agricultural operations, and wastewater treatment systems located on property owned by the federal government.

(B) Utilities must verbally notify the department of any significant spill within twenty-four hours and by written submission within five days.

(C) Upon receiving notice of a significant spill from a wastewater utility, the department must determine whether the responsible wastewater utility has had more than two significant spills per one hundred miles of its sewage collection system, in the aggregate and excluding private service laterals, during the twelve-month period up to and including the date of the significant spill.

(D)(1) If the wastewater utility has had more than two significant spills per one hundred miles of its aggregate collection system miles during a twelve-month period, the department shall issue an order directing the utility to complete a comprehensive review of the sewage system and treatment works facility identified pursuant to subsection (C), or if the wastewater utility has a Capacity, Management,

Operations, and Maintenance plan in place directing the utility to update this plan, the order must include, but is not limited to:

- (a) the submission of the findings of the comprehensive review or CMOM update; and
- (b) the required implementation of any plans to minimize the recurrence of such significant spills.

(2) The comprehensive review, pursuant to item (1), must be performed by a licensed South Carolina professional engineer.

(3) Unless the department's order is being appealed, the comprehensive review or CMOM update must be initiated by the wastewater utility's owner within two months of receiving an order from the department or, in the case of an appeal, within two months from the date the order becomes final and nonappealable.

(E) The department shall require that all wastewater utilities provide public notice of any significant spill of five thousand gallons or more within twenty-four hours of the discovery. Where the responsible wastewater utility does not provide this notice, in addition to any enforcement response, the department shall provide public notice of the significant spill.

(F) Nothing in this section contravenes the department's ability to undertake enforcement action under the Pollution Control Act, Chapter 1, Title 48, or any other state or federal law.

HISTORY: 2012 Act No. 109, Section 1, eff February 1, 2012.

SECTION 48-1-100. Permits for discharge of wastes or air contaminants; jurisdiction of department.

(A) A person affected by the provisions of this chapter or the rules and regulations adopted by the department desiring to make a new outlet or source, or to increase the quantity of discharge from existing outlets or sources, for the discharge of sewage, industrial waste or other wastes, or the effluent therefrom, or air contaminants, into the waters or ambient air of the State, first shall make an application to the department for a permit to construct and a permit to discharge from the outlet or source. If, after appropriate public comment procedures, as defined by department regulations, the department finds that the discharge from the proposed outlet or source will not be in contravention of provisions of this chapter, a permit to construct and a permit to discharge must be issued to the applicant. The department, if sufficient hydrologic and environmental information is not available for it to make a determination of the effect of the discharge, may require the person proposing to make the discharge to conduct studies that will enable the department to determine that its quality standards will not be violated.

(B) The Department of Health and Environmental Control is the agency of state government having jurisdiction over the quality of the air and waters of the State of South Carolina. It shall develop and enforce standards as may be necessary governing emissions or discharges into the air, streams, lakes, or coastal waters of the State, including waste water discharges.

(C) The Department of Health and Environmental Control is the agency of state government having jurisdiction over those matters involving real or potential threats to the health of the people of South Carolina, including the handling and disposal of garbage and refuse; septic tanks; and individual or privately-owned systems for the disposal of offal and human or animal wastes.

HISTORY: 1962 Code Section 63-195.13; 1952 Code Section 70-117; 1950 (46) 2153; 1964 (53) 2393; 1970 (56) 2512; 1971 (57) 709; 1973 (58) 788; 1992 Act No. 294, Section 1.

SECTION 48-1-110. Permits required for construction or alteration of disposal systems; classification; unlawful operations or discharges.

(a) It shall be unlawful for any person, until plans therefor have been submitted to and approved by the department and a written permit therefor shall have been granted to:

- (1) Construct or install a disposal system or source;

(2) Make any change in, addition to or extension of any existing disposal system or part thereof that would materially alter the method or the effect of treating or disposing of the sewage, industrial waste or other wastes;

(3) Operate such new disposal systems or new source, or any existing disposal system or source;

(4) Increase the load through existing outlets of sewage, industrial waste or other wastes into the waters of the State.

(b) The director of Health and Environmental Control shall classify all public wastewater treatment plants, giving due regard to size, types of work, character, and volume of waste to be treated, and the use and nature of the water resources receiving the plant effluent. Plants may be classified in a group higher than indicated at the discretion of the classifying officer by reason of the incorporation in the plant of complex features which cause the plant to be more difficult to operate than usual or by reason of a waste unusually difficult to treat, or by reason of conditions of flow or use of the receiving waters requiring an unusually high degree of plant operation control or for combinations of such conditions or circumstances. The classification is based on the following groups:

(1) For biological wastewater treatment plants: Group I-B. All wastewater treatment plants which include one or more of the following units: primary settling, chlorination, sludge removal, imhoff tanks, sand filters, sludge drying beds, land spraying, grinding, screening, oxidation, and stabilization ponds. Group II-B. All wastewater treatment plants which include one or more of the units listed in Group I-B and, in addition, one or more of the following units: sludge digestion, aerated lagoon, and sludge thickeners. Group III-B. All wastewater treatment plants which include one or more of the units listed in Groups I-B and II-B and, in addition, one or more of the following: trickling filters, secondary settling, chemical treatment, vacuum filters, sludge elutriation, sludge incinerator, wet oxidation process, contact aeration, and activated sludge (either conventional, modified, or high rate processes). Group IV-B. All wastewater treatment plants which include one or more of the units listed in Groups I-B, II-B, and III-B and, in addition, treat waste having a raw five-day biochemical oxygen demand of five thousand pounds a day or more.

(2) Effective July 1, 1987, for physical-chemical wastewater treatment plants: Group I-P/C. All wastewater treatment plants which include one or more of the following units: primary settling, equalization, pH control, and oil skimming. Group II-P/C. All wastewater treatment plants which include one or more of the units listed in Group I-P/C and, in addition, one or more of the following units: sludge storage, dissolved air flotation, and clarification. Group III-P/C. All wastewater treatment plants which include one or more of the units listed in Groups I-P/C and II-P/C and, in addition, one or more of the following: oxidation/reduction reactions, cyanide destruction, metals precipitation, sludge dewatering, and air stripping. Group IV-P/C. All wastewater treatment plants which include one or more of the units listed in Groups I-P/C, II-P/C, and III-P/C and, in addition, one or more of the following: membrane technology, ion exchange, tertiary chemicals, and electrochemistry.

(c) It shall be unlawful for any person or municipal corporation to operate a public wastewater treatment plant unless the operator-in-charge holds a valid certificate of registration issued by the Board of Certification of Environmental Systems Operators in a grade corresponding to the classification of the public wastewater treatment plant supervised by him, except as hereinafter provided.

(d) It shall be unlawful for any person to operate an approved waste disposal facility in violation of the conditions of the permit to construct or the permit to discharge.

(e) It shall be unlawful for any person, directly or indirectly, negligently or willfully, to discharge any air contaminant or other substance in the ambient air that shall cause an undesirable level.

HISTORY: 1962 Code Section 63-195.14; 1952 Code Section 70-118; 1950 (46) 2153; 1969 (56) 764; 1970 (56) 2512; 1974 (58) 2334; 1980 Act No. 319, Section 4; 1985 Act No. 172, Section 1; 1993 Act No. 181, Section 1173.

SECTION 48-1-115. Public notice of sludge storage facility construction permit.

The department shall provide public notice before issuing a construction permit pursuant to Regulation 61-67 for a facility that stores sludge or other residuals, or any combination of these, that is not located at the site of a wastewater or sludge treatment facility permitted pursuant to Regulation 61-67. Public notice must be provided in accordance with Regulation 61-9.

HISTORY: 2006 Act No. 329, Section 1.

SECTION 48-1-120. Determination and correction of undesirable level.

If the Department shall determine that an undesirable level exists, it shall take such action as necessary to control such condition.

The Department shall grant such time as is reasonable for the owner or operator of a source to correct the undesirable level, after taking all factors into consideration that are pertinent to the issue.

In making its order and determinations, the Department shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions involved including, but not limited to:

- (a) The character and degree of injury to, or interference with, the health and physical property of the people;
- (b) The social and economic value of the source of the undesirable levels;
- (c) The question of priority of location in the area involved; and
- (d) The technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from such source.

If the undesirable level is not corrected within the required time, then the Department shall issue an order to cease and desist from causing such emissions.

HISTORY: 1962 Code Section 63-195.15; 1965 (54) 687; 1970 (56) 2512.

SECTION 48-1-130. Order for discontinuance of discharge of wastes or air contaminants.

A person discharging sewage, industrial waste, or other waste or air contaminant into the environment of the State, in such manner or quantity as to cause pollution, without regard to the time that the discharge began or whether or not the continued discharge has been by virtue of a permit issued by the department, shall discontinue the discharge upon receipt of an order of the department. An order is subject to review pursuant to Section 44-1-60 and the Administrative Procedures Act. This section does not abrogate any of the department's emergency powers.

HISTORY: 1962 Code Section 63-195.16; 1952 Code Section 70-120; 1950 (46) 2153; 1970 (56) 2512; 2012 Act No. 198, Section 2, eff June 6, 2012.

SECTION 48-1-140. Revision or modification of national pollutant discharge elimination system or final compliance date for stationary source or class or sources of air pollution.

(a) The Department may, after notice and opportunity for a public hearing, revise or modify a national pollutant discharge elimination system permit in accordance with the procedures and criteria set out in Sections 301(c), 302 and 316(a) of the Federal Water Pollution Control Act Amendments of 1972.

(b) The Department may, after notice and opportunity for a public hearing, revise or modify a final compliance date for any stationary source or class or sources of air pollution whether contained in regulations or a compliance order, if the Department determines that

- (1) good faith efforts have been made to comply with such requirement before such date;
- (2) such source (or class) is unable to comply with such requirement because the necessary technology or other alternative methods of control are not reasonably available or have not been available for a sufficient period of time;

(3) any available alternative operating procedures and interim control measures have reduced or will reduce the impact of such source on public health;

(4) the continued operation of such source is essential to national security or to the public health or welfare.

Provided, however, that where the compliance date is one prescribed in the State Implementation Plan, the findings and recommendations of the Department shall be submitted to the Governor for transmittal to the Administrator of the Federal Environmental Protection Agency or his designated representative for his concurrence or rejection. Rejection by the administrator may constitute grounds for rejection of a request for modification or revisions of such compliance requirement.

(c) Any determination under items (a) or (b) of this section shall (1) be made on the record after notice to interested persons and opportunity for hearing, (2) be based upon a fair evaluation of the entire record at such hearing, and (3) include a statement setting forth in detail the findings and conclusions upon which the determination is based.

HISTORY: 1962 Code Section 63-195.17; 1965 (54) 687; 1970 (56) 2512; 1973 (58) 788; 1975 (59) 241; 1978 Act No. 463.

SECTION 48-1-150. Situations in which public hearing is required or authorized.

Public hearings shall be conducted by the Department prior to action by the Department in the classification of the waters or the adoption of standards of purity and quality thereof as provided by this chapter. The Department may conduct public hearings prior to action in the following cases, either of its own volition or upon the request of affected persons, (a) an order of determination of the Department requiring the discontinuance of discharge of sewage, industrial waste or other wastes into the waters of the State or air contaminant into the ambient air, (b) an order issuing, denying, revoking, suspending or modifying a permit, (c) a determination that a discharge constitutes pollution of waters of a marine district and (d) any other proceeding resulting in a finding of fact or determination that a discharge of air contaminants into the ambient air or sewage, industrial waste or other wastes into the waters of the State contravenes the standards established for such air and waters.

HISTORY: 1962 Code Section 63-195.18; 1952 Code, Section 70-125; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-160. Conduct of hearing; decision of department.

The hearings herein provided for may be conducted by the Department at a regular or special meeting or it may delegate to any member, to the executive director or to any employee or agent of the Department, the authority to conduct such hearings in the name of the Department at any time and place. But the Department shall make all necessary decisions as to the matter under consideration. Such decision may be based solely upon the record of any hearing conducted by the Department or by its duly authorized representative.

HISTORY: 1962 Code Section 63-195.19; 1952 Code Section 70-126; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-170. Records of hearings and decisions.

In any hearing held by the Department in which a quasi-judicial decision is rendered, the Department shall make a record of the decision and secure its prompt publication. The decision shall include a statement of the facts in controversy, the decision of the Department, the law or regulation upon which the decision is based and any other information deemed necessary.

To serve as a guide and precedent of the policy of the Department, the decisions shall be chronologically numbered according to date and compiled in an annual report similar in style to the reports of the Supreme Court. The reports of these decisions shall be made available to the public.

If any person concerned with such hearing requests it, a complete transcript of the testimony presented shall be made and filed.

HISTORY: 1962 Code Section 63-195.20; 1952 Code Section 70-127; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-180. Oaths; examination of witnesses; subpoenas.

In any such hearing, any member of the Department, the executive director or any employee or agent thereof authorized by the Department may administer oaths, examine witnesses and issue in the name of the Department notices of hearings and subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearing. Witnesses shall receive the same fees and mileage as in civil actions.

HISTORY: 1962 Code Section 63-195.21; 1952 Code Section 70-128; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-190. Refusal to obey notice of hearing or subpoena.

In case of refusal to obey a notice of hearing or subpoena, the court of common pleas shall have jurisdiction, upon application of the Department, to issue an order requiring such person to appear and testify or produce evidence, as the case may require, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

HISTORY: 1962 Code Section 63-195.22; 1952 Code Section 70-129; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-200. Appeals.

Any person may appeal from any order of the Department within thirty days after the filing of the order, to the court of common pleas of any county in which the pollution occurs. The Department shall thereupon certify to the court the record in the hearing. The court shall review the record and the regularity and the justification for the order, on the merits, and render judgment thereon as in ordinary appeals in equity. The court may order or permit further testimony on the merits of the case, in its discretion such testimony to be given either before the judge or referee by him appointed. From such judgment of the court an appeal may be taken as in other civil actions.

HISTORY: 1962 Code Section 63-195.23; 1952 Code Section 70-131; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-210. Duties of Attorney General and solicitors.

The Attorney General shall be the legal adviser of the Department and shall upon request of the Department institute injunction proceedings or any other court action to accomplish the purpose of this chapter. In the prosecution of any criminal action by the Attorney General and in any proceeding before a grand jury in connection therewith the Attorney General may exercise all the powers and perform all the duties which the solicitor would otherwise be authorized or required to exercise or perform and in such a

proceeding the solicitor shall exercise such powers and perform such duties as are requested of him by the Attorney General.

HISTORY: 1962 Code Section 63-195.24; 1952 Code Section 70-132; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-220. Institution of prosecutions.

Prosecutions for the violation of a final determination or order shall be instituted only by the Department or as otherwise provided for in this chapter.

HISTORY: 1962 Code Section 63-195.25; 1952 Code Sections 70-134, 70-135; 1950 (46) 2153; 1970 (56) 2512; 1975 (59) 241.

SECTION 48-1-230. Disposition of funds.

Any funds appropriated to or received by the Department shall be deposited in the State Treasury as provided by law. Such funds shall be paid out on warrants issued by the State as prescribed by law, but only on order of the authorized representatives of the Department and in accordance with an annual budget or amendments thereto approved by the Department at an official meeting, such order being the authority of the proper fiscal officials of the State for making payment.

HISTORY: 1962 Code Section 63-195.26; 1952 Code Section 70-136; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-240. Chapter remedies are cumulative; estoppel.

It is the purpose of this chapter to provide additional and cumulative remedies to abate the pollution of the air and waters of the State and nothing herein contained shall abridge or alter rights of action in the civil courts or remedies existing in equity or under the common law or statutory law, nor shall any provision in this chapter or any act done by virtue of this chapter be construed as estopping the State, persons or municipalities, as riparian owners or otherwise, in the exercise of their rights under the common law, statutory law or in equity to suppress nuisances or to abate any pollution.

HISTORY: 1962 Code Section 63-195.27; 1952 Code Section 70-137; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-250. No private cause of action created.

No private cause of action is created by or exists pursuant to this chapter. A determination by the department that pollution exists or a violation of a prohibition contained in this chapter has occurred, whether or not actionable by the State, creates no presumption of law or fact inuring to or for the benefit of a person other than the State.

HISTORY: 1962 Code Section 63-195.28; 1952 Code Section 70-138; 1950 (46) 2153; 1970 (56) 2512; 2012 Act No. 198, Section 3, eff June 6, 2012.

SECTION 48-1-260. Conditions within industrial plants and employer-employee relations not affected.

Nothing contained in this chapter shall be deemed to grant to the Department any authority to make any rule, regulation or determination or to enter any order with respect to air conditions existing solely within

the industrial boundaries of commercial and industrial plants, works or shops or to affect the relations between employers and employees with respect to or arising out of any air pollution within such boundaries.

HISTORY: 1962 Code Section 63-195.29; 1965 (54) 687; 1970 (56) 2512.

SECTION 48-1-270. Availability of records, reports, and information to the public; confidentiality of trade secrets.

Any records, reports or information obtained under any provision of this chapter shall be available to the public. Upon a showing satisfactory to the Department by any person that records, reports or information, or particular parts thereof, other than effluent or emission data, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Department shall consider such record, report or information or particular portion thereof confidential in the administration of this chapter.

HISTORY: 1962 Code Section 63-195.30; 1965 (54) 687; 1970 (56) 2512; 1973 (58) 788; 1975 (59) 241.

SECTION 48-1-280. Health laws not affected.

Nothing herein contained shall be construed to postpone, stay or abrogate the enforcement of the provisions of the public health laws of this State and rules and regulations promulgated hereunder in respect to discharges causing actual or potential hazards to public health nor to prevent the Department of Health and Environmental Control from exercising its right to prevent or abate nuisances.

