

BOARD:
Allen Amsler
Chairman
Mark S. Lutz
Vice Chairman
Ann B. Kirol, DDS
Secretary



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

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

**Minutes of the January 8, 2015, meeting of the
South Carolina Board of Health and Environmental Control**

The South Carolina Board of Health and Environmental Control met on Thursday, January 8, 2015, at 10:00 a.m. in the Board Room (#3420) of the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. (Attachment 0-1)

The following members were in attendance:

Allen Amsler, Chairman
Member-at-Large

Mark Lutz, Vice-Chairman
1st District

Ann B. Kirol, DDS, Secretary
5th District

R. Kenyon Wells
2nd District

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

L. Clarence Batts
4th District

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

William Lee Hewitt, III
7th District

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

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

Item 1: Minutes of December 11 meeting (Attachment 1-1)

Mr. Batts moved, seconded by Mr. Lutz, to approve the minutes as submitted for the December 11 meeting. The Board voted and Motion carried.

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

Ms. Robin Stephens, Assistant to the Deputy Director, Environmental Affairs, stated two (2) Administrative Order and fifty-four (54) Consent Orders had been issued with total penalties of \$108,283.

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

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

Ms. Bentley White, Health Regulation Program Manager, stated four (4) Consent Orders and one (1) Administrative Order had been issued with total penalties of \$11,500.

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

Item 4: Hospital Infection Disclosure Act (HIDA) Advisory Membership Approval (Attachment 4-1)

Dr. Matthew Crist, Medical Consultant, Bureau of Disease Control, presented this item to the Board.

The South Carolina Board of Health and Environmental Control is authorized to appoint the Hospital Infection Disclosure Act Advisory Committee by S.C. Code Section 44-7-2430(c)(1). The Board shall seek recommendations for appointments to the advisory committee from organizations that represent the interests of hospitals, consumers, businesses, purchasers of health care services, physicians, and other professionals involved in the research and control of infections.

The following individuals were presented for approval for membership to the HIDA Advisory Committee:

- Bob Rife – nominated by the South Carolina Society for Respiratory Care;
- Francee Levin – nominated by the American Association of Retired Persons;
- Jennifer Meredith – nominated by the Healthcare-Associated Infections Section in DHEC.

After discussion, *Mr. Joye moved, seconded by Mr. Hewitt, to approve the nominations of Bob Rife, Francee Levin and Jennifer Meredith to serve on the Hospital Infections Disclosure Act*

Advisory Committee. The Board voted and Motion carried by a vote of 6-1 with Mr. Wells being the opposing vote.

Item 5: Public Hearing and Request for Final Approval – Proposed Amendment of Regulation 61-34.1, Pasteurized Milk and Milk Products, State Register Document No. 4497, Legislative Review is required (Attachment 5-1)

Mr. Rick Caldwell, Assistant Bureau Director, Bureau of Environmental Health Services, presented this item to the Board.

Regulation 61-34.1 governs the manufacturing of pasteurized milk and milk products in South Carolina and was derived from the U.S. Food and Drug Administration (FDA) Grade "A" Pasteurized Milk Ordinance, 2003 Revision. In the most recent FDA Grade "A" Interstate Milk Shippers (IMS) Program Triennial State Evaluation (FY 2011-2013) report on the South Carolina Dairy Program, the current version of R.61-34.1 was determined to be out of date and to not meet the current Grade "A" IMS Program minimum requirements.

FDA Memorandum of Information (M-I-03-2012 - Supplement 1) requires a state to adopt the *Grade "A" Pasteurized Milk Ordinance (PMO)* or have an equivalent regulation no more than six (6) years behind the current National Conference on Interstate Milk Shipments (NCIMS) and the PMO.

The amendment will bring R.61-34.1 into compliance with the most up to date procedures of the NCIMS, specifically Sections VI and VII of the *Procedures Governing the Cooperative State - Public Health Service, Food and Drug Administration Program of the National Conference on Interstate Milk Shipments and the FDA Pasteurized Milk Ordinance (PMO), 2013 Revision*.

