

Robert Bolchoz, Chairman Seema Shrivastava-Patel, Vice-Chair Charles M. Joye, II, P.E., Secretary Jim P. Creel, Jr.

J.B. (Sonny) Kinney Richard V. Lee, Jr. Morris E. Brown, III, MD, FAAFP Robert R. Morgan, Jr., MD, MBA

Minutes of the August 11, 2022, meeting of the South Carolina Board of Health and Environmental Control

The South Carolina Board of Health and Environmental Control met on Thursday, August 11, 2022, at 11:00 a.m. in the Boardroom (#3420) at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. (Attachment 0-1)

The following members were in attendance:

Robert Bolchoz, Chairman J.B. (Sonny) Kinney, 1st District Robert Morgan, MD, 4th District Richard V. Lee, Jr., 5th District Morris E. Brown, III, MD, 6th District Jim P. Creel, Jr., 7th District

In attendance virtually: Charles M. Joye, II, P.E., 3rd District

Not in attendance: Seema Shrivastava-Patel, Vice-Chairwoman, 2nd District

Also, in attendance were Dr. Edward Simmer, Director; W. Marshall Taylor, Jr., General Counsel; M. Denise Crawford, Clerk; Department staff; and members of the public. The meeting was also available via Livestream. (Attachment 0-2)

Chairman Bolchoz called the meeting to order and stated notice of this meeting had been provided to all persons, organizations, and news media, which have requested notification, as required by Section 30-4-80(e) of the South Carolina Code of Laws.

Item 1: Minutes of June 29, 2022 meeting (Attachment 1-1)

Mr. Lee moved, seconded by Mr. Kinney, to approve the minutes as presented. The Board voted and Motion carried.

Item 2: Agency Affairs

Dr. Edward Simmer, Director, updated the Board on:

- COVID 19
- Monkeypox update
- Septic Tanks
- Department of Administration approval for salary increases

Dr. Simmer presented Employee Appreciation Coins to Meredith Murphy, Rebecca Sproles, and Bentley White.

Dr. Brannon Traxler, Director of Public Health, provided an overview of the COVID 19 guidance for schools.

Item 3: Administrative Orders and Consent Orders issued by Healthcare Quality (Attachment 3-1)

Ms. Bentley White, Director of Policy and Communications, Healthcare Quality, stated that for this reporting period, thirteen (13) Consent Orders and one (1) Emergency Suspension Order with assessed civil penalties totaling \$74,400.00 were issued.

Dr. Morgan requested more detail about the increase in cases of abuse and inquired if these were self-reports. Ms. White confirmed they were reported on incident reports. Dr. Simmer further clarified that the agency was looking at a way to track care workers that abuse patients to prevent them from moving between facilities.

Mr. Lee inquired about fines that had not been paid. Ms. White clarified that Dalton's CMC Residential Care Facility had not been paid and that the agency is considering additional actions. but nothing has been finalized. Mr. Lee followed up by asking if the agency has to pursue collection actions if the agency recovers the costs of collections as well as additional penalties for nonpayment. Ms. White stated that it depends on the facility and the facts of the matter. Dr. Simmer further clarified that if a portion of the penalty was stayed, that nonpayment of the agreed penalty may result in the full amount being due.

Mr. Lee asked about the radiological health order and the large penalty and how the amount is determined. Ms. White replied that there is a penalty matrix based on the severity of the potential for harm.

Dr. Morgan again asked to discuss Dalton's CMC Residential Care Facility and the serious concerns at the facility, including the agency not being allowed to enter the facility. Ms. White stated that staff was actively working with the Office of General Counsel in this matter to determine what action to take.

After discussion, the Board accepted this item as information.

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

Ms. Rebecca Sproles, Liaison, Environmental Affairs, stated that for this reporting period, fortyfive (45) Consent Orders with assessed civil penalties totaling \$245,590.00 and ten (10) Administrative Orders with assessed civil penalties totaling \$62,475.00 were issued.

Mr. Lee inquired about the sizeable fine for The Express Mart and the long list of violations. Van Keisler, Director, Compliance and Enforcement Division, Environmental Affairs responded that the location has not operated in several years. It does have petroleum in the tank and the agency has attempted to get them to remove that, but they have resisted. The agency has filed an action in Court in this matter.