HISTORY: 1962 Code Section 63-195.31; 1952 Code Section 70-139; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-290. Emergency orders.

Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or property, the Department, with concurrent notice to the Governor, may without notice or hearing issue an order reciting the existence of such an emergency and requiring that such action be taken as the Department deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the Department or by direction of the Governor shall be afforded a hearing within forty-eight hours. On the basis of such hearing the Department shall continue such order in effect, revoke it or modify it. Regardless of whether a hearing is held, the Department shall revoke all emergency orders as soon as conditions or operations change to the extent that an emergency no longer exists.

HISTORY: 1962 Code Section 63-195.32; 1970 (56) 2512; 1975 (59) 241.

SECTION 48-1-300. Certain violations excused.

The civil and criminal liabilities herein imposed upon persons violating the provisions hereof shall not be construed to include any violation which was caused by an act of God, war, strike, riot or other catastrophe as to which negligence on the part of such person was not the proximate cause.

HISTORY: 1962 Code Section 63-195.33; 1952 Code Section 70-122; 1950 (46) 2153; 1970 (56) 2512.

SECTION 48-1-310. Local air pollution control programs.

The governing body of any county is hereby authorized to establish, administer and enforce a local air pollution control program, subject to the approval of the Department. Such programs shall be formulated in accordance with standards and procedures adopted by the Department, and shall be subject to periodic review by the Department, which shall have the power to invalidate such programs if found to be unsatisfactory. County pollution control authorities, when constituted under this section, are hereby authorized to exercise in the geographic area involved all of the powers specified in this chapter, including the authority to adopt rules, regulations and procedures for the control of air pollution.

HISTORY: 1962 Code Section 63-195.34; 1970 (56) 2512.

SECTION 48-1-320. Penalties for violation of Pollution Control Act.

A person who wilfully or with gross negligence or recklessness violates a provision of this chapter or a regulation, permit, permit condition, or final determination or order of the department is guilty of a misdemeanor and, upon conviction, must be fined not less than five hundred dollars or more than twenty-five thousand dollars for each day's violation or be imprisoned for not more than two years, or both.

HISTORY: 1962 Code Section 63-195.35; 1952 Code Section 70-133; 1950 (46) 2153; 1964 (53) 2393; 1969 (56) 764; 1970 (56) 2512; 1973 (58) 788; 1975 (59) 241; 2001 Act No. 95, Section 1.

SECTION 48-1-330. Civil penalties.

Any 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.

HISTORY: 1962 Code Section 63-195.35:1; 1973 (58) 788; 1975 (59) 241.

SECTION 48-1-340. False statements, representations or certifications; falsifying, tampering with, or rendering inaccurate monitoring devices or methods.

Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be subject to the civil or criminal provisions contained in this chapter. For the purposes of this section the term "person" shall mean, in addition to the definition contained in Section 48-1-10, any responsible corporate officer.

HISTORY: 1975 (59) 241.

SECTION 48-1-350. Penalties constitute debts to State; liens; disposition of moneys collected.

All penalties assessed under this chapter are held as a debt payable to the State by the person against whom they have been charged and constitute a lien against the property of the person. One-half of the civil penalties collected inure to the benefit of the county. The criminal penalties collected pursuant to Section 48-1-320 must be collected and distributed pursuant to Section 14-1-205.

HISTORY: 1962 Code Section 63-195.36; 1970 (56) 2512; 1994 Act No. 497, Part II, Section 36O.

Attachment E
State Agency Rule Making and Adjudication of Contested Cases (SC Code Section 1-23-10 et seq.)

DISCLAIMER

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CHAPTER 23.

STATE AGENCY RULE MAKING AND ADJUDICATION OF CONTESTED CASES

ARTICLE 1.

STATE REGISTER AND CODE OF REGULATIONS

SECTION 1-23-10. Definitions.

As used in this article:

(1) "Agency" or "State agency" means each state board, commission, department, executive department or officer, other than the legislature, the courts, the South Carolina Tobacco Community Development Board, or the Tobacco Settlement Revenue Management Authority, authorized by law to make regulations or to determine contested cases;

(2) "Document" means a regulation, notice or similar instrument issued or promulgated pursuant to law by a state agency;

(3) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency;

(4) "Regulation" means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law. The term "regulation" includes general licensing criteria and conditions and the amendment or repeal of a prior regulation, but does not include descriptions of agency procedures applicable only to agency personnel; opinions of the Attorney General; decisions or orders in rate making, price fixing, or licensing matters; awards of money to individuals; policy statements or rules of local school boards; regulations of the National Guard; decisions, orders, or rules of the Board of Probation, Parole, and Pardon Services; orders of the supervisory or administrative agency of a penal, mental, or medical institution, in respect to the institutional supervision, custody, control, care, or treatment of inmates, prisoners, or patients; decisions of the governing board of a university, college, technical college, school, or other educational institution with regard to curriculum, qualifications for admission, dismissal and readmission, fees and charges for students, conferring degrees and diplomas, employment tenure and promotion of faculty and disciplinary proceedings; decisions of the Human Affairs Commission relating to firms or individuals; advisory opinions of agencies; and other agency actions relating only to specified individuals.

(5) "Promulgation" means final agency action to enact a regulation after compliance with procedures prescribed in this article.

(6) "Division" means the Division of Research and Statistical Services in the State Budget and Control Board.

(7) "Substantial economic impact" means a financial impact upon:

- (a) commercial enterprises;
- (b) retail businesses;
- (c) service businesses;
- (d) industry;
- (e) consumers of a product or service;
- (f) taxpayers; or
- (g) small businesses as defined in Section 1-23-270.

HISTORY: 1977 Act No. 176, Art. I, Section 1; 1992 Act No. 507, Section 2; 1996 Act No. 411, Section 1; 1999 Act No. 77, Section 2; 2000 Act No. 387, Part II, Section 69A.3; 2004 Act No. 231, Section 3, eff January 1, 2005.

SECTION 1-23-20. Custody, printing and distribution of documents charged to Legislative Council; establishment of State Register.

The Legislative Council is charged with the custody, printing and distribution of the documents required or authorized to be published in this article and with the responsibility for incorporating them into a State Register. Such Register shall include proposed as well as finally adopted documents required to be filed with the Council; provided, however, that publication of a synopsis of the contents of proposed regulations meets the requirements of this section. Additions to the State Register shall be published by the Legislative Council at least once every thirty days.

HISTORY: 1977 Act No. 176, Art. I, Section 2.

SECTION 1-23-30. Filing of documents with Legislative Council; public inspection; distribution.

The original and either two additional originals or two certified copies of each document authorized or required to be published in the State Register by this article shall be filed with the Legislative Council by the agency by which it is promulgated. Filing may be accomplished at all times when the Council office is open for official business.

The Council shall note upon each document filed the date and hour of filing and shall as soon as practicable publish such document in the State Register. Copies of all documents filed shall be available at the Council office for public inspection during office hours.

The Council shall transmit to the Clerk of Court of each county a copy of the State Register and all additions thereto when published. Clerks of Court shall maintain their copies of the Register in current form and provide for public inspection thereof. The Council shall transmit one original or certified copy of each document filed with the Council to the Department of Archives and History which shall be made available for public inspection in the office of the department.

HISTORY: 1977 Act No. 176, Art. I, Section 3.

SECTION 1-23-40. Documents required to be filed and published in State Register.

There shall be filed with the Legislative Council and published in the State Register:

(1) All regulations promulgated or proposed to be promulgated by state agencies which have general public applicability and legal effect, including all of those which include penalty provisions. Provided, however, that the text of regulations as finally promulgated by an agency shall not be published in the State Register until such regulations have been approved by the General Assembly in accordance with Section 1-23-120.

(2) Any other documents, upon agency request in writing. Comments and news items of any nature shall not be published in the Register.

HISTORY: 1977 Act No. 176, Art. I, Section 4.

SECTION 1-23-50. Legislative Council to establish procedures.

The Legislative Council shall establish procedures for carrying out the provisions of this article relating to the State Register and the form and filing of regulations. These procedures may provide among other things:

(1) The manner of certification of copies required to be filed under Section 1-23-40;

(2) The manner and form in which the documents or regulations shall be printed, reprinted, compiled, indexed, bound and distributed, including the compilation of the State Register ;

(3) The number of copies of the documents, regulations or compilations thereof, which shall be printed and compiled, the number which shall be distributed without charge to members of the General Assembly, officers and employees of the State or state agencies for official use and the number which shall be available for distribution to the public;

(4) The prices to be charged for individual copies of documents or regulations and subscriptions to the compilations and reprints and bound volumes of them.

HISTORY: 1977 Act No. 176, Art. I, Section 5; 1979 Act No. 188, Section 2.

SECTION 1-23-60. Effect of filing and of publication of documents and regulations; rebuttable presumption of compliance; judicial notice of contents.

A document or regulation required by this article to be filed with the Legislative Council shall not be valid against a person who has not had actual knowledge of it until the document or regulation has been filed with the office of the Legislative Council, printed in the State Register and made available for public inspection as provided by this article. Unless otherwise specifically provided by statute, filing and publication of a document or regulation in the State Register as required or authorized by this article is sufficient to give notice of the contents of the document or regulation to a person subject to or affected by it. The publication of a document filed in the office of the Legislative Council creates a rebuttable presumption:

(1) That it was duly issued, prescribed or promulgated subject to further action required under this article;

(2) That it was filed and made available for public inspection at the day and hour stated in the printed notation thereon required under Section 1-23-30;

(3) That the copy on file in the Legislative Council is a true copy of the original;

The contents of filed documents shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number or the numerical designation assigned to it by the Legislative Council.

HISTORY: 1977 Act No. 176, Art. I, Section 6.

SECTION 1-23-70. Duty of Attorney General.

The Attorney General shall be responsible for the interpretation of this article and for the compliance by agencies required to file documents with the Legislative Council under the provisions of this article and shall upon request advise such agencies of necessary procedures to insure compliance therewith.

HISTORY: 1977 Act No. 176, Art. I, Section 7.

SECTION 1-23-80. Costs incurred and revenues collected by Legislative Council.

The cost of printing, reprinting, wrapping, binding and distributing the documents, regulations or compilations thereof, including the State Register, and other expenses incurred by the Legislative Council in carrying out the duties placed upon it by this article shall be funded by the appropriations to the council in the annual state general appropriations act. All revenue derived from the sale of the documents and regulations shall be deposited in the general fund of the State.

HISTORY: 1977 Act No. 176, Art. I, Section 8.

SECTION 1-23-90. Complete codifications of documents; Code of State Regulations designated.

(a) The Legislative Council may provide for, from time to time as it considers necessary, the preparation and publication of complete codifications of the documents of each agency having general applicability and legal effect, issued or promulgated by the agency which are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions.

(b) A codification published under item (a) of this section shall be designated as the "Code of State Regulations". The Legislative Council may regulate the binding of the printed codifications into separate books with a view to practical usefulness and economical manufacture. Each book shall contain an explanation of its coverage and other aids to users that the Legislative Council may require. A general index to the entire Code of State Regulations may be separately printed and bound.

(c) The Legislative Council shall regulate the supplementation and republication of the printed codifications with a view to keeping the Code of State Regulations as current as practicable.

(d) The authority granted in this section is supplemental to and not in conflict with the establishment of the State Register as provided for in other provisions of this article.

HISTORY: 1977 Act No. 176, Art. I, Section 9.

SECTION 1-23-100. Exemptions for Executive Orders, proclamations or documents issued by Governor's Office; treatment of some Executive Orders for information purposes.

This article shall not apply to Executive Orders, proclamations or documents issued by the Governor's Office. However, Governor's Executive Orders, having general applicability and legal effect shall be transmitted by the Secretary of State to the Legislative Council to be published in a separate section of the State Register for information purposes only. Such orders shall not be subject to General Assembly approval.

HISTORY: 1977 Act No. 176, Art. I, Section 10.

SECTION 1-23-110. Procedures for publication of notice of proposed promulgation of regulations; public participation; contest of regulation for procedural defects.

(A) Before the promulgation, amendment, or repeal of a regulation, an agency shall:

(1) give notice of a drafting period by publication of a notice in the State Register. The notice must include:

(a) the address to which interested persons may submit written comments during the initial drafting period before the regulations are submitted as proposed;

(b) a synopsis of what the agency plans to draft;

(c) the agency's statutory authority for promulgating the regulation;

(2) submit to the division, no later than the date the notice required in item (3) is published in the State Register, a preliminary assessment report prepared in accordance with Section 1-23-115 on regulations having a substantial economic impact;

(3) give notice of a public hearing at which the agency will receive data, views, or arguments, orally and in writing, from interested persons on proposed regulations by publication of a notice in the State Register if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members. The notice must include:

(a) the address to which written comments must be sent and the time period of not less than thirty days for submitting these comments;

(b) the date, time, and place of the public hearing which must not be held sooner than thirty days from the date the notice is published in the State Register;

(c) a narrative preamble and the text of the proposed regulation. The preamble shall include a section-by-section discussion of the proposed regulation and a justification for any provision not required to maintain compliance with federal law including, but not limited to, grant programs;

(d) the statutory authority for its promulgation;

(e) a preliminary fiscal impact statement prepared by the agency reflecting estimates of costs to be incurred by the State and its political subdivisions in complying with the proposed regulation. A preliminary fiscal impact statement is not required for those regulations which are not subject to General Assembly review under Section 1-23-120;

(f) a summary of the preliminary assessment report submitted by the agency to the division and notice that copies of the preliminary report are available from the agency. The agency may charge a reasonable fee to cover the costs associated with this distribution requirement. A regulation that does not require an assessment report because it does not have a substantial economic impact, must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1-23-115(E) must include an explanation of the exemption;

(g) statement of the need and reasonableness of the regulation as determined by the agency based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11). At no time is an agency required to include items (4) through (8) in the reasonableness and need determination. However, comments related to items (4) through (8) received by the agency during the public comment periods must be made part of the official record of the proposed regulations.

(h) the location where a person may obtain from the agency a copy of the detailed statement of rationale as required by this item. For new regulations and significant amendments to existing regulations, an agency shall prepare and make available to the public upon request a detailed statement of rationale which shall state the basis for the regulation, including the scientific or technical basis, if any, and shall identify any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation. This subitem does not apply to regulations which are not subject to General Assembly review under Section 1-23-120.

(B) Notices required by this section must be mailed by the promulgating agency to all persons who have made timely requests of the agency for advance notice of proposed promulgation of regulations.

(C)(1) The agency shall consider fully all written and oral submissions respecting the proposed regulation.

(2) Following the public hearing and consideration of all submissions, an agency must not submit a regulation to the General Assembly for review if the regulation contains a substantive change in the content of regulation as proposed pursuant to subsection (A)(3) and the substantive change was not raised, considered, or discussed by public comment received pursuant to this section. The agency shall refile such a regulation for publication in the State Register as a proposed regulation pursuant to subsection (A)(3).

(D) A proceeding to contest a regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within one year from the effective date of the regulation.

HISTORY: 1977 Act No. 176, Art. I, Section 11; 1980 Act No. 442, Section 1; 1985 Act No. 190, Section 2; 1988 Act No. 605, Section 1; 1989 Act No. 91, Section 1; 1992 Act No. 507, Section 3; 1993 Act No. 181, Section 11; 1996 Act No. 411, Sections 2, 3; 2002 Act No. 231, Section 1; 2007 Act No. 104, Section 1, eff July 1, 2008.

SECTION 1-23-111. Regulation process; public hearings; report of presiding official; options upon unfavorable determination.

(A) When a public hearing is held pursuant to this article involving the promulgation of regulations by a department for which the governing authority is a single director, it must be conducted by an administrative law judge assigned by the chief judge. When a public hearing is held pursuant to this article involving the promulgation of regulations by a department for which the governing authority is a board or commission, it must be conducted by the board or commission, with the chairman presiding. The administrative law judge or chairman, as the presiding official, shall ensure that all persons involved in the public hearing on the regulation are treated fairly and impartially. The agency shall submit into the

record the jurisdictional documents, including the statement of need and reasonableness as determined by the agency based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11), except items (4) through (8), and any written exhibits in support of the proposed regulation. The agency may also submit oral evidences. Interested persons may present written or oral evidence. The presiding official shall allow questioning of agency representatives or witnesses, or of interested persons making oral statements, in order to explain the purpose or intended operation of the proposed regulation, or a suggested modification, or for other purposes if material to the evaluation or formulation of the proposed regulation. The presiding official may limit repetitive or immaterial statements or questions. At the request of the presiding official or the agency, a transcript of the hearing must be prepared.

(B) After allowing all written material to be submitted and recorded in the record of the public hearing no later than five working days after the hearing ends, unless the presiding official orders an extension for not more than twenty days, the presiding official shall issue a written report which shall include findings as to the need and reasonableness of the proposed regulation based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11), except items (4) through (8), and other factors as the presiding official identifies and may include suggested modifications to the proposed regulations in the case of a finding of lack of need or reasonableness.

(C) If the presiding official determines that the need for or reasonableness of the proposed regulation has not been established, the agency shall elect to:

- (a) modify the proposed regulation by including the suggested modifications of the presiding official;
- (b) not modify the proposed regulation in accordance with the presiding official's suggested modifications in which case the agency shall submit to the General Assembly, along with the promulgated regulation submitted for legislative review, a copy of the presiding official's written report; or
- (c) terminate the promulgation process for the proposed regulation by publication of a notice in the State Register and the termination is effective upon publication of the notice.

HISTORY: 1993 Act No. 181, Section 11A; 1996 Act No. 411, Section 4.