In order for South Carolina milk producers and processors to continue the shipment of milk and milk products in interstate commerce and market their milk products as Grade "A," it is essential to keep R.61-34.1 updated with respect to the current edition of the FDA *Grade "A" PMO* and its inclusive guidance documents.

A public hearing was conducted; however, no one in attendance spoke. (Attachment 5-2)

After discussion, *Mr. Lutz moved, seconded by Dr. Kirol, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-34.1, Pasteurized Milk and Milk Products, and approve it for submission to the Legislature for review. The Board voted and Motion carried.*

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

Item 6: Public Hearing and Request for Final Approval – Proposed Amendment of Regulation 61-79, Hazardous Waste Management Regulations, State Register Document No. 4541, Legislative Review is required (Attachment 6-1)

Mr. David Scatturo, Director, Division of Waste Management, presented this item to the Board.

The South Carolina Department of Health and Environmental Control (Department) proposed to amend S.C. Regulation 61-79, *Hazardous Waste Management Regulations*, as follows:

- to adopt the “Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents,” published on January 18, 2011 at 75 FR 78918-78926;
- to adopt the “Academic Laboratories Generator Standards Technical Corrections,” published on December 20, 2010 at 75 FR 79304-79308;
- to adopt the “Revision of the Land Disposal Treatment Standards for Carbamate Wastes,” published on August 11, 2011 at 76 FR 34147-34157;
- to adopt the “Hazardous Waste Technical Corrections and Clarifications,” published on May 14, 2012 at 77 FR 22229-22232;
- to amend R.61-79 to adopt the “Conditional Exclusions for Solvent Contaminated Wipes,” published on January 31, 2014 at 78 FR 46448-46485;
- to amend R.61-79 to incorporate three recommended changes identified in its internal 2013 review for the South Carolina Governor’s Regulatory Review Task Force in order to provide consistency with existing federal regulations.

A public hearing was conducted; however, no one in attendance spoke. (Attachment 6-2)

After discussion, *Dr. Kirol moved, seconded by Mr. Batts, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-79, Hazardous Waste Management Regulations, and approve it for submission to the Legislature for review. The Board voted and Motion carried.*

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

Item 7: Public Hearing and Request for Final Approval – Proposed Amendment of Regulation 61-107.3, Solid Waste Management: Waste Tires, State Register Document No. 4542, Legislative Review is required (Attachment 7-1)

Ms. Jana White, Division of Mining and Solid Waste Management, presented this item to the Board.

The Department of Health and Environmental Control proposed to amend Regulation Section 61-107.3, Solid Waste Management: Waste Tires, for clarification of manifesting, reporting, and registration requirements, establish financial assurance requirements for waste tire haulers; and to expand exemptions for certain tire collection and hauling activities. The revision clarifies violations and penalties for violations. The regulation is reformatted for clarity.

A public hearing was conducted; however, no one in attendance spoke. (Attachment 7-2)

After discussion, *Mr. Hewitt moved, seconded by Mr. Lutz, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-107.3, Solid Waste Management: Waste Tires, and approve for it for submission to the Legislature for review. The Board voted and Motion carried.*

A verbatim transcript of this proceeding is included as part of the permanent record. (Attachment 7-3)

Item 8: Public Hearing and Request for Final Approval – Proposed New Regulation Consumer Electronic Equipment Collection and Recovery, State Register Document No. 4539, Legislative Review is required (Attachment 8-1)

Ms. Jana White, Division of Mining and Solid Waste Management, presented this item to the Board.

The South Carolina Manufacturer Responsibility and Consumer Convenience Information Technology Equipment Collection and Recovery Act (hereafter referred to as the Act), establishes requirements for the sale and recovery of covered electronic devices, specifically for household computers, printers, monitors and televisions and requires the Department of Health and Environmental Control staff to promulgate regulations to execute the provisions of the Act.

