

S.C. Board of Health and Environmental Control

Meeting - March 10, 2011

The S.C. Board of Health and Environmental Control met on Thursday, March 10, 2011, at 10:00 a.m. via conference call in the S.C. Department of Health and Environmental Control Board Room, 2600 Bull Street, Columbia, S.C. (Attachment 0-1)

The following members were in attendance:

- Steven G. Kisner, Acting Chairman
3rd District
- Paul C. Aughtry, III, Chairman
Member-at-large
- Henry C. Scott
2nd District
- M. David Mitchell, MD
4th District
- Coleman F. Buckhouse, MD
6th District

Also in attendance were R. Douglas Calvert, Chief of Staff, Carlisle Roberts, Jr., General Counsel, Ms. Lisa Longshore, Clerk, department staff and guests. (Attachment 0-2)

Mr. Kisner stated notice of this meeting has 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: Consideration of Board Minutes – February 10, 2011, minutes - For Approval (Attachment 1-1)

Mr. Aughtry moved, seconded by Mr. Scott, to approve the minutes as submitted for the February 10 Board meeting. Approved.

Item 2: Monthly Award for Excellence for March 2011 (Attachment 2-1)

Mr. Calvert recognized the following recipients:

- **Environmental Quality Control** – Karen Garris;
- **Health Services** – Tammy Sims;
- **Region 1 Public Health Office** – Kandi Fredere;
- **Region 2 Public Health Office** – Tia Arnold;
- **Region 3 Public Health Office** – Debbie Reynolds;
- **Region 4 Public Health Office** – Sumter County Adult Health Administrative Team – Lee Houser, Brittany Ingram, Rhetta Sanders and Robin Williams;
- **Region 5 Public Health Office** – North Augusta Health Department WIC Clinic Staff – Stephanie Brown, Daisy Garcia, Terri Harris, Pat Ledford, Krystal Patrick, and TaTanisha Ryan;
- **Region 6 Public Health Office** – Lakesia Bryant;
- **Region 7 Public Health Office** – Crystal Keyes;
- **Region 8 Public Health Office** – BabyNet Service Coordination Team – Arjanetta Smith, Gwen Jones and

Heather Lear.

The Board extended its thanks to all recipients.

Item 3: Orders issued by Ocean and Coastal Resource Management(Attachment 3-1)

Ms. Rheta DiNovo, Assistant Director, Regulatory, stated two (2) actions had been taken with penalties of \$3,000.

The Board accepted this item as information.

Item 4: Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation (Attachment 4-1)

Ms. Belinda Bradshaw, Bureau of Radiological Health, stated four (4) actions had been taken with penalties of \$5,300.

The Board accepted this item as information.

Item 5: Administrative and Consent Orders issued by Environmental Quality Control (Attachment 5-1)

Ms. Robin Stephens, Compliance Assistance and Enforcement, stated thirty-one (31) actions had been taken with penalties of \$69,369.

The Board accepted this item as information.

Item 6: Status Report – Environmental Fees and Time Frames (Attachment 6-1)

Mr. Mike Rowe, Director, Division of Research and Planning, presented this informational item which represents a report for the second quarter of the 2010-2011 fiscal year as required by Regulation 61-30, Environmental Protection Fees.

The Board accepted this item as information.

Item 7: Public Hearing and Request for Final Approval – Proposed Amendment of R.61-79, Hazardous Waste Management Regulations, State Register Document No. 4174, Legislative review is required (Attachment 7-1)

Mr. Richard Haynes, Director, Division of Waste Management, presented this item. The United States Environmental Protection Agency (EPA) promulgates amendments to 40 CFR 260 through 266, 268, 270, and 273 during the calendar year. The South Carolina Department of Health and Environmental Control (Department)

proposes to adopt one Final Rule that was published in the period between July 1, 2008 and June 30, 2009, entitled: Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated with Colleges and Universities (Academic Laboratories Generator Standards Rule). The Department has proposed to establish new regulations for transfer facilities where manifested shipments of hazardous waste in containers are stored for 10 days or less. The transfer Facility Rule being developed would establish requirements for storage of hazardous waste at transfer facilities which would include notification and annual reporting, location standards, financial assurance, closure contingency and emergency plans. The Department's intention was to clarify that transfer facilities that stored waste greater than 10 days require a storage permit. A public hearing was conducted. (Attachment 7-2)

Mr. Aughtry moved, seconded by Mr. Scott, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

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

Item 8: Public Hearing and Request for Final Approval – Proposed Repeal of Regulation 61-99, Hazardous Waste Management Planning, State Register Document No. 4175, Legislative review is required (Attachment 8-1)

Mr. Haynes presented this item to the Board. This regulation was held invalid by federal case law and the Department has proposed its repeal. This repeal will have no substantial fiscal or economic impact on the State and its political subdivisions or the regulated community and will require legislative review.