SECTION 1-23-115. Regulations requiring assessment reports; report contents; exceptions; preliminary assessment reports.

(A) Upon written request by two members of the General Assembly, made before submission of a promulgated regulation to the General Assembly for legislative review, a regulation that has a substantial economic impact must have an assessment report prepared pursuant to this section and in accordance with the procedures contained in this article. In addition to any other method as may be provided by the General Assembly, the legislative committee to which the promulgated regulation has been referred, by majority vote, may send a written notification to the promulgating agency informing the agency that the committee cannot approve the promulgated regulation unless an assessment report is prepared and provided to the committee. The written notification tolls the running of the one hundred-twenty-day legislative review period, and the period does not begin to run again until an assessment report prepared in accordance with this article is submitted to the committee. Upon receipt of the assessment report, additional days must be added to the days remaining in the one hundred-twenty-day review period, if less than twenty days, to equal twenty days. A copy of the assessment report must be provided to each member of the committee.

(B) A state agency must submit to the State Budget and Control Board, Division of Research and Statistical Services, a preliminary assessment report on regulations which have a substantial economic impact. Upon receiving this report the division may require additional information from the promulgating agency, other state agencies, or other sources. A state agency shall cooperate and provide information to the division on requests made pursuant to this section. The division shall prepare and publish a final assessment report within sixty days after the public hearing held pursuant to Section 1-23-110. The division shall forward the final assessment report and a summary of the final report to the promulgating agency.

(C) The preliminary and final assessment reports required by this section must disclose the effects of the proposed regulation on the public health and environmental welfare of the community and State and the effects of the economic activities arising out of the proposed regulation. Both the preliminary and final reports required by this section may include:

(1) a description of the regulation, the purpose of the regulation, the legal authority for the regulation, and the plan for implementing the regulation;

(2) a determination of the need for and reasonableness of the regulation as determined by the agency based on an analysis of the factors listed in this subsection and the expected benefit of the regulation;

(3) a determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost-effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose;

(4) the effect of the regulation on competition;

(5) the effect of the regulation on the cost of living and doing business in the geographical area in which the regulation would be implemented;

(6) the effect of the regulation on employment in the geographical area in which the regulation would be implemented;

(7) the source of revenue to be used for implementing and enforcing the regulation;

(8) a conclusion on the short-term and long-term economic impact upon all persons substantially affected by the regulation, including an analysis containing a description of which persons will bear the costs of the regulation and which persons will benefit directly and indirectly from the regulation;

(9) the uncertainties associated with the estimation of particular benefits and burdens and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens. A determination of the need for the regulation shall consider qualitative and quantitative benefits and burdens;

(10) the effect of the regulation on the environment and public health;

(11) the detrimental effect on the environment and public health if the regulation is not implemented.

An assessment report must not consider benefits or burdens on out-of-state political bodies or businesses. The assessment of benefits and burdens which cannot be precisely quantified may be expressed in qualitative terms. This subsection must not be interpreted to require numerically precise cost-benefit analysis. At no time is an agency required to include items (4) through (8) in a preliminary assessment report or statement of the need and reasonableness; however, these items may be included in the final assessment report prepared by the division.

(D) If information required to be included in the assessment report materially changes at any time before the regulation is approved or disapproved by the General Assembly, the agency must submit the corrected information to the division which must forward a revised assessment report to the Legislative Council for submission to the committees to which the regulation was referred during General Assembly review.

(E) An assessment report is not required on:

(1) regulations specifically exempt from General Assembly review by Section 1-23-120; however, if any portion of a regulation promulgated to maintain compliance with federal law is more stringent than federal law, then that portion is not exempt from this section;

(2) emergency regulations filed in accordance with Section 1-23-130; however, before an emergency regulation may be refiled pursuant to Section 1-23-130, an assessment report must be prepared in accordance with this section;

(3) regulations which control the hunting or taking of wildlife including fish or setting times, methods, or conditions under which wildlife may be taken, hunted, or caught by the public, or opening public lands for hunting and fishing.

HISTORY: 1992 Act No. 507, Section 1; 1993 Act No. 181, Section 12; 1996 Act No. 411, Sections 5, 6.

SECTION 1-23-120. Approval of regulations; submission to Legislative Council for submission to General Assembly; contents, requirements and procedures; compliance with federal law.

(A) All regulations except those specifically exempted pursuant to subsection (H) must be filed with Legislative Council for submission to the General Assembly for review in accordance with this article; however, a regulation must not be filed with Legislative Council for submission to the General Assembly more than one year after publication of the drafting notice initiating the regulation pursuant to Section 1-23-110, except those regulations requiring a final assessment report as provided in Sections 1-23-270 and 1-23-280.

(B) To initiate the process of review, the agency shall file with the Legislative Council for submission to the President of the Senate and the Speaker of the House of Representatives a document containing:

(1) a copy of the regulations promulgated;

(2) in the case of regulations proposing to amend an existing regulation or any clearly identifiable subdivision or portion of a regulation, the full text of the existing regulation or the text of the identifiable portion of the regulation; text that is proposed to be deleted must be stricken through, and text that is proposed to be added must be underlined;

(3) a request for review;

(4) a brief synopsis of the regulations submitted which explains the content and any changes in existing regulations resulting from the submitted regulations;

(5) a copy of the final assessment report and the summary of the final report prepared by the division pursuant to Section 1-23-115. A regulation that does not require an assessment report because the regulation does not have a substantial economic impact must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1-23-115(E) must include an explanation of the exemption;

(6) a copy of the fiscal impact statement prepared by the agency as required by Section 1-23-110;

(7) a detailed statement of rationale which states the basis for the regulation, including the scientific or technical basis, if any, and identifies any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation;

(8) a copy of the economic impact statement, as provided in Section 1-23-270(C)(1)(a); and

(9) a copy of the regulatory flexibility analysis, as provided in Section 1-23-270(C)(1)(b).

(C) Upon receipt of the regulation, the President and Speaker shall refer the regulation for review to the standing committees of the Senate and House which are most concerned with the function of the promulgating agency. A copy of the regulation or a synopsis of the regulation must be given to each member of the committee, and Legislative Council shall notify all members of the General Assembly when regulations are submitted for review either through electronic means or by addition of this information to the website maintained by the Legislative Services Agency, or both. The committees to which regulations are referred have one hundred twenty days from the date regulations are submitted to the General Assembly to consider and take action on these regulations. However, if a regulation is referred to a committee and no action occurs in that committee on the regulation within sixty calendar days of receipt of the regulation, the regulation must be placed on the agenda of the full committee beginning with the next scheduled full committee meeting.

(D) If a joint resolution to approve a regulation is not enacted within one hundred twenty days after the regulation is submitted to the General Assembly or if a joint resolution to disapprove a regulation has not been introduced by a standing committee to which the regulation was referred for review, the regulation is effective upon publication in the State Register. Upon introduction of the first joint resolution disapproving a regulation by a standing committee to which the regulation was referred for review, the one-hundred-twenty-day period for automatic approval is tolled. A regulation may not be filed under the emergency provisions of Section 1-23-130 if a joint resolution to disapprove the regulation has been introduced by a standing committee to which the regulation was referred. Upon a negative vote by either the Senate or House of Representatives on the resolution disapproving the regulation and the notification in writing of the negative vote to the Speaker of the House of Representatives and the President of the

Senate by the Clerk of the House in which the negative vote occurred, the remainder of the period begins to run. If the remainder of the period is less than ninety days, additional days must be added to the remainder to equal ninety days. The introduction of a joint resolution by the committee of either house does not prevent the introduction of a joint resolution by the committee of the other house to either approve or disapprove the regulations concerned. A joint resolution approving or disapproving a regulation must include:

(1) the synopsis of the regulation as required by subsection (B)(4);

(2) the summary of the final assessment report prepared by the division pursuant to Section 1-23-115 or, as required by subsection (B)(5), the statement or explanation that an assessment report is not required or is exempt.

(E) The one-hundred-twenty-day period of review begins on the date the regulation is filed with the President and Speaker. Sine die adjournment of the General Assembly tolls the running of the period of review, and the remainder of the period begins to run upon the next convening of the General Assembly excluding special sessions called by the Governor.

(F) Any member of the General Assembly may introduce a joint resolution approving or disapproving a regulation thirty days following the date the regulations concerned are referred to a standing committee for review and no committee joint resolution approving or disapproving the regulations has been introduced and the regulations concerned have not been withdrawn by the promulgating agency pursuant to Section 1-23-125, but the introduction does not toll the one-hundred-twenty-day period of automatic approval.

(G) A regulation is deemed withdrawn if it has not become effective, as provided in this article, by the date of publication of the next State Register published after the end of the two-year session in which the regulation was submitted to the President and Speaker for review. Other provisions of this article notwithstanding, a regulation deemed withdrawn pursuant to this subsection may be resubmitted by the agency for legislative review during the next legislative session without repeating the requirements of Section 1-23-110, 1-23-111, or 1-23-115 if the resubmitted regulation contains no substantive changes for the previously submitted version.

(H) General Assembly review is not required for regulations promulgated:

(1) to maintain compliance with federal law including, but not limited to, grant programs; however, the synopsis of the regulation required to be submitted by subsection (B)(4) must include citations to federal law, if any, mandating the promulgation of or changes in the regulation justifying this exemption. If the underlying federal law which constituted the basis for the exemption of a regulation from General Assembly review pursuant to this item is vacated, repealed, or otherwise does not have the force and effect of law, the state regulation is deemed repealed and without legal force and effect as of the date the promulgating state agency publishes notice in the State Register that the regulation is deemed repealed. The agency must publish the notice in the State Register no later than sixty days from the effective date the underlying federal law was rendered without legal force and effect. Upon publication of the notice, the prior version of the state regulation, if any, is reinstated and effective as a matter of law. The notice published in the State Register shall identify the specific provisions of the state regulation that are repealed as a result of the invalidity of the underlying federal law and shall provide the text of the prior regulation, if any, which is reinstated. The agency may promulgate additional amendments to the regulation by complying with the applicable requirements of this chapter;

(2) by the state Board of Financial Institutions in order to authorize state-chartered banks, state-chartered savings and loan associations, and state-chartered credit unions to engage in activities that are authorized pursuant to Section 34-1-110;

(3) by the South Carolina Department of Revenue to adopt regulations, revenue rulings, revenue procedures, and technical advice memoranda of the Internal Revenue Service so as to maintain conformity with the Internal Revenue Code as defined in Section 12-6-40;

(4) as emergency regulations under Section 1-23-130.

(I) For purposes of this section, only those calendar days occurring during a session of the General Assembly, excluding special sessions, are included in computing the days elapsed.

(J) Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall by July 1, 1997, and every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except that those regulations described in subsection (H) are not subject to this review. Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

(1) for which the agency intends to begin the process of repeal in accordance with this article;

(2) for which the agency intends to begin the process of amendment in accordance with this article; and

(3) which do not require repeal or amendment.

Nothing in this subsection may be construed to prevent an agency from repealing or amending a regulation in accordance with this article before or after it is identified in the report to the Code Commissioner.

HISTORY: 1977 Act No. 176, Art. I, Section 12; 1979 Act No. 188, Section 3; 1980 Act No. 442, Section 2; 1981 Act No. 21, Section 1; 1982 Act No. 414, Section 1; 1986 Act No. 414, Section 14; 1988 Act No. 605, Section 2; 1989 Act No. 91, Section 2; 1992 Act No. 507, Section 4; 1993 Act No. 181, Section 13; 1996 Act No. 411, Section 7; 1996 Act No. 411, Section 8; 1997 Act No. 114, Section 1; 2002 Act No. 231, Section 2; 2004 Act No. 231, Sections 4, 5, eff January 1, 2005; 2007 Act No. 104, Section 2, eff July 1, 2008; 2011 Act No. 33, Section 1, eff June 7, 2011; 2013 Act No. 31, Section 3, eff May 21, 2013.

SECTION 1-23-125. Approval, disapproval and modification of regulations.

(A) The legislative committee to which a regulation is submitted is not authorized to amend a particular regulation and then introduce a joint resolution approving the regulation as amended; however, this provision does not prevent the introduction of a resolution disapproving one or more of a group of regulations submitted to the committee and approving others submitted at the same time or deleting a clearly separable portion of a single regulation and approving the balance of the regulation in the committee resolution.

(B) If a majority of a committee determines that it cannot approve a regulation in the form submitted, it shall notify the promulgating agency in writing along with its recommendations as to changes that would be necessary to obtain committee approval. The agency may:

(1) withdraw the regulation from the General Assembly and resubmit it with the recommended changes to the Speaker and the Lieutenant Governor, but any regulation not resubmitted within thirty days is considered permanently withdrawn;

(2) withdraw the regulation permanently;

(3) take no action and abide by whatever action is taken or not taken by the General Assembly on the regulation concerned.

(C) The notification tolls the one-hundred-twenty-day period for automatic approval, and when an agency withdraws regulations from the General Assembly prior to the time a committee resolution to approve or disapprove the regulation has been introduced, the remainder of the period begins to run only on the date the regulations are resubmitted to the General Assembly. Upon resubmission of the regulations, additional days must be added to the days remaining in the review period for automatic approval, if less than twenty days, to equal twenty days, and a copy of the amended regulation must be given to each member of the committee. If an agency decides to take no action pursuant to subsection (B)(3), it shall notify the committee in writing and the remainder of the period begins to run only upon this notification.

(D) This section, as it applies to approval, disapproval, or modification of regulations, does not apply to joint resolutions introduced by other than the committees to which regulations are initially referred by the Lieutenant Governor or the Speaker of the House of Representatives.

(E) A regulation submitted to the General Assembly for review may be withdrawn by the agency for any reason. The regulation may be resubmitted by the agency for legislative review during the legislative session without repeating the requirements of Section 1-23-110, 1-23-111, or 1-23-115 if the resubmitted regulation contains no substantive changes from the previously submitted version.

HISTORY: 1979 Act No. 188, Section 1; 1980 Act No. 442, Section 3; 1982 Act No. 414, Section 1; 1979 Act No. 188, Section 1; 1980 Act No. 442, Section 3; 1982 Act No. 414, Section 1; 1988 Act No. 605, Section 3; 1996 Act No. 411, Section 9; 2007 Act No. 104, Section 3, eff July 1, 2008.

SECTION 1-23-126. Petition requesting promulgation, amendment or repeal of regulation.

An interested person may petition an agency in writing requesting the promulgation, amendment or repeal of a regulation. Within thirty days after submission of such petition, the agency shall either deny the petition in writing (stating its reasons for the denial) or shall initiate the action in such petition.

HISTORY: 1980 Act No. 442, Section 6.

SECTION 1-23-130. Emergency regulations.

(A) If an agency finds that an imminent peril to public health, safety, or welfare requires immediate promulgation of an emergency regulation before compliance with the procedures prescribed in this article or if a natural resources related agency finds that abnormal or unusual conditions, immediate need, or the state's best interest requires immediate promulgation of emergency regulations to protect or manage natural resources, the agency may file the regulation with the Legislative Council and a statement of the situation requiring immediate promulgation. The regulation becomes effective as of the time of filing.

(B) An emergency regulation filed under this section which has a substantial economic impact may not be refiled unless accompanied by the summary of the final assessment report prepared by the division pursuant to Section 1-23-115 and a statement of need and reasonableness is prepared by the agency pursuant to Section 1-23-111.

(C) If emergency regulations are either filed or expire while the General Assembly is in session, the emergency regulations remain in effect for ninety days only and may not be refiled; but if emergency regulations are both filed and expire during a time when the General Assembly is not in session they may be refiled for an additional ninety days.

(D) Emergency regulations and the agency statement as to the need for and reasonableness of immediate promulgation must be published in the next issue of the State Register following the date of filing. The summary of the final assessment report required for refiling emergency regulations pursuant to subsection (B) must also be published in the next issue of the State Register.

(E) An emergency regulation promulgated pursuant to this section may be permanently promulgated by complying with the requirements of this article.

HISTORY: 1977 Act No. 176, Art. I, Section 13; 1980 Act No. 442, Section 4; 1986 Act No. 478, Section 1; 1992 Act No. 507, Section 5; 1993 Act No. 181, Section 14.

SECTION 1-23-140. Duties of state agencies; necessity for public inspection.

(a) In addition to other requirements imposed by law, each agency shall:

(1) Adopt and make available for public inspection a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(2) Adopt and make available for public inspection a written policy statement setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(3) Make available for public inspection all final orders, decisions and opinions except as otherwise provided by law.

(b) No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose until it has been made available for public inspection as required by this article and Article 2. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

HISTORY: 1977 Act No. 176, Art. I, Section 14.

SECTION 1-23-150. Appeals contesting authority of agency to promulgate regulation.

(a) Any person may petition an agency in writing for a declaratory ruling as to the applicability of any regulation of the agency or the authority of the agency to promulgate a particular regulation. The agency shall, within thirty days after receipt of such petition, issue a declaratory ruling thereon.

(b) After compliance with the provisions of paragraph (a) of this section, any person affected by the provisions of any regulation of an agency may petition the Circuit Court for a declaratory judgment and/or injunctive relief if it is alleged that the regulation or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff or that the regulation exceeds the regulatory authority of the agency. The agency shall be made a party to the action.

HISTORY: 1977 Act No. 176, Art. I, Section 15; 1980 Act No. 442, Section 5.

SECTION 1-23-160. Prior filed regulations unaffected.

All regulations of state agencies promulgated according to law and filed with the Secretary of State as of January 1, 1977, shall have the full force and effect of law. All regulations of state agencies promulgated under this article and effective as of June 30, 1994 shall have the full force and effect of law.