To satisfy the requirements of the Act, staff proposed new Regulation 61-___, Electronic Equipment Collection and Recovery:

- to establish standards for labeling covered devices;
- to establish procedures for banning covered devices from disposal in solid waste landfills;
- to specify annual registration fees for manufacturers of covered computer devices, covered computer monitors and covered televisions;
- to address responsibilities of manufacturers and retailers of covered electronic devices as defined by the Act, standards for the safe, environmentally responsible recovery, recycling of devices at end of life and annual reporting requirements;
- to establish fines for violations of the Act and the regulation.

A public hearing was conducted. (Attachment 8-2)

After discussion, *Mr. Wells moved, seconded by Mr. Batts, to find for the need and reasonableness of the Proposed New Regulation Consumer Electronic Equipment Collection and Recovery, and approve it for submission to the Legislature for review with the following revisions that were raised, considered, or discussed by public comment: Section B.7 – change 13” display to 12” display; after discussion, The Board voted and Motion failed by a vote of 3-4, with Mr. Joye, Dr. Kirol, Mr. Lutz and Dr. Hutto being the opposing votes.*

After further discussion, *Mr. Joye moved, seconded by Mr. Batts, to find for the need and reasonableness of the Proposed New Regulation Consumer Electronic Equipment Collection and Recovery, and approve it for submission to the Legislature for review. The Board voted and Motion carried.*

A verbatim transcript of this proceeding is included as part of the permanent record. (Attachment 8-3)

Item 9: Public Hearing and Request for Final Review – Proposed Amendment of Regulation 61-75, Standards for Licensing Day Care Facilities for Adults, State Register Document No. 4498, Legislative Review is required (Attachment 9-1)

Ms. Gwen Thompson, Director, Bureau of Health Facilities Regulation, presented this item to the Board.

Regulation 61-75 provides a set of minimum standards for day care facilities for adults. This regulation affects facilities that provide adults, eighteen (18) years of age or older, a program of individual and group activities and therapies in a group setting.

The amendments included the Department's effort to improve licensing procedures, participants' rights and care, infection control and sanitation, functional safety, emergency procedures, design and construction, and fire and life safety for day care facilities for adults. The Department also added language to incorporate current provider wide exceptions and memoranda that are applicable to day care facilities for adults.

Based on a 5-year review, the Department recommended revision of this regulation to ensure compliance with statutory requirements, current construction, design, fire and life safety requirements, and improvement for overall clarity.

A public hearing was conducted; however, no one in attendance spoke. (Attachment 9-2)

After discussion, *Mr. Wells moved, seconded by Mr. Hewitt, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-75, Standards for Licensing Day Care Facilities for Adults, and approve it for submission to the Legislature for review. The Board voted and Motion carried.*

A verbatim transcript of this proceeding is included as part of the permanent record. (Attachment 9-3)

Dr. Matthew Crist, Medical Consultant, Bureau of Disease Control, gave an update on Influenza in South Carolina.

Item 10: Public Hearing and Request for Final Approval – Proposed Amendment of Regulation 61-15, Certification of Need for Health Facilities and Services, State Register Document No. 4538, Legislative Review is required (Attachment 10-1)

Mr. Sam Phillips, Director, Certificate of Need, presented this item to the Board.

