

BOARD:  
Allen Amsler  
Chairman  
Mark S. Lutz  
Vice Chairman  
R. Kenyon Wells



Catherine B. Templeton, Director

*Promoting and protecting the health of the public and the environment*

BOARD:  
Charles M. Joye II, P.E.  
L. Clarence Batts, Jr.  
Ann B. Kirol, DDS  
John O. Hutto, Sr., MD

## **Minutes of the August 8, 2013, meeting of the**

### **South Carolina Board of Health and Environmental Control**

The South Carolina Board of Health and Environmental Control met on Thursday, August 8, 2013, at 10:00 a.m. in the Board Room at the South Carolina Department of Health and Environmental Control building, 2600 Bull Street, Columbia, South Carolina. (Attachment 0-1)

The following members were in attendance:

Allen Amsler, Chairman  
Member-At-Large

Mark S. Lutz, Vice-Chairman  
1<sup>st</sup> District

R. Kenyon Wells  
2<sup>nd</sup> District

Charles M. Joye, II, P.E.  
3<sup>rd</sup> District

L. Clarence Batts  
4<sup>th</sup> District

Ann B. Kirol, DDS  
5<sup>th</sup> District

John O. Hutto, Sr., MD  
6<sup>th</sup> District

Also in attendance were W. Marshall Taylor, Jr., General Counsel; Lisa Lucas 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.*

Chairman Amsler asked for an Executive Session for the purpose of receiving legal advice relating to the Greenwood tuberculosis matter under the attorney-client privilege.

*Dr. Kirol moved, seconded by Mr. Batts, to go into Executive Session for the purpose of receiving legal advice relating to the Greenwood tuberculosis matter under the attorney-client privilege. The Board voted and the Motion carried.*

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

**Item 1: Board Minutes of the July 11 meeting** (Attachment 1-1)

*Dr. Kirol moved, seconded by Mr. Batts, to approve the minutes as submitted for the July 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, EQC, stated five (5) Consent Orders and one (1) Administrative Order had been issued with total penalties of \$44,900.

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

**Item 3: Proposed Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards and South Carolina Implementation Air Quality Implementation Plan (SIP), Legislative review is not required** (Attachment 3-1)

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

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

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

The Department proposes to amend Regulation 61-62.1, Definitions and General Requirements, to incorporate an amendment to the definition of Volatile Organic Compounds (VOCs) promulgated by the federal rule "Revision to Definition of Volatile Organic Compounds-

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

The Department also proposes other changes to Regulation 61-62 that include corrections for internal consistency, clarification, reference, punctuation, codification, formatting, and spelling to improve the overall text of Regulation 61-62 as necessary. Pursuant to S.C. Code Section 1-23-120(H)(1), the proposed amendments will not be more stringent than current federal requirements and thus do not require legislative review.

***Mr. Lutz moved, seconded by Mr. Batts, to grant initial approval to publish a Notice of Proposed Regulation in the State Register, provide opportunity for public comment, consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted and the Motion carried.***

**Item 4: Proposed Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, and South Carolina Air Quality Implementation Plan (SIP), Legislative review is required** (Attachment 4-1)

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

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

(Section I, *Definitions*) to modify the definition for “Commissioner” to include the term “Director;” to add definitions for the terms “Code of Federal Regulations (CFR),” “NAICS Code,” and “SIC Code;” and to strike the majority of the definition for “Volatile Organic Compound” (VOC) which includes an exemptions list. The exemptions list for VOC is amended on an almost annual basis and requires a SIP amendment. Therefore, the Department is proposing to reference 40 CFR 51.100(s) as the federal definition is often amended before the Department is able to complete the regulatory process outlined in the Administrative Procedure Act.

(Section II, *Permit Requirements*) to update the activities list which an owner or operator may undertake prior to obtaining a construction permit; to update and streamline exemption thresholds for construction permits; to outline construction permit requirements for sources of VOCs; to update and clarify construction permit application requirements; to streamline and

update general construction permit requirements; to clarify and update operating permit renewal request requirements; to strike the Department's requirement to public notice registration permits; to update and streamline registration permit text; to update and streamline transfer of ownership/operation requirements; and to amend the Department's public participation procedures to allow for posting on the Department's website.

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

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

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

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

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

Pursuant to S.C. Code Section, 1-23-120(H)(1), the proposed amendments to Regulation 61-62, *Air Pollution Control Regulations and Standards*, and the SIP will require legislative review.

*Mr. Lutz moved, seconded by Mr. Batts, to grant initial approval to publish a Notice of Proposed Regulation in the State Register, provide opportunity for public comment, consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted and the Motion carried.*

**Item 5: Proposed Amendment of Coastal Division Regulations: R.30-1.D, Definitions; R.30-5, Exceptions; R.30-9, Other Provisions; R.30-13, Specific Project Standards for Beaches and the Beach/Dune System; R.30-15, Activities Allowed Seaward of the Baseline, Legislative review is required** (Attachment 5-1)

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

Pursuant to 1976 Code Ann. Sections 48-39-10 *et seq.* the Department proposes to amend certain Coastal Division regulations related to permitting in the beaches and beach/dune critical areas of the coastal zone.

These proposed changes would amend definitions, provide clarity and specific standards to be utilized in the evaluation of beachfront permit applications and notifications, and provide specific standards, conditions, and administrative procedures for issuance of emergency orders within the state's beachfront jurisdiction. The proposed changes will provide more clarification to the regulations, enabling Department staff to administer more effectively the regulatory program of the Coastal Division.

After discussion, the Board suggested the following changes to the proposed amendments:

- Delete "of Emergency Orders" from heading on 30-5.B;
- Change R.30-15.H(2) (c) to read "within one hundred twenty days..."
- Allow for multiple sand scrapings on golf courses taking into consideration the beach profile.

*Mr. Joye moved, seconded by Mr. Batts, to grant initial approval, with noted changes, to publish a Notice of Proposed Regulation in the State Register, to provide opportunity for public comment, consider comments, and allow staff to proceed with a public hearing before the Board. The Board voted and the Motion carried.*

**Item 6: Agency Affairs**

This item was deferred until a later meeting.

**Item 7: Legal Report**

Mr. Taylor reported the Supreme Court had not yet issued a decision on the Department's Petition regarding the Certificate of Need (CON) program.

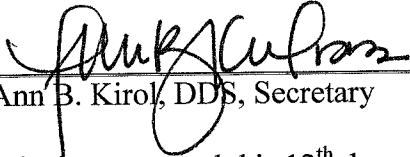
*Dr. Hutto moved, seconded by Dr. Kirol, to go into Executive Session for the purpose of discussion of a personnel matter. The Board voted and the motion carried.*

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

Chairman Amsler adjourned the meeting.

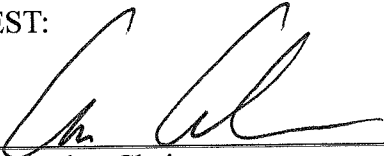
All referenced attachments are made a permanent part of these minutes.

Respectfully submitted,

  
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Ann B. Kirol, DDS, Secretary

Minutes approved this 12<sup>th</sup> day of September 2013.

ATTEST:

  
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Allen Amsler, Chairman

#### Attachments

- 0-1 Agenda
- 0-2 Attendance Roster
- 1-1 Minutes of July 11 meeting
- 2-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 3-1 Proposed Amendment of R.61-62, Air Pollution Control Regulations and Standards (exempt from legislative review)
- 4-1 Proposed Amendment of R.61-62, Air Pollution Control Regulations and Standards
- 5-1 Proposed Amendment to Coastal Division Regulations