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

Dr. Buckhouse moved, seconded by Mr. Scott, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

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

Item 9: Public Hearing and Request for Final Approval – Repeal of Regulation 61-90, Minimum Standards for Licensing Chiropractic Facilities, State Register Document No. 4180, Legislative review is required (Attachment 9-1)

Ms. Gwen Thompson, Assistant Director, Division of Health Licensing, presented this item to the Board. Regulation 61-90 was promulgated April 27, 1984. Only a single facility was licensed under the regulation at any time. The facility's last license expired July 31, 2000. That facility subsequently closed. No other application to license an inpatient chiropractic facility has been received since that date. Act No. 278, effective July 1, 2010, amended the State Certification of Need and Health Facility Licensure Act, Section 44-7-110 et seq., S.C. Code of Laws, 1976, as amended. The amended Act at Section 44-7-260(A) deleted chiropractic inpatient facilities from the list of facilities the Department is authorized to license, thus making R.61-90 null and void.

A public hearing was conducted. (Attachment 9-2)

Mr. Aughtry moved, seconded by Dr. Mitchell, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

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

Item 10: Public Hearing and Request for Final Approval – Proposed Repeal of Regulation 61-6, Capital Expenditure Review under Section 1122, SSA, State Register Document No. 4176, Legislative review is required (Attachment 10-1)

Ms. Beverly Brandt, Director, Bureau of Health Facilities and Services Development, presented this item to the Board. Regulation 61-6, Capital Expenditure Reviews under Section 1122, Social Security Act was adopted by the Board of Health in 1968 and has not been amended. The purpose of R.61-6 was to assure federal funds were not used to support unnecessary capital expenditures made by or on behalf of a health care facility to support unnecessary capital expenditures reimbursed by other activities. The federal government no longer reimburses the Department for its review of health facility applications. In addition, R.61-6 has been subsumed by “The State Certification of Need and Health Facility Licensure Act,” S.C. Code Ann. Sections 44-7-110 et seq.; “Certification of Need for Health Facilities and Services,” S.C. Code Ann. Regs. 61-15; and the South Carolina Health Plan. This regulation obsolete; it no longer serves its initial purpose and should be repealed and removed from the Code of Regulations of the S.C. Code of Laws. Department staff proposes the repeal of R. 61-6 in its entirety. A public hearing was conducted. (Attachment 10-2)

Dr. Buckhouse moved, seconded by Dr. Mitchell, to find for the need and reasonableness of the proposed regulation and approve it for submission to the legislature for review. Approved.

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

Item 11: Handling of Request for Final Review requiring action by April 14, 2011 (RFR Docket No. 11-RFR-7 through 11-RFR-11) (Attachment 11-1)

Mr. Kisner asked if anyone wished to conduct review conferences on any of the pending requests for review.

Dr. Mitchell moved, seconded by Mr. Aughtry, to conduct a final review conference on Docket No. 11-RFR-11, Determination E-11-01 dated February 22, 2011, that replacement of the existing PMD2 linear accelerator with like equipment at Gibbs Regional Cancer Center, Spartanburg Regional Healthcare System does not require CON review; and to decline to conduct review conferences on Docket Nos. 11-RFR-7, -8, -9 and -10. Approved.

Item 12: Agency Affairs

Mr. Calvert announced that he would defer this report until next meeting.

Item 13: Legal Report

Mr. Roberts updated the Board on legal matters and asked for an Executive Session for discussion of matters in litigation under the attorney-client privilege.

Mr. Aughtry moved, seconded by Dr. Mitchell, moved to go into Executive Session. Approved.

While in Executive Session, no actions were taken.

Mr. Scott moved, seconded by Dr. Buckhouse, to adjourn. Approved.

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

Respectfully submitted,
Steven G. Kisner
Secretary of the Board

Minutes approved this 14th day of April 2011.

ATTEST:

Allen Amsler
Chairman

Attachments

- 0-1 Agenda
- 0-2 Sign-in Sheet
- 1-1 February 10, 2011 minutes
- 2-1 Monthly Award for Excellence Recipients for March 2011
- 3-1 Orders issued by the Office of Ocean and Coastal Resource Management
- 4-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 5-1 Administrative and Consent Orders issued by Environmental Quality Control
- 6-1 Status Report – Environmental Fees and Time Frames
- 7-1 **Public Hearing** - Proposed Amendments to R. 61-79, Hazardous Waste Management
- 7-2 Sign-in sheet for Public Hearing
- 7-3 Verbatim Transcript
- 8-1 **Public Hearing** – Proposed Repeal of Regulation 61-99, Hazardous Waste Management Planning
- 8-2 Sign-in sheet for Public Hearing
- 8-3 Verbatim Transcript
- 9-1 **Public Hearing** – Repeal of Regulation 61-90, Minimum Standards for Licensing Chiropractic Facilities
- 9-2 Sign-in sheet for Public Hearing
- 9-3 Verbatim Transcript
- 10-1 **Public Hearing** – Proposed Repeal of Regulation 61-6, Capital Expenditure Review under Section 1122, SSA
- 10-2 Sign-in Sheet for public hearing
- 10-3 Verbatim transcript
- 11-1 Handling of Requests for Final Review requiring action by April 14, 2011, Docket No. 11-RFR-7 through Docket No. 11-RFR-11