The South Carolina Department of Health and Environmental Control (Department) proposed amending Regulation 61-15, *Certification of Need for Health Facilities and Services*, as follows:

- to delete Section 101 and Section 102;
- to revise Section 103 to amend the timeframe for submitting a “competing application,” to clarify the procedures for collecting “Fees” used by the Certificate of Need program, to add the term “implemented” to the definitions, and to delete certain definitions that are unnecessarily duplicative of S.C. Code Section 44-7-130 or other statutory authority. This provision will be renumbered as Section 101;
- to add Section 102 to clarify the “Timing” requirement for deadlines that fall on weekends and holidays that was previously addressed in Section 304(4);
- to add Section 103 to modify the monetary thresholds for Certificate of Need review of capital expenditures and acquisitions of equipment referenced in S.C. Code Section 44-7-160(3) and (6) that were previously addressed in Section 102;
- to revise Section 104 to simplify the requirements for obtaining an exemption from Certificate of Need review pursuant to S.C. Code Section 44-7-170;
- to delete Section 105 (Non-Applicability Determination) due to introduction of the web-based Certificate of Need application and the revision to Section 104 of this Regulation;
- to revise Section 106 to simplify the procedures for the South Carolina Health Plan. This provision will be renumbered as Section 105;
- to delete Chapter 2 (Sections 201 & 202) because these provisions will be supplanted by the implementation of a web-based Certificate of Need application and other revisions to this Regulation;
- to revise Section 301 to conform the application procedures set forth therein to the requirements of the new web-based Certificate of Need application. This provision will be renumbered as Section 201;
- to add Section 202 that sets forth the requirement to post notice that the Department has accepted a Certificate of Need application for filing;
- to delete Section 302;
- to add Section 203 that sets forth the requirement to post notice that the Department has deemed a Certificate of Need application to be complete;
- to delete Sections 303 thru 312, which are unnecessarily duplicative of statutory provisions or which have been supplanted by the implementation of a web-based Certificate of Need application and other revisions to this Regulation, and replacing them with the following Sections: 301 (Project Changes During Review Period), 302 (Project Changes After Receipt of Certificate of Need), 303 (Implementation and Extension Procedures), 304 (Reporting of Certificate of Need Implementation), and 305 (Joint Annual Reports);
- to delete Chapters 4, 5, 6, 7, 8 and the existing Appendix A to simplify the Certificate of Need application and implementation processes, so as to conform the existing Regulation to the new web-based Certificate of Need application. Additionally, some of the deleted provisions were unnecessarily duplicative of the requirements set forth in S.C. Code Sections 44-1-60, 44-7-190, 44-7-210, 44-7-230, 44-7-320, 44-7-340 and related authority;

- to add Section 401 to simplify and focus the Certificate of Need project review criteria in compliance with S.C. Code Section 44-7-190.

A public hearing was conducted. (Attachment 10-2)

After discussion, Mr. Batts moved, seconded by Dr. Hutto, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-15, Certificate of Need for Health Facilities and Services, and approve it for submission to the Legislature for review with the following revisions that were raised, considered or discussed by public comment: change threshold amounts to \$2 million for equipment and \$5 million for buildings. The Board voted and the Motion failed by a vote of 2-5, with Mr. Lutz, Mr. Wells, Mr. Joye, Dr. Kirol and Mr. Hewitt being the opposing votes.

After further discussion, Mr. Lutz moved, seconded by Mr. Wells, to find for the need and reasonableness of the Proposed Amendment of Regulation 61-15, Certificate of Need for Health Facilities and Services, and approve it for submission to the Legislature for review. The Board voted and Motion carried by a vote of 4-3 with Mr. Joye, Mr. Batts and Dr. Hutto being the opposing votes.

A verbatim transcript of this proceeding is included as part of the permanent record. (Attachment 10-3)

Item 11: Agency Affairs

Chairman Amsler asked for an Executive Session for the purpose of discussing a Personnel matter.

Dr. Kirol moved, seconded by Mr. Batts, to go into Executive Session for the purpose of discussing a Personnel matter. The Board voted and the Motion carried.

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

Director Templeton announced her resignation as Director of the Department.

After Board members comments of gratitude for Ms. Templeton and her accomplishments while at the Department, *Mr. Wells moved, seconded by Mr. Batts, to accept the resignation of Catherine Templeton as Director of the South Carolina Department of Health and Environmental Control effective Monday, January 12, 2015. The Board voted and the Motion carried.*

Item 12: Legal Report

No Report.