Mr. Lee asked for an update on the Department's consideration of cumulative effect of repeat violations on a multi-site owner. Mr. Taylor stated that they were still looking at the policy and trying to determine the best way to proceed.

After discussion, the Board accepted this item as information.

<u>Item 5: Notice of Proposed Regulation amending Regulation 61-19, Vital Statistics</u> (Attachment 5-1)

Mr. Caleb Cox, Director of Vital Statistics, presented this item to the Board.

The Bureau of Vital Statistics proposed the Notice of Proposed Regulation amending Regulation 61-19, Vital Statistics, for publication in the August 26, 2022, *South Carolina State Register* ("*State Register*"). Legal authority resides in S.C. Code Section 44-63-20, which provides that the Department of Health and Environmental Control ("Department") shall establish the Bureau of Vital Statistics and formulate, promulgate, and enforce regulations regarding registration and certification of Vital Statistics. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

The purpose of this proposed revision to Regulation 61-19 is to make general updates that will make processes more clear, concise, customer-friendly, and efficient; to remove obsolete sections; to add and update definitions; to address advancements in processes for the creation and amendment of vital records; and to bring the regulation into conformity with changes in South Carolina law.

The Department had a Notice of Drafting published in the April 22, 2022, *State Register*. The Department received public comments from nine parties by May 23, 2022, the close of the public comment period.

Department staff conducted a general stakeholder meeting on May 19, 2022, to receive comments on the proposed amendments. Additional targeted stakeholder meetings were held via Microsoft Teams on April 29, May 3, May 5, May 11, May 13, and May 16, 2022, to address specific sections that impact these groups, including funeral home personnel, medical certifiers for death certificates, Induced Termination of Pregnancy (ITOP) facilities, LGBTQ advocacy groups, surrogacy providers, and attorneys. A total of approximately 120 individuals attended these various stakeholder meetings online; three stakeholders attended the general in-person meeting on May 19, 2022. Overall feedback from all meetings was positive. The most frequent concern raised regarded new sections related to administrative penalties (Section 700). However, it was discussed that the statute is very clear on what these fines are and when they are to be administered. The

proposed regulations are simply defining the process for individuals to be notified and to have an opportunity to respond, as well as to receive a reduction of the fines if paid in a timely manner. The meeting for LGBTQ groups (May 11) to discuss the regulations relating to amending the sex marker on certificates, as well as parental titles, did not have any stakeholders in attendance. The meeting to discuss the sections relating to surrogacy (May 13) had two attorneys in attendance, who offered very valuable insight into the court processes and procedures that influenced drafting of the sections relating to surrogacy and gestational carriers.

Department staff conducted an internal review of the proposed amendments on May 25, 2022.

The Bureau of Vital Statistics requested the Board grant approval of the Notice of Proposed Regulation for publication in the August 26, 2022, *State Register*.

Mr. Kinney asked about timing to report deaths. Mr. Cox replied that all deaths should be filed within five (5) days, but medical certifiers have forty-eight (48) hours from notification about the death to report. The Statute provides an exception for weekends and holidays for medical certifiers, but not funeral homes.

Dr. Brown asked what happens if a solo physician is unavailable to report the death. Mr. Cox replied that there was an allowance in the law that another physician in their facility or in the case of a solo physician, an administrator can be designated to certify on their behalf if they are unavailable. Dr. Brown asked for further clarification of a non-physician certifying a death. Mr. Cox will provide the exact language.

Mr. Lee asked if the issue with the death reporting system had been resolved. Mr. Cox said it has been corrected and the system is up to date.

Chairman Bolchoz asked what happened to the original record once is was amended. Mr. Cox stated that the original record remains, it just notates the amendment. Mr. Lee followed up and asked if the change would be biological. Mr. Cox states that the amendment to a birth certificate does not indicate a biological change, but rather the gender of the transition.

Chairman Bolchoz asked if changing name, date of birth, and gender would have any impact in criminal investigations. Mr. Cox stated that the agency routinely works with law enforcement and that the original records would be linked to any amendments. Chairman Bolchoz followed up and asked if staff was comfortable making these changes without a court order on just a physician's statement. Mr. Cox indicated that he was comfortable with the requested change.