HISTORY: 1977 Act No. 176, Art. I, Section 16; 1993 Act No. 181, Section 15.

ARTICLE 2.

SMALL BUSINESS REGULATORY FLEXIBILITY

SECTION 1-23-270. Small business defined; economic impact statements; impact reduction options; judicial review of agency compliance; periodic review of regulations.

(A) This article may be cited as the "South Carolina Small Business Regulatory Flexibility Act of 2004".

(B) As used in this article "small business" means a commercial retail service, industry entity, or nonprofit corporation, including its affiliates, that:

(1) is, if a commercial retail service or industry service, independently owned and operated; and

(2) employs fewer than one hundred full-time employees or has gross annual sales or program service revenues of less than five million dollars.

(C) Before an agency submits to the General Assembly for review a regulation that may have a significant adverse impact on small businesses, the agency, if directed by the Small Business Regulatory Review Committee, shall prepare:

(1) an economic impact statement that includes the following:

(a) an identification and estimate of the number of small businesses subject to the proposed regulation;

(b) the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(c) a statement of the economic impact on small businesses; and

(d) a description of less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation;

(2) a regulatory flexibility analysis in which the agency, where consistent with health, safety, and environmental and economic welfare, shall consider utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing a significant adverse impact on small businesses.

(D) The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

(1) establishment of less stringent compliance or reporting requirements for small businesses;

(2) establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(3) consolidation or simplification of compliance or reporting requirements for small businesses;

(4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(5) exemption of small businesses from all or a part of the requirements contained in the proposed regulation.

(E) A small business that is adversely impacted or aggrieved in connection with the promulgation of a regulation is entitled to judicial review of agency compliance with the requirements of this article. A small business may seek that review during the period beginning on the date of final agency action.

(F)(1) Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall by July 1, 1997, and every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except that those regulations described in Section 1-23-120(H) are not subject to this review. Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

(a) for which the agency intends to begin the process of repeal in accordance with this article;

(b) for which the agency intends to begin the process of amendment in accordance with this article; and

(c) which do not require repeal or amendment.

Nothing in this subsection may be construed to prevent an agency from repealing or amending a regulation in accordance with Article 1 before or after it is identified in the report to the Code Commissioner.

(2) Regulations that take effect on or after the effective date of this article must be reviewed within five years of the publication of the final regulation in the State Register and every five years after that to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

(3) In reviewing regulations to minimize their economic impact on small businesses, the agency shall consider the:

(a) continued need for the regulation;

(b) nature of complaints or comments received concerning the regulation from the public;

(c) complexity of the regulation;

(d) extent to which the regulation overlaps, duplicates, or conflicts with other federal, state, and local governmental regulations; and

(e) length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005; 2007 Act No. 104, Section 4, eff July 1, 2008.

SECTION 1-23-280. Small Business Regulatory Review Committee; membership; terms.

(A)(1) There is established a Small Business Regulatory Review Committee within the South Carolina Department of Commerce. For purposes of this article, "committee" is the Small Business Regulatory Review Committee and "department" is the South Carolina Department of Commerce.

(2) The duties of the committee, in determining if a proposed permanent regulation has a significant adverse impact on small businesses, are to:

(a) direct the promulgating agency to prepare the regulatory flexibility analysis described in Section 1-23-270(C)(2) no later than the end of the public comment period that follows the notice of proposed regulation, as provided in Section 1-23-110(A)(3); and

(b) request, at the committee's discretion, the Office of Research and Statistics of the Budget and Control Board to prepare a final assessment report, as provided in Section 1-23-115(B), of the proposed permanent regulation no later than the end of the public comment period that follows the notice of proposed regulation, as provided in Section 1-23-110(A)(3). The committee may request a final assessment report from the Office of Research and Statistics only in cases where the committee determines that information in addition to the agency's economic impact as provided in Section 1-23-270(C)(1) is critical in the committee's determination that a proposed permanent regulation has a significant adverse impact on small business. The Office of Research and Statistics:

(i) within the review and comment period, shall perform a final assessment report of the regulation on small businesses within sixty days of a request for assessment by the committee, and the promulgating agency has sixty days to complete a regulatory flexibility analysis; and

(ii) may request additional information from the agency. The sixty-day final assessment report deadline must be tolled until the time that the Office of Research and Statistics receives the requested additional information. The one-year deadline for submission of regulations to the General Assembly as provided in Section 1-23-120(A) also must be tolled until the time that both analyses are prepared and presented to the committee; and

(c) submit to the promulgating agency, no later than thirty days after receipt of the regulatory flexibility analysis prepared by the promulgating agency and, if requested by the committee, after receipt of the final assessment report prepared by the Office of Research and Statistics, a written statement advising the agency that a proposed permanent regulation has a significant adverse impact on small business.

(3) This subsection does not limit the committee's ability to petition a state agency to amend, revise, or revoke an existing regulation.

(4) Staff support for the committee must be provided by the department. The department shall act only as a coordinator for the committee, and may not provide legal counsel for the committee.

(B) The committee shall consist of eleven members, appointed as follows:

(1) five members to be appointed by the Governor;

(2) three members to be appointed by the President Pro Tempore of the Senate; and

(3) three members to be appointed by the Speaker of the House of Representatives.

(C) In addition, the Chairman of the Labor, Commerce and Industry Committee of the South Carolina Senate and the Chairman of the Labor, Commerce and Industry Committee of the South Carolina House of Representatives, or their designees, shall serve as nonvoting, ex officio members of the committee. During the committee review process, the director or his designee, of the promulgating agency shall be available at the request of the committee for comment on the proposed regulation.

(D) Appointments to the committee must be representative of a variety of small businesses in this State. All appointed members shall be either current or former owners or officers of a small business.

(E) The initial appointments to the committee must be made within sixty days from the effective date of this act. The department shall provide the name and address of each appointee to the Governor, the

President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Chairmen of the House and Senate Labor, Commerce and Industry Committees.

(F)(1) Members initially appointed to the committee shall serve for terms ending December 31, 2005. Thereafter, appointed members shall serve two-year terms that expire on December thirty-first of the second year.

(2) The Governor shall appoint the initial chairman of the committee from the appointed members for a term ending December 31, 2006, and shall appoint subsequent chairs of the committee from the appointed members for two-year terms that expire on December thirty-first of the second year.

(3) The committee shall meet as determined by its chairman.

(4) A majority of the voting members of the committee constitutes a quorum to do business. The concurrence of a majority of the members of the committee present and voting is necessary for an action of the committee to be valid.

(5) An appointed committee member may not serve more than three consecutive terms.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005.

SECTION 1-23-290. Petition opposing regulation having significant adverse impact; determination of whether impact statement or public hearing addressed economic impact; waiver or reduction of administrative penalties.

(A) For promulgated regulations, the committee may file a written petition with the agency that has promulgated the regulations opposing all or part of a regulation that has a significant adverse impact on small business.

(B) Within sixty days after the receipt of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business or if conditions justifying the regulation have changed. The agency shall submit a written response of its determination to the committee within sixty days after receipt of the petition. If the agency determines that the petition merits the amendment, revision, or revocation of a regulation, the agency may initiate proceedings in accordance with the applicable requirements of the Administrative Procedures Act.

(C) If the agency determines that the petition does not merit the amendment or repeal of a regulation, the committee promptly shall convene a meeting for the purpose of determining whether to recommend that the agency initiate proceedings to amend or repeal the regulation in accordance with the Administrative Procedures Act. The review must be based upon the actual record presented to the agency. The committee shall base its recommendation on any of the following reasons:

(1) the actual impact on small business was not reflected in, or significantly exceeded, the economic impact statement formulated by the Office of Research and Statistics, pursuant to Section 1-23-280(A)(2);

(2) the actual impact was not previously considered by the agency in its economic impact statement formulated pursuant to Section 1-23-270(C) or its regulatory flexibility analysis formulated pursuant to Section 1-23-280(A)(2); or

(3) the technology, economic conditions, or other relevant factors justifying the purpose for the regulations have changed or no longer exist.

(D) If the committee recommends that an agency initiate regulation proceedings for a reason provided in subsection (C), the committee shall submit to the Speaker of the House of Representatives and the President Pro Tempore of the Senate an evaluation report and the agency's response as provided in Section 1-23-290(B). The General Assembly may take later action in response to the evaluation report and the agency's response as the General Assembly finds appropriate.

(E)(1) Notwithstanding another provision of law, an agency authorized to assess administrative penalties or administrative fines upon a business may waive or reduce an administrative penalty or administrative fine for a violation of a regulation by a small business if the:

(a) small business corrects the violation within thirty days or less after receipt of a notice of violation or citation; or

(b) violation was the result of an excusable misunderstanding of the agency's interpretation of a regulation.

(2) Item (1) does not apply if:

(a) a small business has been notified previously of the violation of a regulation by the agency pursuant to Section 1-23-290(E)(1) and has been given an opportunity to correct the violation on a previous occasion;

(b) a small business fails to exercise good faith in complying with the regulation;

(c) a violation involves wilful or criminal conduct;

(d) a violation results in imminent or adverse health, safety, or environmental impact; or

(e) the penalty or fine is assessed pursuant to a federal law or regulation, for which a waiver or reduction is not authorized by the federal law or regulation.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005.

SECTION 1-23-300. Applicability.

This article does not apply to emergency regulations promulgated pursuant to Section 1-23-130 or regulations promulgated pursuant to Chapter 9 of Title 46 or Chapter 4 of Title 47 or to proposed regulations by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as state legislative or federally mandated provisions that do not allow discretion to consider less restrictive alternatives or to a federal regulation that has gone through the federal regulatory flexibility act, if the federal review process is the same as or is stricter than the requirements of these sections.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005.

ARTICLE 3.

ADMINISTRATIVE PROCEDURES

SECTION 1-23-310. Definitions.

As used in this article:

(1) "Administrative law judge" means a judge of the South Carolina Administrative Law Court created pursuant to Section 1-23-500;

(2) "Agency" means each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases;

(3) "Contested case" means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing;

(4) "License" includes the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes;

(5) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

HISTORY: 1977 Act No. 176, Art. II, Section 1; 1980 Act No. 442, Section 7; 1993 Act No. 181, Section 16; 1998 Act No. 359, Section 1; 2008 Act No. 334, Section 3, eff June 16, 2008.

SECTION 1-23-320. Notice and hearing in contested case; depositions; subpoenas; informal disposition; content of record.

(A) In a contested case, all parties must be afforded an opportunity for hearing after notice of not less than thirty days, except in proceedings before the Department of Employment and Workforce, which are governed by the provisions of Section 41-35-680.

(B) The notice must include a:

- (1) statement of the time, place, and nature of the hearing;
- (2) statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) reference to the particular sections of the statutes and rules involved;
- (4) short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

(C) A party to these proceedings may cause to be taken the depositions of witnesses within or without the State and either by commission or de bene esse. Depositions must be taken in accordance with and subject to the same provisions, conditions, and restrictions as apply to the taking of like depositions in civil actions at law in the court of common pleas; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification of it, and matters of practice relating to it apply.

(D) The agency hearing a contested case may issue subpoenas in the name of the agency for the attendance and testimony of witnesses and the production and examination of books, papers, and records on its own behalf or, upon request, on behalf of another party to the case.

A party to the proceeding may seek enforcement of or relief from an agency subpoena before the Administrative Law Court pursuant to Section 1-23-600(F).

(E) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

(F) Unless precluded by law, informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default.

(G) The record in a contested case must include:

- (1) all pleadings, motions, intermediate rulings, and depositions;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on the contested case;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing.

(H) Oral proceedings or any part of the oral proceedings must be transcribed on request of a party.

(I) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

HISTORY: 1977 Act No. 176, Art. II, Section 2; 1983 Act No. 56, Section 1; 1993 Act No. 181, Section 17; 1998 Act No. 359, Section 2; 2008 Act No. 334, Section 4, eff June 16, 2008.

SECTION 1-23-330. Evidentiary matters in contested cases.

In contested cases:

- (1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Except in proceedings before the Industrial Commission the rules of evidence as applied in civil cases in the court of common pleas shall be followed. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;

(3) Any party may conduct cross-examination;

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

HISTORY: 1977 Act No. 176, Art. II, Section 3; 1979 Act No. 188, Section 6.

SECTION 1-23-340. Procedure in contested cases where majority of those who are to render final decision are unfamiliar with case.

When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or reviewed the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section.

HISTORY: 1977 Act No. 176, Art. II, Section 4.

SECTION 1-23-350. Final decision or order in contested case.

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

HISTORY: 1977 Act No. 176, Art. II, Section 5.

SECTION 1-23-360. Communication by members or employees of agency assigned to decide contested case.

Unless required for the disposition of *ex parte* matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member:

(1) May communicate with other members of the agency; and

(2) May have the aid and advice of one or more personal assistants.

Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than two hundred fifty dollars or imprisoned for not more than six months.

HISTORY: 1977 Act No. 176, Art. II, Section 6.

SECTION 1-23-370. Procedures regarding issuance, denial or renewal of licenses.

(a) When the grant, denial or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this article and Article 1 concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

HISTORY: 1977 Act No. 176, Art. II, Section 7.

SECTION 1-23-380. Judicial review upon exhaustion of administrative remedies.

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.

(1) Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency and all parties of record.

(2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure.

(3) If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings

and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.

(4) The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate.

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

HISTORY: 1977 Act No. 176, Art. II, Section 8; 1993 Act No. 181, Section 18; 2006 Act No. 387, Section 2, eff July 1, 2006; 2008 Act No. 334, Section 5, eff June 16, 2008.

SECTION 1-23-390. Supreme Court review.

An aggrieved party may obtain a review of a final judgment of the circuit court or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases.

HISTORY: 1977 Act No. 176, Art. II, Section 9; 1999 Act No. 55, Section 4; 2006 Act No. 387, Section 3, eff July 1, 2006.

SECTION 1-23-400. Application of article.

The provisions of this article shall not apply to any matters pending on June 13, 1977. The provisions of Sections 1-23-360 and 1-23-370 shall not apply to any agency which under existing statutes have established and follow notice and hearing procedures which are in compliance with such sections.

HISTORY: 1977 Act No. 176, Art. II, Section 10.

ARTICLE 5.

SOUTH CAROLINA ADMINISTRATIVE LAW COURT

SECTION 1-23-500. South Carolina Administrative Law Court created; number of judges.

There is created the South Carolina Administrative Law Court, which is an agency and a court of record within the executive branch of the government of this State. The court shall consist of a total of six administrative law judges. The administrative law judges shall be part of the state employees retirement system.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Section 9; 2004 Act No. 202, Section 1, eff April 26, 2004.

SECTION 1-23-505. Definitions.

As used in this article:

(1) "Administrative law judge" means a judge of the South Carolina Administrative Law Court created pursuant to Section 1-23-500.

(2) "Agency" means a state agency, department, board, or commission whose action is the subject of a contested case hearing or an appellate proceeding heard by an administrative law judge, or a public hearing on a proposed regulation presided over by an administrative law judge.

(3) "Contested case" means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing.

(4) "License" includes the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes.

(5) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

HISTORY: 2008 Act No. 334, Section 1, eff June 16, 2008.

SECTION 1-23-510. Election of judges; terms.

(A) The judges of the division must be elected by the General Assembly in joint session, for a term of five years and until their successors are elected and qualify; provided, that of those judges initially elected, the chief judge, elected to Seat 1 must be elected for a term of five years, the judge elected to Seat 2 must be elected for a term of three years, the judge elected to Seat 3 must be elected for a term of one year. The remaining judges of the division must be elected for terms of office to begin February 1, 1995, for terms of five years and until their successors are elected and qualify; provided, that those judges elected to seats whose terms of office are to begin on February 1, 1995, to Seat 4 must be initially elected for a term of five years, the judge elected to Seat 5 must be initially elected for a term of three years, and the judge elected to Seat 6 must be initially elected for a term of one year. The terms of office of the judges of the division for Seats 1, 2, and 3 shall begin on March 1, 1994. The terms of office of the judges of the division for Seats 4, 5, and 6 shall begin on February 1, 1995. The terms of office of each of the seats shall terminate on the thirtieth day of June in the final year of the term for the respective seats.

(B) In electing administrative law judges, race, gender, and other demographic factors including age, residence, type of practice, and law firm size should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State.

(C) Before election as an administrative law judge, a candidate must undergo screening pursuant to the provisions of Section 2-19-10, et seq.

(D) Each seat on the division must be numbered. Elections are required to be for a specific seat. The office of chief administrative law judge is a separate and distinct office for the purpose of an election.

(E) In the event that there is a vacancy in the position of the chief administrative law judge or for any reason the chief administrative law judge is unable to act, his powers and functions must be exercised by the most senior administrative law judge as determined by the date of their election to the division.

HISTORY: 1993 Act No. 181, Section 19; 1999 Act No. 39, Section 1.

SECTION 1-23-520. Eligibility for office.

No person is eligible for the office of law judge of the division who does not at the time of his election meet the qualification for justices and judges as set forth in Article V of the Constitution of this State.

HISTORY: 1993 Act No. 181, Section 19.

SECTION 1-23-525. Members of General Assembly disqualified for office of law judge.

No member of any General Assembly who is not otherwise prohibited from being elected to an administrative law judge position may be elected to such position while he is a member of the General Assembly and for a period of four years after he ceases to be a member of the General Assembly.

HISTORY: 1993 Act No. 181, Section 19.

SECTION 1-23-530. Oath of office.

The judges of the division shall qualify after the date of their election by taking the constitutional oath of office.

HISTORY: 1993 Act No. 181, Section 19.

SECTION 1-23-535. Official seal.

The Administrative Law Court shall have a seal with a suitable inscription, an impression of which must be filed with the Secretary of State.