Item 13: Final Review Conference – Docket No. 14-RFR-38, Decision to return application for a bridge; John McDaniel, Applicant (Attachment 13-1)

Ms. Jacquelyn Dickman, Legal Counsel to the Board introduced this matter to the Board.

Mr. Brad Churdar, Esquire, represented the Department and Mr. Chris McG. Holmes represented John McDaniel.

After presentations from both parties and discussion by the Board, *Mr. Joye moved, seconded by Mr. Batts, to go into Executive Session for the purposed of obtaining legal advice pertaining to this matter under the attorney client privilege. The Board voted and Motion carried.*

Chairman Amsler announced while in Executive Session no actions were taken.

After further discussion, *Dr. Kirol moved, seconded by Mr. Joye, to uphold the staff decision of returning the application for a bridge unprocessed. The Board voted and Motion carried by a vote of 5-2 with Mr. Lutz and Mr. Wells being the opposing votes.*

Chairman Amsler asked for an Executive Session for the discussion of a personnel issue.

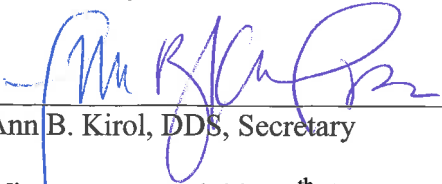
Mr. Wells moved, seconded by Dr. Kirol, to go into Executive Session for the purpose of discussing a Personnel issue. The Board voted and the Motion carried.

Chairman Amsler announced while in Executive Session no actions were taken.

The meeting adjourned.

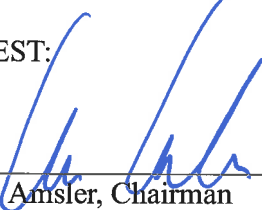
All referenced attachments are made a permanent part of these minutes.

Respectfully submitted,


Ann B. Kirol, DDS, Secretary

Minutes approved this 12th day of March 2015.

ATTEST:


Allen Amsler, Chairman

Attachments

- 0-1 Agenda
- 0-2 Attendance Roster
- 1-1 Minutes December 11 meeting
- 2-1 Administrative Orders, Consent Orders issued by Environmental Affairs
- 3-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 4-1 Hospital Infection Disclosure Act (HIDA) Advisory Membership Approval
- 5-1 Public Hearing – Proposed Amendment of R.61-34.1, Pasteurized Milk and Milk Products
- 5-2 Sign-in Sheet for Public Hearing
- 5-3 Verbatim Transcript of Public Hearing
- 6-1 Public Hearing – Proposed Amendment of R.61-79, Hazardous Waste Management Regulations
- 6-2 Sign-in Sheet for Public Hearing
- 6-3 Verbatim Transcript of Public Hearing
- 7-1 Public Hearing – Proposed Amendment of R.61-107.3, Solid Waste Management: Waste Tires
- 7-2 Sign-in Sheet for Public Hearing
- 7-3 Verbatim Transcript of Public Hearing
- 8-1 Public Hearing – Proposed New Regulation Consumer Electronic Equipment Collection and Recovery
- 8-2 Sign-in Sheet for Public Hearing
- 8-3 Verbatim Transcript of Public Hearing
- 9-1 Public Hearing – Proposed Amendment of R.61-75, Standards for Licensing Day Care Facilities for Adults
- 9-2 Sign-in Sheet for Public Hearing
- 9-3 Verbatim Transcript of Public Hearing
- 10-1 Public Hearing – Proposed Amendment of R.61-15, Certificate of Need for Health Facilities and Services
- 10-2 Sign-in Sheet for Public Hearing
- 10-3 Verbatim Transcript of Public Hearing
- 13-1 FRC – Docket No. 14-RFR-38, Decision to return an application for a bridge; John McDaniel, Applicant