After discussion, Dr. Morgan moved, seconded by Dr. Brown, to grant approval to publish the Notice of Proposed Regulation amending Regulation 61-19, Vital Statistics, in the State Register, to provide opportunity for public comment, to receive and consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted and the motion carried.

Mr. Lee made a motion that the Board go into Executive Session pursuant to SC Code Section 30-4-70 to discuss an employment matter. Mr. Kinney seconded the motion and the motion carried unanimously.

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

<u>Item 6: Notice of Proposed Regulation amending Regulation 61-94, WIC Vendors</u> (Attachment 6-1)

Mr. Barry Kelly, Director, Bureau of Community Nutrition Services, presented this item to the Board.

The Bureau of Community Nutrition Services proposed the Notice of Proposed Regulation for amending Regulation 61-94, WIC Vendors, for publication in the August 26, 2022, South Carolina State Register ("State Register"). Legal authority resides in S.C. Code Section 43-5-930, which directs the Department to outline the responsibilities and duties of all potential and authorized WIC Vendors. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

Regulation 61-94, WIC Vendors, outlines the responsibilities and duties of potential and authorized WIC Vendors. The purpose of this promulgation is to implement the transition from food instruments to South Carolina Electronic WIC Benefits (eWIC) and update associated provisions and requirements.

The Department had a Notice of Drafting published in the February 25, 2022, State Register. The Department received no public comments by the March 28, 2022, close of the public comment period.

Department staff conducted an internal review of the proposed amendment on July 20,2022.

The Bureau of Community Nutrition Services requested the Board grant approval of the Notice of Proposed Regulation for publication in the August 26, 2022, State Register.

Dr. Brown stated that at one time, well child checkups were connected to the WIC program, but that is no longer the case. Mr. Cox stated the federal standard had changed. Dr. Simmer stated that there may be something the agency can do to encourage well child checkups when constituents come in to receive WIC benefits. Mr. Cox and Dr. Traxler will look into the matter.

After discussion, Mr. Lee moved, seconded by Mr. Creel, to grant approval to publish the Notice of Proposed Regulation amending Regulation 61-94, WIC Vendors, in the State Register, to provide opportunity for public comment, to receive and consider comments, and allow for staff to proceed with a public hearing before the Board. The Board voted and the motion carried.

<u>Item 7: Notice of Proposed Regulation for new Regulation 61-107.20 - Solar Energy Regulation</u> (Attachment 7-1)

Ms. Sallie Williams, Section Manager, Solid Waste Regulation Development, Planning, and Reporting Section, Division of Mining and Solid Waste Management, Environmental Affairs, presented this item to the Board.

The Bureau of Land and Waste Management ("Bureau") proposed the Notice of Proposed Regulation for new Regulation 61-107.20, Solar Energy Systems, for publication in the August 26, 2022, South Carolina State Register ("State Register"). Legal authority resides in 2022 Act No. 119, Section 5, which directs the Department of Health and Environmental Control ("Department") to develop rules to guide all South Carolinians invested in, selling, installing, and using photovoltaic ("PV") modules and energy storage system batteries in the management of end-of-life photovoltaic modules, and energy storage system batteries on solar projects and the decommissioning of solar projects in excess of thirteen acres. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of this proposed new regulation.

Pursuant to 2022 Act No. 119, Section 5, the Department is directed to submit regulations for the management of end-of-life PV modules and energy storage system batteries on solar projects in excess of thirteen acres. The Bureau proposes new Regulation 61-107.20, *Solar Energy Systems*, to create basic guidelines for large solar energy systems to facilitate proper disposal of PV modules and accompanying equipment. The new regulation is designed to establish a permitting requirement and require that all large solar energy systems have a decommissioning plan, which includes financial assurance, removal of PV modules and accompanying equipment, and remediation of the land, if necessary.

The Department had a Notice of Drafting published in the February 25, 2022, *State Register*. The Department received no public comments by the March 28, 2022, close of the public comment period.