HISTORY: 2008 Act No. 334, Section 2, eff June 16, 2008.

SECTION 1-23-540. Compensation; full-time position.

The chief judge (Seat 1) shall receive as annual salary equal to ninety percent of that paid to the circuit court judges of this State. The remaining judges shall receive as annual salary equal to eighty percent of that paid to the circuit court judges of this State. They are not allowed any fees or perquisites of office, nor may they hold any other office of honor, trust, or profit. Administrative law judges in the performance of their duties are also entitled to that per diem, mileage, expenses, and subsistence as is authorized by law for circuit court judges.

Each administrative law judge shall devote full time to his duties as an administrative law judge, and may not practice law during his term of office, nor may he during this term be a partner or associate with anyone engaged in the practice of law in this State.

HISTORY: 1993 Act No. 181, Section 19.

SECTION 1-23-550. Vacancies.

All vacancies in the office of administrative law judge must be filled in the manner of original appointment. When a vacancy is filled, the judge elected shall hold office only for the unexpired term of his predecessor.

HISTORY: 1993 Act No. 181, Section 19.

SECTION 1-23-560. Application of Code of Judicial Conduct; enforcement by State Ethics Commission; attending judicial-related functions.

Administrative law judges are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The sole grounds for discipline and sanctions for administrative law judges are those contained in the Code of Judicial Conduct in Rule 502, Rule 7 of the South Carolina Appellate Court Rules. The State Ethics Commission, which is responsible for enforcement and administration of those rules shall use the procedure contained in Section 8-13-320. Notwithstanding another provision of law, an administrative law judge and the judge's spouse or guest may accept an invitation to attend a judicial-related or bar-related function, or an activity devoted to the improvement of the law, legal system, or the administration of justice.

HISTORY: 1993 Act No. 181, Section 19; 2008 Act No. 334, Section 6, eff June 16, 2008.

SECTION 1-23-570. Chief Judge responsible for administration of division.

The Chief Judge of the Administrative Law Judge Division is responsible for the administration of the division, including budgetary matters, assignment of cases, and the administrative duties and responsibilities of the support staff. The chief judge shall assign judges of the division to hear all cases of the various state departments and commissions for which it is responsible on a general rotation and interchange basis by scheduling and assigning administrative law judges based upon subject matter no less frequently than every six months.

HISTORY: 1993 Act No. 181, Section 19; 1998 Act No. 359, Section 3.

SECTION 1-23-580. Clerk of division; assistants to administrative law judges; other staff.

(A) A clerk of the division, to be appointed by the chief judge, must be appointed and is responsible for the custody and keeping of the records of the division. The clerk of the division shall perform those other duties as the chief judge may prescribe.

(B) Each administrative law judge may appoint, hire, contract, and supervise an administrative assistant as individually allotted and authorized in the annual general appropriations act.

(C) The other support staff of the division is as authorized by the General Assembly in the annual general appropriations act and shall be hired, contracted, and supervised by the chief judge. The division may engage stenographers for the transcribing of the proceedings in which an administrative law judge presides. It may contract for these stenographic functions, or it may use stenographers provided by the agency or commission.

HISTORY: 1993 Act No. 181, Section 19; 1998 Act No. 359, Section 4.

SECTION 1-23-590. Appropriation of funds.

The General Assembly in the annual general appropriations act shall appropriate those funds necessary for the operation of the Administrative Law Judge Division.

HISTORY: 1993 Act No. 181, Section 19.

SECTION 1-23-600. Hearings and proceedings.

(A) An administrative law judge shall preside over all hearings of contested cases as defined in Section 1-23-505 or Article I, Section 22, Constitution of the State of South Carolina, 1895, involving the departments of the executive branch of government as defined in Section 1-30-10 in which a single hearing officer, or an administrative law judge, is authorized or permitted by law or regulation to hear and decide these cases, except those arising under the:

- (1) Consolidated Procurement Code;
- (2) Public Service Commission;
- (3) Department of Employment and Workforce;
- (4) Workers' Compensation Commission, except as provided in Section 42-15-90; or

(5) other cases or hearings which are prescribed for or mandated by federal law or regulation, unless otherwise by statute or regulation specifically assigned to the jurisdiction of the Administrative Law Court. Unless otherwise provided by statute, the standard of proof in a contested case is by a preponderance of the evidence. The South Carolina Rules of Evidence apply in all contested case proceedings before the Administrative Law Court.

(B) All requests for a hearing before the Administrative Law Court must be filed in accordance with the court's rules of procedure. A party that files a request for a hearing with the Administrative Law Court must simultaneously serve a copy of the request on the affected agency. Upon the filing of the request, the chief judge shall assign an administrative law judge to the case. Notice of the contested case hearing must be issued in accordance with the rules of procedure of the Administrative Law Court.

(C) A full and complete record must be kept of all contested cases and regulation hearings before an administrative law judge. All testimony must be reported, but need not be transcribed unless a transcript is requested by a party. The party requesting a transcript is responsible for the costs involved. Proceedings before administrative law judges are open to the public unless confidentiality is allowed or required by law. The presiding administrative law judge shall render the decision in a written order. The decisions or orders of administrative law judges are not required to be published but are available for public inspection unless confidentiality is allowed or required by law.

(D) An administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of the State of South Carolina, 1895, or another law, except that an appeal from a final order of the Public Service Commission and the State Ethics Commission is to the Supreme Court or the court of appeals as provided in the South Carolina Appellate Court Rules, an appeal from the Procurement Review Panel is to the circuit court as provided in Section 11-35-4410, and an appeal from the Workers' Compensation Commission is to the court of appeals as provided in Section 42-17-60. An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A) or an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.

(E) Review by an administrative law judge of a final decision in a contested case, heard in the appellate jurisdiction of the Administrative Law Court, must be in the same manner as prescribed in Section 1-23-380 for judicial review of final agency decisions with the presiding administrative law judge exercising the same authority as the court of appeals, provided that a party aggrieved by a final decision of an administrative law judge is entitled to judicial review of the decision by the court of appeals pursuant to the provisions of Section 1-23-610.

(F) Notwithstanding another provision of law, a state agency authorized by law to seek injunctive relief may apply to the Administrative Law Court for injunctive or equitable relief pursuant to Section 1-23-630. The provisions of this section do not affect the authority of an agency to apply for injunctive relief as part of a civil action filed in the court of common pleas.

(G) Notwithstanding another provision of law, the Administrative Law Court has jurisdiction to review and enforce an administrative process issued by an agency or by a department of the executive branch of government, as defined in Section 1-30-10, such as a subpoena, administrative search warrant, cease and desist order, or other similar administrative order or process. A department or agency of the executive

branch of government authorized by law to seek an administrative process may apply to the Administrative Law Court to issue or enforce an administrative process. A party aggrieved by an administrative process issued by a department or agency of the executive branch of government may apply to the Administrative Law Court for relief from the process as provided in the Rules of the Administrative Law Court.

(H)(1) This subsection applies to timely requests for a contested case hearing pursuant to this section of decisions by departments governed by a board or commission authorized to exercise the sovereignty of the State.

(2) A request for a contested case hearing for an agency order stays the order. A request for a contested case hearing for an order to revoke or suspend a license stays the revocation or suspension. A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing for a decision to issue a new license stays all actions for which the license is a prerequisite; however, matters not affected by the request may not be stayed by the filing of the request. If the request is filed for a subsequent license related to issues substantially similar to those considered in a previously licensed matter, the license may not be automatically stayed by the filing of the request. If the requesting party asserts in the request that the issues are not substantially similar to those considered in a previously licensed matter, then the license must be stayed until further order of the Administrative Law Court. Requests for contested case hearings challenging only the amount of fines or penalties must be deemed not to affect those portions of orders imposing substantive requirements.

(3) The general rule of subsection (H)(2) does not stay emergency actions taken by an agency pursuant to an applicable statute or regulation.

(4) After a contested case is initiated before the Administrative Law Court, a party may move before the presiding administrative law judge to lift the stay imposed pursuant to this subsection. Upon motion by any party, the court shall lift the stay for good cause shown or if no irreparable harm will occur, then the stay shall be lifted. A hearing must be held within thirty days after the motion is filed with the court and served upon the parties to lift the automatic stay or for a determination of the applicability of the automatic stay. The judge must issue an order no later than fifteen business days after the hearing is concluded.

(5) A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals.

(6) Nothing contained in this subsection constitutes a limitation on the authority of the Administrative Law Court to impose a stay as otherwise provided by statute or by rule of court.

(I) If a final order of the Administrative Law Court is not appealed in accordance with the provisions of Section 1-23-610, upon request of a party to the proceedings, the clerk of the Administrative Law Court shall file a certified copy of the final order with a clerk of the circuit court, as requested, or court of competent jurisdiction, as requested. After filing, the certified order has the same effect as a judgment of the court where filed and may be recorded, enforced, or satisfied in the same manner as a judgment of that court.

(J) If an attorney of record is called to appear in actions pending in other tribunals in this State, the action in the Administrative Law Court has priority as is appropriate. Courts and counsel have the obligation to adjust schedules to accord with the spirit of comity between the Administrative Law Court and other state courts.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Sections 1, 5; 1995 Act No. 92, Section 1; 2004 Act No. 202, Section 2, eff April 26, 2004; 2006 Act No. 381, Section 1, eff June 13, 2006; 2006 Act No. 387, Section 4, eff July 1, 2006; 2007 Act No. 111, Pt I, Section 1, eff July 1, 2007, applicable to injuries that occur on or after that date; 2008 Act No. 188, Section 1, eff January 1, 2009; 2008 Act No. 201, Section 13, eff February 10, 2009; 2008 Act No. 334, Section 7, eff June 16, 2008; 2010 Act No. 278, Section 23, eff July 1, 2010; 2012 Act No. 183, Section 2, eff June 7, 2012; 2012 Act No. 212, Section 1, eff June 7, 2012.

SECTION 1-23-610. Judicial review of final decision of administrative law judge; stay of enforcement of decision.

(A)(1) For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

(2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge's decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. Upon motion, the administrative law judge may grant, or the court of appeals may order, a stay upon appropriate terms.

(B) The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

HISTORY: 1993 Act No. 181, Section 19; 2006 Act No. 387, Section 5, eff July 1, 2006; 2008 Act No. 334, Section 8, eff June 16, 2008.

SECTION 1-23-630. Powers of law judges.

(A) Each administrative law judge of the division has the same power at chambers or in open hearing as do circuit court judges and to issue those remedial writs as are necessary to give effect to its jurisdiction.

(B) An administrative law judge may authorize the use of mediation in a manner that does not conflict with other provisions of law and is consistent with the division's rules of procedure.

HISTORY: 1993 Act No. 181, Section 19; 2003 Act No. 39, Section 1.

SECTION 1-23-640. Principal offices of court; where cases heard.

The court shall maintain its principal offices in the City of Columbia. However, judges of the court shall hear contested cases at the court's offices or at a suitable location outside the City of Columbia when determined by the chief judge.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Section 6; 2008 Act No. 334, Section 9, eff June 16, 2008.

SECTION 1-23-650. Promulgation of rules.

(A) Rules governing the internal administration and operations of the Administrative Law Court must be:

- (1) proposed by the chief judge of the court and adopted by a majority of the judges of the court; or
- (2) proposed by any judge of the court and adopted by seventy-five percent of the judges of the court.

(B) Rules governing practice and procedure before the court which are:

- (1) consistent with the rules of procedure governing civil actions in courts of common pleas; and
- (2) not otherwise expressed in Chapter 23, Title 1; upon approval by a majority of the judges of the court must be promulgated by the court and are subject to review as are rules of procedure promulgated by the Supreme Court under Article V of the Constitution.

(C) All hearings before an administrative law judge must be conducted exclusively in accordance with the rules of procedure promulgated by the court pursuant to this section. All other rules of procedure for the hearing of contested cases or appeals by individual agencies, whether promulgated by statute or regulation, are of no force and effect in proceedings before an administrative law judge.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Section 2; 1998 Act No. 359, Section 5; 2006 Act No. 387, Section 6, eff July 1, 2006.

SECTION 1-23-660. Office of Motor Vehicle Hearings; conduct of hearings; applicability of Code of Judicial Conduct; appeals.

(A) There is created within the Administrative Law Court the Office of Motor Vehicle Hearings. The chief judge of the Administrative Law Court shall serve as the director of the Office of Motor Vehicle Hearings. The duties, functions, and responsibilities of all hearing officers and associated staff of the Department of Motor Vehicles are devolved upon the Administrative Law Court effective January 1, 2006. The hearing officers and staff positions, together with the appropriations relating to these positions, are transferred to the Office of Motor Vehicle Hearings of the Administrative Law Court on January 1, 2006. The hearing officers and staff shall be appointed, hired, contracted, and supervised by the chief judge of the court and shall continue to exercise their adjudicatory functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge and shall perform such other functions and duties as the chief judge of the court prescribes. All employees of the office shall serve at the will of the chief judge. The chief judge is solely responsible for the administration of the office, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff. Notwithstanding another provision of law, the chief judge also has the authority to promulgate rules governing practice and procedures before the Office of Motor Vehicle Hearings. These rules are subject to review as are the rules of procedure promulgated by the Supreme Court pursuant to Article V of the South Carolina Constitution.

(B) Notwithstanding another provision of law, the hearing officers shall conduct hearings in accordance with Chapter 23 of Title 1, the Administrative Procedures Act, and the rules of procedure for the Office of Motor Vehicle Hearings, at suitable locations as determined by the chief judge. For purposes of this section, any law enforcement agency that employs an officer who requested a breath test and any law enforcement agency that employs a person who acted as a breath test operator resulting in a suspension pursuant to Section 56-1-286 or 56-5-2951 is a party to the hearing and shall be served with appropriate notice, afforded the opportunity to request continuances and participate in the hearing, and provided a copy of all orders issued in the action. Representatives of the Department of Motor Vehicles are not required to appear at implied consent, habitual offender, financial responsibility, or point suspension hearings. However, if the Department of Motor Vehicles elects not to appear through a representative at any implied consent hearing, or through the submission of documentary evidence at any habitual

offender, financial responsibility, or point suspension hearing, and it wishes to appeal the decision, it must first file a motion for reconsideration with the Office of Motor Vehicle Hearings within ten days after receipt of the hearing officer's decision. The hearing officer must issue a written order upon the motion for reconsideration within thirty days. The Department of Motor Vehicles may file a notice of appeal with the Administrative Law Court within thirty days after receipt of the hearing officer's order on the motion for reconsideration. The Administrative Law Court must dismiss any appeal which does not meet the requirements of this subsection.

(C) The hearing officers are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The State Ethics Commission is responsible for the enforcement and administration of those rules and for the issuance of advisory opinions on the requirements of those rules for administrative law judges and hearing officers pursuant to the procedures contained in Section 8-13-320. Notwithstanding another provision of law, an administrative law judge or hearing officer, and the judge's or hearing officer's spouse or guest, may accept an invitation to and attend a judicial-related or bar-related function, or an activity devoted to the improvement of the law, the legal system, or the administration of justice.

(D) Appeals from decisions of the hearing officers must be taken to the Administrative Law Court pursuant to the court's appellate rules of procedure. Recordings of all hearings will be made part of the record on appeal, along with all evidence introduced at hearings, and copies will be provided to parties to those appeals at no charge. The chief judge shall not hear any appeals from these decisions.

HISTORY: 1993 Act No. 181, Section 19; 2005 Act No. 128, Section 22, eff July 1, 2005; 2006 Act No. 381, Section 2, eff June 13, 2006; 2006 Act No. 387, Section 7, eff July 1, 2006; 2008 Act No. 201, Section 14, eff February 10, 2009; 2008 Act No. 279, Section 1, eff October 1, 2008.

SECTION 1-23-670. Filing fees.

Each request for a contested case hearing, notice of appeal, or request for injunctive relief before the Administrative Law Court must be accompanied by a filing fee equal to that charged in circuit court for filing a summons and complaint, unless another filing fee schedule is established by rules promulgated by the Administrative Law Court, subject to review as in the manner of rules of procedure promulgated by the Supreme Court pursuant to Article V of the Constitution of this State. This fee must be retained by the Administrative Law Court in order to help defray the costs of the proceedings. No filing fee is required in administrative appeals by inmates from final decisions of the Department of Corrections or the Department of Probation, Parole and Pardon Services. However, if an inmate files three administrative appeals during a calendar year, then each subsequent filing during that year must be accompanied by a twenty-five dollar filing fee. If the presiding administrative law judge determines at the conclusion of the proceeding that the case was frivolous or taken solely for the purpose of delay, the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

HISTORY: 2008 Act No. 353, Section 2, Pt 18A, eff July 1, 2009.

SECTION 1-23-680. Cost of South Carolina Code, supplements, and replacement volumes.

The South Carolina Administrative Law Court is not required to reimburse the South Carolina Legislative Council for the cost of the Code of Laws, code supplements, or code replacement volumes distributed to the court.

HISTORY: 2008 Act No. 353, Section 2, Pt 18B, eff July 1, 2009.

Attachment F
Environmental Protection Fees (SC Regulation 61-30)

DISCLAIMER

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Regulation 61-30. Environmental Protection Fees.

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 - A. Purpose and Scope.

Pursuant to South Carolina Code Sections 48-2-50 (1993) and 48-39-145, the Department of Health and Environmental Control shall charge fees for environmental programs it administers pursuant to federal and state law and regulations. This regulation prescribes those fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations (hereinafter, "permits") and establishes schedules for timely action on permit applications. This regulation also establishes procedures

for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeals process to contest the calculation or applicability.