Department staff conducted an internal review of the proposed new regulation on June 16, 2022.

The Bureau conducted a stakeholder engagement meeting on April 8, 2022, to receive comments on the proposed new regulation. The Bureau conducted the meeting virtually and included representatives of solar companies, utilities, green energy advocates, the recycling industry, waste processing industry, environmental organizations, city and county governments, and other interested parties.

The Bureau requested the Board grant approval of the Notice of Proposed Regulation for publication in the August 26, 2022, *State Register*.

Mr. Lee asked why thirteen (13) acres was specified. Ms. Williams stated the requirement was in statute. He followed up and asked if this applied to homes or utilities. Ms. Williams stated it did

not apply to a home, but it would apply to utilities, and they would need to provide a bond to cover the cost of decommissioning.

Dr. Morgan asked how many entities would be impacted. Ms. Williams replied approximately seventy-eight (78).

Mr. Lee asked what the recommended method of disposal was for used solar panels. Ms. Williams said this regulation was to get ahead of disposal and the life of the panels is 20 to 30 years. An annual report is provided to the agency on the panels.

After discussion, Mr. Lee moved, seconded by Mr. Kinney, to grant approval to publish the Notice of Proposed Regulation for new Regulation 61-107.20, Solar Energy Systems, in the State Register, to provide opportunity for public comment, to receive and consider comments, and allow for staff to proceed with a public hearing before the Board. The Board voted and the motion carried.

<u>Item 8: Notice of Proposed Regulation amending Regulation 61-68, - Water Classifications and Standards (Triennial Review)</u> (Attachment 8-1)

Mr. Shawn Clarke, Director, Water Facilities Permitting Division, Bureau of Water, Environmental Affairs, presented this item to the Board.

The Bureau of Water ("Bureau") proposed the Notice of Proposed Regulation amending Regulation 61-68, *Water Classifications and Standards*, for publication in the August 26, 2022, *South Carolina State Register* ("*State Register*"). Legal authority resides in S.C. Code Sections 48-1-10 et seq., which provide that the Department of Health and Environmental Control ("Department") shall promulgate regulations to implement the South Carolina Pollution Control Act. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

Regulation 61-68 establishes appropriate goals and water uses to be achieved, maintained, and protected; general rules and water quality criteria to protect classified and existing water uses; and an antidegradation policy to protect and maintain the levels of water quality necessary to support and maintain those existing and classified uses. Section 303(c)(2)(B) of the federal Clean Water Act ("CWA") requires South Carolina's water quality standards be reviewed and revised, where necessary, at least once every three years. Referred to as the triennial review, this required process consists of reviewing and adopting, where appropriate, the Environmental Protection Agency's updated numeric and narrative criteria according to Section 304(a) and Section 307(a) of the CWA.

The Department had a Notice of Drafting published in the February 25, 2022, *State Register*. The Department received public comments from four parties by March 25, 2022, the close of the public comment period.

The Department met with stakeholders to discuss the Notice of Drafting and to receive stakeholder input on April 19, 2022, and on May 24, 2022.

Department staff conducted an internal review of the proposed amendments on July 13, 2022.

The Bureau of Water requested the Board grant approval of the Notice of Proposed Regulation for publication in the August 26, 2022, *State Register*.

After discussion, Mr. Kinney moved, seconded by Dr. Morgan, to grant approval to publish the Notice of Proposed Regulation amending Regulation 61-68, Water Classifications and Standards (Triennial Review), in the State Register, to provide opportunity for public comment, to receive and consider comments, and allow for staff to proceed with a public hearing before the Board. The Board voted and the motion carried.

<u>Item 9: Notice of Proposed Regulation amending Regulation 61-69, - Classified Waters (Triennial Review)</u> (Attachment 9-1)

Mr. Shawn Clarke, Director, Water Facilities Permitting Division, Bureau of Water, Environmental Affairs, presented this item to the Board.

The Bureau of Water ("Bureau") proposed the Notice of Proposed Regulation amending Regulation 61-69, Classified Waters, for publication in the August 26, 2022, South Carolina State Register ("State Register"). Legal authority resides in S.C. Code Sections 48-1-10 et seq., which provides that the Department of Health and Environmental Control ("Department") shall promulgate regulations to implement the South Carolina Pollution Control Act. The Administrative Procedures Act, S.C. Code Section 1-23-120(A), requires General Assembly review of these proposed amendments.