B. Definitions.

(1) "Actual Emissions" As pertains to Air Quality Control, the actual rate of emissions in tons per year of any regulated pollutant which was emitted over the preceding calendar year or any other period determined by the department to be representative of normal source operation. Actual emissions must be calculated using the unit's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year or such other time period established by the department.

(2) "Actual Flow" means (a) aggregate flow as reported on the Discharge Monitoring Reports submitted for the previous year by Industrial dischargers; (b) flow limit as established by NPDES and ND permits for municipal and other non-industrial domestic dischargers.

(3) "Adjudicatory Hearing" means a trial-type proceeding conducted by the Department pursuant to the Department's Procedures for Contested Cases, as defined in R.61-72.101.

(4) "Administratively Complete" means a determination by the Department that all elements of an application, as specified in the applicable regulation and including but not limited to all required signatures and tender of the application fee, where required, have been received.

(5) "Applicant" means a person who applies for, or who is required to apply for a permit from the Department, or on whose behalf a permit application is made or required.

(6) "Application" means those forms supplied by the Department, properly completed, together with such technical reports, plans and specifications as may be required by statute or regulation to apply for a new permit; to renew an expired permit; or to request a major modification to an existing permit requiring substantial technical review by the Department.

(7) "Consumer Price Index (CPI)" The average of the Consumer Price Index for all-urban consumers published by the U. S. Department of Labor as of the close of the 12-month period ending on August 31 of each calendar year.

(8) "Department" means the Department of Health and Environmental Control.

(9) "Environmental Protection Fund" means a special agency-restricted, interest-bearing account established within the Treasurer's Office in which is deposited all fees as authorized to be collected for the Department's environmental programs.

(10) "Minor activity" As pertains to Coastal Zone Management Program, activities which are noncommercial/nonindustrial in nature and provide personal benefits that have no connection with a commercial/industrial enterprise. These include, but are not limited to, activities to construct such structures as private docks, bulkheads to prevent erosion of individual property, beachfront homes seaward of the baseline, and private boat ramps.

(11) "Major activity" As pertains to Coastal Zone Management Program, any construction activity that is not a minor activity. These include, but are not limited to, activities such as marina construction, construction of docks for commercial endeavors, dredging for navigation channels, pipeline construction, and beach renourishment projects.

(12) "Permit Extension" As pertains to Coastal Zone Management critical area permits, is the extension of an existing permit as allowed pursuant to Section 48-39-150(F) and R.30-4(D).

(13) "Permit" means any permit, license, certificate, registration, plan approval, variance, or other approval issued by or required by the Department or any of its divisions, pursuant to any statute or regulation.

(14) "Permit Reissuance" is the renewal of an existing permit, license, certification or registration at the end of or during the original period of the existing permit, license, certification or registration.

(15) "Permitted Emissions" As pertains to Air Quality, emissions of a regulated pollutant, as specified in a source's air operating permit issued by the Department. Any physical or operational limitation on a source's capacity to emit a pollutant, including air pollution control equipment and

restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be considered in calculating total emissions.

(16) "Permittee" means any person authorized to conduct any activity or business pursuant to a valid permit issued by or filed with the Department.

(17) "Person" means any individual, trust, firm, public or private corporation or authority, partnership, association or other entity or any group thereof or any officer, employee, or agent thereof, including the State and the federal government and any agency or authority thereof, and including any city, town, county, or district of the State.

(18) "Public Hearing" A proceeding, properly noticed in accordance with applicable state and federal laws, during which comments are received and testimony is taken to establish a record of concern prior to an administrative action by the Department.

(19) "Public Notice" Notice of application or of proposed agency action published in accordance with applicable statutes and regulations.

(20) "Regulated Pollutant" As pertains to Air Quality, means the actual or permitted emissions from a source for each of the following compounds or substances:

(a) Except as provided for under G(2)(c), any pollutant regulated by Regulation 61-62.

(b) Volatile Organic Compounds.

(c) Except as provided for under G(2)(c), any pollutant for which a National Ambient Air Quality Standard has been promulgated.

(d) Any pollutant that is addressed by any standard promulgated under Section 111 or 112 of the 1990 Federal Clean Air Act or Regulation 61-62, Standard No. 8.

(21) "Sources Subject to Fees" As pertains to Air Quality Control, all sources operating under a permit issued by the Department.

(22) "Time Schedules" In accordance with S.C. Code Sections 48-2-70 and 48-39-150, a "schedule of timely review" for purposes of this regulation shall begin when the applicant is notified that the application is administratively complete or within ten days of receipt of the application, whichever comes first; and end when a final decision is rendered. It will include required technical review, required public notice, and end with a final decision by the Department to issue or deny the permit. The time schedule may be tolled or extended in accordance with the conditions stipulated in Section H(1) of this regulation.

(23) "Transfer of permits" As pertains to the Coastal Zone Management Program, means the written permission of the Department transferring a permit from one person to another.

C. Payment of Fees.

Application and other fees shall be paid in full as follows:

(1) Application fees:

(a) The Department may specify through the establishment of payment invoices, permit application forms, or other standardized instructions the form and manner of payment of all permit application fees.

(b) Application fees shall be due when the application is submitted. The Department will not process an application until the application fee is received.

(c) If the applicant withdraws the permit application anytime before or after the application has been deemed Administratively Complete, but prior to the Technical review of the application, the Department shall refund the entire application fee to the applicant.

(d) Once an applicant has been notified that the application has been deemed Administratively Complete, the Department shall issue or deny the permit within the time period established in Section H below; if no permit decision has been rendered by the end of the relevant time period, the application fee shall be refunded.

(2) Other Fees:

(a) The permit holder shall be notified of all fees other than application fees through routine invoicing schedules developed by the Department. All fees other than application fees are assessed on the

state fiscal year of July 1 through June 30 of the following year. The holder of any valid permit on July 1 of each year will be assessed fees for the entire following fiscal period.

(b) New facilities permitted at any time during the fiscal year shall pay the entire annual operating fee prior to issuance of an operating permit except for those fees assessed pursuant to the Clean Air Act.

(c) All fees other than application fees are due within thirty days of billing. Unpaid fees, late fees, and returned checks are subject to the provisions of paragraph D below.

(d) Unless the permittee seeks an extension of the time for making payment, the permittee shall make payment in full on or before the date, and in the manner and form, specified in the invoice. Except to the extent authorized by the Department, late payment, nonpayment, partial payment, or failure to make payment in the specified manner and form shall constitute a failure by the permittee to pay the fee when due.

(3) All fees shall be payable to the Department of Health and Environmental Control and mailed to the Bureau of Finance, 2600 Bull Street, Columbia, S.C. 29201.

(4) Construction permits or modifications, revision, or reissuance of an operating permit will not be issued for a facility that is in default of fees due under this regulation.

D. Penalties.

(1) All fees other than application fees remaining unpaid thirty (30) days after billing will be issued a late notice with no penalty due; however, it will contain advisement of penalty for non-payment after sixty (60) days. Fees remaining unpaid after sixty (60) days will be assessed a ten percent (10%) penalty. Persons delinquent will be issued a notice of the ten percent (10%) penalty due the Department as well as advisement of further penalties should fees remain unpaid. Fees remaining unpaid at the end of ninety (90) days will be assessed a twenty five percent (25%) penalty in addition to the ten percent (10%) sixty day penalty. The sum of both penalties may not exceed five thousand dollars. Persons delinquent at the end of ninety (90) days under this paragraph, will be notified by the Department by certified mail at their last known address.

(2) All returned checks will be subject to a returned check fee as outlined in the DHEC Administrative Policy and Procedures Manual. This penalty will be in addition to those outlined in Paragraph D(1).

(3) Failure to pay fees may, after a hearing in accordance with the provisions of Section F, result in the revocation of an existing permit, license, registration or certification.

E. Reporting.

A quarterly report will be made to the DHEC Board. The report shall include, but not be limited to, fees set and established under this regulation, changes made in the fee schedule since the last report, number of applications received and number of permits issued by each permitting program, adherence to the time schedules as listed in Section H., reduction, if any, in the backlog of permit applications awaiting review, the amount collected and expended by each fee source and any other information requested by the Board.

F. Appeals.

Any person required to pay a fee established pursuant to this regulation who disagrees with the calculation or applicability of the fee may submit to the Department a petition for a hearing together with the total amount of the fee assessed by the Department. The petition must comply with the requirements of Section 201 of Regulation 61-72 and must identify the fee which is challenged and set forth the grounds on which relief is sought. Such petition and the full amount of the fee due must be received by the Department no later than thirty days after the due date. The hearing shall be in accordance with Regulation 61-72, Procedures for Contested Cases, and the State Administrative Procedures Act. If, through the appeals process, it is determined that the fee was improperly assessed, the Department shall return the amount determined to be improperly assessed with interest not to exceed the statutory rate.

G. Schedule of Fees.

(1) Water Pollution Control.

(a) Annual Fees for NPDES and State Construction Permits and State Land Application Permits.

Annual operating fees for facilities with five or less pipes must be calculated based on the previous year's actual flow except for municipal separate storm sewer system (MS4) permits and coverage under a general permit. Annual operating fees for facilities with more than five pipes must be calculated based on the number of pipes except for municipal separate storm sewer system (MS4) permits and coverage under a general permit.

(i)	Facilities with five or less discharge pipes:	
	1. Flow greater than 4,999,000 gal/day	\$ 2,660
	2. Flow 2,000,000 - 4,999,999 gal/day	\$ 2,130
	3. Flow 1,000,000-1,999,999 gal/day	\$ 1,600
	4. Flow 500,000-999,999 gal/day	\$ 1,330
	5. Flow 100,000-499,999 gal/day	\$ 1,065
	6. Flow 50,000-99,000 gal/day	\$ 800
	7. Flow 0-49,999 gal/day	\$ 530
(ii)	For six (6) or more discharge pipes plus \$800/discharge for each discharge pipe over five. (\$2,400 minimum charge).	\$ 1,600
(iii)	Coverage under General Permit (except for NPDES Storm Water General Permits)	\$ 100
(iv)	Municipal Separate Storm Sewer Systems	
	1. Individual Permits	
	a. Large MS4 (population equal to or greater than 250,000)	\$ 25,000
	b. Medium MS4 (population equal to or greater than 100,000 and less than 250,000)	\$ 15,000
	c. Small MS4 (population less than 100,000)	\$ 10,000
	2. Coverage under a MS4 General Permit	\$ 2,000
(v)	Agricultural Facilities. Annual Fee will be based on maximum permitted capacity.	
	1. Swine Facilities	
	a. Facilities with a capacity of 1,000,000 pounds or more of normal production animal live weight at any one time	\$ 500
	b. Facilities with a capacity between 500,000 pounds and 1,000,000 pounds of normal production animal live weight at any one time	\$ 300
	c. Facilities with a capacity of less than 500,000 pounds of normal production animal live weight at any one time	\$ 150
	2. Other Animal Operations	
	a. Dry Manure/Litter Operations	\$ 75
	b. Wet Manure/Litter Operations	\$ 150
(vi)	Industrial NPDES Storm Water General Permit Coverage	\$ 75

(b) Water Quality Certification Application Fees.

(i)	Certification of major activities requiring federal or state permits	\$ 1,000
(ii)	Certification of minor activities requiring federal or state permits	\$ 100

(c) Construction Permit Fees.

(i)	Pretreatment Systems	
	1. For simple systems, such as one-component systems (e.g. oil/water separators, air strippers, PH control, etc.)	\$ 200
	2. Complex (such as Multi-Component) systems	\$ 600
(ii)	Collection Systems	
	1. Non-Delegated Program	
	a. 1000 ft. or less	\$ 100

	b.	1,001 to 9,999 ft.	\$	200
	c.	10,000 ft. or greater	\$	350
	d.	Pump stations with or without sewer lines (Fee exempt for individual, residential pumps)	\$	350
	2.	Delegated Project Review Program	\$	75
(iii)	Wastewater Treatment Facilities. Fees for modifications without expansions will be assessed by the Department only for those modifications which require the actual submission of plans and specifications to the Department for review.			
	1.	Facilities with a Flow of 1,000,000 GPD or greater		
	a.	New	\$	1,050
	b.	Expansion	\$	800
	c.	Modification without Expansion (Engineering review required)	\$	550
	d.	Modification without Expansion (No Engineering review required)		NC
	2.	Facilities with a Flow of 0-999,999 GPD		
	a.	New	\$	700
	b.	Expansion	\$	550
	c.	Modification without Expansion (Engineering review required)	\$	400
	d.	Modification without Expansion (No Engineering review required)		NC
(iv)	Project submittals with both collection and treatment components pay the sum of the applicable collection and treatment fees under (i), (ii), and (iii) above.			
(v)	Construction NPDES Storm Water Permit			
	1.	When the Department is the entity responsible for reviewing the Stormwater Pollution Prevention Plan submitted for review	\$	125
			Plus \$	100
				per disturbed acre (not to exceed \$2000)
	2.	When an entity other than the Department is responsible for review of the Storm Water Pollution Prevention Plan and the entity's approval serves as a notice of intent for coverage under the general permit.	\$	125
(d) Agricultural Waste Management Plan Application.				
(i)	New or Expanding Swine Facilities			
	1.	Facilities with a capacity of 1,000,000 pounds or more of normal production animal live weight at any one time	\$	2,500
	2.	Facilities with a capacity between 500,000 pounds and 1,000,000 pounds of normal production animal live weight at any one time	\$	680
	3.	Facilities with a capacity of less than 500,000 pounds of normal production Animal live weight at any one time	\$	340
(ii)	New [FN*] or expanding Other Animal Facilities			

1. Dry Manure/Litter Operation	\$	165
2. Wet Manure/Litter Operation	\$	240
(e) Industrial Storm Water 'No Exposure' Certification	\$	350

FN [FN*] includes conversion to another type of facility, i.e. poultry to swine.

(2) DHEC: Safe Drinking Water Act.

(a) In order to comply with the provisions of the federal Safe Drinking Water Act, the Department is authorized to collect a fee from each public water system. The fee must be based upon the number of taps through which the system provides water to its customers. The fees collected must be returned to the department for the purposes of implementing the Safe Drinking Water Act Regulatory Program including engineering plan review, compliance inspections, and enforcement; and for providing technical assistance and monitoring and laboratory analytical services for the public water systems of the State. The fee shall be as follows:

(i) Community and Non-Transient Non-Community Water Systems

Fee = Program Administration Component + Distribution Monitoring Component + Source Monitoring Component

Program Administration Component:

$\$14.38 \times (\# \text{ Taps Up To } 10) + \$9.60 \times (\# \text{ Taps From } 11 \text{ To } 25) + \$7.76 \times (\# \text{ Taps From } 26 \text{ To } 50) + \$5.75 \times (\# \text{ Taps From } 51 \text{ To } 100) + \$3.85 \times (\# \text{ Taps From } 101 \text{ To } 500) + \$2.88 \times (\# \text{ Taps From } 501 \text{ To } 1,000) + \$1.96 \times (\# \text{ Taps From } 1,001 \text{ To } 5,000) + \$1.44 \times (\# \text{ Taps From } 5,001 \text{ To } 10,000) + \$0.92 \times (\# \text{ Taps From } 10,001 \text{ To } 15,000) + \$0.46 \times (\# \text{ Taps From } 15,001 \text{ To } 25,000) + \$0.29 \times (\# \text{ Taps From } 25,001 \text{ To } 50,000) + \$0.17 \times (\# \text{ Taps From } 50,001 \text{ To } 100,000) + \$0.12 \times (\# \text{ Taps Greater Than } 100,000)$

Distribution Monitoring Component:

\$262.50 (Systems Serving Up To 100 Taps); Or,
 \$750.00 (Systems Serving 101 To 1,000 Taps); Or,
 \$3,750 (Systems Serving 1,001 To 15,000 Taps); Or,
 \$7,500 (Systems Serving Greater Than 15,000 Taps)

Source Monitoring Component:

$[(\$250 \times (\# \text{ GW Sources})) + (\$500 \times (\# \text{ SW Sources}))]$ (Up To 25 Taps); Or,
 $[(\$450 \times (\# \text{ GW Sources})) + (\$800 \times (\# \text{ SW Sources}))]$ (From 26 To 100 Taps);
 Or, $[(\$1,250 \times (\# \text{ GW Sources})) + (\$1,800 \times (\# \text{ SW Sources}))]$ (Greater Than 100 Taps); Or, [Maximum \$7,500]

Program Administration Component of Fee (Base Amount + Rate Per Tap)

System Size		Base Amount	Rate Per Tap	
1	- 10	\$ 0	\$14.38	First 10 Taps
11	- 25	\$ 143.80	\$ 9.60	Taps 11-25
26	- 50	\$ 287.80	\$ 7.76	Taps 26-50
51	- 100	\$ 481.80	\$ 5.75	Taps 51-100
101	- 500	\$ 769.30	\$ 3.85	Taps 101-500
501	- 1000	\$ 2,309.30	\$ 2.88	Taps 501-1,000
1,001	- 5,000	\$ 3,749.30	\$ 1.96	Taps 1,001-5,000
5,000	- 10,000	\$ 11,589.30	\$ 1.44	Taps 5,001-10,000
10,001	- 15,000	\$ 18,789.30	\$ 0.92	Taps 10,001-15,000
15,001	- 25,000	\$ 23,389.30	\$ 0.46	Taps 15,001-25,000
25,001	- 50,000	\$ 27,989.30	\$ 0.29	Taps 25,001-50,000
50,001	- 100,000	\$ 35,239.30	\$ 0.17	Taps 50,001-100,000

100,001 and Above \$ 43,739.30 \$ 0.12 Taps Over 100,000

Distribution and Source Monitoring Components of Fee

System Size (Number Of Taps)	Distribution Monitoring (Fixed Rate)	Source Monitoring (Rate per Source)	
		Ground Water	Surface Water
1 - 10	\$262.50	\$ 250	\$ 500
11 - 25	\$262.50	\$ 250	\$ 500
26 - 50	\$262.50	\$ 450	\$ 800
51 - 100	\$262.50	\$ 450	\$ 800
101 - 500	\$ 750	\$1,250	\$1,800
501 - 1000	\$ 750	\$1,250	\$1,800
1,001 - 5,000	\$ 3,750	\$1,250	\$1,800
5,000 - 10,000	\$ 3,750	\$1,250	\$1,800
10,001 - 15,000	\$ 3,750	\$1,250	\$1,800
15,001 - 25,000	\$ 7,500	\$1,250	\$1,800
25,001 - 50,000	\$ 7,500	\$1,250	\$1,800
50,001 - 100,000	\$ 7,500	\$1,250	\$1,800
100,001 And Above	\$ 7,500	\$1,250	\$1,800

(ii) Other Public Water Systems

Transient Non-Community Syst	Fee = \$275
Systems Serving More Than 1 Tap But Less Than 15 Taps and Serving Less Than 25 People	Fee = \$175
Systems Serving 1 Tap and Serving Less Than 25 People	Fee = \$125
Vending Machines	Fee = \$75

(iii) For the purposes of this fee schedule, tap is defined as a service connection, the point at which water is delivered to the consumer (building, dwelling, commercial establishment, camping space, industry, etc.) from a distribution system, whether metered or not and regardless of whether there is a user charge for consumption of the water.

(iv) The Department shall submit an annual report to the Senate Finance Committee, House Ways and Means Committee, South Carolina Section American Water Works Association and the Municipal Association detailing activities funded from safe drinking water fees. The report shall include the amount of fees collected from each waterworks and the listing of expenditures from those fees. The expenditures shall be accompanied by a list of benefits the waterworks receive from the State as a result of the fees. In providing monitoring and laboratory analytical services, DHEC will consider least cost alternatives including contracting with private laboratories when appropriate. DHEC shall include all applicable direct and indirect costs in developing cost comparisons with private laboratories.

(v) Penalties. All fees remaining unpaid thirty (30) days after billing will be issued a late notice with no penalty due; however, it will contain advisement of penalty for non-payment after sixty (60) days. Fees remaining unpaid after sixty days will be assessed a ten percent (10%) penalty. Fees remaining unpaid at the end of ninety (90) days will be assessed a twenty-five percent (25%) penalty in addition to the sixty day penalty. The Department may waive any or all of the assessed penalties in extenuating circumstances. The sum of both penalties may not exceed five thousand dollars. Persons delinquent under this paragraph will be notified by the Department by certified mail at their last known address.

1. All returned checks will be subject to a returned check fee as outlined in the DHEC Administrative Policy and Procedures Manual. This penalty will be in addition to those outlined above.

2. No monitoring will be conducted on systems with fees unpaid at the end of ninety (90) days.

(b) Construction General Permit (for Distribution Systems) Annual Fee. The annual fee is \$1,000.

(c) Construction Permit Application Fees

(i)	Distribution systems and related components	
1.	1,000 feet or less of line	\$150
2.	1,001 feet to 9,999 feet	\$400
3.	10,000 feet or greater	\$600
4.	Distribution storage/pump stations	\$600
(ii)	Supply/Treatment from Groundwater Sources	
1.	Well systems (test well)	\$500
2.	Well systems, (follow-up, including well head piping, storage	\$500
3.	Well systems (one step)	\$1,000
4.	Treatment systems (except for chemical feed systems)	\$500
5.	Chemical feed systems	\$250
6.	Small water system permits	\$250
(iii)	Supply/Treatment from Surface Water Sources	
1.	New treatment plants	\$2,000
2.	Expansions of existing facilities	\$1,500
3.	Modifications or addition of components	\$1,000
4.	Plant storage, pumping and piping facilities	\$500
5.	Chemical feed systems	\$250
(iv)	Drinking Water Dispensing Stations/Bottled Water Plants (using distribution water)	\$500
(v)	General Permit (which may include Delegated Review Program Approval)	
1.	Application for permit (not a renewal)	\$1,000
2.	Delegated review permit	\$75
(vi)	Permit extensions	\$50

(3) Air Quality.

(a) General.

(i) The fees assessed are those fees sufficient to cover reasonable costs associated with the development, processing, and administration of the air quality permit program. Such costs are defined as those necessary to administer the permit program, the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services, contracts with consultants and program expenses listed in Section 502(b)(3)(a) of Title V of the 1990 amendments to the Federal Clean Air Act.

(ii) Fees collected shall be placed in a separate non-reverting account within the Department to be used exclusively for the expenses in G(3)(a)(i).

(iii) Except as provided in Section F of this regulation, fees are non-refundable.

(b) Annual Fee. The source owner or operator must pay an annual permit fee to the Department. Beginning on July 1, 1994, and for each subsequent year, fees will be as follows:

(i) \$25.00 per ton (plus Consumer Price Index adjustment) of regulated pollutant based on the actual emissions for the preceding calendar year or any other period determined by the department to be representative of normal source operation. The CPI adjustment is that percentage of \$25.00/ton equal to the percentage, if any, by which the CPI for the most recent calendar year ending before the beginning of such year exceeds the CPI for 1989.

(ii) New sources or any source without sufficient data to be able to determine actual emissions must be assessed the above \$25.00 a ton fee with appropriate CPI adjustment calculated on a pro rata basis for their months of operation. The fee must be based on permitted emissions, until such time as "Actual emissions" can be calculated, and must be paid before the operating permit is issued.

(iii) Should funds in the non-reverting account exceed the anticipated budgeted expenditures for the following year, the fee described in G.3.b.(i) and (ii) above may be adjusted by the

Board. At no time shall this adjustment cause a depletion of funds to a level less than ten percent (10%) of the previous year's expenditures for the Title V permitting requirements of the 1990 Federal clean air Act. Any adjustment of fees will require a public hearing to propose the adjustment prior to a final decision by the Board.

(c) Exceptions.

(i) No fees will be assessed for emissions of carbon monoxide.

(ii) No fee will be assessed for actual or permitted emissions in excess of 4,000 tons/year per pollutant.

(iii) The Department may exclude, from the fee calculations, insignificant quantities of actual emission not required in a permit application pursuant to Regulation 61-62.70.5(c).

(4) Laboratory Certification Services:

(a)	Application Fee	\$	125
(b)	Minimum Annual Fee (per laboratory)	\$	125
(c)	Clean Water Act (CWA) Inorganics per parameter	\$	20
(d)	Safe Drinking Water Act (SDWA) Inorganics per parameter	\$	20
(e)	SDWA Secondary Inorganics per parameter	\$	20
(f)	CWA Organics:		
	(i) PCBs and Pesticides	\$	350
	(ii) Herbicides	\$	350
	(iii) Volatiles	\$	350
	(iv) Semi-Volatiles	\$	350
	(v) Dioxins and Furans	\$	350
(g)	SDWA Organics:		
	(i) Trihalomethanes	\$	350
	(ii) Organic Compounds	\$	350
	(iii) Volatiles	\$	350
(h)	Microbiology:		
	(i) Total Coliform	\$	75
	(ii) Fecal Coliform	\$	75
	(iii) Fecal Streptococci	\$	75
(i)	Biology		
	(i) Toxicity Testing	\$	500/ Species
	(ii) Taxonomy	\$	250
(j)	Solid and Hazardous Wastes (SW-846 Methods):		
	(i) Inorganics (per parameter)	\$	20
	(ii) Organics (per parameter group)	\$	350
	Note: SW-846 certification fees shall be capped at \$1,500 for those laboratories which have paid the applicable per-parameter fees for CWA tests.		
(k)	Air Quality Analysis:		
	(i) Inorganics (per parameter)	\$	20
	(ii) Organics (per parameter group)	\$	350
	Note: Air Quality Certification fees shall be capped at \$1,500 for those laboratories which have paid the applicable per-parameter fees for CWA tests.		

(5) Radioactive materials licenses including reciprocity and general licenses specified in

R.61-63.

(a)	Low-Level Radioactive Waste Shallow Land Disposal	\$	600,000
(b)	Low-Level Waste Interim On Site Storage & Processing:		
	(i) Solid Components Only	\$	7,500
	(ii) Combination Waste Streams	\$	15,000
(c)	Low-Level Waste Processing Services:		
	(i) Less than 200 FT ³ /year	\$	15,000
	(ii) Greater than 200 FT ³ /year	\$	75,000
(d)	Low-Level Waste Consolidation Services	\$	37,500
(e)	Decontamination, Recycling, Pilot Study Services & Contaminated Equipment Storage (Non-Waste)	\$	4,500
(f)	Decommissioned Facility:		
	(i) Test Reactor	\$	750
	(ii) Non Fuel Cycle	\$	750
	(iii) Fuel Cycle	\$	7,500
(g)	Natural Occurring from Processes	\$	750

(h)	Radioactive material Manufacturing/Processing	\$ 40,500
(i)	Irradiator (unshielded)	\$ 5,994
(j)	Irradiator (Self-contained)	\$ 313
(k)	Large Quantity Source Material	\$ 1,250
(l)	Industrial Radiography (In-Plant only)	\$ 1,119
(m)	Industrial Radiography (Temporary Field Site)	\$ 1,344
(n)	General License for Distribution	\$ 806
(o)	Medical Institution	\$ 707
(p)	Teletherapy	\$ 1000
(q)	Industrial Gauges	\$ 344
(r)	Laboratories-Commercial/Medical	\$ 325
(s)	Educational Institution	\$ 407
(t)	Nuclear Pharmacy	\$ 1,244
(u)	Medical Private Practice	\$ 588
(v)	Moisture/Density Gauge	\$ 325
(w)	Gas Chromatograph	\$ 188
(x)	Services Consultants	\$ 207
(y)	Bone Mineral Analyzer	\$ 432
(z)	Eye Applicator	\$ 432
(aa)	Medical/Academic Broad License	\$ 2,313
(bb)	Well Logging	\$ 1,125
(cc)	Mobile Scanning Services	\$ 675
(dd)	Decontamination/Nuclear Laundry	\$ 4,375
(ee)	All Other	\$ 338

(6) Radioactive Waste Transportation Permits.

(a)	Type X - Annually greater than 75 cubic feet	\$2,500
(b)	Type Y - annually less than 75 cubic feet	\$300
(c)	Type Z - Combination X or Y but not for disposal within State-Transport only	\$100

(7) Radioactive Material fees for review and approval of special projects, topical reports, on site disposals, permits, licenses, amendments, renewals and inspections that are not covered by the above schedule, but are based on the full cost recovery for the review or inspection, will be calculated using a professional staff-hour rate equivalent to the sum of the average cost to the agency for a professional staff member, including salary and benefits, administrative support, travel, and certain program support. The professional staff-hour rate will be based on the applicable fiscal year budget but would not exceed one hundred dollars per hour.

(8) Hazardous and Mixed Waste.

Annual Operating Fee \$ 600

(9) Public Swimming Pool Fees.

(a) Construction Permits.

(i) Type "A", "B", "C", "D", and "F" Pools - \$400 plus \$0.50 per square foot of surface area.

(ii) Type "E" Pools - \$1,000 per flume (including minimum required design landing area) or water course, to include water slide. Additional area above minimum required landing area and all other Type "E" pools will be charged according to (i) above.

(iii) The Department may collect an additional \$250 from the owner for each repeat final inspection that is required due to incomplete construction or construction that is not in accordance with permitted plans and specifications.

(b) Annual Operating Permits.

(i) Type "A", "B", "C", "D" and "F" Pools - \$125 for the first pool on a property plus \$100 for each additional pool on the same property.

(ii) Type "E" Pools - \$100 per flume or water course.

(10) Individual Residential Wells and Irrigation Wells. In accordance with R.61-44, Permitting of Individual Residential Wells and Irrigation Wells, the Department is authorized to collect a fee for each application to install an individual residential well and irrigation well. The fee collected must be returned to the Department for the purposes of developing and implementing the Individual Residential Well and

Irrigation Well program, including proposed well construction review, compliance inspections, technical assistance, enforcement, and for providing bacteriological analytical services for new individual residential wells. The fee shall be as follows:

- (a) Individual Residential Well \$ 70
- (b) Irrigation Well \$ 50

(11) Individual Residential Well Monitoring - These fees are to be charged for water samples collected by individuals from their residential well and submitted to the Department for analysis. These fees will not be charged if the samples are considered part of a Department groundwater contamination investigation and may be waived or reduced based on the individual's ability to pay. Ambient water samples and samples from public water systems will not be accepted and analyzed.

- (a) Total or Fecal Coliform \$ 20 per test
- (b) Metals and Minerals \$ 50 per sample
- (c) Other Inorganic Parameters \$ 25 per parameter
- (d) Volatile Organic Chemicals \$ 50 per sample
- (e) Herbicides, Pesticides, and other Synthetic Organic Parameters \$ 50 per parameter

(12) Infectious Waste Annual Fees.

- (a) Generators of 1000 pounds per month or more. \$ 600
- (b) Generators of 50 pounds per month through 999 pounds per month \$ 150
- (c) Transporters \$ 500

(13) Coastal Zone Management Program

- (a) General.
 - (i) The fees assessed are those fees sufficient to cover a portion of the reasonable costs associated with the development, processing, and administration of the Coastal Zone Management Program.
 - (ii) Fees collected shall be placed in a separate non-reverting account within the Department to be used exclusively for the expenses in G(13)(a)(i), except for the amounts dedicated to the Coastal Resources Access Fund (CRAF). DHEC-OCRM shall make matching grants from the fund on a 50/50 basis to local governments in the South Carolina Coastal Zone for projects which enhance the public's use and enjoyment of coastal resources. A portion of the funds collected as per G(13)(b) shall be dedicated to the CRAF.
 - (iii) Local governments will only be charged the fee for a minor activity and State agencies will not be charged.
- (b) Critical Area Permit Application Fees
 - (i) Minor activity: \$250.00, except for docks 100 feet or less in length for which the fee will be \$150.00
 - (ii) Major activity: \$1000.00
 - (iii) Extensions or transfers of minor permits: \$25.00
 - (iv) Extensions or transfers of major permits: \$100.00
 - (v) Amendments for minor permits which must be placed on public notice: \$100.00
 - (vi) Amendments for major permits which must be placed on public notice: \$1000.00

(14) Oil and Gas Annual Fees

Terminal Facility Registration Fees \$250.

H. Time Schedules.

(1) General

(a) All times given in days are given in calendar days. The last day of the period is to be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. With respect to permit reissuance, the schedule for timely action shall apply only if the applicant so elects and notifies the Department in writing.

(b) The day notice is mailed to the applicant that the application is deemed administratively complete shall be counted. If notice that the application is Administratively Complete or notice that the application is not Administratively Complete, together with notice of the specific items deemed to be lacking, is not mailed to an applicant within ten (10) working days of receipt of an application, the time period will begin.

(c) The time schedule shall be tolled when the Department makes a written request for additional information and shall resume when the Department receives the requested information from the applicant. If an applicant fails to respond to such a request within 180 days, the Department will consider the application withdrawn and the application fee will be forfeited. The Department shall notify the applicant no later than 10 days prior to expiration of the 180-day period.

(d) The time periods given in Section H.2 shall be stayed if:

(i) The applicant requests that permit review be suspended;

(ii) The Department at least ten days prior to the expiration date, requests a delay in the review process to which the applicant agrees;

(iii) The Department is requested to hold a public hearing, in which case the time schedule will be tolled for no more than 60 days.

(e) Change in Project.

(i) Determination of Change. The Department may determine that the applicant has filed a new application whenever additional information provided by the applicant during any Departmental review period, in response to any statement identifying deficiencies in the application or supporting materials, or during any period allowed for public comment, either:

1. results in a change in the category in which the permit application is classified, or;

2. significantly increases or changes the nature of the potential effects of the proposed project or activity on public health and safety or the environment. Upon making a determination that the applicant has filed a new application, the Department shall promptly notify the applicant in writing. The notice shall indicate the basis for the determination and summarize the provisions relative to such determinations. The determination that a project has changed shall not be grounds for a request for adjudicatory hearing; however, an applicant aggrieved by such a determination may seek review of the determination as an issue in any appeal of the permit decision.

(ii) Effects of determination on schedule.

1. Immediately upon issuance of the notification, the schedule for timely action shall be suspended.

2. If the determination resulted from a proposed change in design or operation of the proposed project or activity the applicant may, within 30 days, withdraw the change and return to its previous proposal by so notifying the Department in writing. If the applicant so notifies the Department, the schedule for timely action shall resume at the point at which it was suspended.

3. If the determination resulted from any other cause, or if the applicant does not elect to withdraw the change; the Department shall begin a review of the new application pursuant to the relevant schedule for timely action.

(iii) Effects of determination on fee. Unless the applicant elects to proceed with the previous application the original application shall be deemed withdrawn, and the fee shall be forfeited; provided, that the Department shall credit any amount to be refunded toward the permit application fee payable for the new permit unless the applicant requests a refund.

(f) Extension of schedule by other actions.

(i) Failure of payment. Whenever a check or other form of payment of an application fee is returned for insufficient funds, or if payment in full is in any other manner prevented, the schedule for timely action shall be suspended. The department shall notify the applicant of such suspension in writing.

(g) Extension of periods for Departmental action.