Regulation 61-69 establishes South Carolina's site-specific water quality standards and provides a listing of all named and specific unnamed waterbodies, their classifications, and locations. The Bureau proposed amending Regulation 61-69 to clarify and correct, as needed, waterbody names, counties, classes, and descriptions. The Bureau also proposes stylistic changes for overall improvement of the text of the regulation.

The Department had a Notice of Drafting published in the February 25, 2022, *State Register*. The Department received public comments from two parties by March 25, 2022, the close of the public comment period.

Department staff met with stakeholders to discuss the Notice of Drafting and receive stakeholder input on the proposed amendments on April 19, 2022, and May 24, 2022.

Department staff conducted an internal review of the proposed amendments on July 13, 2022.

The Bureau of Water requested the Board to grant approval of the Notice of Proposed Regulation for publication in the August 26, 2022, *State Register*.

Mr. Creel asked what constitutes an outstanding resource water. Mr. Clarke replied that it is a natural resource water. Mr. Taylor provided the definition as "Outstanding recreational or ecological resource waters means waters which are of exceptional recreational or ecological importance or of unusual value. Such waters may include, but are not limited to: waters in national or state parks or wildlife refuges; waters supporting threatened or endangered species; waters under the National Wild and Scenic Rivers Act or South Carolina Scenic Rivers Act; waters known to be significant nursery areas for commercially important species or known to contain significant commercial or public shellfish resources; or waters used for or having significant value for scientific research and study."

After discussion, Mr. Kinney moved, seconded by Mr. Lee, to grant approval to publish the Notice of Proposed Regulation amending Regulation 61-69, Classified Waters (Triennial Review), in the State Register, to provide opportunity for public comment, to receive and consider comments, and allow for staff to proceed with a public hearing before the Board. The Board voted and the motion carried.

Chairman Bolchoz stated the Board would be taking a break until 2:30 when they would reconvene to conduct the scheduled public hearing.

Chairman Bolchoz called the meeting back to order and turned it over to Board Counsel Taylor to conduct the public hearing.

<u>Item 10: Public Hearing - Initial Groundwater Management Plan for the Santee-Lynches Capacity Use Area: S.C. Code of Laws, Title 49, Chapter 5, Groundwater Use and Reporting Act</u> (Attachment 10-1)

A Public Hearing was conducted concerning the Regulation. Ms. Leigh Anne Monroe, Program Manager, Bureau of Water, Environmental Affairs, presented this item to the Board.

Pursuant to S.C. Code Section 49-5-60(B), the Department of Health and Environmental Control (Department) is directed to develop a groundwater management plan to achieve goals and objectives stated in Section 49-5-20

S.C. Code Section 49-5-60 (B) states: "After notice and public hearing, the department shall coordinate the affected governing bodies and groundwater withdrawers to develop a groundwater management plan to achieve the goals and objectives stated in Section 49-5-20. In those areas where the affected governing bodies and withdrawers are unable to develop a plan, the department shall take action to develop the plan. The plan must be approved by the board before the department may issue groundwater withdrawal permits for the area."

The Department proposed an initial groundwater management plan for the Santee-Lynches Capacity Use Area (SLCUA) to the Board for approval. The Department has coordinated with local stakeholders to develop this plan and begin the process of establishing goals and processes to ensure sustainable growth of our groundwater resources. This is achieved by the establishment of six strategies outlined in the plan that support growth while conserving and protecting this

valuable water resource. It should be noted the initial plan is based on current department procedures for evaluating permit applications and establishing conservation measures. As the Capacity Use Areas are evaluated every five years, the most current information can be incorporated, and the plan refined over time through an adaptive management approach.