(i) The time periods for the Department to take any action shall be extended whenever action by another federal, state, or municipal governmental agency is required before the Department may act, or judicial proceedings then underway affect the ability of the Department or the applicant to proceed with the application, or when the Department has commenced enforcement proceedings which could result in revocation of an existing permit for that facility or activity and denial of the application. The applicant shall promptly notify the Department in writing whenever it believes that action by another governmental agency is required, or that judicial proceedings affect the ability of the Department or the applicant to proceed with the application.

(ii) The Department shall provide written notice to the permit applicant within ten (10) days of making a determination that an extension is necessary. Such notice shall contain a statement of the reasons for which the schedule must be extended.

(iii) When the Department determines that the reason for such extension is no longer applicable, the Department shall so notify the applicant in writing within ten (10) days of making such determination. The time period for the Department to complete the a timely review shall begin on the day the notice is mailed.

(2) Environmental Permit.

(a) Water Pollution Control:

(i)	New/increased capacity NPDES or land application permits	180 Days
(ii)	Construction Permit for new treatment plant or expansion with increased volume, mass loading, or loading, or addition of pollutant to be controlled.	120 Days (or 20 Days beyond effluent discharge permit issuance, whichever is greater)
(iii)	Construction Permit for treatment plant upgrade (without expansion and no change in effluent discharge permit limits)	90 Days
(iv)	Construction permit for pre-treatment system	90 Days
(v)	Construction Permit for sewer systems (including pump stations and force main systems)	60* Days *Add 45 days if separate navigable waterway permit is applicable
(vi)	Storm water discharge under General Permit	7 Days
(vii)	Water Quality Certification	180 Days
(b)	Agricultural Waste Management Plan Application	
(i)	Swine Facilities	
	1. Facilities with a capacity of 420,000 pounds or more of production animal live weight at any one time	120 Days
	2. Facilities with a capacity of less than 420,000 pounds of normal production animal live weight at any one time	90 Days
(ii)	Other Animal Facilities	
	1. Dry Manure/Litter Operation	90 Days
	2. Wet Manure/Litter Operation	120 Days
(c)	Air Quality:	
(i)	Construction permit	90 Days (Except for permits issued under the NESHAP Regulation [R.61-62.63] which provides 105 days for permit issuance.)
(ii)	Operating permit	90 Days
(iii)	PSD Construction Permit	270 Days

(iv)	Title V Operating Permit	540 Days
(d)	Laboratory Certification:	
(i)	Initial certification	90 Days
(e)	Radioactive Materials licenses:	
(i)	New license - on-site disposal, broad license	30 Days
(ii)	New license - storage/treatment	180 Days
(iii)	License renewal - annual	30 Days
(iv)	Transporter permit	10 Days
(f)	Hazardous and Mixed Waste Management:	
(i)	Commercial Hazardous Waste Facilities	990 Days
(ii)	Non-Commercial Hazardous Waste Facilities	540 Days

Applications for permit modifications which add or delete units or which change the capacity of permitted units will be processed within The time schedules above.

(g)	Solid Waste Management.	
(i)	Municipal Solid Waste Landfill Permit:	
1.	Solid Waste Landfill Siting Study:	
a.	Preliminary Hydrogeologic Characterization Report	60 Days
b.	Site Hydrogeologic Characterization Work Plan	90 Days
c.	Site Hydrogeologic Characterization Report	120 Days
2.	Permit Application	360 Days
(ii)	Industrial Solid Waste Landfill Permit:	
1.	Solid Waste Landfill Siting Study:	
a.	Preliminary Hydrogeologic Characterization Report	60 Days
b.	Site Hydrogeologic Characterization Workplan	90 Days
c.	Site Hydrogeologic Characterization Report	120 Days
2.	Permit Application	360 Days
(iii)	Municipal Incinerator Ash Landfill Permit:	
1.	Solid Waste Landfill Siting Study:	
a.	Preliminary Hydrogeologic Characterization Report	60 Days
b.	Site Hydrogeologic Characterization Workplan	90 Days
c.	Site Hydrogeologic Characterization Report	120 Days
2.	Permit Application	360 Days
(iv)	Municipal Solid Waste Incineration Permit	180 Days
(v)	Construction, Demolition and Land-Clearing Debris Landfill Permit	120 Days
(vi)	Waste Tire Permit (Processing, Collection and Disposal Permit)	90 Days
(vii)	Waste Tire Hauler Registration	30 Days
(viii)	Transfer Station Permit	90 Days
(ix)	Research, Development and Demonstration Permit	90 Days
(x)	Municipal Solid Waste Processing Permit	90 Days
(xi)	Lead-Acid Battery Facility Registration	30 Days
(xii)	Yard Trash Composting Facility Registration	30 Days
(h)	Infectious Waste Management:	
(i)	Treatment facility	270 Days
(ii)	Intermediate handling facility	270 Days
(i)	Drinking Water Permits:	
(i)	Drinking Water Construction	45 Days
(ii)	Recreational Waters	15 Days
(iii)	UST Construction Permit 15 Days In Coastal Zone	45 Days
(iv)	UST Operating Permit	10 Days
(v)	UIC Construction Permit	60 Days
(vi)	UIC Operating Permit	45 Days

(j) Individual Residential Wells and Irrigation Wells (issued under a general permit with the 48-hour period calculated from the time and date of receipt of the Notice of Intent excluding weekends and legal state holidays):

(i)	Individual Residential Well	48 Hours
(ii)	Irrigation Well	48 Hours

(3) Coastal Zone Management Program.

(g) Solid Waste Management.

(a) Critical Area Permits

(i) Minor activities: 30 days

(ii) Major activities: 90 days

(iii) Extensions or transfers of minor activity permits: 15 days

(iv) Extensions or transfers of major activity permits: 30 days

(v) Amendments of minor activity permits: 30 days

(vi) Amendments of major activity permits: 90 days

I. Compliance with Other Statutes and Regulations.

Nothing in this regulation shall relieve the applicant of the duty to comply with all other applicable environmental statutes and regulations.

J. Severability.

Should any section, paragraph or other part of these regulations be declared invalid for any reason, the remainder shall not be affected.

HISTORY: Added by State Register Volume 19, Issue No. 6, eff June 23, 1995; Amended by State Register Volume 22, Issue No. 6, Part 2, eff June 26, 1998; State Register Volume 23, Issue No. 6, eff June 25, 1999; State Register Volume 25, Issue No. 2, eff February 23, 2001; State Register Volume 26, Issue No. 6, Part 1, eff June 28, 2002; State Register Volume 28, Issue No. 3, eff March 26, 2004; State Register Volume 29, Issue No. 3, eff March 25, 2005; State Register Volume 30, Issue No. 6, eff June 23, 2006; State Register Volume 32, Issue No. 5, eff May 23, 2008; State Register Volume 36, Issue No. 2, eff February 24, 2012.

Attachment G Comments Received and Responses

On February 28, 2014, the Department of Health and Environmental Control (Department) published a Notice of General Public Interest in the South Carolina *State Register* that provided public notice of the Department's proposal to certify that it had addressed the required State Implementation Plan (SIP) elements for SO₂ attainment areas in South Carolina. On the same day, the Department submitted a pre-hearing package to the Environmental Protection Agency (EPA) Region 4 for review. The aforementioned notice announced a 30-day comment period and a public hearing for the proposed SO₂ infrastructure SIP (ISIP) certification. The Department did not receive request for a public hearing, so pursuant to 40 CFR 51.102, no public hearing was held. The Department did, however receive comments by Southern Environmental Law Center (SELC) and on behalf of the Sierra Club, South Carolina Coastal Conservation League, and the Southern Alliance for Clean Energy. These comments allege (among other things) that the proposed infrastructure SIP is deficient because it does not meet requirements to establish enforceable emission limits, provide for air quality modeling, and address significant contributions to downwind states. The full extent of these comments is too large to include in this attachment, and can be viewed at: <https://app.box.com/s/ahzbhz00awsielrgob8p>

The Department would like to thank SELC and associated groups for taking part in the process of developing SC's SO₂ ISIP. While many of their assertions may have some merit, they can not, nor should not be addressed in an ISIP based on the requirements of the Clean Air Act, current guidance, and status of SO₂ implementation. The comments have been generalized below and are followed by the Department's response.

Comment #1: THE DRAFT I-SIP FAILS TO INCLUDE ENFORCEABLE ONE-HOUR SO₂ EMISSION LIMITATIONS TO ENSURE ATTAINMENT AND MAINTENANCE OF THE PRIMARY SO₂ [National Ambient Air Quality Standards] NAAQS.

An ISIP is not the same document as an attainment SIP, nor does it have the same requirements. An ISIP is only a demonstration to EPA that a state has the infrastructure, authority, and resources to comply with the NAAQS. Conversely, an attainment SIP demonstrates to EPA how a state will achieve compliance with the NAAQS, by detailing specific emission reduction to achieve the NAAQS and how those programs will be enforced. Due to the distinct differences between these two types of SIPs, South Carolina believes the comments provided do not pertain to the ISIP process or the content of an ISIP. This is reinforced by the September 2013 Infrastructure SIP Guidance which states in the section titled "Which elements of CAA 110(a)(2) affect infrastructure SIPs" that sections 110(a)(2)(C) (NANSR) and 110(a)(2)(I) (SIP revisions for NA areas) are not applicable for infrastructure SIPs and, as such, "*Emissions limitations and other control measures needed to attain the NAAQS in areas designated nonattainment for that NAAQS will be due on a different schedule from the section 110 infrastructure elements.*" At this time, South Carolina's monitoring data show attainment with the 1-hour SO₂ standard. Since EPA has deferred designations, this is the only reliable basis with which to assess SC's attainment status. As such, no further emissions limits on SO₂ emitting sources should (or can) be included in the SO₂ infrastructure SIP. The Department has followed the September 2013 guidance which states that, with regard to section 110(a)(2)(A): "To satisfy Element A, an air agency's submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS" – and feels that we have adequately addressed the requirement by relying on our robust major and minor source permitting program and regulatory and statutory authority to ensure that all NAAQS be enforced.

The commenters have provided modeling conducted by the Sierra Club for North Carolina sources which demonstrate that they are currently violating the SO₂ standard, and allege that they act as a surrogate for SC sources which, in turn, should have 1-hour SO₂ permit limits. Though, as previously mentioned, 1-hour SO₂ emission limits are appropriate for ISIPs, the Department would like to note that the Sierra Club has used a modeling method which relied on a now superseded March 2011 SO₂ implementation guidance. EPA has indicated that this method is not appropriate for assessing actual SO₂ concentrations. “However, an important difference between attainment planning and permitting guidance that this TAD reflects is that this TAD describes how to characterize “current” air quality based on actual emissions data from recent years for the purposes of designations. (Page 2 of the modeling TAD).

As such, no changes were made to the ISIP as a result of these comments.

Comment #2: THE DRAFT I-SIP MUST BE REVISED TO ADDRESS SOURCES SIGNIFICANTLY CONTRIBUTING TO NONATTAINMENT OR INTERFERENCE WITH MAINTENANCE OF THE NAAQS IN DOWNWIND STATES

The August 21, 2012, decision by the U.S. Court of Appeals (EME Homer City Generation, L.P. v. EPA) states that a SIP cannot be deemed deficient for failing to meet the “good neighbor” obligation before the EPA quantifies that obligation. As of the submission of this document, EPA has yet to determine that South Carolina has any significant contribution of SO₂ to any downwind state’s nonattainment or maintenance of the 1-hour SO₂ standard. Therefore, at this time, South Carolina should not address the good neighbor provisions of the CAA in Section 110(a)(2)(D). This is consistent with November 19, 2012, EPA memorandum from Administrator Gina McCarthy that “a SIP cannot be deemed deficient for failing to meet the good neighbor obligation before EPA quantifies the obligation.” The EPA must complete its rule making and technical assistance documents before South Carolina can determine the ambient air quality impacts of its SO₂ sources on neighboring states.

As such, no changes were made to the ISIP as a result of these comments.

Comment #3: THE DRAFT I-SIP IMPERMISSIBLY RELIES ON ITS REGIONAL HAZE SIP TO PROTECT THE VISIBILITY IN OTHER STATES.

Reliance on Partial Haze Approval and FIP

Commenters assert that “*South Carolina cannot rely on visibility protection from its Regional Haze State Implementation Plan (“Haze SIP”), because it does not have a fully approved Haze SIP...[and that]...South Carolina must demonstrate that it satisfies section 110(a)(2)(D)(i)(II), which requires South Carolina to address any contributions of its sources’ impacts on other states’ visibility program requirements (visibility transport prong). See Draft I-SIP, Att. A at 3.*” This assertion goes on to explain that the FIP put in place to address CSAPR in South Carolina is not sufficient to meet the requirements of section 110(a)(2)(D)(i)(II) and that South Carolina “*cannot rely on any benefits from CSAPR, because CSAPR has been vacated. A Haze SIP based on a vacated rule cannot adequately protect visibility in other states...[and that]...a FIP is not a SIP and cannot be relied upon by the state to satisfy later requirements...*”

The Department disagrees with this logic and directs the commenters to the SO₂ ISIP which states that Regional Haze Rule adequately addressing section 110(a)(2)(D)(i)(II). At the time the Regional Haze SIP was submitted to EPA (2007), CAIR (SC Regulation 61-62.96) was in place. As such the Department’s analysis in this SO₂ ISIP is related to CAIR, not CSAPR, and this argument is largely irrelevant.

Reliance on CAIR to Equal BART

Commenters assert that the Department cannot rely on CAIR to equal BART. *“With regards to South Carolina’s reliance on CAIR, South Carolina cannot rely on CAIR as its BART alternative to protect visibility in other states. To begin with, CAIR is not part of South Carolina’s approved Haze SIP, thus it cannot be relied upon to adequately protect visibility in other states. See 40 C.F.R. 52.2132(d); 77 Fed. Reg. at 38,509; 77 Fed. Reg. at 33,643. Furthermore, CAIR’s reductions are not acceptable because CAIR has been remanded...”*

The Department disagrees. SC Regulation 61-62.96 (the State’s CAIR program) is in place and sources have and will continue to comply with its requirements as a matter of State Law.

Commenters further assert that *“Even if CAIR was found to be permanent and enforceable, CAIR does not meet the standards of the visibility program mandated by Congress in section 169A.”* Commenters go on to depict the litigation history of CAIR and claim, *“The D.C. Circuit has made it clear that CAIR is a stopgap and not a valid, permanent program; thus, South Carolina cannot rely on CAIR to meet the requirements of sections 110(a)(2)(D)(i)(II) and 110(a)(2)(J).”*

The Department disagrees, and believes that it can rely on R. 61-62.96 (the SC CAIR program) to meet the requirements up to and until an alternative rule is promulgated by the EPA to replace the federal CAIR program, or the SC CAIR program is disapproved by EPA.

CAIR does not address CAA Section 169A

Commenters claim that CAIR is an ineffective means to address CAA Section 169A. Commenters assert, *“To the extent that EPA’s “better than BART” provision purports to exempt BART-eligible sources from BART, it is arbitrary and capricious and in clear violation of the Act...[and that]...EPA’s “better than BART” provision also violates the explicit language of section 169A(b)(2)(A), which requires BART for sources that emit any pollutant that may contribute to any visibility impairment in any Class I area.”*

Again, the Department feels these comments are relevant only to the EPA’s approval of the SC Regional Haze Rule and are largely inappropriate here; in the context of the Department’s reliance on this approval to satisfy the ISIP requirements to address the SO₂ NAAQS.

As such, no changes were made to the ISIP as a result of these comments.

Comment #4: THE DRAFT I-SIP MUST PROVIDE FOR AIR QUALITY MODELING TO DETERMINE THE APPROPRIATE SO₂ EMISSION LIMITS AND ENSURE ATTAINMENT AND MAINTENANCE OF THE NAAQS.

The Department agrees that 61-62.5 Standard 2 refers to monitoring methods. As such, the Department has revised its infrastructure SIP to include R.61-62.1, Definitions and General Requirements, which provides for the reporting of emissions necessary to conduct air quality modeling. S.C. Code Ann. § 48-1-50(14) has also been included since it provides the Department with the necessary authority to “Collect and disseminate information on air and water control.” The Department feels that these inclusions, along with the technical requirement for PSD modeling mentioned in R.61-62.5 Standard 7 provide the tools necessary to meet *the statutory or regulatory provisions that provide the air agency or official with the authority to perform the following actions along with a narrative explanation of how the provisions meet the requirements of this element: (1) conduct air quality modeling to predict the effect on ambient air quality of any emissions of any air pollutant for which a NAAQS has been promulgated, and (2) provide such modeling data to the EPA Administrator upon request* which is outlined in the September 2013 infrastructure SIP guidance.

Changes were made to the Infrastructure SIP as a result of these comments.

Comment #5: THE DRAFT I-SIP FAILS TO INCLUDE PROPER PUBLIC NOTIFICATION FOR EXCEEDANCES OF THE 2010 SO₂ NAAQS.

The Department Agrees with the commenters that the referenced SIP approved regulation R. 61-62.3, *Air Pollution Episodes* does not adequately address the requirement for Public Notification in 110(a)(2)(J). As a result, additions have been made which demonstrate that, through its website and public outreach efforts, the Department regularly notifies the public of instances or areas in which the new or revised primary NAAQS was exceeded; advises the public of the health hazards associated with such exceedances; and enhances public awareness of measures that can prevent such exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

Changes were made to the Infrastructure SIP as a result of these comments.

Conclusion

The Department believes it has adequately addressed the comments submitted by SELC and on behalf of the Sierra Club, South Carolina Coastal Conservation League, and the Southern Alliance for Clean Energy SCLC/Sierra Club, and is requesting that the EPA approve the South Carolina certification of CAA section 110(a)(1) and (a)(2) requirements for the 2010 1-hour SO₂ NAAQS.