To comply with this provision, the following actions were taken to invite stakeholder participation:

• A Notice of General Public Interest was published in the State Register on March 26, 2021

Santee-Lynches Management Plan Schedule

- January 5, 2021- Virtual Public Meeting held
- January 12, 2021- Virtual Public Meeting held
- October 6, 2021-SLCUA Stakeholder Workgroup (Sumter)
- November 3, 2021 SLCUA Stakeholder Workgroup (Sumter)
- December 1, 2021- SLCUA Stakeholder Workgroup (Sumter)
- February 10, 2022- SLCUA Stakeholder Workgroup (Sumter)
- March 28, 2022 DHEC Open House (Camden)
- The comment period for the plan ended April 12, 2022.

Department staff requested the Board grant approval of the proposed Initial Groundwater Management Plan for the Santee-Lynches Capacity Use Area

The proposed Initial Groundwater Management Plan established a management strategy for groundwater resources in the Santee-Lynches (Chesterfield, Clarendon, Kershaw, Lee, Richland, and Sumter Counties) Capacity Use Area. All new permit requests, permit renewals, and requests for permit modifications are on hold until groundwater management plans for each of the Capacity Use Areas can be finalized. Economic development and growth will be impacted if management plans are not put in place to allow the Department to issue new permits, permit renewals, and modifications to existing permits.

The initial plan relies on currently available data from the Department, the U.S. Geological Survey (USGS), and the South Carolina Department of Natural Resources (SCDNR). The data (actual groundwater use and actual groundwater levels) provide a basis for a scientific analysis of proposed groundwater withdrawals. However, as more tools become available, such as the updated Groundwater Availability Model for the South Carolina Coastal Plan from the USGS and SCDNR, the groundwater management plan will be updated to incorporate these tools. The groundwater management plan includes a process for updates to the plan on a 5-year cycle to coincide with permit renewals for the Santee-Lynches Capacity Use Area. Stakeholder participation is part of this process.

Department staff recommended the Board grant approval of the proposed Santee-Lynches Capacity Use Area Groundwater Management Plan.

Board Counsel, W. Marshall Taylor, opened the meeting up for public comments on this matter. No members of the public spoke. (Attachment 10-2) The public comment portion of the public hearing was closed.

Dr. Morgan asked if the five (5) year evaluations were synchronized amongst all the capacity use areas. Ms. Monroe replied that each has its own plan and staff tries to stagger the evaluations.

Mr. Lee asked if those currently using the water would need to apply for a permit. Ms. Monroe said they would or drop below the usage threshold to be permitted. Mr. Kinney followed up and asked if they currently have to apply for a permit. Ms. Monroe stated they did not.

Chairman Bolchoz asked if other states used electronic metering similar to how some municipalities receive water usage information instead of self-reporting. Ms. Monroe stated she did not know of any states that currently did that.

After discussion, Mr. Lee moved, seconded by Mr. Kinney, that the Board grant approval of the proposed Santee-Lynches Capacity Use Area Groundwater Management Plan. The Board voted and Motion carried.

Being no further business, Chairman Bolchoz adjourned the meeting.

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

Respectfully submitted,

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

Minutes approved this 8th day of September 2022.

ATTEST:

Robert Bolchoz, Chairman

Attachments

- 0-1 Agenda
- 0-2 Sign in Sheet
- 1-1 Minutes of June 29, 2022 meeting
- 3-1 Administrative Orders and Consent Orders issued by Healthcare Quality
- 4-1 Administrative Orders and Consent Orders issued by Environmental Affairs
- 5-1 Item 5: Notice of Proposed Regulation amending Regulation 61-19, Vital Statistics
- 6-1 Item 6: Notice of Proposed Regulation amending Regulation 61-94, WIC Vendors
- 7-1 Item 7: Notice of Proposed Regulation for new Regulation 61-107.20 Solar Energy Regulation
- 8-1 Item 8: Notice of Proposed Regulation amending Regulation 61-68, Water Classifications and Standards (Triennial Review)
- 9-1 Item 9: Notice of Proposed Regulation amending Regulation 61-69, Classified Waters (Triennial Review)
- 10-1 Item 10: Public Hearing Initial Groundwater Management Plan for the Santee-Lynches Capacity Use Area: S.C. Code of Laws, Title 49, Chapter 5, Groundwater Use and Reporting Act
- 10-2 Public Hearing Sign In Sheet
- 10-3 Transcript of Public Hearing